The Power of a Bad Example: Diffusion of Flawed Electoral Legislation across the Post-Soviet Area

Max Bader
University of Munich
max.bader@gsi.lmu.de

Paper prepared for the 6th ECPR General Conference, University of Iceland, 25-27 August 2011

Abstract
Flawed electoral legislation in post-Soviet states facilitates the conduct of undemocratic elections. This paper argues that the low quality of electoral legislation in the region results in large part from a process of ‘authoritarian diffusion’, whereby the election laws of the post-Soviet states extensively borrow and adapt from existing Soviet and Russian laws. By contrast, the authorities of most post-Soviet states have routinely disregarded recommendations by the OSCE and the Venice Commission to improve electoral legislation. The paper points attention to a widespread but often overlooked form of institutional choice (legal borrowing and adaptation), presents evidence of ‘authoritarian diffusion’ across the post-Soviet area, and highlights the enduring impact of the Soviet legacy and of Russia’s relatively hegemonic position in the region.

Key words: elections; authoritarianism; electoral legislation; electoral manipulation; institutional choice; OSCE; Council of Europe; democracy promotion; authoritarian diffusion.

1. Introduction
As the Soviet Union dissolved, its constituent republics like all post-communist states were confronted with the task of adopting and recasting a wide range of institutions as part of their transition away from authoritarianism. For the former Soviet republics, with the exception of the Baltic states, the task was especially formidable given that they were newly independent states with no legacy or at best a distant legacy of sovereign statehood. In addition to administrative institutions, the choice of new institutions concerned the political institutions that are inherent to democracy, including legislatures, election administration, and a legal framework regulating the conduct of elections. In most post-Soviet states, however, these
political institutions have not been used to exercise democracy: legislatures throughout the two post-Soviet decades have rarely put a serious check on the presidency, and most elections took place on a markedly uneven playing field benefitting the ruling forces. At the end of the 2000s, the post-Soviet region as a whole (without the Baltic states) was considered the most authoritarian region in the world on a par with the Middle East (Swedberg and Sprout 2008).

The unfairness of elections has been facilitated by low-quality electoral legislation. In numerous reviews of the election laws of the post-Soviet states and in the reports that are issued around elections observation missions, the Organization for Security and Co-operation in Europe (OSCE) has noted the many inconsistencies in the legislation with international standards and good practice regarding electoral legislation, and the difficulties that these shortcomings create for the organization of an equitable electoral process. Highly permissive provisions for early voting in Belarus, for example, have been linked to large-scale fraud in the days prior to election day (OSCE/ODIHR 2001b, p. 8). Insufficient regulations for electronic voting in Kazakhstan raise suspicion that fraud can be committed around the electronic voting (OSCE/ODIHR 2004d, p. 7-8). In Azerbaijan, suspected fraud in voting on military bases is facilitated by the legal provision for ‘military voting’ (OSCE/ODIHR and Venice Commission 2008, p. 7. Poor-quality electoral legislation is neither a sufficient nor a necessary condition for undemocratic elections, but it is conducive to fraud and other forms of electoral malpractice which stand in the way of fair elections.

The poor quality of electoral legislation in the post-Soviet states is not purely homegrown: much of the existing electoral legislation has been borrowed and adapted from Soviet-era legislation and Russian legislation from the 1990s. Given the relative lack of autonomous legal expertise in the former Soviet republics in the years following the dissolution of the Soviet Union, it is hardly a surprise that the newly independent states took recourse to foreign examples. Two such foreign examples were readily available. On the one hand, the OSCE, sometimes in conjunction with the Venice Commission of the Council of Europe, for most of the post-Soviet states has issued a range of legal reviews coupled with long lists of recommendations on how to bring the electoral legislation in line with international standards. On the other hand, the post-communist Russian electoral laws in addition to Soviet-era laws were a close point of reference. While the post-Soviet states could have taken heed of the recommendations from the OSCE and the Venice Commission, they
instead have largely relied on Russian and Soviet-era laws which on many counts did not meet international standards.

This paper argues that a process of ‘authoritarian diffusion’ across the post-Soviet area has rendered much of the electoral legislation of the region significantly flawed. The contribution of the paper is fourfold. First, it directs attention to a form of institutional choice that is widespread but often overlooked in the literature on institutions: the borrowing and adaptation of legal text from a foreign source (Elkins 2010; Watson 2000). Second, the diffusion of flawed electoral legislation across the post-Soviet area is an example of what has been referred to as authoritarian diffusion (Ambrosio 2010). While there are accounts of democratic diffusion in which positive examples play a role in institutional choice, such as in Central and Eastern Europe in the 1990s (Jacoby 2003; Malovà and Haughton 2002), there is less evidence of authoritarian diffusion through negative examples. Third, the paper shifts the perspective on how authoritarian diffusion in the post-Soviet area transpires. A growing literature asserts that Russia takes pro-active measures to increase its clout in its ‘near abroad’. This paper however makes clear that the dynamic is also reversed: the post-Soviet states wilfully, without coercion adopt elements of undemocratic rule. Fourth, the paper highlights the lasting impact of the Soviet legacy and of the near-hegemonic position of Russia in the post-Soviet area. For many post-Soviet states, Russia remains the quintessential point of reference regarding institutional design, while efforts by international organizations to promote democratic standards and values in the region are inconsequential by comparison.

The paper focuses on the nine states that were undemocratic for most of the 1990s and until 2010. In the five states of Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan), the three South Caucasus states (Armenia, Azerbaijan, Georgia), and Belarus, all elections until 2010 received serious criticism from OSCE election observation missions since the OSCE started observing elections in the region in the mid-1990s. Only Moldova, Russia (in the 1990s), and Ukraine have organized one or several elections that were both competitive and, according to OSCE observation missions, reasonably in line with international standards (Herron 2009, p. 11).

The paper opens in the first two sections with a discussion of the context in which election laws were adopted in the post-Soviet states, and of the impact of external actors on institutional choice and elections in the region.

1 Reports from OSCE election observation missions can be consulted at: http://www.osce.org/odihr/elections
The next two sections establish the genealogy (origin and evolution) of electoral legislation in the region: the first of these sections documents the external (Soviet and Russian) sources of existing electoral legislation in the region; the second investigates to what extent amendments to the legislation have been based on OSCE recommendations or the Russian example. The final section before the conclusion demonstrates the diffusion of flawed legislation in a number of areas that are frequently highlighted in OSCE election observation reports and legal reviews as falling behind international standards.

2. Institutional choice and authoritarian elections

The context in which political institutions have been adopted in the former Soviet Union (FSU) since the end of communism has in crucial ways differed from that in Central and Eastern Europe (CEE). First, while in CEE states the post-communist political elites included many former opposition figures (Geddes 1995), the principal actors involved in institutional choice in the FSU were more often elites from the previous socialist regime. In Azerbaijan, Georgia, Kazakhstan, Turkmenistan, and Uzbekistan, the current election laws were adopted under presidents who previously served as First Secretaries of the republican organizations of the Communist Party of the Soviet Union. The presidents of Armenia, Belarus, Kyrgyzstan, and Tajikistan were former nomenklatura in the Soviet administrative system. The process of institutional choice moreover often did not involve as much bargaining between different groups and elites as it had in several CEE states (Roeder, 2001). In most cases new election laws were adopted without much discussion.

Second, given that the countries of the FSU were newly independent states that previously were merely constituent parts in the Soviet Union, they often lacked the kind of autonomous legal expertise required for drafting complicated new laws (Sharlet 1998). Moreover, a precommunist legacy of independent statehood was either distant or non-existing and therefore could hardly be taken as an initial point of reference as it had been in some CEE states (Elster et al. 1998). For the newly independent states of the FSU, instead, the laws of the Soviet Union and the new laws of the Russian Federation were viewed as an expedient source from which elements could be freely borrowed.

Third, the FSU states were subject to less external involvement from western intergovernmental organizations that could have incentivized them to bring their legislation in line with democratic standards. For geographical and political reasons, organizations like the OSCE, the Council of Europe, and the
European Union were less involved with the FSU states during the 1990s than with the the CEE states. With that, the FSU states lacked a crucial incentive that the CEE states had for political reform - possible integration into the European Union (Schimmelfennig and Sedelmeier 2004; Vachudova 2005). By contrast, most FSU states maintained relatively close relations with Russia, both bilaterally and multilaterally through regional intergovernmental organizations.

Finally, and most crucially, the post-Soviet leaders in the nine states covered here, unlike governments in CEE, lacked the political will to put the new political institutions to work for democracy, as is evident from the low quality of election processes in the region. OSCE reports from election observation missions since the mid-1990s document the many ways in which elections in the region failed to meet international standards and commitments for democratic elections as those are listed in documents such as the 1990 Copenhagen Document adopted by OSCE member states, and the 2002 Code of Good Practice in Electoral Matters, adopted by the Venice Commission of the Council of Europe. The score for the ‘electoral process’ component of Freedom House’s annual Nations in Transit studies has not improved in any of the nine states over the 2000s, and has deteriorated in most. Data from OSCE election observation reports moreover indicate that the quality of election-day procedures has not improved over the past decade (Bader 2011).

Three types of elections in the nine states can be distinguished. First, in Turkmenistan throughout the post-communist period and in Uzbekistan since the mid-1990s, elections are organized without participation of opposition political forces. Second, in all elections since the mid-1990s in Azerbaijan, Belarus, Kazakhstan, and Tajikistan, and in most elections in Kyrgyzstan, there is some participation of opposition forces, but pro-regime forces and candidates achieve deliberately overwhelming victories. Most elections in Armenia and Georgia, finally, feature some degree of real competition but also a playing field that by design clearly benefits pro-regime forces. This tripartite division corresponds with the ‘electoral process’ scores from the Nations in Transit publication: competitive authoritarian elections are organized in countries with a score between 4 and 6 for ‘electoral process’.


3 The Nations in Transit studies can be consulted at: http://www.freedomhouse.org/template.cfm?page=17.
Politically closed elections such as those in Turkmenistan and Uzbekistan correspond with a score of 7, the lowest possible. And uncompetitive elections with opposition correspond with a score between 6 and 7.

Regardless of the undemocratic nature of elections, the post-Soviet states all have more or less elaborate laws which formally provide for democratic elections. While research on the origins and consequences of electoral systems is an advanced research agenda of comparative politics, the study of election laws is ‘a largely unexplored territory’ (Massicotte et al. 2004, p. 3). Election laws ‘define the rules of the game’ (idem, p. 3) of elections. The electoral system, which comprises ‘the rules governing the conversion of votes into seats’ (Gallagher 2011, p. 186) is only one element in the overall legal framework regulating the conduct of elections. In defining the rules of the game of elections, election laws typically contain provisions on the functioning of the election administration, on the financing of campaigns, on the handling of complaints of appeals, on special forms of voting, and they describe voting, counting, and tabulation procedures, among many other things. Even when individual provisions from the election law are violated by election management bodies and other authorities, the election law still sets the parameters within which an electoral process is conducted.

The context in which the election laws came about helps explain why post-Soviet leaders to a large extent contented themselves with the borrowing and adaptation of Soviet and Russian electoral legislation rather than autonomously drafting legislation or implementing amendments on the basis of OSCE recommendations. Diffusion through the borrowing and adaptation of legal text is one example of international influence in institutional choice; other examples include the imposition of an institution by a foreign power, ‘learning’ from other states, and compliance with an international norm. Institutional choice in the post-communist world, however, is more commonly explained from domestic factors. Of the fourteen explanations for the origin of electoral system listed by Benoit (2004), for example, only one deals with international influences. With regard to the origin of electoral systems in the former Soviet Union, there is indeed much reason to accept that domestic factors have played a central role (Jones Luong 2002; McFaul 1999). The origin and subsequent evolution of most elections laws, however, cannot be understood without taking international factors into account.
3. Democracy promotion and authoritarian diffusion

The two external sources that legislators in the post-Soviet states could take recourse to in the process of adopting and amending their elections laws, have been, on the one hand, existing Soviet and Russian election laws, and, on the other hand, a large number of concrete recommendations to improve the laws, issued by the OSCE/ODIHR and Venice Commission. The impact of Russia on the other post-Soviet states is the subject of much speculation. It is commonly understood that Russia seeks to increase and/or restore its clout in the region that Russian officialdom often refers to as the ‘near abroad’ (Hedenskog and Larsson 2007; Kramer 2008). Russia’s relation to the region was expressed by the president in 2008 as one in which Russia has ‘privileged interests’. The project to increase its clout in the region is variably motivated by primarily economic interests (Rutland 2008), political benefits (Bader et al. 2010), a desire to restore some of its lost power per se (Bugajski 2010), or a combination of these factors. Aiming to increase its clout, Russia operates both at a bilateral level and at a multilateral level. Bilaterally, Russia has been observed as, among other things, directly manipulating election processes (Petrov and Ryabov 2006), involving national economic elites into a transnational patronage network (Wallander 2007), and punishing selected governments for ‘anti-Russian’ policies (Makarychev 2008). Multilaterally, Russia uses intergovernmental organizations such as the Commonwealth of Independent States (CIS), the Shanghai Cooperation Organization (SCO), and the Eurasian Economic Community (EurAsEc) to further its goals. While these organizations are intended to foster economic integration and cooperation on political and security issues, their real impact, however, is seen as limited (Kubicek 2009; Kurtov 2007).

In speculation about Russia’s impact in the region, the focus is mostly on the country’s pro-active policies to assert its position. Russia, however, also has an indirect impact on the former Soviet republics through the diffusion of (formal and informal) institutions. Unlike Russia’s pro-active policies, this diffusion does not entail coercion: the post-Soviet states wilfully and voluntarily borrow and adopt from the Russian example. Diffusion can be simply defined as ‘multiple adoptions of basically similar practices’ (Elkins and Simmons 2005, p. 36). Since these adoptions typically occur in spatial and temporal clusters, the multiple adoptions are, as in a domino effect, presumably related. Diffusion has been identified as an important variable in democratization (Brinks and Coppedge 2006; Leeson and Dean 2009), but it
can also be observed in undemocratic contexts. Because of the presence of one relatively hegemonic power in the region (Russia), a powerful common legacy (the Soviet Union), and a host of regional intergovernmental organizations, the post-Soviet area is a pre-eminent case of a region where diffusion may be expected to have significant explanatory value concerning institutional choice and evolution. Such institutional ‘isomorphism’ appears to have played a role, for example, in the adoption of roughly similar executive-legislative arrangements and other constitutional elements in the 1990s. Another example, that this article focuses on, is the borrowing and adoption across the post-Soviet area of electoral legislation.

While the impact of Russia on the post-Soviet states is often explicitly viewed as negative (Tolstrup 2009) or even as undermining democracy (Burnell 2010), the countries of the region are also recipients of democracy assistance. In the area of elections and electoral legislation, the main provider of democracy assistance is the OSCE. The purpose of OSCE electoral assistance is to assess the fit of the conduct of elections and electoral legislation with international standards. Ultimately, the assistance aims to contribute to an improvement of the quality of elections, and in this sense it is a form of democracy assistance. Roughly since the turn of the century, the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE has issued reviews of the electoral legislation of the participating states of the OSCE, formally after such a review is requested by the relevant state. The legal reviews are one element of OSCE electoral assistance; the other, more visible element is election observation. In recent years, the reviews of the election laws of the Southern Caucasus states and Belarus have been conducted in cooperation with the Venice Commission of the Council of Europe. The legal reviews typically contain large numbers of concrete recommendations on how to bring the election laws into line with OSCE and other international standards for democratic elections. In addition to the recommendations in the legal reviews, recommendations for improving the legal framework of elections are also contained in the reports of OSCE election observation missions, and especially in the final reports of these missions.

As participating states of the OSCE, all post-Soviet states formally have a stake in the OSCE’s electoral assistance. In practice, however, the electoral assistance is perceived as being directed by the Western participating states of the organization. Over the past decade, the OSCE’s election-related efforts have come under heavy criticism from Russia and from the Commonwealth of Independent States (Fawn 2006). Moreover, at Russia’s
instigation the CIS has developed a set of activities that mirror the OSCE’s. The CIS election-related activities include election observations missions whose conclusions are almost always diametrically opposed to those of the OSCE; largely uncritical reviews of electoral legislation of CIS member states; and the development of common standards on elections and election-related issues. The simultaneous efforts of the OSCE and the CIS point to a competition between different views on elections. In a broader sense, the simultaneous efforts around elections in the post-Soviet area are part of what is seen as competition between Russia and the West (Motyl 2008; Wilson and Popescu 2009). The views and interests of the western OSCE states and Russia may not always collide, but regarding elections in the region they are clearly incompatible. The post-Soviet states besides Russia find themselves between the two competing powers, and are subject to a simultaneous pull by the two competing powers to conform with their respective view of elections. Accordingly, whether a post-Soviet state conforms with the views of the western OSCE states regarding elections or with Russia’s views is revealing as regards the attitudes of its political leaders.

4. The DNA of post-Soviet election laws

From even a cursory inspection of the election laws of the states in Central Asia, the Southern Caucasus, and Belarus it becomes clear that most of these heavily draw from Soviet and Russian electoral legislation: apparently, the individuals involved in drafting the laws extensively used the Soviet and Russian laws in the process of drafting their own legislation. A detailed article-to-article analysis reveals which articles in the laws of the post-Soviet states have been borrowed and adapted from which articles in the Soviet and Russian laws. With the exception of the Uzbek, Tajik, and Turkmen laws, that in many instances copy verbatim entire articles, the legislative “plagiarism” is often not easy to detect: article headings and the order of articles are changed, different formulations are used to express similar content, and borrowed parts from articles from the Soviet and Russian legislation are spread out over several articles in the new laws, and vice versa. Also, many articles intricately combine different sources.

At each moment since 1995, there have been in Russia three laws that regulate the conduct of national elections: one law that contains general provisions on the conduct of elections, and two separate laws that regulate parliamentary and presidential elections, respectively. The three laws between

---

4 Information about election-related activities by the CIS can be found at: http://www.iacis.ru/
them contain considerable substantive overlap. In addition, they borrow elements from the last Soviet election laws: the Law on the Election of People's Deputies of the USSR (1988) and the Law on the Election of the President of the RSFSR (1991). As table 1 demonstrates, the first post-communist Russian laws were adopted in 1994-1995, after which two or three revised editions of each law were adopted over the following ten years. The newer editions have added much content. In comparison with the latest editions of the Russian election laws, the editions from the 1990s were underdeveloped. Tellingly, the three laws from 1994-1995 totalled 86 pages, against 380 pages for the latest editions including amendments until 2010. As some of the election laws from other post-Soviet states, the Russian election laws from the 1990s were also still heavily influenced by Soviet legislation. Due in large part to the substantial borrowing from Soviet laws and a large number of missing provisions (especially in the 1994-1995 laws), the Russian election laws of the 1990s fell short of meeting international standards.

Electoral legislation in the nine perpetually undemocratic (until 2010) states of the region comes in two types. Tajikistan, Turkmenistan, and Uzbekistan have separate laws for parliamentary and presidential elections in conformity with Soviet practice and existing Russian practice. Armenia, 


Azerbaijan, Belarus, Georgia, Kyrgyzstan, and Kazakhstan, by contrast, have all adopted unified election codes that regulate the conduct of all types of elections, between 1995 and 2003. These unified codes consist of a general part and a special part for each type of elections. Only the general parts of the codes are considered henceforth because the special parts largely replicate the general part. Table 1 lists the election laws of the nine post-Soviet states as they were in use in 2010, as well as the main election laws of the late Soviet period and post-communist Russia.

<table>
<thead>
<tr>
<th>Year</th>
<th>Soviet and Russian election laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988</td>
<td>Law on the Election of People’s Deputies of the USSR</td>
</tr>
<tr>
<td>1989</td>
<td></td>
</tr>
<tr>
<td>1990</td>
<td></td>
</tr>
<tr>
<td>1991</td>
<td>Law on Presidential Elections of the RSFSR</td>
</tr>
<tr>
<td>1992</td>
<td>Law on Presidential Elections of Uzbekistan</td>
</tr>
<tr>
<td>1993</td>
<td></td>
</tr>
<tr>
<td>1994</td>
<td>1994 General Election Law of Russia</td>
</tr>
<tr>
<td>1995</td>
<td>Law on Legislative Elections of Russia; 1995 Law on Presidential Elections of Russia</td>
</tr>
<tr>
<td>1996</td>
<td></td>
</tr>
<tr>
<td>1997</td>
<td>1997 General Election Law of Russia</td>
</tr>
<tr>
<td>1998</td>
<td></td>
</tr>
<tr>
<td>1999</td>
<td>1999 Law on Legislative Elections of Russia; 1999 Law on Presidential Elections of Russia</td>
</tr>
<tr>
<td>2000</td>
<td>Election Code of Armenia; Election Code of Kyrgyzstan; Law on Legislative Elections of Tajikistan</td>
</tr>
<tr>
<td>2001</td>
<td></td>
</tr>
<tr>
<td>2002</td>
<td>2002 General Election Law of Russia; 2002 Law on Legislative Elections of Russia</td>
</tr>
<tr>
<td>2003</td>
<td></td>
</tr>
<tr>
<td>2004</td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>Law on Presidential Elections of Turkmenistan</td>
</tr>
</tbody>
</table>

Table 1. Soviet and post-Soviet election laws

In terms of correspondence with Soviet and Russian laws, the election laws of the nine countries can be divided into three types: first, laws that for the biggest part are based on Soviet electoral legislation - the law on presidential elections of Tajikistan, and the laws of Turkmenistan and Uzbekistan; second, laws that are either for the biggest part based on Russian legislation or that are largely hybrids of Russian and Soviet laws - the law on parliamentary elections in Tajikistan, and laws in Azerbaijan, Belarus, Kyrgyzstan, and Kazakhstan; and, finally, laws that are predominantly original - the Georgian and Armenian laws. Table 3 at the end of this section details for each election law which articles and chapters have been partially or entirely based on Soviet and Russian legislation, and in some cases on legislation from other post-Soviet states.

The greatest similarity with Soviet election laws is found in the cases of Turkmenistan and Uzbekistan: both Turkmen laws and the law on parliamentary elections of Uzbekistan are almost fully based on the 1988 law On the Election of People’s Deputies of the USSR. Roughly half of the Tajik and Uzbek laws on presidential elections is equally based on the Law On the Election of People’s Deputies of the USSR law, while the other half is based on the 1991 law On the Election of the President of the RSFSR. Interestingly, some articles (specifically articles 18, 19, and 20) from the Tajik law on legislative elections have been adapted from the Uzbek law on presidential elections. The other Tajik law, on parliamentary elections, has a particularly complex pedigree. The correspondence between the Turkmen and Uzbek laws and the Tajik law on presidential elections on the one hand, and the 1988 and 1991 Soviet laws on the other hand, is so great that it is fair to say that the authorities of Uzbekistan, Turkmenistan, and partly Tajikistan have not yet undertaken the effort to draft post-communist electoral legislation.

The 2000 election code of Belarus also draws extensively from the 1988 Soviet law: roughly half of the law’s articles to some degree resemble articles from the 1988 Soviet law. The Belarusian law for example retains a number of provisions that were typical for Soviet electoral legislation, such as the possibility to recall deputies, nomination of parliamentary candidates by workers’ collectives, and a mandatory fifty percent turnout in elections. At least eight articles that are not based on Soviet law instead are based on the 1997 general election law of Russia. Furthermore, the opening section of the Belarusian election code on the basic principles of elections, copies formulations from the 1995 Kazakh election code.
The election codes of Azerbaijan, Kazakhstan, and Kyrgyzstan are predominantly based on Russian electoral legislation from the 1990s. While the first five chapters of the 2003 Azeri election code contain a considerable amount of original elements, from article 29 the content of almost all articles can also be found, in modified form, in the 1999 laws on presidential and legislative elections of Russia. Altogether roughly four out of five articles from the Azeri code are derived to some degree from the 1999 Russian laws. Over the course of a number of chapters of the code, even the order of articles from the Russian laws is retained. The 1999 Kyrgyz election code is also largely based on one Russian law, in this case the 1997 general election law. As in the Azeri code, the Kyrgyz code over long stretches replicates the structure of the Russian law. The 1995 election code of Kazakhstan, the first unified election code released in the region, is largely based on three sources in addition to some original elements. The only two election laws of the region that are largely original are those of Armenia (1999) and Georgia (2001). Even the persons who drafted these laws, however, relied to some extent on Soviet and Russian electoral legislation.

Taken together, most of the electoral legislation in the nine states covered here that is not original is derived from the 1988 and 1991 Soviet laws (mainly Belarus, Kazakhstan, Tajikistan, Turkmenistan, and Uzbekistan), the 1995 Russian laws on parliamentary and presidential elections (Kazakhstan), the 1997 general election law of Russia (Belarus and Kyrgyzstan) and the 1999 Russian law on parliamentary and presidential elections (Azerbaijan). Choices made by lawmakers to use certain Russian election laws appear to have been dictated by time: whenever Russian laws were used, had these been adopted at most a few years before the legislation in the post-Soviet states was drafted. While the Soviet and Russian laws were clearly the most important sources for post-Soviet lawmakers, elements from Kazakh and Uzbek laws, which had been adopted early on, can be found in the election laws of Belarus, Kyrgyzstan, and Tajikistan.

<table>
<thead>
<tr>
<th>Country</th>
<th>Existing law (2010)</th>
<th>Sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Armenia</td>
<td>Election Code (1999)</td>
<td>chapter 1 (‘main provisions’) and articles 31, 45, 46 from Law On the Election of People’s Deputies of the USSR; articles 18, 19, 24-26, 39 from 1997 General Election Law of Russia</td>
</tr>
<tr>
<td>Belarus</td>
<td>Election Code (2000)</td>
<td>articles 13, 17-21, 35, 37, 38, 45, 49-52, 64 from Law On the Election of People’s Deputies of the USSR; articles 15, 32, 46, 47, 52-55 from 1997 General Election Law of Russia; chapter 1 (‘general provisions’) based on Election Law of Kazakhstan</td>
</tr>
<tr>
<td>Georgia</td>
<td>Election Code (2001)</td>
<td>chapter 1 (‘main provisions’) from Law On the Election of People’s Deputies of the USSR; articles 46, 75 from 1999 Law</td>
</tr>
<tr>
<td>Country</td>
<td>Law Name</td>
<td>Sources</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------------------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Tajikistan</td>
<td><strong>Law on Presidential Elections (1994)</strong></td>
<td>roughly half from Law On the Election of People’s Deputies of the USSR; roughly half from Law On the Election of the President of the RSFSR; articles 17, 18, 19 from Law on Presidential Elections of Uzbekistan</td>
</tr>
<tr>
<td></td>
<td><strong>Law on Legislative Elections (1999)</strong></td>
<td>articles 4-8, 10, 12, 14-17, 19, 21-27, 36, 41, 42, 49, 53-58 from Law On the Election of People’s Deputies of the USSR; articles 9, 48, 50 from 1995 Law on Legislative Elections of Russia; articles 36, 38, 40, 44-47 from 1997 General Election Law of Russia; articles 12, 14, 18-22, 30-33 from Law on Legislative Elections of Uzbekistan</td>
</tr>
<tr>
<td>Turkmenistan</td>
<td><strong>Law on Presidential Elections (2006)</strong></td>
<td>almost entirely from Law On the Election of People’s Deputies of the USSR</td>
</tr>
<tr>
<td></td>
<td><strong>Law on Legislative Elections (1998)</strong></td>
<td>almost entirely from Law On the Election of People’s Deputies of the USSR</td>
</tr>
<tr>
<td>Uzbekistan</td>
<td><strong>Law on Presidential Elections (1991)</strong></td>
<td>roughly half from Law On the Election of People’s Deputies of the USSR; roughly half from On the Election of the President of the RSFSR</td>
</tr>
<tr>
<td></td>
<td><strong>Law on Legislative Elections (1993)</strong></td>
<td>-almost entirely from Law On the Election of People’s Deputies of the USSR; articles 54 and 55 from Regulations of the Congress of People’s Deputies of the USSR and the Supreme Council of the USSR (1989)¹⁰</td>
</tr>
</tbody>
</table>

Table 2. The sources of election laws in the post-Soviet states.

5. The evolution of post-Soviet election laws

Election laws are comparatively long documents: the laws of the nine perpetually undemocratic states of the former Soviet Union comprise anything between 38 (the law on presidential elections of Tajikistan) and 246 (the election code of Azerbaijan) articles. Each containing hundreds if not thousands of distinct provisions, election laws are subject to frequent amendment. Since their adoption, the post-Soviet election laws have all been amended, some rather piecemeal and infrequent (Tajikistan, Turkmenistan, Uzbekistan), and other laws substantially and often (Armenia, Georgia, Kazakhstan); the number of amendments and the frequency of amendments of the Azeri, Belarusian, and Kyrgyz laws falls in between. Amendments have been of three types: first, amendments that are modeled on articles from Russian legislation since 1997, i.e. the “second wave” of Russian elections laws. Second, amendments that are based on, or at least address recommendations from the OSCE, often in cooperation with the Venice Commission of the Council of Europe. And third, presumably original amendments that are based neither on the Russian example nor on OSCE recommendations.

5.1 Compliance with OSCE Recommendations

Since the beginning of the century, the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE has issued reviews of the electoral legislation of the participating states of the OSCE, formally after a review is requested by the relevant state. More recently, the reviews of the election laws of the Southern Caucasus states and Belarus have been conducted in cooperation with the Venice Commission of the Council of Europe. These legal reviews are one element of OSCE electoral assistance; election observation is the other, more visible element. The legal reviews contain large numbers of concrete recommendations on how to bring the election laws into line with OSCE and other international standards for democratic elections. Recommendations for improving the legal framework of elections are also contained in the reports of OSCE election observation missions, and especially in the final reports of these missions. In the legal reviews of the OSCE/ODIHR and the Venice Commission, election laws are assessed for their compliance with the norms and standards as these are set out in a range of documents. The most important of these documents are the 1990 Copenhagen Document of what was then the Conference for Security and Co-operation in Europe (and became the OSCE soon after), the 2002 Code of Good Practice in Electoral Matters, adopted by the European Commission for Democracy through Law (otherwise known as the Venice Commission), and the 2003 OSCE document Existing Commitments for Democratic Elections in OSCE Participating States. The only country discussed here for which the OSCE has not issued a review of its electoral legislation is Turkmenistan. One review each was issued for the Uzbek law on parliamentary elections and the Tajik law on presidential elections. The election codes of Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, and Kyrgyzstan have each been extensively scrutinized a number of times over the course of the 2000s.\textsuperscript{11} For each of eight out of the nine countries discussed here, between forty-eight (Azerbaijan) and one hundred (Armenia) unique recommendations have been put forth.

There is substantial variation in the level of appreciation of the different laws by the OSCE. On the one hand, some laws are seen as practically incompatible with the conduct of democratic elections. In relation to the 2004 legislative election in Belarus, for example, the OSCE notes that “the legal framework failed to provide a sufficient basis for a meaningful democratic election process” (OSCE/ODIHR 2004b, p. 3). Similarly, the law

\textsuperscript{11} These legal reviews can be consulted at: http://www.osce.org/odihr/elections.
on presidential elections of Tajikistan, according to an OSCE election observation report, 'lacks clarity and fails to sufficiently regulate many of the aspects of the election' (OSCE/ODIHR 2006f, p. 5). On the other hand, the laws of particularly Armenia and Georgia are assessed much more positively. The final report of the observation mission to the 2003 parliamentary election in Armenia, for example, holds that “the legislative framework provides a substantive basis for the conduct of election in compliance with international standards” (OSCE/ODIHR 2003b, p. 4). The Georgian election code, similarly, “serves as an adequate basis for the conduct of democratic elections” (OSCE/ODIHR 2008b, p. 4). Regardless of the overall adequacy of the election laws, however, all election laws of the post-Soviet states are seen as containing significant shortcomings that must be addressed to meet international standards and instill confidence in the fairness of the election process.

Speaking for its signatories, the 1999 Istanbul Document stipulated: ‘We agree to follow up promptly the ODIHR’s election assessment and recommendations’ (OSCE 1999, p. 7). By signing the Istanbul Document, Armenia, Azerbaijan, Belarus, Georgia, and Kazakhstan have formally committed themselves to compliance with the recommendations. Neither these countries nor the other post-Soviet states, however, have followed up more than a third of the recommendations. Especially the Central Asian states and Belarus have routinely disregarded the (large) majority of recommendations. Table 3 contains data on the number of unique and concrete recommendations for the improvement of the electoral legislation, the years between which these recommendations were issued, the number of recommendations that have been addressed, the proportion of this number to the total number of recommendations, and the articles in the election laws that have been affected by amendments which have addressed OSCE recommendations. In addition, the table lists examples of important recommendations that have been addressed and that have not been addressed by amendments. For the analysis, the latest available versions of the laws were consulted.
<table>
<thead>
<tr>
<th>Country</th>
<th>Number of recommendations issued by OSCE/ODIHR (and years issued)</th>
<th>Number (and proportion of total number) of recommendations that have been addressed; articles affected by the amendments</th>
<th>Examples of recommendations that have been addressed</th>
<th>Important recommendations that have not been addressed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Armenia</td>
<td>100 (1999-2008)</td>
<td>30 (30%): 2, 10, 14, 22, 25, 30, 35, 38, 39, 40, 42, 46, 49, 51, 57, 60, 61, 62, 70, 86, 101, 104, 107, 108, 112</td>
<td>Election results should be published broken down to the polling station level.</td>
<td>- The option of voting against all candidates or parties should be eliminated.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- Appeals and complaints procedures should be improved.</td>
<td>- Finger inking should be introduced.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- Mobile voting should be made possible.</td>
<td>- Mobile voting should be accessible for more groups.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>40 (30%): 2, 10, 14, 22, 25, 30, 35, 38, 39, 40, 42, 46, 49, 51, 57, 60, 61, 62, 70, 86, 101, 104, 107, 108, 112</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>48 (2003-2008)</td>
<td>10 (21%): 48, 65, 100, 104, 109, 112, 194, 200, 203</td>
<td>- The option of voting against all candidates or parties should be eliminated.</td>
<td>- The rules for the composition of the Central Election Commission should be changed.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- Finger inking should be introduced.</td>
<td>- NGOs should be allowed to observe elections</td>
</tr>
<tr>
<td>Belarus</td>
<td>50 (2000-2009)</td>
<td>5 (10%): 13, 48, 49, 53, 79</td>
<td>- Parties and candidates should be able to receive private donations.</td>
<td>- There should be stricter provisions regarding 'military voting'.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- There should be better safeguards against fraud in early voting.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- Appeals and complaints procedures should be improved.</td>
<td>- Early voting should be available to fewer people.</td>
</tr>
<tr>
<td>Georgia</td>
<td>71 (1999-2008)</td>
<td>20 (28%): 16, 21, 22, 28, 42, 48, 49, 50, 56, 58, 60, 63, 64, 73, 77, 81, 87, 95, 105, 111, 117</td>
<td>- The number of signatures that must be collected for registration of candidacy should be reduced.</td>
<td>- Provisions for the recall of elected deputies should be scrapped.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- The electoral threshold in legislative elections should be lowered.</td>
<td>- It should be less cumbersome to initiate a referendum.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- Appeals and complaints procedures should be improved.</td>
<td>- Early voting should be available to fewer people.</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>74 (2001-2007)</td>
<td>12 (16%): 20, 28, 34, 37, 41, 54, 59, 60, 64, 74, 80, 90, 96, 110, 119, 124</td>
<td>- There should be a deadline for the withdrawal of candidacy.</td>
<td>- Convicted prisoners should be granted passive suffrage.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- The requirement for international observers to have previous experience in election observation should be lifted.</td>
<td>- Large discrepancies in the number of voters per district in legislative elections should be removed.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- The deposit sum for candidates in presidential elections should be lowered.</td>
<td>- The provision of drug tests for candidates and deputies should be reassessed or removed.</td>
</tr>
<tr>
<td>Kyrgyzstan</td>
<td>94 (2000-2007)</td>
<td>6 (6%): 17, 25, 30, 31, 66, 76</td>
<td>- Observers should be allowed to conduct observation in more than one polling.</td>
<td>- There should be more safeguards in the electronic voting system.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- The number of voters per polling station should be lowered.</td>
<td>- The number of grounds for denial of candidacy should be reduced.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- Voters should be able to receive protocols of the vote count.</td>
</tr>
</tbody>
</table>

17
Some of the issues that are noted in many legal reviews include: the rules for the composition of election commissions do not provide for enough pluralism (Armenia, Azerbaijan, Belarus, Kyrgyzstan, Tajikistan); members of election commissions can be dismissed too easily (Belarus, Georgia, Kazakhstan); the option of voting "against all candidates", a leftover from Soviet legislation, should be removed (Armenia, Belarus, Kyrgyzstan, Tajikistan); the procedures for verifying the signatures that are collected for candidate registration are inappropriate (Belarus, Kyrgyzstan, Tajikistan); the provisions regarding the handling complaints and appeals are flawed (Kazakhstan, Kyrgyzstan, Tajikistan); there are insufficient safeguards for equal treatment in the media (Georgia, Kazakhstan, Tajikistan); and election observers should have more extensive rights (Belarus, Georgia, Kyrgyzstan).

The review of the Uzbek law on parliamentary elections broaches a large number of problems in all sections of the legislation, indicating that the
legislation is far removed from international standards. After the OSCE legal review was published, the Uzbek government has not taken steps to amend the election law to any significant extent. Similarly, of all the OSCE recommendations for the Tajik election laws, only one has been implemented. It is unclear, however, whether this amendment was introduced in response to the OSCE recommendation. Regarding the Kyrgyz laws, a small number of issues that inspired the OSCE recommendations have been eliminated, but this appears to be rather a consequence of changes in the electoral system than due to the intention of the Kyrgyz government to comply with OSCE recommendations. The Kazakh government conducted a major overhaul of its election code that addressed a significant number of OSCE concerns in 2004. Since 2004, however, only few of OSCE recommendations have been followed up. Regarding the election code of Belarus, one tenth of OSCE recommendations to improve the code have made it into amendments. Most amendments that implement OSCE recommendations were adopted in 2009, nine years after the recommendations were initially issued. Between 2000 and 2009 only a small number of amendments were made, in 2006, and these, according to the OSCE “were a regressive step and addressed none of the concerns [of the OSCE]” (OSCE and Venice Commission 29, p. 4). Authorities in Azerbaijan have been somewhat more responsive to the recommendations, one fifth of which has been addressed. Since implementation of OSCE recommendations often follows years after the original recommendation, and since so many other recommendations are not addressed, it can be difficult to tell whether amendments that address recommendations are a direct response to those recommendations or whether, alternatively, the amendments are implemented regardless of OSCE recommendations. Armenia and Georgia present the only cases where there is a clear relation between many amendments and OSCE recommendations. The authorities in Armenia and Georgia have also addressed the largest number of recommendations.

In many legal reviews the OSCE acknowledges the failure of the post-Soviet states to adopt its recommendations. In 2006, for example, the OSCE noted with regard to the election code of Belarus: “Although recommendations were made to bring the Code more closely in line with OSCE commitments for democratic elections, the Belarusan authorities have not, to date, appeared willing to consider them.” (OSCE/ODIHR 2006c, p. 6). Similarly, a review of election law of Azerbaijan in 2005 commented: ‘Unfortunately, the most important suggestions have not been implemented by the authorities of Azerbaijan in spite of the repeated recommendations from the Parliamentary
Assembly and the Committee of Ministers of the Council of Europe (OSCE/ODIHR and Venice Commission 2005, p. 2). Instead of addressing substantive OSCE recommendations, it is often found that many amendments only make minor and technical changes to the election law (e.g. OSCE/ODIHR 2011a, p. 5; OSCE/ODIHR and Venice Commission 2002, p. 1). In other instances, amendments, rather than improving the quality of the electoral legislation though adoption of the OSCE recommendations, compound existing shortcomings or add new ones (e.g. OSCE/ODIHR 2006d, p. 5; OSCE/ODIHR 2008c, p. 2).

5.2 The Russian example
A small minority of amendments to electoral legislation in most post-Soviet countries presented a response to OSCE recommendations. Especially in Belarus, Kyrgyzstan, and Kazakhstan, amendments have often, instead, been adapted from Russian electoral legislation from the late 1990s and early 2000s. The electoral legislation of Belarus, Kazakhstan, and Kyrgyzstan has evolved parallel with the Russian laws, as the original election codes in these countries were also largely based on Russian election laws. For the six countries in the region where amendments to electoral legislation have been adapted from Russian laws, table 4 lists the relevant amendments and their source.

<table>
<thead>
<tr>
<th>Law</th>
<th>Articles affected by amendments; sources of the amendments.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Election Code of Belarus</td>
<td>articles 32 and 61 from 1999 Law on Legislative Elections of Russia and 1999 Law on Presidential Elections of Russia; article 13 from 1997 General Election Law of Russia; articles 32, 33, 45, 48 from 2002 General Election Law of Russia; article 61 from 2003 Law on Presidential Elections of Russia</td>
</tr>
<tr>
<td>Election Law of Kazakhstan</td>
<td>articles 27, 28, 43, 50, 72 from 2002 General Election Law of Russia</td>
</tr>
<tr>
<td>Election Code of Kyrgyzstan</td>
<td>articles 12, 28, 29, 32, 39, 53, 54, 55 from 2002 General Election Law of Russia; articles 10, 17, 18, 24, 26, 41, 45 from 2002 Law on Legislative Elections of Russia and 2003 Law on Presidential Elections of Russia</td>
</tr>
<tr>
<td>Law on Legislative Elections of Tajikistan</td>
<td>article 8 from 1997 General Election law of Russia and from Commonwealth of Independent States (CIS) Declaration on Principles of the International Observation of Elections and Referendums in the CIS Member States</td>
</tr>
<tr>
<td>Law on Legislative Elections of Turkmenistan</td>
<td>article 23 from 1997 General Election law of Russia</td>
</tr>
<tr>
<td>Law on Presidential Elections of Turkmenistan</td>
<td>article 23 from 1997 General Election law of Russia</td>
</tr>
<tr>
<td>Law on Legislative Elections of Uzbekistan</td>
<td>article 6 from 1997 General Election law of Russia</td>
</tr>
<tr>
<td>Law on Presidential Elections of Uzbekistan</td>
<td>article 5 from 1997 General Election law of Russia</td>
</tr>
</tbody>
</table>

Table 4. Amendments in post-Soviet election laws that are based on Russian law.

Most amendments to the Kazakh election code were drafted independently, but lawmakers have also consulted Russian legislation. A majority of
amendments to the Kyrgyz code have incorporated the language of articles of the 2002 general elections law of Russia and the 2003 Russian law on presidential elections. Finally, amendments to the Belarusian election code since 2000 have drawn from five different Russian election laws. While the election laws of Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, and Kyrgyzstan have all been subject to dozens of amendments, those of Uzbekistan, Tajikistan, and Turkmenistan have almost remained unchanged since adoption. The main change to the election laws of Uzbekistan, Tajikistan, and Turkmenistan, in addition to amendments that were made following changes in the electoral system, has been the inclusion of provisions for domestic and international election observers. In determining the rights and obligations of observers, the three countries have largely followed the example of Russia, which included observer rights in the 1997 general election law. Regarding domestic observer rights, the Tajik laws copy the 1997 Russian law almost verbatim. Regarding international observers, on the other hand, the Tajik laws take on the list of observer rights as agreed by the member states of the Commonwealth of Independent States (CIS) in the 2008 Declaration on Principles of the International Observation of Elections and Referendums in the CIS Member States.12 The list of observer rights in this declaration is somewhat more extensive than that in the general Russian election law of 1997 and the new edition of this law from 2002. The Turkmen and Uzbek laws, like the Russian law, grant the same rights to domestic and international observers. The Turkmen laws list some of the rights that can be found in the Russian law but leaves out other rights, such as the right to address the chairman or chairwoman of an electoral commission. The Uzbek laws provide only a short list of what observers may and may not do. The list in part corresponds, substantively and linguistically, with the list of observer rights as found in the Russian law.

Amendments to the election laws of Armenia, Azerbaijan, and Georgia, as far as could be determined, are not based on Russian legislation. Amendments in Armenia and Georgia have been both frequent and substantial, and in many cases moreover were demonstrably based on OSCE recommendations. Some amendments in Georgia in particular, however, have been marked by successive legal reviews of the OSCE and the Venice Commission as a step back from international standards, including the introduction of a drug use test for candidates in elections in Georgia, and the circumstance that independent candidates can no longer run in elections

12 This declaration is available at http://www.iacis.ru/html/?id=189.
(OSCE/ODIHR and Venice Commission 2010). Amendments to the Azeri election code, the last adopted among the election codes, have been large in number but limited in substance as they deal mostly with minor issues of a technical nature.

In sum, out of the eight countries whose election laws have been reviewed by the OSCE, and that have received large numbers of recommendations on how to bring the laws in line with international standards, only two – Armenia and Georgia - have clearly been receptive to the recommendations. Even these countries, however, have still refrained from implementing over two thirds of the recommendations. On the other hand, out of the five states (Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan) that have implemented a significant number of substantial amendments to their election laws, three (Belarus, Kazakhstan, Kyrgyzstan) have based some or most of the amendments on Russian electoral legislation. Taken together, despite the large numbers of OSCE and Venice Commissions recommendations which would constitute significant improvement if implemented, the election laws remain for the biggest part shaped by Soviet and Russian legislation.

6. Diffusion of flawed legislation
Each of the legal reviews conducted by the OSCE, whether or not in cooperation with the Venice Commission, lists large numbers of alleged shortcomings in the relevant election law. Many of these shortcomings are not unique to one election law but instead can be found in more or less the same shape and form in the election laws of other post-Soviet states as well. This circumstance suggests that the shortcomings share a common origin. This section demonstrates that pieces of flawed legislation that are found throughout the post-Soviet area can indeed be traced back to one common origin in Soviet and post-communist Russian laws. The flawed legislation concerns issues as suffrage, candidate registration, provisions for election observation, special forms of voting such as mobile voting and military voting, and complaints and appeals procedures. Because the flawed legislation has facilitated electoral malpractice including fraud, the spread of initially flawed legislation to the laws of other states is a vivid example of ‘authoritarian diffusion’.
6.1 Suffrage

Universal suffrage is limited everywhere by age and nationality; beyond this, any other limitation on suffrage, especially for national elections, must be discrete and carefully regulated by law. One limitation on both passive suffrage (the right to stand for election) and active suffrage (the right to vote) that may be legitimately imposed, and that would apply to only a relatively small group of people, is the existence of ‘a criminal conviction for a serious offence’ (OSCE/ODIHR 2003a, p. 59; European Commission for Democracy through Law 2003, p.15). With the partial exception of Azerbaijan, however, the post-Soviet states deny suffrage to all people with a current criminal conviction, regardless of the nature or seriousness of the offense for which they have been convicted. Some election laws in the region even deny suffrage to every individual who is in custody, including individuals who are merely suspected of a crime.

Both in terms of content and formulation, the articles in the election laws of the post-Soviet states that contain restrictive provisions regarding suffrage can be traced back to provisions in Soviet election laws and the early post-communist election laws of Russia. In article 2 of the the 1988 law On the Election of People's Deputies of the USSR, active and passive suffrage is denied to anyone held under custody, which would include persons who have been arrested for whatever reason. This highly restrictive limitation on suffrage lives on in the election law of Belarus (article 4) and in the law on presidential elections in Turkmenistan (article 2). These laws also use a formulation that is nearly identical with that of the 1998 Soviet law. Limitations on suffrage were less restrictive in the first post-communist election law of Russia (1994), but this law still, in violation of international standards, denies suffrage to anyone with a running conviction regardless of the nature of the offense (article 4). The provision has remained intact in the two subsequent general election laws of Russia (1997 and 2002), but has also found it way, in similar formulations, in the election laws of Armenia (article 2), Kazakhstan (article 4), Kyrgyzstan (article 3), Tajikistan (article 2 in the law on presidential elections, article 4 in the law on legislative elections), Uzbekistan (article 2 in both laws), and in the law on legislative elections of Turkmenistan (article 2). Since 2007, Kazakhstan in addition denies passive suffrage to anyone who has ever been convicted of a corruption-related offense. Provisions for active suffrage in Azerbaijan (article 12) do not impose the restriction that is found in the laws of all the other post-Soviet states discussed here. Regarding passive suffrage (article 13), however, the law is
particularly restrictive, as it denies the right to stand in elections to all sentenced prisoners, anyone who has ever been convicted for a serious crime, and people who presumably 'have obligations towards foreign states'. The OSCE has addressed the excessive restrictions on suffrage in relation to the election laws of Belarus (OSCE/ODIHR 2000b, p. 15) Georgia (OSCE/ODIHR and Venice Commission 2010, p. 6-7), Kyrgyzstan (OSCE/ODIHR 2004a, p. 4), Tajikistan (OSCE/ODIHR 2005a, p. 9), and Uzbekistan (OSCE/ODIHR 2005b, p. 4). In none of the countries, however, have the excessive restrictions been lifted.

6.2 Candidate registration
Reviews by the OSCE/ODIHR and the Venice Commission of the legal framework of elections in the post-Soviet area berate the provisions for candidate registration in some laws in particular with regard to two points: the procedure for the verification of signatures that must be collected by prospective candidates, and the deadline for withdrawal of candidacy. Concerning the verification of signatures, three international standards are violated in a number of the election laws in the post-Soviet area. The first standard is that the count of signatures should be conducted on all signatures rather than on a sample. In the post-Soviet states, it is often permitted to conduct the count on only a sample. The second standard that is violated is that counting should proceed until the requisite number of valid signatures has been reached. In some post-Soviet states, by contrast, counting can be halted, and registration denied, if a certain number of invalid signatures is found, regardless of the total amount of valid signatures. The reason that this provision is flawed is that it may lead to the denial of candidacy to a prospective candidate who has in fact collected a sufficient number of signatures and has thus demonstrated that he or she enjoys a sufficient degree of support. The third standard that is often violated concerns the number of valid signatures that a candidate or party must collect. The norm that is operated by OSCE/ODIHR and the Venice Commission puts the number at a maximum of 1% of eligible voters (European Commission for Democracy through Law 2003, p. 16). In many post-Soviet states, however, the number is set (significantly) higher than this. There appears to be no element of diffusion across the post-Soviet states regarding the percentage of signatures that candidates must collect, as there is great variation in these percentages. The other two violations related to the collection of signatures, however, can be traced back Soviet and Russian legislation.
The election laws of Belarus (article 61), Georgia (article 42.2), Kyrgyzstan (article 62.10), and Tajikistan (article 35 in the law on legislative elections) allow taking a sample from the total number of signatures to conduct the count instead of counting all signatures (until the requisite number of signatures is reached). In the cases of Belarus, Kyrgyzstan, and Tajikistan, this provision is derived from article 32.3 of the 1997 general election law of Russia; the Georgian law uses a different formulation. The election laws of Belarus, Kyrgyzstan, Tajikistan, and Uzbekistan (article 20 in the law on legislative elections, and article 24-2 in the law on presidential elections) moreover allow for the denial of candidacy when a certain proportion of invalid signatures is found among the signatures that have been collected by a candidate. The provision also comes from the 1997 general election law of Russia (article 32.2) in the case of Belarus, Kyrgyzstan, and Tajikistan; the Uzbek laws on the other hand contain a similar provision but in a different wording. The original flaws in the procedure for the verification of signatures that were contained in the 1997 Russian law, and that still exist in the current version of the 2002 general election law, have apparently trickled into the election laws Belarus, Kyrgyzstan, and Tajikistan. The authorities of these three countries have used the 1997 Russian law extensively while drafting their own laws. The OSCE has criticised the sampling procedure in relation to Armenia (OSCE/ODIHR 2001a, p. 10), Belarus (OSCE/ODIHR 2000a, p. 4), Georgia (OSCE/ODIHR and Venice Commission 2010, p. 8), Kyrgyzstan (OSCE/ODIHR 2006a, p. 8), and Tajikistan (OSCE/ODIHR 2005a, p. 23). The issue has been resolved since in the Armenian election law because the collection of signatures as a method to obtain registration has been abandoned there. In the other election laws the issue persists.

A second common shortcoming in the legal provisions concerning candidate registration pertains to the deadline for withdrawal of candidacy. There is no precisely defined norm for when candidacy can still be withdrawn. Election laws that prescribe that candidacy can be withdrawn at any moment before the elections or up to a few days before the election, however, have been repeatedly criticized by OSCE legal reviews (e.g. OSCE/ODIHR and Venice Commission 2006, p.16; OSCE/ODIHR 2006e, p. 6) According to one OSCE legal review, 'the lack of such a deadline is problematic as late withdrawals of candidacy confuse voters, complicate election administration, and can significantly impair the counting and tabulation processes' (OSCE/ODIHR 2004c, p. 9). In Belarus (articles 69 and 103), Tajikistan
(article 36 in the law on legislative election, and article 24 in the law on presidential elections), Turkmenistan (article 33 in the law on legislative election, and article 32 in the law on presidential elections), and in legislative elections in Uzbekistan (article 31), there is still no deadline for withdrawal of candidacy. The absence of a withdrawal deadline can be traced back to the 1988 Soviet election law (article 41), from which the election laws of Belarus, Tajikistan, Turkmenistan, and Uzbekistan borrow extensively. The wording in the 1988 Soviet law that indicates the absence of a deadline is identical to that in the laws of the post-Soviet states.

While the 1994 general election law of Russia inherited the absence of a withdrawal deadline from the 1988 Soviet law, the 1997 law introduced a three-day deadline for withdrawal (article 32.8). This provision has subsequently found its way into the Kyrgyz election law (article 27.8). Excessively short withdrawal deadlines have also been maintained in the Georgian and Kazakh laws, but since they use different language than the Soviet and Russian laws, it is unclear whether diffusion from Soviet or Russian laws has occurred in these cases. The only election laws in the region that do provide for ample deadlines for candidacy withdrawal are those of Armenia and Azerbaijan: in these countries, candidacy can be withdrawn up to ten days before election day. The issue of withdrawal deadlines has been addressed by the OSCE in reviews of the election laws of Kyrgyzstan (OSCE/ODIHR 2006a, p. 19), Kazakhstan (OSCE/ODIHR 2004c, p. 8-9), and Tajikistan (OSCE/ODIHR 2006e, p. 6). In the Kazakh election law, a very short deadline of two days has since been introduced for presidential candidates, while a withdrawal deadline for candidates in election for the national legislature is still missing. The issue has not been addressed by legislators in Kyrgyzstan and Tajikistan.

6.3 Election observation
As signatories of the 1990 Copenhagen Document, the OSCE participating states are committed to inviting observers from other OSCE participating states (Conference for Security and Co-operation in Europe 1990, p.7). They are also expected to include specific provisions in their election laws regarding the domestic and international observation of elections. The laws ‘should provide for observation of all aspects of the election process by any appropriate domestic or foreign organizations, as well as by observers from OSCE participating States’ (OSCE/ODIHR 2003a, p. 76). Instead of a blanket provision for the observation of all aspects of elections, however, the election
laws of all states discussed here, except Armenia, contain a rather limited list of what observers are entitled to do as part of their observation mission. Observers in Russia, for example, have the right to inspect voter lists, be present in a polling station on election day, observe the handing of ballots to voters, accompany mobile voting; observe the vote count, address the chair of an election commission with proposal and remarks, become acquainted with protocols of election commission, wear a badge indicating the observer’s status, appeal actions of an election commission to a higher election commission or a court, and be present at a vote recount (article 30.9 in the 2002 general election law). By including some elements in this list and leaving out others, it is implied that observers do not have the right to observe elements of the electoral process that are not explicitly mentioned. This complicates the observation of ‘all aspects of the election process’, as OSCE commitments prescribe. OSCE reviews of electoral legislation in the post-Soviet states have noted important omissions in the lists of observer rights: in particular, observers are often not granted the right to attend meetings of election commission at all levels, receive protocols with voting results, and observe the printing, storing, and transportation of ballots (OSCE/ODIHR and Venice Commission 2003a). Most election laws, including the Russian law, also fail to include any express provisions for the observation of the electoral process before and after election day.

Regarding the breadth of observer rights, the OSCE has found fault with the election laws of all eight states for which it has issued legal recommendations: Armenia (OSCE/ODIHR and Venice Commission 2003b, p. 11), Azerbaijan (OSCE/ODIHR and Venice Commission 2003a, p. 12), Belarus (OSCE/ODIHR 2001b, p. 23), Georgia (OSCE/ODIHR and Venice Commission 2010, p. 11-12), Kazakhstan (OSCE/ODIHR 2004c, p. 20), Kyrgyzstan (OSCE/ODIHR 2006a, p. 23), Tajikistan (OSCE/ODIHR 2000c, p. 26), and Uzbekistan (OSCE/ODIHR 2005b, p. 19-20). Following the OSCE recommendations, observer rights have only been meaningfully expanded in Armenia. The only law among the post-Soviet election laws whose provisions for election observation appear to be broadly in compliance with the standards of the OSCE and the Council of Europe, accordingly, is Armenia’s: instead of listing specific rights, the law prescribes that observers can attend all meetings of all election commission, be present in the polling station, and study and receive all election-related documentation (article 30). The election law of Kazakhstan contains similarly inclusive provisions, but only for international observers.
Russia first included provisions on election observation in its general election law of 1997. Apart from the addition of the right to wear a badge in 2002 and the right to observe the handing of ballots to voters in 2005, the list of observer rights of the 1997 general election law has remained unchanged. The flawed provisions for election observation in the Russian general election law have in different degrees spread to most election laws of the post-Soviet states. The similarities between the Russian law and the laws of the other post-Soviet states are not only substantive: typically, the wording of the observer rights from the Russian law has also been copied.

Election laws of Azerbaijan (article 42), Kyrgyzstan (article 18), Tajikistan (article 8-1 regarding domestic observers, in the law on legislative elections), and Turkmenistan (article 23 in the law on legislative elections) have copied most of the 1997 Russian provisions verbatim. All four laws, however, also leave out observer rights from the Russian law. On the other hand, the Azeri law grants observers additional rights relative to the Russian law, namely the right to demand inclusion of their observation in election commission protocols, and to receive protocols. Regarding observers the Tajik law on presidential elections only mentions that international observers can participate in meetings of election commission 'if necessary' (article 4) and, unlike the law on legislative elections, as yet does not list further observer rights. Against international standards, Tajikistan and Kazakhstan have different provisions for international observers and domestic observers. The Tajik provisions for international observers in the law on legislative elections are copied verbatim from article 14 of the 2002 Convention on the Standards for Democratic Elections, Electoral Rights and Freedom in the Participating States of the Commonwealth of Independent States. The list of observer rights in this document, relative to the 1997 general election law of Russia, leaves out the rights to inspect voter lists and wear a badge, but adds the right to attend early voting. No other post-Soviet state has adopted the provisions from the 2002 CIS document.

The laws of Belarus (article 13), Georgia (article 70), Kazakhstan (regarding domestic observers, article 20-1) and Uzbekistan (article 6 in law on legislative elections, article 5 in law on presidential elections) each borrow some of the observer rights from the Russian law, but add a number of other rights. The list of observer rights is the least inclusive in the case of Uzbekistan, but observers there, in contrast to Russia, have the right to

---

receive protocols of the voting result. In addition to the rights that observers in Russia too have, observers in Belarus can attend meetings of election commissions and write off the data from a voting results protocol - but not receive a protocol. Domestic observers in Kazakhstan are granted the right to receive information about the number of voters, record (video, audio, photos) the proceedings in a polling station, observe the handing over protocols, and point the attention of election commission members to violations. Of the election laws that borrow some observer rights from the Russian law, Georgia’s is the most inclusive as it adds nine rights, including the right to attend all meetings of election commission, and to observe voter registration, to those borrowed from Russian laws.

6.4 Mobile voting
Mobile voting refers to the practice whereby a ballot box is brought to people so they can vote, instead of people coming to the ballot box in a polling station. Typically, this service is provided to people who are unable to go to a polling station due to illness or other disability. The desirability of mobile voting is controversial: while the Venice Commission calls it plainly ‘undesirable’ ‘because of the attendant serious risk of fraud’ (European Commission for Democracy through Law 2003, p. 22), the OSCE has urged Armenia to adopt provisions for mobile voting (OSCE/ODIHR and Venice Commission 2003b, p. 8) - a recommendation that was followed by the Armenian authorities in 2006. The main reason why mobile voting is believed to lend itself to fraud is the difficulty of monitoring the process. Especially where the number of people who voted through the mobile ballot box is unusually high – such as in the presidential elections in Belarus in 2010, in which 7.6% of voters used mobile voting (OSCE/ODIHR 2011b, p. 22) – mobile voting is often linked to fraud (e.g. Kaliakin and Korneenko 2010). The provisions for mobile voting in the elections laws of the post-Soviet states come from two sources. Tajikistan (article 42 in the law on legislative elections, article 30 in the law on presidential elections), Turkmenistan (article 40 in the law on legislative elections, article 38.5 in the law on presidential elections), and Uzbekistan (article 41 in the law on legislative elections, article 31 in the law on presidential elections) have, like much content in their election laws, copied the section on mobile voting from the 1988 law On the Election of People’s Deputies of the USSR without any significant modification. The section amounts to one short paragraph which reads: ‘In
cases in which individual voters due to their health condition or because of
other reasons cannot come to polling station, the precinct election commission
at their request orders individual members of the commission to organize
voting at the voters' location.'\textsuperscript{14} The provisions for mobile voting in the
elections laws of Azerbaijan (article 105), Belarus (article 54), Kazakhstan
(article 41.6), and Kyrgyzstan (article 42) are drawn from the 1997 general
election law of Russia (article 54) and later Russian laws.

An issue with mobile voting in most post-Soviet states is the lack of
sufficient safeguards against fraud. This pertains most obviously to the laws of
Tajikistan, Turkmenistan, and Uzbekistan since the section about mobile
voting from the 1988 Soviet law that they copied, does not provide for any
meaningful safeguards against fraud. The provisions for mobile voting in the
Azeri, Belarusian, Kazakh, and Kyrgyz laws are merely abbreviated versions
of the provisions for mobile voting in the Russian laws on which they are
based, and equally lack sufficient safeguards against fraud (e.g. OSCE/ODIHR
2001d, pp. 6-7, OSCE/ODIHR 2006a, p. 18). On top of this, the provisions for
mobile voting in many post-Soviet election laws suffer from two specific
shortcomings which can be traced back to their Soviet and Russian origins.
First, the OSCE/ODIHR has criticized the condition that mobile voting in
Belarus and Tajikistan is available to people who 'due to their health condition
or because of other reasons cannot come to polling station' (author's italics),
and has recommended that it should only be available to ill or disabled people
(OSCE/ODIHR 2003c, p. 15, OSCE/ODIHR 2000c, p. 26). In Belarus, the
conditions for mobile voting are even more permissive as the law explicitly
states that the reason why someone requests mobile voting does not have to
be confirmed. The phrase 'because of other reasons' comes from the 1988 law
On the Election of People's Deputies of the USSR and the 1997 general
election law of Russia. The election laws of Kazakhstan and Kyrgyzstan
initially also contained the phrase, but it has been removed from those laws
through subsequent amendments, as it is also no longer found in the Russian
elections laws.

Second, the election laws of Azerbaijan (article 106.2), Georgia (article
61.4), Kazakhstan (article 43.3), and Kyrgyzstan (article 44.6), until today
contain the remarkable provision that if there are more ballots in the mobile
ballot box than there are signatures on the list of people who have requested
mobile voting, then all ballots in the mobile ballot box are invalidated. The

\textsuperscript{14} On the Election of People's Deputies of the USSR (1988), article 52. Author's translation.
OSCE has expressly spoken out against this practice in relation to the election laws of Azerbaijan (OSCE/ODIHR and Venice Commission 2003a, p. 14), Georgia (OSCE/OIDHR and Venice Commission 2010, p. 17), and Kyrgyzstan (OSCE/ODIHR 2004a, p. 20). According to the 2010 legal review of the Georgian election law (OSCE/OIDHR and Venice Commission, p. 17) ‘[i]t would go against the principle of proportionality for one hundred legitimate and valid mobile ballots to be invalidated just because one extra ballot is found in the mobile ballot box’. The flawed provision comes from Russian election laws since 1995 (article 59 in the 1995 law on legislative elections, and article 52 in the 1995 law on presidential elections) and is still present in current Russian electoral legislation (article 68.12 in the 2002 general election law).

6.5 Military voting
Military voting refers here to voting in special polling stations where only members of the military vote. The Venice Commission’s Code of Good Practice prescribes that members of the military should preferably vote in regular civilian polling stations; only in cases when a military base is located far away from a civilian polling station is it acceptable that a polling station is set up inside a military base. Moreover, when this is done, ‘special commissions should be set up to supervise the pre-election period, in order to prevent the risk of superior officers imposing or ordering certain political choices’ (European Commission for Democracy through Law 2003, p. 22). Next to a possible violation of freedom of choice due to intimidation of junior personnel by senior personnel, a problem commonly noted with regard to military voting is the inaccessibility of military polling station for observers (e.g. OSCE/ODIHR 2006c, p. 22). Military polling station are often associated with a higher than average incidence of electoral fraud (e.g. OSCE/ODIHR 2011c, p. 22) and they often report suspicious results, such as full turnout on many military polling station and near-total support for the president on military polling stations in the presidential election in Kazakhstan in 2011 (OSCE/ODIHR 2011a, p. 20).

The provisions for military voting in the election laws of Belarus (article 19), Kazakhstan (article 24.7), Tajikistan (article 23 in the law on legislative elections, article 20 in the law on presidential elections), Turkmenistan (article 26 in both laws) and Uzbekistan (article 32 in the law on legislative elections, article 22 in the law on presidential elections), are derived from article 32 of the 1988 law On the Election of People’s Deputies of
the USSR. The provisions for military voting in these laws do not impose restrictions on the establishment of military polling stations; contrary to what the Venice Commission prescribes, there is no requirement that a military polling station can only be established if a military unit is located far away from a civilian polling station. Furthermore, the provisions do not include safeguards against fraud in military polling stations. Provisions for military voting in the election laws of Azerbaijan (article 35.5) and Kyrgyzstan (article 21.4) are based on provisions from Russian election laws (e.g. article 20.6 from the 1997 general election law). Unlike the provisions in the 1988 Soviet election law, the provisions in the Russian election laws do note that military polling stations can only be established when a military unit is located far away from a civilian polling station. There are, however, no criteria for what counts as 'far away'. Instead, in Azerbaijan, there is a provision that military polling stations are established where the military authority designates a 'special regime'. In practice, a majority of members of the military in Azerbaijan in successive elections has voted in military polling stations (OSCE/ODIHR and Venice Commission 2008, p. 7). By way of a safeguard against fraud, the election laws of Azerbaijan and Kyrgyzstan, like the Russian election laws, state that the military polling stations should be accessible to all election commission members, candidates, proxies, and observers. While OSCE observer missions do not report issues regarding military voting in elections in Kyrgyzstan, military voting in Azerbaijan is a recurring concern to observers.

The only election laws that have largely original provisions for military voting are those of Armenia (article 10.3) and Georgia (article 16.3). While the laws stipulate less permissive conditions for the creation of military polling stations than the election laws of the other post-Soviet states, the safeguards contained in these laws against fraud in military voting are still judged by OSCE/ODIHR as insufficient (OSCE/ODIHR 2001a, p. 10; OSCE/ODIHR 2006, p. 28). In addition to the Armenian and Georgian laws, the OSCE has also criticized the provisions for military voting with regard to the election laws of Azerbaijan (OSCE/ODIHR and Venice Commission 2008, p. 7), Kazakhstan (OSCE/ODIHR 2004c, p. 12), and Uzbekistan (OSCE/ODIHR 2005b, p. 12). In none of these three countries, however, have the provisions for military voting since been improved.
6.6 Complaints and appeals procedures

An important element of an electoral process is that voters and candidates are able to file complaints and appeals against the decisions of the election administration. In election observation reports, the OSCE is almost invariably critical of how complaints and appeals are handled by relevant authorities. In reviews of the electoral legislation, the OSCE is equally critical of the legal provisions for complaints and appeals procedure in all post-Soviet states discussed here. With regard to Azerbaijan, for example, the procedure for complaints and appeals is seen as excessively complicated and time-consuming (OSCE/ODIHR and Venice Commission 2005, p.8-9). In Tajikistan, by contrast, procedures are described in little detail, leaving unclear how an actual procedure would be conducted (OSCE/ODIHR 2006e, pp. 18-19). In Belarus, a more or less elaborate but still flawed provision for complaints and appeals was included in the election law only in 2009 (OSCE/ODIHR and Venice Commission 2009, p. 16).

Most laws lack sufficient provisions for complaints and appeal procedures due to the fact that they have been derived from provisions in the 1988 Soviet election law or from early Russian post-communist laws. The main shortcoming noted in a large number of reviews of the elections laws of the post-Soviet states is that persons who file a complaint about alleged misconduct of an election commission can often do so either in a court or in a higher-tier election commission (e.g. OSCE/ODIHR 2005b, p. 20). The shortcoming can be found in the laws of Armenia (article 40.1), Azerbaijan (article 112), Kazakhstan (article 20.9), Tajikistan (article 20 in the law on legislative elections, article 19 in the law on presidential elections), Turkmenistan (article 25 in both laws), and Uzbekistan (article 18 in the law on legislative election, article 19 in the law on presidential elections). OSCE recommendations have addressed the issue in relation to the election laws of five of these countries: Armenia (OSCE/ODIHR 2003c, p. 25), Azerbaijan (OSCE/ODIHR 2006b, p. 6), Kazakhstan (OSCE/ODIHR 2004c, p. 11), Tajikistan (OSCE/ODIHR 2005a, p. 15) and Uzbekistan (OSCE/ODIHR 2005b, p. 3). The issue, however has not been resolved in the election laws of these five countries. According to the OSCE/ODIHR in one legal review, 'the option of making challenges in different forums will most likely lead to "forum shopping" and inconsistency in decisions (OSCE/ODIHR 2004c, p. 11). For this reason, regarding the election laws where the shortcoming is found, 'the OSCE recommends that challenges to decisions be filed in only one forum designated by the law – either a court or higher election commission'
The shortcoming can be traced back both to the 1988 law On the Election of People’s Deputies of the USSR (article 30) and to the 1994 (article 16) and 1997 (article 63) general elections laws of Russia. The same shortcoming was found in the election law of Georgia (article 77) until 2009 when it was eliminated, seemingly in response to recommendations by the OSCE (OSCE/ODIHR 2008b, p. 27)

6.7 Lingering soviet practices

The election laws of a number of the post-Soviet states contain provisions that are clearly holdovers from Soviet electoral legislation and early Russian post-communist legislation and that are difficult to reconcile with electoral practice in modern democracies. First, in both legislative elections (article 42) and in presidential elections (article 31) in Tajikistan, and in presidential elections in Turkmenistan (article 39.2), voters mark their preference not by placing a sign next to the name of a candidate or party, but by crossing out the names of all other candidates and parties. In a review of Tajik electoral legislation, the OSCE/ODIHR finds fault with this form of ‘negative voting’ on seven grounds (OSCE/ODIHR 2006e, p. 14). The retainment of negative voting by crossing out names of candidates in Tajikistan and Turkmenistan results from the carbon copying of many articles from Soviet election laws. Until 2003, the provision also existed in the election laws of Uzbekistan. In the last Soviet elections laws, negative voting by crossing out names was contained in article 53 of the 1988 Law on the Election of People’s Deputies of the USSR and in article 14 of the 1991 Law on the Election of the President of the RSFSR.

Another form of negative voting is the inclusion of the option on the ballot to vote ‘against all’ candidates or parties. This option continues to exist in Armenia (article 49.6), Belarus (article 72), Kyrgyzstan (article 39.4), and in Turkmenistan for legislative elections (article 43-44), and previously existed in Kazakhstan (until 2004). The OSCE/ODIHR has frequently spoken out against this option, mainly for the simple reason that voting should concern a positive choice, not a negative one (e.g. OSCE/ODIHR 2006a, p. 20; OSCE/ODIHR and Venice Commission 2007, p. 7). Moreover, ‘the “against all” vote possibility runs contrary to the principle of representation, since it permits voters to choose not to be represented at all’ (OSCE/ODIHR 2008a, p. 5). The ‘against all’ option comes from early Russian post-communist legislation, where it first featured in the 1994 general election law (article 30) and was retained in subsequent laws until the option was scrapped in 2006.
Third, in line with a standard set in Soviet election laws, the election laws of most post-Soviet states too have set the maximum number of voters per polling station at 3,000. In reviews of electoral legislation, the OSCE has called this number excessively high as it places too big an administrative burden on precinct election commissions (e.g. OSCE/ODIHR 2004a, p. 16; OSCE/ODIHR 2006e, p. 12). In recommendations to improve electoral legislation, the OSCE/ODIHR suggests that the maximum number of voters per polling station should instead be set at 1,000-1,500. Despite the recommendations, the number is still 3,000 for Armenia (article 15.6), Belarus (article 17), Kazakhstan (article 23.2), Tajikistan (article 22 in the law on legislative elections, article 9 in the law on presidential elections), for presidential elections in Turkmenistan (article 12), and Uzbekistan (article 8 in the law on legislative elections, article 11 in the law on presidential elections). In Kyrgyzstan (article 21.2), the number has been reduced from 3,000 to 2,500, which is still above the level recommended by the OSCE.

Fourth, in five post-Soviet states, elections are invalidated if less than half of voters turn out. The turnout requirement applies to both legislative and presidential elections in Belarus (articles 79 and 82), Tajikistan (article 48 in the law on legislative elections, article 34 in the law on presidential elections), and Uzbekistan (article 44 in the law on legislative elections, article 35 in the law on presidential elections); and only to presidential elections in Kyrgyzstan (article 65) and in Turkmenistan (article 42.3). The OSCE has repeatedly recommended to eliminate the turnout requirement as it may lead to a cycle of failed elections, or undermine the legitimacy of elections in cases with a turnout of less than fifty per cent but a clear winner (e.g. OSCE/ODIHR 2006e, p. 15; OSCE/ODIHR 2006a, p. 22). The turnout requirement in the five countries where it has been retained so far derives from the 1988 law On the Election of People’s Deputies of the USSR (article 55) and the 1991 law On the Election of the President of the RSFSR (article 15).

Finally, the election code of Belarus (article 129-152) provides for the possibility that individual deputies are recalled from assemblies. When the election code had just been released in 2000, the OSCE commented that recall elections are contrary to the constitution, and that provisions for recall elections should be deleted from the election code (OSCE/ODIHR 2000b, pp. 13-14). Most provisions for recall elections in the election code of Belarus are borrowed from the 1991 law On the Order of the Recall of a People’s Deputy
of the USSR. The only other post-Soviet state that allows for recall elections is Uzbekistan; the provisions for recall elections there, however, are contained in a separate law.

7. Conclusion
The post-Soviet area is the theater of a competition between different views on elections. Western governments and intergovernmental organizations that are dominated by western governments, such as the OSCE and the Council of Europe, promote a norm of democratic elections through the monitoring of election processes and the issuance of recommendations to bring electoral practices and legislation in line with international standards. The Russian government, which itself has not internalized the norm of democratic elections, actively resists the promotion of the norm at home and in the post-Soviet abroad. At home, the Russian government has effectively barred large-scale observation of its elections by the OSCE starting with the 2007 legislative elections. In relation to the post-Soviet abroad, the Russian government has initiated, through the Commonwealth of Independent States, a range of activities that mimic OSCE’s electoral assistance, including the observation of elections and the conduct of legal reviews. The governments of the post-Soviet states are faced with the choice to either comply with the western-promoted international standards or to continue to disregard these standards and, by design or default, follow the Russian example.

Regardless of Russia’s anti-promotion of democratic elections, the governments of the post-Soviet states have wilfully adopted elements from Soviet or Russian electoral legislation that are incompatible with the international standards that are promoted by the OSCE. Moreover, they have overwhelmingly not repaired these shortcomings in their election laws despite repeated calls from the OSCE to do so. As a result of the extensive borrowing and adaptation from Soviet and Russian legislation, the quality of the post-Soviet election laws has deteriorated, or remained low. Given the existence of a legacy of shared statehood, the relatively hegemonic position of Russia, and the presence of multiple intergovernmental organizations in the region, it seems likely that this kind of ’authoritarian diffusion’ has been more widespread. As a variable in explanations of institutional origin and change in the post-Soviet area, it is underexplored.

For the democracy promotion agenda of the OSCE, the ‘authoritarian diffusion’ of legislation in the post-Soviet area presents a major challenge. A large majority of the recommendations that the OSCE issues to eliminate the effects of the diffusion of flawed legislation are unaddressed. In cases where the authorities have been somewhat more receptive to the recommendations, such as in Armenia and Georgia, dozens of serious flaws in the election laws have continued to exist. If the OSCE remains committed to help improve the election laws of the post-Soviet states, then it should aim to persuade the post-Soviet governments to adopt original legislation that is not tainted by the impact of Soviet and Russian examples.

References


OSCE/ODIHR (2001c) Guidelines for Reviewing a Legal Framework for Elections. Warsaw, January,


