

REGULATION OF POLITICAL COMPETITION IN ELECTORAL PROCESSES: THE CASE OF ARMENIA AND RUSSIA

by Hayk Abrahamyan

In partial fulfilment of the requirements for the degree of Master of Arts

Legal Studies Department
Central European University
Supervisor: Daniel Smilov

Budapest, Hungary

2014

Abstract

This thesis aims at analysing the influence of state involvement in regulation of electoral process can influence the electoral competition from the perspective of equal and fair conditions for the competitors. The research is based on the comparative analysis of relevant practices in Armenia and Russia. It is revealed that the free and fair elections can be challenged by improper state regulation of electoral competition especially with regard to such components of electoral process as election administration, electoral dispute resolution and election campaign.

Table of Contents

Abstract	i
Introduction	1
Chapter 1 – General Background: Regulation of Political Competition in Electoral Processes	5
1.1 Regulation of political competition in electoral processes	5
1.2 Legislative framework	7
1.3 Political Context	11
Chapter 2 – Impartiality in Election Administration and Electoral Justice Systems ..	19
2.1 Election Administration.....	20
2.1.1 Guiding Principles.....	20
2.1.2 Election Administration in Armenia and Russia	22
2.2 Electoral Justice.....	28
2.2.1 Guiding Principles.....	28
2.2.2 Electoral Dispute Resolution in Armenia and Russia.....	31
Chapter 3 – Securing Pluralism and Equality in Election Campaigns	36
3.1 Media and Election Campaign	36
3.1.1 Guiding Principles.....	36
3.1.2 Media and Campaign in Armenia and Russia.....	39
3.2. Campaign Financing	44
3.2.1. Guiding Principles.....	44
3.2.2. Campaign Financing in Armenia and Russia.....	45
Conclusion	50
Bibliography	52

Introduction

After the collapse of the Soviet Union most of the newly independent countries including Armenia and Russia stepped on the road of democratization. Along with other changes the process of democratization also implied holding free and fair elections. Lacking the experience of established democracies, with newly developing democratic institutions and party system these countries faced the challenge of organizing democratic elections which will meet the requirements of international standards. Although elections were also held in Soviet Union they lacked competitiveness. Thus the state involvement in regulation of political competition in electoral processes became of crucial importance in securing free and fair democratic elections.

In this paper I address the challenges faced by Armenia and Russia in relation to regulation of political competition in electoral processes after the fall of Soviet Union. Particularly I will address the issue of state involvement in regulation of electoral process, which means that it can affect the competitiveness of electoral process. Thus by securing equal and fair conditions or by failing to do so the state practices can influence the outcomes of elections. This can have implications on a broader democratization level and also within a human rights context. Considering the mostly negative records by both countries with regard to these issues the research on regulation of political competition can provide many answers.

Thus the aim of the research is to analyse how the state regulation of certain components of electoral process can influence the electoral competition from the perspective of equal and fair conditions for the competitors. The research focuses on certain elements of election process, namely the election administration, electoral

justice and dispute resolution, election campaign. Although it is clear that state regulation of other elements of electoral process can also influence the political competition during elections, only the election administration, electoral dispute resolution and the election campaign are chosen for the purposes of this research. The choice of these particular elements is reasoned by their comparably high influence on electoral processes and election outcomes as well as by existence of apparent drawbacks related to these components in both countries. Furthermore, the existing limitations in terms of time, the availability of relevant materials and length of this paper resulted in restriction of the scope of this research.

Based on the comparative analysis of regulation of political competition in Armenia and Russia in next chapters I will answer the following research questions:

1. How the regulation of election administration affects the political competition in electoral processes?
2. How the regulation of electoral justice affects the political competition in electoral processes?
3. How the election campaign regulations in terms of media and political financing affect the political competition in electoral processes?

The research questions are answered by using the comparative analysis methodology. Besides the comparative legal analysis of national legislation of both countries and the international legal framework, a qualitative analysis of various relevant data (including reports, databases) is done.

The research is elaborated in three chapters. In the first chapter I provide general background information necessary for implementation of the research. First of all the notion of regulation of political competition in electoral context is defined. Secondly,

the legislative framework for democratic elections is presented with a focus on norms, principles and political commitments relevant for the regulation of chosen components of electoral process. And finally, the relevant political context is described for the purpose of setting the political environment of electoral processes and its influence on regulation of political competition.

In the second chapter I address the first two research questions of this thesis. Namely, through a comparative analysis of practices of election administration and electoral justice in Armenia and Russia I show how the regulation of election management bodies (EMB) and election dispute resolution bodies (EDRB) influence the political competition in electoral processes. After introducing the concepts of election administration and electoral justice as well as reflecting upon their role in democratic elections I elaborate on fundamental principles on which their functioning is based. Further, based on the reports of OSCE ODHR election observation missions (EOM) I analyse the practices of election administration and election justice systems in Armenia and Russia in the context of regulation of political competition in electoral processes addressing the current issues faced by them.

In the third chapter I present the influence of regulation of election campaigning on election competition. The focus is on two components of electoral campaign - media and political finances. After presenting the guiding principles of regulating the media and campaign financing I analyse the relevant practices in Armenia and Russia in a comparative perspective reflecting on the challenges faced by them.

There has been a lot of research on electoral practices of post-Soviet area including Armenia and Russia. Moreover, different components of electoral process in both countries have been analysed to some extent. However the state involvement in

regulation of these components and its influence on political competition has not been examined much. Thus this research aims at filling the existing gap. Moreover, the research can lead to further researches in this area. Namely, a more comprehensive analysis can be done on state regulation of electoral process covering the other aspects missing in this paper as well. This research can also contribute to post-Soviet studies on electoral processes. Moreover, the research can contribute further researches on implications of regulation of political competition for other fields such as democratisation and human rights.

As regards the practical application of this research it can be used to assess the regulation of political competition in next elections in both countries or can be adapted for other countries as well.

Chapter 1 – General Background: Regulation of Political

Competition in Electoral Processes

This chapter aims at setting the general background for the further research on regulation of political competition in electoral processes in post-Soviet Russia and Armenia. First of all, the idea of regulation of political competition in the context of elections is elaborated in the first section. Further a short reflection follows on how the regulation of certain elements of election process generally affects the electoral competition. The second section presents the relevant legislative framework for democratic elections. Particularly, the set of norms, principles and political commitments developed within this framework addressing the issue of regulation of political competition are being discussed. And finally, the third section provides the political context of electoral processes in both countries. Analysing the developments in political life after independence will help to fully understand the environment of each election taking place in countries.

1.1 Regulation of political competition in electoral processes

The periodic free and fair elections are widely recognized and acknowledged in many international documents as a vital element of democracy. Along with other foundational principles of democratic elections, such as universal, equal and secret suffrage the requirement of free and fair character of elections has been stated in various regional and universal human rights instruments. These principles have been reflected in the Universal Declaration of Human Rights (UDHR), the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the International Covenant on Civil and Political Rights (ICCPR), and a body of political commitments, legal obligations, international standards and practices related to democratic elections after 1990, when the Document of the Copenhagen Meeting

of the CSCE Conference on the Human Dimension (Copenhagen Document) was adopted. Furthermore, as it was noted by former Secretary General of the United Nations Boutros Boutros-Ghali in his “Agenda of Democratization” the free and fair elections are “a fundamental prerequisite for democratization”.¹

The process of democratization was launched in most of the post-communist countries, including Armenia and Russia after the end of the Cold War. This implied a change of a wide range of practices exercised in Soviet Union including the elections, which despite being *de jure* democratic in fact lacked competitiveness.

With gaining independence and establishing a multi-party political environment the countries faced the new challenge of regulating the political competition between the political forces. As elections are the process where the competitive character of politics is mostly expressed securing an equal and non-discriminatory ground for competitors is crucial for democratic elections. Thus the regulation of political competition here refers to the state’s practice of designing legislative framework and relevant policies that aim at securing equality and plurality in electoral processes.

According to the Inventory of OSCE Commitments and Other Principles for Democratic Elections the key components of electoral process are the following:

- *Legal Framework: Scope and System;*
- *Equality: Constituencies and Districting;*
- *Impartiality: Administration and Management;*
- *Universality: Right to Vote;*
- *Candidacies and Political Parties;*
- *Election Campaign, including Financing and Media;*
- *Voting Process;*
- *Results: Determination, Publication, and Implementation;*
- *Complaints and Appeals;*
- *Domestic and International Observation; and*

¹ Boutros Boutros-Ghali, *An Agenda for Democratization*, New York: United Nations, 1996. Para 16-17

- *Co-operation and Improvement.*²

Though the regulation of political competition is exercised with regard to most of the aforementioned components, for the purposes of this research only three are chosen: election management, election campaign, complaints and appeals (electoral dispute resolution). In the next section the relevant legislative framework with a focus on these three components is provided. The further chapters provide a more comprehensive description of the components with further analyse of cases of Armenia and Russia.

1.2 Legislative framework

While considering the legal framework for election processes it is important to note that there is no a single universal document defining the principles of democratic elections. Moreover, since the principle of democratic elections and election-related human rights were set by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) no any major step towards further comprehensive elaboration of the principles was taken until 1990s.

Since then a legal framework of principles of democratic elections has been developed on three levels: global, regional and national. On global level UN bodies have adopted a number of documents addressing the topic of democratic elections. Most notably, the Human Rights Committee's General Comment 25 provided interpretation of the principles of democratic elections set forth in Article 25 of the ICCPR. As for relevant regional instruments, that both Armenia and Russia are part of, several regional institutions defining election-related norms and principle worth mentioning. Firstly, the Council of Europe supplemented the formation of regional legislative framework through its institutions, namely the Parliamentary Assembly,

² Inventory of OSCE Commitments and Other Principles for Democratic Elections, 1.4

the European Commission for Democracy through Law (Venice Commission), which has developed a Code of Good Practice in Electoral Matters (CDL Guidelines) and the case law of the European Court of Human Rights. The second important regional organization is the Organization for Security and Co-operation in Europe. The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe (CSCE, currently OSCE) adopted in 1990 is considered to be one of the most important international documents setting forth the principles of democratic elections. The Copenhagen Document has also been a guiding document for election related activities of OSCE/ODIHR (Office for Democratic Institutions and Human Rights), which has also developed guidelines for review of national legislative framework. Other relevant regional instruments are the “Convention on Standards for Democratic Elections and Electoral Rights and Freedoms in CIS Member States” drafted by the Parliamentary Assembly of the Commonwealth of Independent States (CIS) and the draft convention submitted to the Council of Europe by the Association of Central and Eastern European Election Officials (ACEEEO). In terms of development of international standards related to democratic elections the Inter-Parliamentary Union and the Declaration on Criteria for Free and Fair Elections are also worth mentioning.

Within this framework a relevant set of norms, principles and political commitments has been developed addressing the issue of regulation of political competition.

The administration and management of elections is required to be exercised autonomously without government interference. This implies establishment of an

impartial and effective mechanism for management of elections³. The CIS Electoral Convention for example requires establishment of an independent election management bodies,⁴ however countries with strong traditions of impartial executive administration prefer to exercise the election administration through government and local authorities.

The impartiality, which is to be secured mainly through a neutral and balanced composition of election management bodies, also implies a transparent appointment of EMB members⁵. As for the effectiveness of EMBs, the CIS Electoral Convention for example requires that decisions of EMBs be binding⁶. The guidelines set by ODIHR and Venice Commission also consider the permanent functioning of EMBs as vital factor of their efficiency.⁷ And finally based on a number of final reports of ODIHR Election Observation Missions (EOM) it is suggested that EMBs have sufficient resources, including funding, as well as receive the support of other relevant agencies to function effectively.⁸

International documents have also developed norms and principles for electoral justice, namely the complaint and appeal procedures and the role of election dispute management bodies. The Copenhagen Document set forth a several principles of electoral justice, such as the availability to seek redress against administrative

³ Commission for Democracy through Law: Code of Good Practice, II, 3.1; ODIHR Guidelines for Reviewing a Legal Framework for Elections, VI; Inter-Parliamentary Union, Declaration on Criteria for Free and Fair Elections 4(2).

⁴ CIS Electoral Convention, 11(1), 19(2)(j)

⁵ ODIHR Guidelines, VI.

⁶ CIS Electoral Convention, 11(6)

⁷ CDL Code of Good Practice, II, 3.1.c; ODIHR Guidelines,

⁸ Inventory of OSCE Commitments and Other Principles for Democratic Elections, 1.4

decisions, which in turn should be fully justifiable and specify available remedies.⁹ The impartiality and effectiveness of EDRBs should also be secured¹⁰.

A set of principles and norms has been developed regulation the election campaigns, especially the issues related to financing and media. It is widely accepted that in order to secure equality of opportunity and fair competition states should exercise certain regulation of campaign financing, in terms of imposing reasonable limitations on private financing,¹¹ securing the fair and just distribution of public funding or other support,¹² imposing restrictions on the possible sources of contributions and preventing direct assistance by public bodies.¹³ State can also require the candidates to disclose and report on the campaign funds under the supervision of EMBs or other relevant state institution.¹⁴ The disclosure refers to the contributions received by candidates and the sources thereof as well as the expenditures and their purposes.¹⁵

The States should also have a positive obligation to provide fair and just conditions for election contestants to freely address their messages to public.¹⁶ The CIS requires the EMBs to secure media's accessibility to all the processes of election cycle.¹⁷ Equal access and fair treatment should be secured by all types of state-owned media¹⁸ and measures should be undertaken to guarantee equality of

⁹ Copenhagen Document, 5.

¹⁰ CDL Code of Good Practice, II, 3.3; IPU Declaration, 4(9); CIS Electoral Convention, 10(4)(f)

¹¹ CDL Code of Good Practice, I, 2.3.c-e; ODIHR Guidelines, X.C, IPU Declaration, 3(3).

¹² CDL Code of Good Practice, I, 2.3.a-b; ODIHR Guidelines, X.B;

¹³ European Convention on Human Rights, 16; The CIS Electoral Convention, 1(7); CDL Code of Good Practice, I, 2.3.e.

¹⁴ CIS Electoral Convention, 12(6)

¹⁵ European Court of Human Rights, *Pierre-Bloch* case; CDL Code of Good Practice, I, 2.3.d;

¹⁶ CDL Code of Good Practice, I, 3.1.b;

¹⁷ CIS Electoral Convention, 13(3)

¹⁸ Copenhagen Document, 7.7, 7.8; CDL Code of Good Practice, I, 2.3.a.ii; IPU Declaration, 3(4).

opportunities and non-discriminatory treatment on private media as well but without infringing the press freedom.¹⁹

1.3 Political Context

The description of political context, which is exercised based on the Freedom in the World Reports by the Freedom House, is provided here to secure a more comprehensive analysis of regulation of political competition in both countries. The focus is on political processes and developments taking place in Russia and Armenia between the electoral processes that can affect the specific components of regulation of political competition in electoral processes discussed in following chapters.

The collapse of Soviet Union marked the beginning of democratization processes in political and economic spheres of Armenia and Russia. The process itself was full of various obstacles as in both countries any political force coming to power had to deal with Soviet legacy and difficulties of transition process. The Soviet legacy was reflected in economic crises, weak separation of powers, widespread corruption, underdeveloped party system, escalation of previously frozen conflicts etc. These processes shaped the developments in political life of both countries.

The common characteristic for both Russia and Armenia that can be visible throughout the political developments after independent is the policy of consolidation of power by ruling authorities. For instance, Levon Ter Petrosian, the leader of independence movement in Armenia and country's first president banned 9 political parties and consequently secured the victory of his political coalition in parliamentary

¹⁹ Copenhagen Document, 7.7 and 7.8; Universal Declaration of Human Rights, 19; ECtHR, *Lopes Gomes Da Silva* and *Oberschlik* cases; CDL Code of Good Practice, I, 2.3.a.ii & c; IPU Declaration, 3(4).

elections of 1995. This subsequently also guaranteed his re-election for a second term in 1996.²⁰ Boris Yeltsin too, Russia's first president chose over power consolidation especially over broadcast media and business elites after communists and nationalists took over in 1995 parliamentary elections. Being afraid of the comeback of communist regime and the failure of reformist policy Yeltsin gained the support of media and business elites and only with their help managed to secure victory in the 1996 presidential elections.²¹

However, both Ter Petrosian and Yeltsin didn't fully serve their second terms. In 1998 Ter Petrosian resigned under a strong political and public pressure for his gradualist approach in negotiations with Azerbaijan over the disputed area of Nagorno-Karabakh. Prime Minister Robert Kocharian, previously the President of Nagorno-Karabakh was elected as president of Republic of Armenia²². As for Yeltsin, after facing a financial crisis and harsh political tensions, he appointed Vladimir Putin, the head of the Federal Security Service, as Prime Minister and as his preferred successor in 2000 presidential elections. Putin, whose popularity and influence increased in light of his close association with military campaign in Chechnya, backed the pro-governmental coalition Unity bloc, which successfully performed in parliamentary elections thus securing favourable conditions for upcoming presidential elections. On 31 December 1999 President Boris Yeltsin unexpectedly resigned leaving Prime Minister Vladimir Putin as an acting head of state, who subsequently won the majority of votes in the presidential elections of 2000.²³

²⁰ Freedom House, Freedom in the World, Armenia 1998

²¹ Freedom House, Freedom in the World, Russia 1999

²² Freedom House, Freedom in the World, Armenia 1998

²³ Freedom House, Freedom in the World, Russia 1999

Both Putin and Kocharian initiated processes aimed at increasing the consolidation of power in their hands. On 27 October 1999 the Prime Minister and the Speaker of Parliament of Armenia were assassinated along with other top officials during an armed attack of 5 gunmen on the National Assembly. As a result the country was left without strong political leadership and plunged into a political crisis.²⁴ Robert Kocharian, whose name was speculated as being behind the organizing of shootings avoided official accusations due to lack of evidence and despite an increasing political opposition managed to strengthen his positions.²⁵ Meanwhile Putin initiated a set of reforms and policies directed at consolidation of central government authority especially over powerful business elite (the so called oligarchs) and the independent media outlets.²⁶ Putin also successfully removed Communists from almost all of their leadership positions having around 25 percent of key decision-making positions being occupied by former security and military officers by the year 2004.²⁷

The authoritarian line in Putin's policy of consolidation of executive power continued in next years and was marked by increased pressure on civil society and political opposition, reinforced state control over media (including the closure of state's last independent television network and adoption of a restrictive legislation) and politically-motivated prosecutions of influential business leaders and academics. In this conditions the Unity party, which was controlled by Kremlin won the 2003

²⁴ Freedom House, Freedom in the World, Armenia 1999

²⁵ Freedom House, Freedom in the World, Armenia 2001; Freedom House, Freedom in the World, Armenia 2002

²⁶ Freedom House, Freedom in the World, Russia 2001; Freedom House, Freedom in the World, Russia 2002

²⁷ Freedom House, Freedom in the World, Russia 2003; Freedom House, Freedom in the World, Russia 2004

parliamentary elections and Putin achieved an easy victory in 2004 presidential elections.²⁸

The year of 2003 saw a critical downgrade in democratic processes in Armenia having failed to hold both presidential and parliamentary elections in line with democratic standards. Kocharian was re-elected in the second round of elections the results of which resulted in mass street demonstrations and followed by detention of numerous opposition supporters. In May, as a result of parliamentary votes three parties supporting the President won a majority and formed a coalition government²⁹.

The 2003-2004 elections in both Armenia and Russia received negative assessment by international observers for their gross irregularities. However, the following events showed no any change in continuous consolidation of power in hands of executive authority headed by the Presidents in both countries. Kocharian neglected the Constitutional Court's proposal to hold a "referendum of confidence" to dispel widespread doubts about the legitimacy of the election results. Furthermore, the mass opposition protest rallies over the flawed presidential elections were violently dispersed. Combined with further marginalization of independent voices, including the media, this led to public apathy in Armenia with regard to political processes.³⁰

During his second term Putin strengthened the president's executive power through certain legislative changes. Firstly, the new constitutional changes made governors appointed rather than elected officials³¹. Moreover, Putin practically achieved the absence of opposition in legislature by first banning formal electoral blocs and even

²⁸ Freedom House, Freedom in the World, Russia 2005

²⁹ Freedom House, Freedom in the World, Armenia 2004

³⁰ Freedom House, Freedom in the World, Armenia 2005

³¹ Freedom House, Freedom in the World, Russia 2006

preventing the formation of informal coalitions.³² The legislation on registration and reporting requirements of nongovernmental organizations (NGO), especially those that receive foreign funding, made it easier for the authorities to close down the NGOs that were of critical position on official policy. The vague formulations of new legislation on extremism and terrorism allowed authorities to abuse it for political purposes against the critics and opponents of Kremlin³³.

In 2007 parliamentary elections took place in both countries which reinforced the positions of pro-government parties thus securing favourable conditions for incumbent presidents' successors for upcoming presidential elections.

After a disputed victory by Serzh Sargsian, Kocharian's successor, in 2008 presidential elections the country was dragged into another political crisis when the protest demonstrations started by opposition candidate turned violent with 10 people being killed more than 200 injured. Outgoing president Kocharian declared emergency situation and dozens of people were arrested in the rise of the turmoil.³⁴ The political situation in Armenia remained restrained until 2011 with authorities being subject to harsh criticism by opposition and international organizations for not undertaking adequate measures to investigate the police abuses committed in 2008 and not releasing the opposition supporters arrested during 2008 crackdown.³⁵

In conditions of increasing pressure and limitations on opposition political parties, public demonstrations, the media, and nongovernmental organizations Putin's successor Dmitri Medvedev won the elections immediately appointing Putin as Prime Minister. With political power de facto remaining in Putin's hands the latter's

³²Freedom House, Freedom in the World, Russia 2007

³³Ibid

³⁴Freedom House, Freedom in the World, Armenia 2009

³⁵Freedom House, Freedom in the World, Armenia 2010; Freedom House, Freedom in the World, Armenia 2011

administration continued authoritarian line. Medvedev continued Putin's policy of concentrating political power in hands of executive branch while maintaining control over the media, civil society as well as over the legislative and judicial branches³⁶. A new constitutional amendment came to reinforce the president's executive power by extending the presidential term from four to six years.³⁷

The 2011 saw significant improvement with regard to political situation in the Armenia. First of all, under the pressure of international organizations and mass opposition demonstrations the authorities released political prisoners. The government also restored the stalled investigation of 2008 crackdown and launched a dialogue with the opposition. And finally, given the criticism of the last 2 elections a new Electoral Code was adopted under the local and international pressure.³⁸

Meanwhile in Russia after the 2011 parliamentary elections, where the United Russia barely preserved majority, strong anti-government protests took place protesting against the fraudulent elections and widespread corruption as well as demanding freedom for political prisoners.³⁹

The latest 2 elections in Armenia saw the strengthening of pro-government parties' positions in the parliament and re-election of Serzh Sargsian. According to international observers both elections were held generally in line with international standards⁴⁰.

Prime Minister Vladimir Putin returned to the Kremlin after he won the March 2012 presidential election. In 2013 government enacted a series of laws strictly

³⁶ Freedom House, Freedom in the World, Russia 2011

³⁷ Freedom House, Freedom in the World, Russia 2009

³⁸ Freedom House, Freedom in the World, Armenia 2012

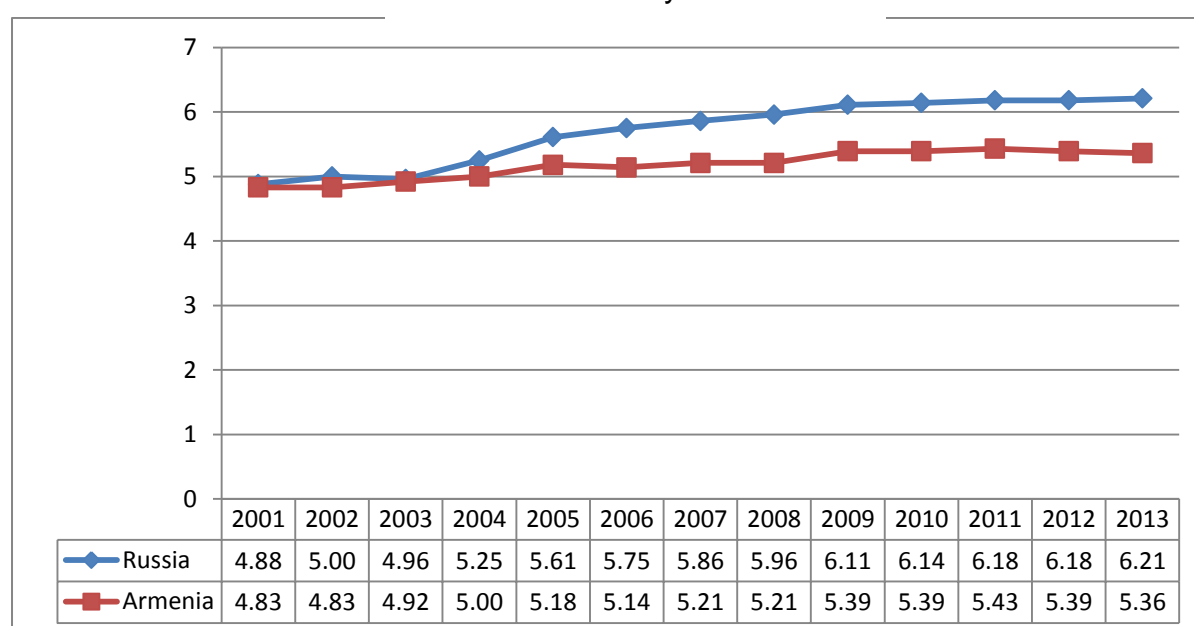
³⁹ Freedom House, Freedom in the World, Russia 2012

⁴⁰ Freedom House, Freedom in the World, Armenia 2013

undermining civil liberties and human rights in Russia. The laws came as a respond to 2011 and 2012 massive opposition protests and increasing civil society activity. The laws implied increased control on the internet, restrictions for demonstrations and defined the NGOs receiving foreign funding and engaged in political activities as “foreign agents”.⁴¹

The charts below show the correlation between the electoral processes and democracy score in both countries based on the Nations in Transit reports of Freedom House.⁴² It is apparent, that the democracy score is correlated with electoral porcesses. Namely, in Russia the flawed democratization process is reflected in a poor performance of electoral processes, both of which maintain a upwards trend reflecting the consolidated authoritarian regime in the country. While in Armenia in spite of a visible upwards trend a stability for both components is obvious for the last years revealing the semi-consolidated authoritarian regime in the country.

Chart1. Democracy score



⁴¹ Freedom House, Freedom in the World, Russia 2013; Freedom House, Freedom in the World, Russia 2014

⁴² Freedom House, Nations in Transit

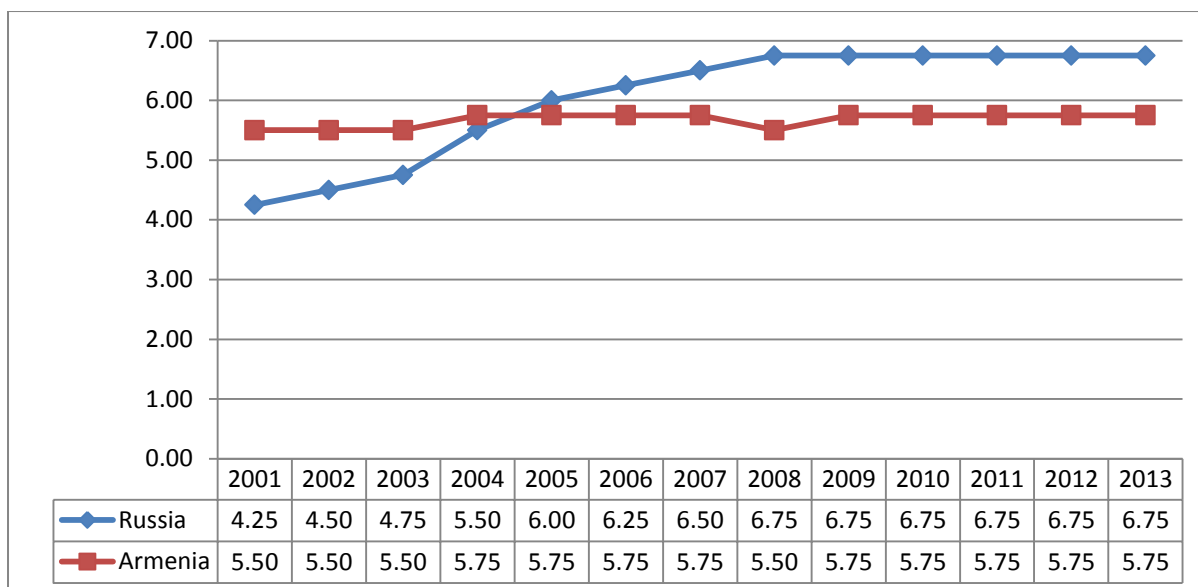


Chart2. Electoral process

As an introductory chapter here I provided the general background necessary for the research. Particularly, the notion of regulation of political competition was introduced in the first section underlining its components which are further examined in the following chapters. Further, the relevant international legislative framework related to elections and the components of regulation of political competition was set in the second section. And finally, the political context relevant to electoral processes was presented in the last section. With this background information I now turn to the research questions in the following chapters.

Chapter 2 – Impartiality in Election Administration and Electoral Justice Systems

In this chapter I address two crucial aspects of electoral process – election administration and electoral justice and their role in regulation of political competition in post-soviet Armenia and Russia. Considering the institutional and functional interrelation and interdependence of these components of electoral process I discuss them under the same chapter. Here I analyse the influence of regulatory framework of election administration and electoral justice with regard to securing free and fair political competition thus addressing the first two research questions of this thesis. The comparative analysis is mainly based on the reports of election observation missions of OSCE/ODIHR.

In the first section the concept of election administration and the principles of functioning of election administration institutions are provided with a further elaboration of legislative framework are provided. Then in the second section the election administration practices in Russia and Armenia from the perspective of impartiality and effectiveness of practices of election management bodies (EMB) are described. Furthermore, the recent developments with regard to election administration based on the practices of the latest national elections are presented with a focus on the current issues in election administration leading to relevant conclusions.

In the second section I present the concept of electoral justice and the role of electoral dispute resolution mechanisms in regulation of political competition. After presenting the fundamental principles on which these mechanisms operate I analyse the role of electoral dispute resolution bodies (EDRB) in electoral competition after

independence in both countries. The focus is on the relevant jurisdiction of election dispute resolution system, the independence of EDRBs and their effectivity in terms of timelines, enforcement etc. Finally, I discuss the latest developments in electoral dispute resolution in both countries addressing the current issues based on the experience of latest national elections.

2.1 Election Administration

2.1.1 Guiding Principles

The election administration is a key component of the election competition and electoral process in general. The right to vote implies not only negative obligation, but also positive involvement of the state in terms of holding elections. This in turn indicates the need for specific institution for organization and administration of elections.

Democratic elections require the election administration to be politically impartial and administratively effective given the influence that the decisions of election administration institutions can have on the outcomes of elections.⁴³ Consequently the role of EMBs that are in charge of organization and administration of elections is undeniable with regard to the regulation of political competition. It is particularly apparent from the functions that they exercise throughout the election cycle, which generally include the following:

- *Recruiting and training election officials and workers responsible for the administration of the election;*
- *Supervising the registration of voters and preparing voter lists;*
- *Qualifying contestants for the ballot;*

⁴³ Background Report: OSCE Commitments and Other Principles for Democratic Elections 56, IV, D

- *Producing and distributing ballots and other voting materials in a secure and efficient manner;*
- *Regulating the voting process;*
- *Informing voters of the elections, polling places, and voting procedures;*
- *Informing voters of political parties and candidates;*
- *Safeguarding the secrecy and security of the balloting;*
- *Counting ballots and tabulating results in an accountable manner;*
- *Determining the winners and awarding mandates; and*
- *Resolving, in the first instance, complaints concerning the electoral processes, including violations of the right to vote or stand as a candidate.*⁴⁴

International standards require the EMBs to be autonomous, free from government and other interference to ensure the impartiality of election administration. With this regard it is important to note that there are three different models of election management bodies – independent model, governmental model, mixed model.⁴⁵ The establishment of the certain model in a certain country largely depends on historical developments and democratic traditions. Particularly, the governmental model, which implies organization and holding of the elections by the government and local authorities, is exercised in countries with strong traditions of political independence and impartiality of administrative authorities. On the other hand, establishment of an election management body financially and administratively independent from the government allows emerging democracies, such as former Soviet states to overcome challenges of incomplete separation of powers – a Soviet legacy. The mixed model combines the practices of the previous two: it has an independent EMB responsible for policy development and monitoring and a body within executive branch responsible for the implementation.⁴⁶

⁴⁴ Ibid

⁴⁵ *Electoral Management Design* The International IDEA Handbook; page 7

⁴⁶ Ibid, pp 7-8

Apart from independence, the election administration should also meet the international standards of effectiveness and impartiality. With this regard the composition of EMBs is of primary importance. The professional and politically balanced composition of EMB, with transparent process of appointment of members and no possibility of premature termination can secure EMB's impartiality. Moreover, as suggested in ODIHR EOM reports the effectiveness of EMBs can be increased if they operate on permanent basis and have sufficient funding, resources as well as administrative and other support from other state agencies.⁴⁷ The decisions of EMBs adopted within the field of their competence should be binding.

2.1.2 Election Administration in Armenia and Russia

In order to increase the credibility of election processes all the post-Soviet countries including both Armenia and Russia opted for a decentralized mechanism of permanent and independent electoral administrative institutions.⁴⁸ The practice was exercised in Soviet Union; however with independence the election administration in both countries underwent structural and functional changes to adapt the democratization processes and international standards.

The election administration system consisted of multitier election commissions structured in hierarchical order. The structure of election commissions has been frequently subject to quantitative and qualitative changes up until to the latest elections. Armenia started with a commission framework structured with four levels (Central Electoral Commission (CEC), Regional Electoral Commission (REC), Community Electoral Commission (CEC) and Precinct Electoral Commission (PEC))

⁴⁷ ODIHR's final reports on the 1999 Slovak Republic presidential elections; 2000 Romanian national elections; 2000 Albanian local elections; 2000 Croatia House of Representatives elections; 2002 parliamentary elections in the former Yugoslav Republic of Macedonia; report of needs assessment mission on the 2003 Armenian presidential elections

⁴⁸ UNDP *electoral Management Bodies as Institutions of Governance*, page 38

and later with amendments to electoral code since 1999 it operated with three-tiered election commissions.⁴⁹ Russia as well started with four levels (Central Electoral Commission, Subject Electoral Commissions (SEC), Territorial Electoral Commissions (TEC) and Local Electoral Commissions (LEC)) however the structural changes and consequently the fluctuations of number of tiers were more frequent there.⁵⁰

As regards the effectiveness of election administration certain elements are worth noting. First of all the EMBs in both countries operated in permanent basis and the decisions made by them were binding for relevant authorities. Secondly, both countries continuously provided trainings for the election commission members.

The independence of EMBs both in Armenia and Russia has been shaped by two factors: the composition of election commissions and the formulas of appointment of commission members. These two elements have long been subject to manipulations undermining the independence of EMBs and thus negatively affecting the impartial and effective regulation of the electoral competition.

The independence and impartiality of election administration in Armenia was undermined because of partisanship based model of composition. The party control over the EMBs especially on the lower levels had a negative influence on election administration. Based on the assessment of first elections in Armenia the ODIHR EOM came up with conclusion that there is a need for pluralistic, representative and stable EMBs election management bodies to secure the impartiality and

⁴⁹ From the structural perspective the only changes later occurred only with regard to the number of regional or territorial commissions.

⁵⁰ As in both countries the changes also occurred in names and amounts of commissions, in order not to get confused for the purposes of this paper the hierarchy of election administration system is considered in three levels (high, low, middle).

effectiveness of election administration.⁵¹ However, up until the 2003 elections in Armenia the purely party based composition of commissions remained in practice and proved to be inefficient. Manipulation and abuse of the right to nomination, dismissal and reappointment of commission members by pro-government representatives was observed on a large scale.⁵²

The issue of independence in Russia was apparent in relation to the local administration. Particularly, the commissions on lower level were appointed by respective legislative and executive bodies based on the proposals of public organizations and elected bodies of government.⁵³

Though the mechanism of appointment itself is not subject to criticism, it continuously failed to secure politically balanced EMBs and undermined the independence, impartiality as well as professional and effective functioning of election administration.⁵⁴

The 2003 elections in Armenia saw some amendments in electoral law aimed at establishing a balanced political representation in election administration. As a result the rule entitling the political parties to withdraw their nominees to electoral commissions was abolished and a new practice in commission member appointment was adopted. Particularly according to the new law the President nominated three members of commission and each faction in parliament nominated one member. The formula applied to all levels of election commissions.⁵⁵ Though the law intended to secure balanced political representation and credibility of election commissions,

⁵¹ OSCE/ODIHR Preliminary Statement to the Armenian Extraordinary Presidential Election Second Round, 30 March 1998

⁵² Ibid; OSCE/ODIHR, Armenia Parliamentary Elections, 30 May 1999 Final Report

⁵³ OSCE/ODIHR Russia, Presidential Election, 26 March 2000 Final Report

⁵⁴ OSCE/ODIHR Armenia, Presidential Election, 19 February and 5 March 2003 Final Report

⁵⁵ OSCE/ODIHR Armenia, Presidential Election, 19 February and 5 March 2003 Needs Assessment Mission Report

manipulations and even intimidations especially on lowest level resulted in imbalance in political representation.⁵⁶ Namely, the fact that most of the three executive positions (Chair, Deputy Chair and Secretary) in commissions were presidential appointees undermined the credibility of the impartiality of election administration including the independence of Central Election Commission.⁵⁷ Moreover, the inadequate standards set by law with regard to decision-making process in election commissions injured the credibility and impartiality of election commissions as it enabled the commission to make a decision with three members voting in favour when quorum is secured.⁵⁸

The imbalance of representation of political interests at all levels of election administration was connected to the policy of consolidation of power waged by the presidents Kocharian and Putin. This was reflected in the dominant position of commission members connected to presidential administration or pro-governmental parties in all levels of election administration. In 2003 elections the majority of chairs of election commissions at all levels in Armenia were presidential appointees or represented pro-governmental parties.⁵⁹ Meanwhile in Russia the majority of CEC members turned out to have direct or indirect ties to the presidential administration.⁶⁰

The imbalance in political representation especially on lower levels of election administration observed by ODIHR EOMs in 2003 elections in Russia and Armenia

⁵⁶ OSCE/ODIHR Armenia, Presidential Election, 19 February and 5 March 2003; Final Report OSCE/ODIHR, Armenia Parliamentary Elections, 25 May 2003 Preliminary Statement

⁵⁷ Ibid; OSCE/ODIHR, Armenia, Presidential Election, 19 February and 5 March 2003, Needs Assessment Mission Report,

⁵⁸ OSCE/ODIHR, Armenia Parliamentary Elections, 25 May 2003 Final Report

⁵⁹ Ibid

⁶⁰ OSCE/ODIHR, Russia, Parliamentary Elections, 7 December 2003 Needs Assessment Mission Report

were preserved in subsequent elections as well. In Russia the formula⁶¹ of appointment as well as rules of nomination and composition resulted in increased dependence of the election administration on the executive authorities at all levels.⁶² While in Armenia, where the composition of Central Election Commission was changed balanced composition was not fully secured in middle level of election administration. President, each faction in the parliament and the “peoples’ deputy” group⁶³ nominated one member of CEC each and one member was nominated by the judiciary. As regards the appointment rules a hierarchical approach was exercised with each CEC representative nominating the middle level EMB members, who in turn nominate the members of lower level EMBs. As a result both in Armenia and Russia the middle level of election administration lacked independence and impartiality. In Russia the leadership of many election commissions on middle level (the chairpersons and secretaries) was consisted of either employees of local administration or those closely connected to it,⁶⁴ while the “troikas” of middle level of election administration in Armenia were dominated by nominees of parties from ruling coalition and appointees of the President.⁶⁵

It is noteworthy that in spite of ongoing amendments of electoral codes both Armenia and Russia still failed to secure the independence and impartiality of election administration in reality. This discrepancy between “*equitable rules on paper and an*

⁶¹ The Central Electoral Commission appointed 2 members of Subject Electoral Commissions including the chairmen, and the other members were appointed by the subject’s legislature and executive authorities. The District Electoral Commissions and Territorial Electoral Commissions are appointed by SEC and Precinct Electoral Commissions by TECs.

⁶² OSCE/ODIHR Russia, Parliamentary Elections, 7 December 2003 Preliminary Statement

⁶³ Deputies that were elected as non-partisan candidates

⁶⁴ OSCE/ODIHR Russia, Presidential Election, 14 March 2004 Preliminary Statement

⁶⁵ OSCE/ODIHR Armenia, Parliamentary Elections, 12 May 2007 Preliminary Statement; Armenia, Presidential Election, 19 February 2008 Final Report

*inequitable reality*⁶⁶ is considered as a consequence of manipulation of electoral rules. It is obvious from the description of election administration practices above that in both countries various measures were exercised to manipulate with existing rules. Particularly, the presence of public officials in EMBs in Russia and distribution of leadership positions in EMBs to supporters of ruling party or pro-governmental members in both countries is frequently abused. Besides, the reinforcement of verticality of election administration is exercised to strengthen the dependency of lower levels of election commissions. And finally, the provisions securing the adoption of decisions by EMBs in conditions of low quorum for attendance is another relevant example of manipulating rules in Armenia.⁶⁷

The latest 2 national elections in Armenia and Russia come to prove what is said above. The insufficient separation of election administration from bodies of state power further deteriorated the impartiality and independence of election commissions in Russia. Although exercising a combined mechanism⁶⁸ of composition of EMBs with all political parties having the right to appoint a member of commission the majority of members were still appointed by state and local authorities, which were closely connected to the ruling party⁶⁹. Moreover, most of the commission members being employees of local administration were economically dependent and subject to pressure. As a result the independence of election commissions from state and local officials and government institutions was undermined.⁷⁰

⁶⁶ OSCE Electoral Assistance and the Role of Election Commissions, Max Bader, *Security and Human Rights 2012 no 1*, page 24

⁶⁷ Ibid, pp 24-25

⁶⁸ International IDEA, Electoral Management Design Data

⁶⁹ OSCE/ODIHR Russian Federation, State Duma Elections, 4 December 2011 Final Report

⁷⁰ OSCE/ODIHR Russian Federation, Presidential Election, 4 March 2012 Final Report

Meanwhile in Armenia the latest elections saw an improvement in terms of impartiality of election administration. The new Electoral Code abandoned the partisanship based composition of EMBs. From then on the election commissions were composed based on expertise.⁷¹ Thus, the members of CEC are nominated by Human Rights Defender, the head of the Chamber of Advocates and the head of the Court of Cassation and are appointed by the President. The CEC appointed the members of EMBs in middle level (territorial electoral commission) from citizens nominating themselves as such. The lowest level of election management bodies is formed by the TEC and parliamentary parties, with the leading positions (chairperson and secretaries) proportionately distributed to the parties in parliament. This resulted in lack of trust in election administration in lower level by the non-parliamentary forces. However they have the right to appoint proxies at all levels of election administration. The “troikas” (chairpersons, deputy chairpersons and secretaries) of the CEC and TECs were elected by members of commissions from among themselves.⁷²

2.2 Electoral Justice

2.2.1 Guiding Principles

Electoral justice system is seen as a key component for guaranteeing rule of law and free and fair elections. The electoral justice system is defined as a set of mechanisms for:

- “ - ensuring that each action, procedure and decision related to the electoral process complies with the legal framework;
- protecting or restoring electoral rights; and

⁷¹ Electoral Code of the Republic of Armenia, 26 May 2011, Article 40

⁷² OSCE/ODIHR Armenia, Parliamentary Elections, 6 May 2012 Final Report

- *giving people who believe their electoral rights have been violated the ability to file a challenge, have their case heard and receive a ruling.”*⁷³

The irregularities that may occur in electoral processes engender electoral disputes - any complaints, challenges, claims, and contestations relating to the electoral process.⁷⁴ With this regard adequate mechanisms and procedures for protecting electoral rights and adjudicating electoral disputes need to be in place throughout the electoral cycle. The institutions within electoral justice system entitled to handle these disputes and defend the electoral rights are called election dispute resolution bodies.

International legal documents do not directly address issues related to electoral dispute resolution. However they provide a broader context within human rights framework. Particularly, the rights to an effective remedy, to a fair and impartial hearing and to equality before the law are relevant for electoral dispute resolution bodies.⁷⁵ Moreover, two main components can be derived from human rights and election-related treaties.

“(1) The right of every individual or political party to a remedy for violation of political and electoral rights, including the right to vote and to be registered as a voter, as well as candidature, party and campaign rights;

*(2) The responsibility of States to ensure, that complaints relating to the electoral process are determined promptly within the timeframe of the electoral process and effectively by an independent and impartial authority, such as an electoral commission or the courts.”*⁷⁶

The electoral dispute resolution system, i.e. the legal framework defining the electoral dispute resolution mechanisms of electoral justice system differ from

⁷³ Electoral Justice: An Overview of the International IDEA Handbook, page 5

⁷⁴ IDEA International Electoral Standards *Guidelines for reviewing legal frameworks of elections*, annex 4. Glossary of electoral terms

⁷⁵ Electoral Justice: The International IDEA Handbook, Box 2.1

⁷⁶ Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System, page 7

country to country given the different political and legal traditions.⁷⁷ The general classification though, is based on the institutions making decisions on electoral disputes.⁷⁸ Thus, many advanced democracies secure the election dispute resolution through ordinary administrative and judicial institutions, while in many developing countries the ordinary courts share jurisdiction with election management bodies.⁷⁹ As for the legal procedures, depending on the subject of the claim the final decision can be made either within the hierarchy of election management bodies, be held by ordinary court or the constitutional court.⁸⁰ The remedies provided can also be of different character.

The OSCE/ODIHR Election Dispute Report emphasizes four key criteria in assessing the election dispute resolution: jurisdiction, timeliness, enforcement, prosecution. The assessment of jurisdiction is particularly relevant for this research as countries where courts and election management bodies share the responsibility of electoral dispute resolution frequently face challenges in terms of confusion over jurisdiction.⁸¹ Timeliness mainly refers to effectiveness of election dispute resolution bodies. Particularly, it is necessary that they deal with complaints in short period of time without causing any delay in election outcome.⁸² The enforcement is also related to efficiency of election dispute resolution bodies as they may lack enforcement authority and the sanctions may not work.⁸³ And finally criminal prosecutions along with administrative actions aim at securing remedies for violated electoral rights.

⁷⁷ Electoral Justice: An Overview of the International IDEA Handbook, page 12

⁷⁸ Ibid, page 14

⁷⁹ Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System, page 5

⁸⁰ Ibid

⁸¹ Ibid, page 7

⁸² Ibid

⁸³ Ibid

Based on these four components I will analyse the performance of electoral dispute resolution bodies in Armenia and Russia after independence.

2.2.2 Electoral Dispute Resolution in Armenia and Russia

The possibility for citizens to exercise their right to appeal to an independent, impartial legal body was incomplete for Armenian citizens in the first national elections. The lack of will by election commissions to properly address the election related complaints raised doubts about the professionalism and commitment of commission members. Furthermore, the absence of judicial control over the election administration undermined the right to seek judicial remedy for violation of electoral rights.⁸⁴

However, even after the establishment of a judicial mechanism of appeals and later the possibility to appeal to European Court of Human Rights did not secure the impartiality of EDRBs mostly because of the lack of independence of judicial system and the consolidation of power over the judicial system as well as the lack of independence of EMBs.⁸⁵

The lack of confidence in complaint procedure and the dispute resolution mechanisms, in terms of effectiveness and independence, was reflected in 2003 elections, when relatively low number of complaints was filed. This was reinforced by the lack of transparency in election management bodies especially with regard to complaints. For instance, no quorum was required for the commission to make a decision on a complaint, which as a result was considered by individual members of commission.⁸⁶

⁸⁴ OSCE/ODIHR Armenia, Presidential Election, 16 and 30 March 1998. Final Report

⁸⁵ OSCE/ODIHR, Armenia Parliamentary Elections, 30 May 1999 Final Report

⁸⁶ OSCE/ODIHR, Armenia, Presidential Election, 19 February and 5 March 2003, Final Report

The EMBs further failed with regard to electoral dispute resolution in next elections. First of all, the CEC lacked proactive approach with regard to violations of electoral rights. Particularly it took no any action with regard the EOM findings. Secondly, the remedies provided by EMBs for breach of electoral code were inappropriate. For instance, the cancellation of a registration may not be an effective sanction against a candidate.

The courts started to play more active role against the background of public distrust towards the independence of judicial role of election commissions. However, the courts also lacked enforcement mechanisms, e.g. the constitutional court's power to challenge election results or to declare invalid the results of a polling station⁸⁷

As a result the procedural framework of election dispute resolution remained confusing and ineffective. While the jurisdiction did not require the EMBs to have a more proactive approach with regard to violations of electoral laws or hearing the complaints in formal session the judicial system did not provide opportunity to fully exercise the right to seek an effective remedy by not permitting appeals from the Court of First Instance.⁸⁸

In both countries the overlapping jurisdiction of EMBs and courts was confusing not only for voters and candidates, but also result in lack of effectivity because of failure to share responsibilities⁸⁹

The latest elections in both countries revealed a set of problems in election dispute resolution. While in Armenia the jurisdiction of the courts and EMBs creates an

⁸⁷ OSCE/ODIHR, Armenia Parliamentary Elections, 25 May 2003 Final Report

⁸⁸ OSCE/ODIHR Armenia, Parliamentary Elections, 12 May 2007 Final Report; Armenia, Presidential Election, 19 February 2008 Final Report

⁸⁹ OSCE/ODIHR Russia, Parliamentary Elections, 7 December 2003 Final Report

overlapping jurisdiction and complexity of complaint procedure, in Russia the involvement of courts is on a low level and EMBs are more involved in adjudication.

The jurisdiction in both countries implies that complaints can be filed on any decision, action and inaction of EMBs only when one proves that their electoral rights have been violated. The appeals are filed either with a higher level EMB or with the relevant court.⁹⁰

In both countries lack of effectiveness of EDRBs was observed during the latest elections. In spite of numerous informal complaints in Armenia few complaints were filed to EDRBs. This mirrored the low level of public confidence in election dispute resolution and was resulted by a lack of proactive approach by both EMBs and the courts.⁹¹ In Russia the Central Electoral Commission, which was much more involved in electoral dispute resolution than the courts, treated the complaints as applications failing to secure appropriate adjudication. Moreover, most of the complaints were considered by working group operating under the election commissions, which however undermined the collegiality of EMBs.⁹²

The lack of confidence is especially high with regard to the independence of the judicial system. The data from the Freedom House's Nations in Transit Report reveals that the performance of judicial system in both countries has an overall stable upwards trend. This means that in terms of independence and impartiality the judicial system in both countries has a negative trend towards more consolidated authoritarian regime.

⁹⁰ International IDEA, Electoral Justice Data

⁹¹ OSCE/ODIHR Armenia, Presidential Election, 18 February 2013 Final Report

⁹² OSCE/ODIHR Russian Federation, State Duma Elections, 4 December 2011 Final Report

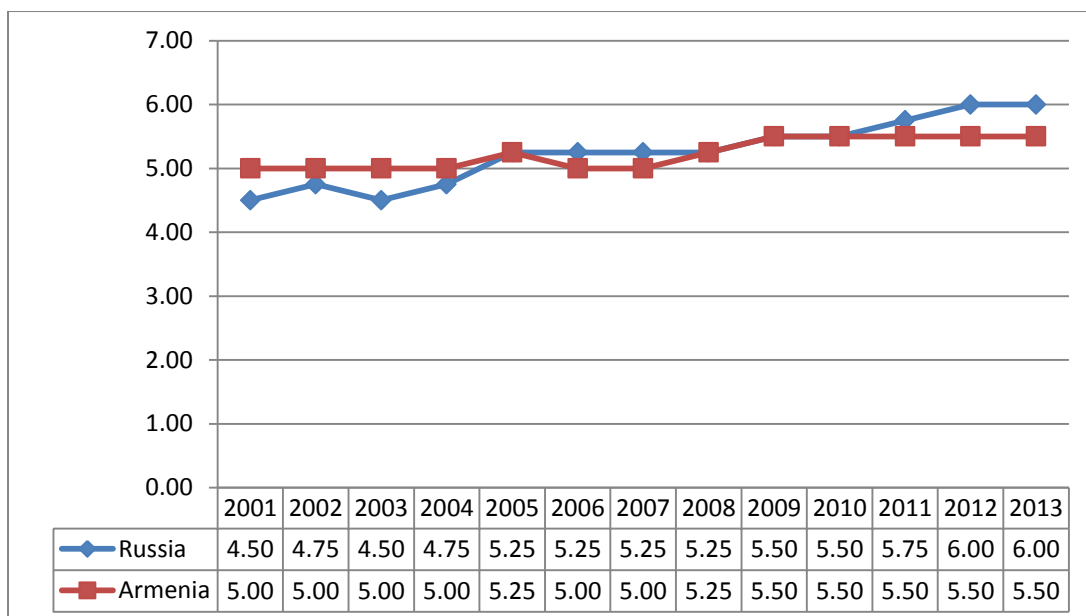


Chart3. Judicial System

The legal framework for complaints and appeals in Armenia still remains complex and the overlapping jurisdiction of Administrative Court and EMBs can lead to confusion.⁹³ This can be solved by elimination of dual jurisdiction and further simplification of complaint procedure through a hierarchical process.⁹⁴

Unlike in Russia the current jurisdiction in Armenia imposes unduly limits on the right to complaint. Thus only those whose rights have been violated can file a complaint. This means that no complaint on general violation of electoral rights can be filed by voters, observers and representatives of civil society. Furthermore, the right to seek remedy is also limited by the fact that the decisions of first instance court cannot be appealed.⁹⁵ Apparently the abolishment of these limits can increase the efficiency of election dispute resolution.

⁹³ OSCE/ODIHR Armenia, Parliamentary Elections, 6 May 2012 Final Report

⁹⁴ OSCE/ODIHR Armenia, Presidential Election, 18 February 2013 Final Report

⁹⁵ OSCE/ODIHR Armenia, Parliamentary Elections, 6 May 2012 Final Report

In this chapter I have addressed the first two research questions of my thesis with regard to the role of election administration and electoral justice in regulation of political competition in electoral processes. After representing the concepts of election administration and the main guidelines for their functioning I analyse the practices of election management bodies and election dispute resolution bodies in Armenia and Russia from the perspective of securing equality and impartiality in regulation of political competition in electoral processes.

The comparative analysis of practices of EMBs and EDRBs in Armenia and Russia lead to a conclusion that the lack of impartiality and independence of election administration results in the establishment of regime's control over the electoral processes. Moreover, the EMBs are involved to a critical extent into election dispute resolution and the lack of effective and impartial judicial control because of consolidation of executive power over judicial system and improper separation of powers reinforces the control over elections. This in turn, as the developments in political sphere described in previous chapter prove, leads to continuous reproduction of regime.

Chapter 3 – Securing Pluralism and Equality in Election Campaigns

In this chapter I analyse the regulation of election campaigns and the influence it has on regulation of political competition. The role of media and campaign financing is analysed considering their influence on securing equality and plurality in electoral processes. Here I answer the last research question of this thesis identifying the influence of election campaign regulation on electoral competition in Armenia and Russia.

In the first section after presenting the general principles of media regulation during electoral campaigns I analyse the role of regulation of media environment on political competition. Through a comparative analysis of practices in Armenia and Russia since independence I reveal the major issues from the perspective of the equal access, equal and fair treatment, oversight bodies and general media environment. In the second section I address the role of political campaign in electoral processes and the influence of regulation of campaign financing on political competition in terms of equality and plurality. The regulation of campaign financing in Russia and Armenia is analysed with a focus on such issues as public funding, expenditures, private funding and disclosure.

3.1 Media and Election Campaign

3.1.1 Guiding Principles

Election campaigns are the most competitive and perhaps the most decisive element of the electoral cycle given its impact on the outcomes of elections. This is also a period when an environment should be secured where a number of human rights can be exercised. It is hard to imagine a democratic electoral campaign and an effective one when there are undue restrictions on freedom of expression including

the right to communication, freedom to hold opinions and to receive and impart information and ideas as well as the right of peaceful assembly and right of association.

Under the legislative framework presented in the first chapter a set of norms and principles has been developed with regard to electoral campaigns and regulation of media. First of all, it is important to note the state's positive obligations with regard to securing environment free from the fear of retribution among the voters and ruling out any discriminative administrative or legal obstacles preventing political groupings and individuals to fully and properly participate in election processes. In order to secure an effective election campaign it is also necessary to have equal opportunities for contestants to reach their electorate and equal access necessary facilities ruling out any discriminatory practices in terms of application of laws, regulations and administrative procedures. Moreover, voter information and education should be provided by state through any available means.

As for the media international standards require the states to provide adequate opportunities for contestants to reach their audiences on equitable and non-discriminatory basis. The regulations by state should secure non-discriminator environment in terms of equal treatment and access and protection of freedom of expression.

The equal opportunity for access means that political parties and candidates should be provided with non-discriminatory, unimpeded access to all forms of media so that the voters can make an informed decision being sufficiently aware of the views, programs and opinions of the contestants.

The equal treatment of the parties and candidates by media requires fair coverage in terms of the amount (quantitative) and the tone (qualitative) of media coverage of election campaigns. The equal treatment implies regulations that cover such components as objective broadcast time allocation and paid political advertising on state-owned or state-controlled media. As for the quantitative measures, biased and unequal coverage by state media should be prohibited.

The regulations to secure impartial, balanced and equal treatment in private media can be challenging from freedom-of-expression perspective. However relevant state institutions can determine the guidelines for impartial news coverage in private media.

Democratic elections rule out any limitations on freedom of speech other than required for prohibition of hate speech and reasonable restrictions on opinion and exit polling. In order to secure pluralism even the offensive, shocking, and disturbing speech must be tolerated in a democratic society and the governments have to “display restraints” with regard to freedom of expression during elections.

To guarantee fair and just treatment of contestants it is important to provide with effective and impartial complaint mechanisms.

In the next section I will present the developments in electoral processes related to media and election campaign in Armenia and Russia. In a comparative analysis I will reflect upon the influence of media regulations on electoral competition from the perspective of legislation, equal access, equal and fair treatment, oversight bodies and the media environment.

3.1.2 Media and Campaign in Armenia and Russia

After the collapse of the Soviet Union and the emergence of independent states there was a shift in the role of media in elections. After the countries stepped on the road of democratization which was to be secured by holding free and competitive democratic elections the media was considered a platform which would secure the plurality and equality.

Right from the first elections it was apparent that the legal framework and existing regulations are not properly designed to address the challenges brought by new political, economic and social situations. The inadequacy of existing laws governing media provided opportunities to abuse the broadcast media. In both countries, where TV was the only medium with national coverage and the main tool for election campaigns, the weak laws regulating TV resulted in manipulation of TV channels and especially state TV in favour of one of the candidates.⁹⁶

This resulted in imbalance and bias in coverage of election campaigns. The state/public TV favoured candidates received extensive coverage which was reflected not only in the number of references but also the tone of coverage.⁹⁷

The role of private media was very important. While generally it can be noted that the private media was providing balanced coverage a common characteristic for both Armenia and Russia from the first elections was the disproportionate coverage. Private media usually favoured a candidate. Moreover, in Russia, where the media was owned and controlled by a few politically connected businessmen, the inability

⁹⁶ OSCE/ODIHR Armenia, Presidential Election, 22 September 1996. Final Report

⁹⁷ OSCE/ODIHR Armenia, Presidential Election, 16 and 30 March 1998. Final Report

of federal law to restrict the influence of the media owners resulted in what was called “media wars”⁹⁸.

As for the alternative sources, such as printed media, both in Armenia and Russia they suffered from economic difficulties and had a low and mostly localized circulation. Moreover, in Russia the local media was mostly owned or received subsidies from local authorities, which made it easier to control them.⁹⁹

One of the reasons of these abuses in both countries was the impotence of regulatory and oversight bodies. In Armenia, CEC was highly politicized from the beginning and did not exercise its main functions with regard to media regulation. By 2003, the parliamentary elections, 2 bodies were established by government with oversight and regulatory functions over the electronic media. However the latter lacked political independence and lacked enforcement power.¹⁰⁰ In Russia, the Ministry of Interior was involved in monitoring the media in order to compensate the impotence of CEC.¹⁰¹ The CEC itself established a working group before 2003 parliamentary elections to oversee the compliance with regulations. As in Armenia the media council was not independent and failed to exercise its oversight and control mandate.¹⁰² A common issue in both countries was the failure of CEC to consider the media related complaints and initiate judicial actions against violators.¹⁰³

Besides the official oversight institutions it is important to highlight the role of civil society which could have controlled the media behaviour. However, both in Armenia

⁹⁸ OSCE/ODIHR Russia, Parliamentary Elections, 19 December 1999 Final Report

⁹⁹ OSCE/ODIHR Russia, Presidential Election, 26 March 2000 Final Report

¹⁰⁰ OSCE/ODIHR Armenia, Parliamentary Elections, 25 May 2003 Final Report

¹⁰¹ OSCE/ODIHR Russia, Presidential Election, 26 March 2000 Final Report

¹⁰² OSCE/ODIHR Russia, Parliamentary Elections, 7 December 2003 Final Report; Armenia, Parliamentary Elections, 12 May 2007 Final Report

¹⁰³ OSCE/ODIHR Russia, Presidential Election, 14 March 2004 Final Report

and Russia the formation of civil society was in the initial period.¹⁰⁴ Moreover, to different extent the civil society was subject to some pressures from the government.

The pressure existed towards the journalists and the media as well. This was reflected in different practices in both countries that undermined the freedom of press and media. It is worthy to mention here the four of them: attacks and intimidation against journalists; artificial burdens and obstacles for independent media; laws, regulations and practices that have chilling effect on media and thus result in self-censorship and finally government interference in journalists' activities.

Some practices by media that are also questionable and undermine balanced and impartial coverage of campaigns. For instance, the TV channels decide not to provide the candidates time for political advertisement, or even when they do the prices thereof are higher than those for commercial ads. Moreover, the advertisements may be aired at a time, which is considered less attractive and out of primetime.¹⁰⁵

Another media practice was manipulated in favour of incumbents. When the candidate is still in the office and the line between his activities as a candidate or in his official capacities is hard to draw they received far more coverage than other candidates.¹⁰⁶

Another issue, which can be considered in line with imbalanced coverage, is the lack of diversity and variety in provided information. Because in both countries the campaigns are focused more on personalities of candidates, rather than on

¹⁰⁴ OSCE/ODIHR Russia, Parliamentary Elections, 19 December 1999 Final Report

¹⁰⁵ OSCE/ODIHR Armenia, Parliamentary Elections, 12 May 2007 Final Report

¹⁰⁶ OSCE/ODIHR Armenia, Parliamentary Elections, 12 May 2007 Final Report; Russia, Parliamentary Elections, 19 December 1999 Final Report; Russia, Presidential Election, 14 March 2004 Final Report; Russia, Parliamentary Elections, 7 December 2003 Final Report

substantives issues, the public had no opportunity to make an informed choice in conditions of imbalanced coverage by media.¹⁰⁷

During the last two elections in both countries the media environment shared common characteristics. Both in Armenia and in Russia persistent self-censorship existed because of a number of reasons. One of the main reasons was frequent lawsuits against media outlets and defamation laws. In Armenia the situation was facilitated by adoption of a law decriminalizing defamation.¹⁰⁸ Secondly, continuous assaults on journalists created atmosphere of fear and ruled out the possibility of courageous articles.¹⁰⁹ Thirdly, the lack of independence of editorial lines of media outlets because of media ownership (political division in private media in Armenia and ownership/control of major media outlets by government-affiliated structures in Russia)¹¹⁰ and government interference with media affairs affected the impartiality of media and plurality of opinion.

Nations in Transit reports by Freedom House addresses the situation with media's independence. Based on the reports since 2001 it is becoming apparent that the consolidation of power by executive authorities negatively affected the independence of media.

¹⁰⁷ OSCE/ODIHR Armenia, Parliamentary Elections, 30 May 1999 Final Report; Armenia, Parliamentary Elections, 12 May 2007 Final Report; Russia, Parliamentary Elections, 19 December 1999 Final Report

¹⁰⁸ OSCE/ODIHR Armenia, Parliamentary Elections, 6 May 2012 Needs Assessment Report; OSCE/ODIHR Armenia, Presidential Election, 18 February 2013 Final Report

¹⁰⁹ OSCE/ODIHR Russian Federation, State Duma Elections, 4 December 2011 Final Report

¹¹⁰ OSCE/ODIHR Armenia, Presidential Election, 18 February 2013 Final Report; OSCE/ODIHR Russian Federation, State Duma Elections, 4 December 2011 Final Report

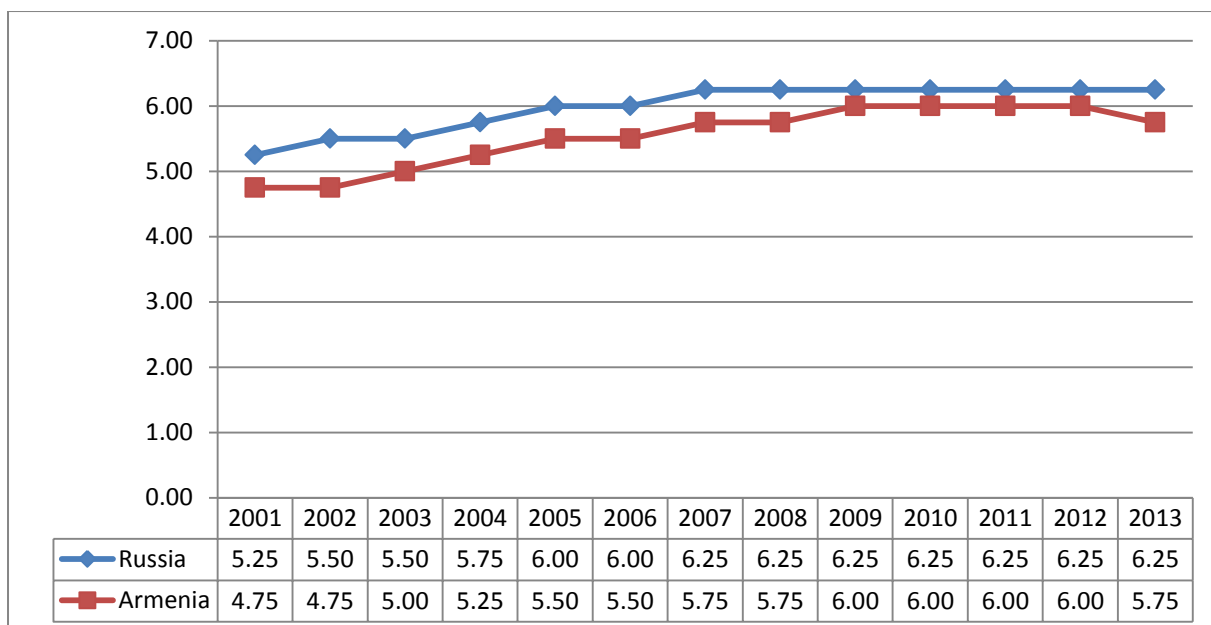


Chart 4: Media

As in previous elections the media provided mostly event-oriented coverage rather than presenting political discourse. In this context it is worthy to mention that in both countries the line between official and campaign-related appearances of officials was not clear and the incumbents benefited from it.¹¹¹ The quantitative balance in coverage was mostly preserved, but the tone, timing and types of programs affected the qualitative balance.¹¹² Media focused mostly on main candidates¹¹³ and in Russia the non-parliamentary parties remained out of coverage.¹¹⁴ The lack of diversity however was subsidized by an emerging alternative media platform: the Internet and particularly social media.¹¹⁵

The analysis of the latest elections reveals the lack of substantive enforcement mechanisms and impartiality of the oversight bodies. In order to guarantee a free

¹¹¹ OSCE/ODIHR Armenia, Presidential Election, 18 February 2013 Final Report; OSCE/ODIHR Russian Federation, Presidential Election, 4 March 2012 Final Report; OSCE/ODIHR Russian Federation, State Duma Elections, 4 December 2011 Final Report

¹¹² OSCE/ODIHR Russian Federation, State Duma Elections, 4 December 2011 Final Report

¹¹³ OSCE/ODIHR Armenia, Parliamentary Elections, 6 May 2012 Final Report;

¹¹⁴ OSCE/ODIHR Russian Federation, State Duma Elections, 4 December 2011 Final Report

¹¹⁵ OSCE/ODIHR Armenia, Presidential Election, 18 February 2013 Final Report

and fair access to media on an equal basis the effectivity and independence of monitoring body is of primary importance. It is important to secure a diverse and equal representation in the composition of oversight institution, involving representatives from media, civil society, judicial bodies, the government and political parties who will be independent from executive authorities.

3.2. Campaign Financing

3.2.1. Guiding Principles

In order to secure fair competition during election campaign state should exercise reasonable regulations on campaign financing, namely with regard to private funding, limitations on expenditures, public funding and disclosure.

The equality of opportunity either strict or proportionate (depending on state practice) must be guaranteed when it comes to public funding or other support received by contestants. This means that states should secure that any provision of public funding should be done in an equitable manner and on equal basis. Moreover, states should make sure that state resources are not misused for campaign purposes and should secure equal treatment in availability of state resources for all contestants.

In order to secure equal and fair conditions for contestants, states may enforce funding restrictions from certain sources as well as prevent direct assistance from state bodies and public enterprises.

States may also impose limitations on campaign expenditures, which however should be reasonable not to violate the freedom of expression of contestants. This means that the campaign spending by parties and candidates should be sufficient to convey their messages to the electorate.

States also often define limits for private funding in order to avoid corruption and undue influence in politics. However, it is important for limitations to be reasonable not to create undue burdens for contestants as well as not to violate the funders' right to association and expression. What is considered "reasonable" is naturally different from country to country depending on specific economic conditions of the country and costs of campaign.

Under the supervision of a state body the contestants should periodically disclose and report on the campaign funds and the sources thereof as well as the expenditures and the purposes thereof. Moreover, the reports should be made public in order to maintain the transparency and public confidence towards the electoral process.

3.2.2. Campaign Financing in Armenia and Russia

Regulation of political funding and specifically campaign financing in countries in transition like Armenia and Russia is important from two perspectives. Firstly, it is supposed to secure equal conditions for political parties and candidates to express their messages to voters. Secondly, it has to address the issue of corruption.¹¹⁶

A common situation for both countries was that incumbent candidates abused state resources for the purposes of their campaign. Though later in order to create equal conditions for competitors the legislation banned the use of state resources in favour of a party or candidate, the practice of support by state institutions and public officials is still observed in both countries.¹¹⁷

¹¹⁶ Daniel Smilov, Jurij Toplak, Political Finance and Corruption in Eastern Europe: The Transition Period, page 1

¹¹⁷ International IDEA Political Finance Data; OSCE/ODIHR Armenia, Presidential Election, 19 February 2008 Final Report; Russia, Presidential Election, 16 June and 3 July 1996 Final Report

With regard to public funding it is important to note the direct and indirect public funding to political parties. Both countries provide direct public funding to parties based on the share of votes in the previous election. The threshold however has been subject to manipulation. Thus for instance in Armenia it was necessary to get the 25 per cent of the votes in elections, which was possible only for a few strong parties.¹¹⁸ This practice however was abandoned later with the new Electoral Code setting a 3 per cent threshold for receiving reimbursement.¹¹⁹ As for the indirect funding in both countries it is provided in terms of free access to media as well as access to public premises for campaign purposes.¹²⁰

As regards the expenditures, in Armenia in spite of setting high limits for campaign spending, the categories of expenditure were subject to a narrow interpretation thus allowing competitors to avoid reporting on certain campaign related expenditures and abuse equal conditions especially with regard to organizational expenditures, e.g. services of marketing agencies, campaign offices, transportation and communication expenses.¹²¹

As regards the private funding certain limitations in both countries apply. First of all, institutions financed from government are prohibited to make donations. In both countries a legal provision bans charity and religious organizations from making contributions. Foreign and anonymous donations are also not allowed by law.

The requirement of disclosure of campaign financing in Armenia is done through establishment of an open bank account under the oversight of Central Electoral

¹¹⁸ OSCE/ODIHR Armenia, Parliamentary Elections, 12 May 2007 Final Report;

¹¹⁹ International IDEA Political Finance Data

¹²⁰ Ibid

¹²¹ OSCE/ODIHR Armenia, Parliamentary Elections, 6 May 2012 Final Report

Commission which periodically received information about the income and expenditure of campaign activities flowing through the bank account.¹²²

Considering the close connections of political and business circles in Armenia certain factors with regard to disclosure requirement undermined the equal political competition. First of all the legislation lacked clarity with regard the activities of third parties in support of electoral campaign, i.e. whether they are considered as campaigning and thus should be disclosed as contributions. Secondly the CEC lacked any authority to investigate the failure to disclose campaign-related financial flow outside the bank account created under its control.¹²³

In Russia strict financial disclosure requirement first of all aim at excluding criminals from political sphere. The relevant documents are required twice – before and during elections. Moreover, the reports on campaign finances are examined by relevant authorities, which are to confirm the validity of provided information In case of an omission or false information the candidate is denied registration. This practice however can be abused and instead of creating equal conditions can be practiced to eliminate certain candidates.¹²⁴ Meanwhile in Armenia the Oversight and Audit Service of the CEC lacks competence to assess the validity of the data provided by the competitors. Moreover, it interpreted the requirement to open special bank accounts under the control of CEC as non-mandatory thus resulting in the failure of CEC to sanction those competitors failing to open bank account for campaign finance. Furthermore, considering the restricted independence and lack of proactive

¹²² OSCE/ODIHR Armenia Parliamentary Elections, 25 May 2003 Final Report

¹²³ OSCE/ODIHR Armenia, Parliamentary Elections, 12 May 2007 Final Report;

¹²⁴ OSCE/ODIHR Russia, Parliamentary Elections, 19 December 1999 Final Report; Russia, Presidential Election, 26 March 2000 Final Report

approach of the Oversight and Audit Service it can be concluded that CEC remains in passive role in securing equal conditions for competitors.¹²⁵

Another common issue for both countries related to disclosure of campaign financing is the accuracy of reported amounts. Reports on campaign finances do not actually reflect all the campaign contributions and expenditures of the candidates.¹²⁶

.....

In this chapter I have dealt with the last research question of this thesis regarding how the regulation of election campaign affects the political competition. Specifically, based on the practices of campaign regulation in Armenia and Russia I have analysed two components of election campaign – the financing and media. In first section I represented the guiding principles for media-related regulations in the context of election campaign. After I proceeded with examination of relevant practices in Armenia and Russia identifying the challenges they face with regard to securing equality of opportunity as well as free and fair treatment. In the second section relevant norms and principles related to regulation of campaign financing are presented. Then I examine the challenges faced by Russia and Armenia with regard to regulation of campaign financing and its influence on political competition.

The analysis of relevant practices of regulation of electoral campaign in Armenia and Russia reveals serious drawbacks. Namely, the failure to establish an enforceable legislative framework that can guarantee the equality and plurality of political parties or candidates negatively affected the electoral competition. Moreover, the regulation of campaign financing with regard to the functioning of oversight bodies, which in both countries are either under the control of Central Electoral Commission or the

¹²⁵ OSCE/ODIHR Armenia, Parliamentary Elections, 6 May 2012 Final Report

¹²⁶ OSCE/ODIHR Russian Federation, State Duma Elections, 4 December 2011 Final Report; Armenia, Parliamentary Elections, 12 May 2007 Final Report;

government also resulted in poor performance in securing equal and fair treatment of competitors and thus harming the electoral competition.

Conclusion

In this paper I aimed at analyzing the influence of the state regulation of certain components of electoral process on electoral competition from the perspective of equal and fair conditions. The research questions were with regard to the influence of state regulation of election administration, electoral dispute resolution and electoral campaign on election competition are addressed through a comparative analysis of relevant practices in Armenia and Russia.

The discussion of practices with regard to election administration and electoral dispute resolution in Armenia and Russia based on the guiding principles and standards revealed that the lack of impartiality and independence of election administration leads to establishment of regime's control over the electoral processes. Moreover, if the election management bodies are seriously involved in adjudication of electoral disputes and there is no effective and impartial judicial control, as is the case in both Armenia and Russia, the competitive character of elections can be undermined resulting in continuous reproduction of regime.

The analysis of relevant practices of regulation of electoral campaign in both countries also revealed serious drawbacks. Namely, the electoral competition of negatively influenced by the failure of states to establish an enforceable legislative framework as well as the lack of independence, impartiality and effectiveness of regulatory and oversight bodies.

The poor performance with regard to elections also affects the democratization processes that started in both countries after the collapse of the Soviet Union. These findings show the challenges faced by Armenia and Russia with regard to regulation of political competition in electoral processes. State involvement in

regulation of certain components of electoral process can influence the outcomes of elections when the regulatory bodies and mechanisms are not functioning according to the developed set of international standards guiding rules and principles.

The researches on the issue of regulation of political competition in electoral processes can be further focused on other components of elections in order to provide a more comprehensive understanding on the role of state involvement in regulation of electoral process.

As for this research, it can find a practical application in further evaluation of the activities of election management bodies, election dispute resolution bodies and the regulatory framework of electoral campaigns in Armenia and Russia or can be adapted for the conditions of other countries.

Bibliography

1. Commonwealth of Independent States. Convention on Standards for Democratic Elections
2. Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE
3. European Convention on Human Rights
4. Inter-Parliamentary Union, Declaration on Criteria for Free and Fair Elections
5. Universal Declaration of Human Rights
6. Inventory of OSCE Commitments and Other Principles for Democratic Elections
7. Electoral Code of the Republic of Armenia, 26 May 2011,
8. Freedom House, Freedom in the World reports on Armenia and Russia
<https://freedomhouse.org/report-types/freedom-world>
9. Freedom House, Nations in Transit <https://freedomhouse.org/report-types/nations-transit>
10. OSCE Office for Democratic Institutions and Human Rights, Elections in Armenia <http://www.osce.org/odihr/elections/armenia>
11. OSCE Office for Democratic Institutions and Human Rights, Elections in Russia <http://www.osce.org/odihr/elections/russia>
12. International IDEA, Electoral Justice Database <http://www.idea.int/elections/ej/>
13. International IDEA Political Finance Database <http://www.idea.int/political-finance/>
14. International IDEA, Electoral Management Design Database
<http://www.idea.int/elections/emd/electoral-management-design-database.cfm>

15. Background Report: OSCE Commitments and Other Principles for Democratic Elections
16. ODIHR, Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System, Warsaw, 2000
17. Commission for Democracy through Law: Code of Good Practice, Venice, 2002
18. ODIHR Guidelines for Reviewing a Legal Framework for Elections, Warsaw, 2001
19. Electoral Justice: The International IDEA Handbook, 2010
20. Electoral Justice: An Overview of the International IDEA Handbook, 2010
21. *Electoral Management Design* The International IDEA Handbook 2006
22. UNDP *electoral Management Bodies as Institutions of Governance*, 2000
23. IDEA International Electoral Standards *Guidelines for reviewing legal frameworks of elections* 2002
24. Daniel Smilov, Jurij Toplak, Political Finance and Corruption in Eastern Europe: The Transition Period, 2007
25. OSCE Electoral Assistance and the Role of Election Commissions, Max Bader, *Security and Human Rights* 2012 no 1
26. Boutros Boutros-Ghali, An Agenda for Democratization, New York: United Nations, Para 16-17