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Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Honouring of obligations and commitments by Armenia

Information note by the co-rapporteurs on their fact-finding visit to Yerevan (22 and 23 November 2016)

Co-rapporteurs: Mr Alan Meale, United Kingdom, Socialist Group, and Mr Giuseppe Galati, Italy, Group of the European People's Party

I. Introduction

1. This visit focussed on the continuing implementation of the new constitutional framework in Armenia and in particular the new political and election systems. In addition to the change of government system and electoral reform, the on-going reform of the judiciary (in line with the new constitutional provisions), as well as the reform of the police and the establishment of an independent police complaint mechanism, were areas of attention.
2. During our visit we met with, *inter alia*, the President of the Republic, the Prime Minister, the Speaker of the National Assembly, the President of the Constitutional Court of Armenia, the Minister of Justice, the Minister responsible for the co-ordination of the Cabinet of Ministers, the Prosecutor General of Armenia, the Deputy Head of the National Police of Armenia, the Chairman and members of the Armenian Delegation to PACE, as well as representatives of think tanks and civil society organisations in Armenia. The programme of our visit is attached to this note in Appendix 1.
3. We would like to thank the Armenian National Assembly for the excellent programme and hospitality, and the Head of the Council of Europe Office and her staff for the support given to our delegation with the organisation of the programme.

II. Political developments

4. In a welcome development that is changing the political environment in Armenia, the co-operation and unity among all the major political forces to ensure the stability and security of the country, which emerged after the April hostilities along the line of contact, were maintained. This was most clearly evident from the several agreements between the ruling majority and opposition that led to the consensual adoption of the election law, which historically had been a source of contention between ruling majority and opposition. At the same time, the April hostilities give rise to increased scrutiny of allegations of possible mismanagement and corruption within the armed forces leading to increased public anger with the pervasive corruption in Armenian society.
5. This public anger came to the forefront on 17 June 2016, when a group of armed veterans of the 1990's Nagorno-Karabakh war, calling themselves the "Daredevils of Sasun", stormed a police station in central Yerevan during which they killed one police officer and took 9 persons hostage, including the Deputy Head of the National Police of Armenia. A second policeman was killed later during the ensuing standoff, reportedly by sniper fire from the hostage takers. The hostage takers demanded the resignation of President Sargsyan and the release of the leader of the New Armenia Public Salvation Front, Jirair Sefilian, who had

¹ Document declassified by the Monitoring Committee at its meeting on 26 January 2017.

been arrested on suspicion of planning a coup d'état and convicted for illegal weapons possession. Mr Sefilian has long accused the authorities of weakening Armenia's military resolve and criticised their alleged willingness to make unilateral territorial concessions to Azerbaijan in order to resolve the Nagorno-Karabakh question.

6. The hostage taking was condemned by all political forces (with the exception of individual members of the Heritage party) highlighting the new political environment that is emerging in Armenia. However, while all interlocutors we met unanimously described the hostage taking as a terrorist act, there were protest marches calling for a peaceful resolution of the standoff, in solidarity with the stated motive of the hostage takers.

7. While initially small, the number of protesters increased to several thousand persons² by 21 July 2016, when violence between protesters and police broke out after protesters reportedly tried to break through the police cordon and march on the occupied police station. During the ensuing scuffles between the protesters and the police, the police reportedly used excessive and disproportional force against the protesters and bystanders, including journalists. During our visit we urged the authorities to ensure that these cases of alleged police brutality are fully and transparently investigated. According to the authorities, investigations are still on-going but criminal charges have been brought against 14 police officers for the disproportional use of force, while a number of other police officers have been subjected to disciplinary measures.

8. The hostage crisis ended without bloodshed on 31 July 2016, when the hostage takers surrendered to the police after the latter threatened to storm the occupied police building. However, protests, albeit in reportedly small numbers, continued to take place in Yerevan until 11 August. Before surrendering, the hostage takers issued a statement in which they portrayed themselves as a liberation movement against Russian colonialism, a reference to Russia's increasing influence in Yerevan.

9. As a result of the combined effect of the above described public anger following the April hostilities and the government's handling of the hostage crisis and violent protests over the summer, criticism about the government of Prime Minister Abrahamyan increased dramatically. In August 2016, President Sargsyan publicly called for the establishment of a government of national unity to address the challenges faced by the country. Subsequently, on 8 September 2016, Prime Minister Abrahamyan resigned, stating that Armenia needed "a new beginning". A number of interlocutors also indicated that his resignation had been an attempt to give a fresh image to the Republican Party in the context of the upcoming parliamentary elections on 2 April 2017.

10. On 13 September 2016, President Sargsyan appointed former Yerevan Mayor Karen Karapayan Prime Minister. At the time of his appointment, Mr Karapayan, who is seen as a pragmatic manager, was a senior Gazprom executive in Moscow. Several interlocutors saw his appointment as a sign of the growing influence of Moscow in Armenia's domestic politics or as an attempt to improve relations with Moscow in order to secure a more advantageous energy deal for Armenia with Russia and Gazprom.³ Mr Karapayan appointed a new government in which several ministers, including the Minister of Defence, were replaced. Former members of our Assembly, Mr Davit Harutyunyan and Ms Arpine Hovhannisyan remained in their posts of, respectively, Minister responsible for the Government Staff and Minister of Justice. The President and ruling majority hope that Mr Karapayan, as a relative outsider, will improve the image of the current government. During our meeting, the Prime Minister seemed well aware of the high expectations placed on him and has made improving the economic performance of the country one of the main priorities for the government.

III. Electoral reform

11. We outlined the constitutional and electoral reform in detail in our two previous information notes. To recall: the new Constitution changes the political system from a presidential republic, with a mixed election system, to a parliamentary republic, with a proportional election system. The change from a presidential to a parliamentary political system will take effect when the term of the current President ends in 2018. The new President, whose office will become largely ceremonial, will be elected by the new parliament. The current President will maintain the considerable powers granted to him by the old Constitution until he leaves office. Parliamentary elections under the new system will take place in April 2017. As a result, there will be a transitional period between the time the new government is installed and the moment the President leaves office. While the legal provisions governing the transition period are reportedly clear, there are some

² The exact numbers are disputed.

³ The summer of 2015 saw many Armenians taking to the streets to protest about the rising energy prices, which led to clashes between protesters and police.

questions as to how the division of powers will work in practice, especially in the event that the President and the government represent different political forces.

12. The drafting of the electoral code started immediately after the adoption of the constitutional amendments. The government stated that it wished to adopt a new electoral code at least one year before the next elections would take place, in line with Venice Commission guidelines that recommend a stable legal framework at least one year before elections take place. As mentioned in our previous information note, after an initial lack of inclusiveness of the electoral reform as a result of the stringent deadlines set by the authorities, the ruling majority and opposition started co-operating more closely on the drafting of the new electoral code in the so-called 4+4+4 group, composed of four members of the authorities, four of the opposition and four representing civil society. In this group, the representatives of the opposition and civil society organisations focussed their attention on the adoption of a series of measures that they considered essential for guaranteeing the integrity of the vote. For that purpose, they proposed, *inter alia*, that signed voters lists be made public after the elections; that video cameras be installed in all polling stations; that the voters list be cleared up in a joint effort between the opposition and the authorities and that the inking of voter's fingers be introduced to counter multiple voting.

13. The new election code was adopted in first reading on 29 April 2016, and after being considerably amended. It was adopted with the support of ruling majority and most of the opposition in final reading on 25 May 2016. At the same time, the authorities and opposition announced that they would continue to co-operate with a view also to reaching a consensus on the few issues on which no agreement had (yet) been found. Subsequently, further amendments to the electoral code were adopted by the National Assembly on 30 June 2016. All the stakeholders should be congratulated for their constructive and pragmatic attitude during these negotiations.

14. The amendments adopted on 30 June 2016 included changes to the electoral code to implement a number of Venice Commission recommendations as well as provisions to implement the agreement reached between the ruling majority and opposition on, *inter alia*, a new system of electronic voter registration, including the use of fingerprints for voter identification (the latter also made the need for the inking of voter's fingers redundant which was therefore not implemented); the creation of an official commission to monitor voter registration, as well as access to the stamped voters list under controlled circumstances. It was agreed to insert a provision in the law that these adopted amendments would only enter into force after a CEC decision certifying that the technical and financial means for implementing them were in place.

15. The Venice Commission adopted an opinion on the amended electoral code of 30 July 2016, during its plenary sitting on 14 and 15 October 2016.⁴ In its opinion, the Venice Commission welcomed that many of its recommendations had been addressed in the new electoral code. On 29 August 2016, the CEC announced that, despite the fact that the authorities had secured funding for the new technology, the conditions for the entering into force of the amendments with regard to voter registration had unfortunately not been met and the specific amendments agreed upon between the opposition and ruling majority did not enter into force. Subsequently, a new political agreement on voter registration was reached between the opposition and majority on 13 September 2016. This agreement foresees the publication of the signed voters lists as well as the live streaming of the conduct of the vote and vote count in polling stations. This agreement is another sign of the increasingly mature political environment that has emerged in Armenia. The amendments to the election code necessary to implement this agreement were adopted by the National Assembly on 19 October 2016. It should be noted that these changes were not assessed in the above-mentioned Venice Commission opinion, and some provisions, as we will outline below, may run counter to European electoral standards and best practices.

16. In our previous information note we expressed concern about the fact that the election code only foresaw a very short time to create political coalitions or form a government after the first round of elections before a second round would be triggered. This concern was shared by the Venice Commission. The June amendments doubled this amount of time from three to six days after the announcement of the results, which is a welcome improvement. Moreover, in line with Venice Commission recommendations, the President can now only appoint an acting chairperson or member of the CEC in consultation with the parliament and an exhaustive list of grounds for early termination of the mandate of a member of an election commission (including the CEC) has been added to the law, increasing the independence of the election administration.

17. According to the election code, the number of parties or pre-election coalitions that can form a governing alliance after the first round of elections is limited to three. As outlined in our previous information note, we were concerned that this rather strict provision would place unnecessary limitations on the

⁴ CDL-AD(2016)031.

democratic coalition-forming process. The authorities continue to insist that this provision is necessary to ensure a stable government and it was therefore maintained in the electoral code that was consensually adopted on 30 June 2016. In support of their position, the authorities point to the fact that there is no limitation on the formation of election blocs before the first round of elections and there is no limit to the number of parties and blocs that can form an alliance to participate in the second round. Therefore, in the view of the authorities, in reality there are no restrictions on large election coalitions, the law only ensures that they are made in full transparency vis-a-vis the Armenian electorate who can then decide to support, or not, these coalitions in the first and/or second rounds of elections.

18. The electoral code originally foresaw that observers, party and candidate proxies, as well as the media would have access to the stamped (not signed) voters list and the possibility to check these lists, under controlled circumstances, for half an hour after the elections, or in case of an official investigation into alleged electoral fraud. In our view, this would help to increase public confidence in the election system, while at the same time respecting privacy concerns and the secrecy of the vote. However, the political agreement of 13 September 2016 now foresees, for the 2017 elections, the publication of the signed voter's lists and not the stamped voters' lists as originally foreseen. It should be recalled that according to the Venice Commission's Code of good practice in electoral matters: *"the list of persons actually voting should not be published"*. Noting that a balance should be found between the need to protect the secrecy of the ballot and privacy of the voters on the one hand, and the importance of public confidence in the electoral process on the other hand, the Venice Commission adopted, on 13 October 2016, an interpretive declaration regarding the above-mentioned provision of the Code of good practice. According to this interpretive declaration, the publication of signed voters' lists should in general be avoided. However, access could be granted to certain electoral stakeholders, such as candidate proxies and observers or a person who claims irregularities in the list of persons having voted, under controlled circumstances for a limited, but meaningful, period of time.

19. Clearly, the amendments to the electoral code of 19 October 2016 are not in line with this interpretation by the Venice Commission. According to these amendments: *"Lists [...] shall be posted on CEC website's [...]. All information available on the voter's lists (with the exception of the data of the voter's ID), shall be clearly visible on the scan. The latter shall be considered as an official publication. The lists shall be published with download and print functionalities"* This goes far beyond the Venice Commission recommendation.

20. In addition, the September amendments introduced the live broadcasting of the vote and vote count in the polling stations on the internet. Such provisions are in contradiction with European standards as was underscored with regard to similar provisions in the electoral legislation of other countries.

21. As mentioned, the CEC announced that the conditions had not been met to implement a series of amendments to the electoral code in time for the 2017 elections. The September agreement between the opposition and ruling majority aimed to address this with a new set of amendments. Given that some of these provisions are not fully in line with European standards we had hoped that the September amendments were of a temporary nature, applicable to the 2017 elections only. However we were informed that these amendments are permanent. While we understand that, for the sake of a wide consensus on the electoral code, these provisions will be maintained for the 2017 elections, even if they run counter to European standards, we insist that the shortcomings noted above should be addressed, preferably by re-introducing the original provisions of 23 June 2016, after the 2017 elections.

22. The agreement of 13 September in the 4+4+4 group increased the penalties for multiple voting and impersonating another voter. At the same time it was agreed that falsely claiming that someone's, including your own, vote had been cast by someone else, i.e. falsely claiming the commitment of electoral fraud, would be criminalised to the same extent as multiple voting itself. Amendments to the Criminal Code were introduced in the National Assembly to this extent. These amendments led to some controversy, as they did not seem to differentiate between intentionally falsely claiming electoral fraud and unintentionally, but erroneously, making such a claim. We expressed our concern that such a lack of differentiation could become a de facto barrier for persons to come forward to report electoral fraud, which had been the main reason for the publication of the signed voters' list in the first place. The Minister of Justice informed us that our concerns were unfounded as the Criminal Procedure Code prevented charges being brought against a person if it was clear that (s)he had unintentionally made an erroneous claim while taking all reasonable precautions to check the veracity of the claim, i.e. the CPC recognised the concept of "reasonable cause". At the same time, the authorities insisted that each claim of personification had to be fully investigated within strict deadlines. If these deadlines were not met the election results in that particular polling station would be cancelled and the election re-run there. It was therefore important that false or frivolous claims of multiple voting impose criminal responsibility. In any event, according to a number of interlocutors, as a result of the introduction of the new voter registration system, with voters' fingerprints, the possibilities for impersonation

would in reality be very limited, which in turn, in their view, would limit, if not exclude, the possibility of unintentional erroneous claims of voter personification. Those arguments notwithstanding, we urge the authorities to make it clear to the Armenian public that unintentional erroneous claims of personification will not lead to prosecution if the claimant has clearly taken all reasonable precautions to check the veracity of their claim.

23. We wish to highlight the exemplary co-operation between all political forces in the drafting of the electoral code, as well as the subsequent agreements to implement and improve the code, which highlights the improved and constructive political environment that has emerged in Armenia in recent months. We sincerely hope that this constructive political environment will be maintained even during and after the elections, when the stakes are arguably higher and tensions more prevalent. This would be an enormous step forward for the democratic consolidation of the country.

IV. Reform of the judiciary and the national police

24. As mentioned in previous monitoring reports, in Armenia the national police is not accountable to the government but directly to the President of the Republic. This institutional arrangement has impaired civilian oversight and police accountability, including to the parliament. In the aftermath of the political crisis in Armenia in 2008, the Assembly already noted⁵ this impaired accountability and recommended⁶ that the national police be made accountable to a specialised ministry within the government. However, despite support for this position within the Armenian ruling majority, this recommendation has not been implemented.

25. Following the adoption of the constitutional amendments with the change of political system, the President becomes a ceremonial position and a new institutional arrangement will have to be established for the national police. During our visit we were informed that the national police will indeed become subordinate and accountable to the government, but that no decision has yet been taken as to whether the police will be made subordinate to the Prime Minister or to a specialised ministry, such as the Ministry of the Interior. In order to ensure maximum civilian oversight and accountability to the parliament, we recommend making the national police subordinate to a specialised ministry and not to the Prime Minister, given that a vote of no confidence in the latter would automatically lead to the fall of the government, which could clearly affect the accountability of the police to the parliament.

26. Disproportionate and excessive use of violence by the police, especially in the context of protests and demonstrations, accompanied by a sense of impunity for such actions, has been a recurrent issue of concern in Armenia. This came again to the forefront during the attempted dispersal of the protests in July 2016, when the police was accused of using deliberate excessive force against protesters and bystanders, including journalists. The head of the national police emphasised that combatting police violence, as well as the sense of impunity thereof, was a main priority for the police. Extensive reforms of the police had been initiated with the aim of transforming the police from a mainly coercive force into a community police force.

27. In previous resolutions the Assembly recommended, in line with similar recommendations from the Commissioner of Human Rights of the Council of Europe, that a special independent complaints mechanism for complaints against the police be established. The head of the national police informed us that, following this recommendation, a special unit had been established inside the police to investigate any complaints made against police officers for, *inter alia*, abuse of power or excessive use of force. Since its establishment it has recommended disciplinary action against a police officer in 1,584 cases and opened 11 criminal investigations. While we welcome the establishment of such a specialised unit within the police as a positive development, it falls short of the independent complaints mechanism recommended by the Commissioner and the Assembly. We note that investigations by the police into alleged transgressions of police officers are often perceived by the public to be partial and more aimed at covering up any misdeeds by the police than punishing the perpetrators. We call upon the authorities to take all necessary measures to guarantee the independence and transparency of the complaints and internal investigation mechanisms, in line with best practices in other Council of Europe member states.

28. Public trust in the independence and impartiality of the judiciary in Armenia is very low, which is of concern. This is compounded by the fact that the public perception of corruption among the judiciary is particularly high, as noted again by the latest report by Transparency International.⁷ Increasing the independence and restoring public trust in the judiciary, as well as fighting the pervasive corruption among the judiciary, are stated priorities of the authorities.

⁵ Doc 11656(2008).

⁶ Resolution 1677(2009).

⁷ People and Corruption: Europe and Central Asia 2016.

29. While the Constitution guarantees the independence of the judiciary, and judges are required to declare any undue interference in their work, the independence of the judiciary continues to be problematic and judges are subjected to external and internal (from hieratically higher judges) interference, often amounting to *de facto* instructions. This is a key issue that needs to be resolved.

30. The authorities are preparing a new law on the judiciary. This law, *inter alia*, aims to strengthen the internal independence of the judiciary by ensuring that higher courts cannot interfere in the internal work of lower courts. As part of these reforms, an electronic case-assignment system will be implemented to replace the current distribution of cases by court chairpersons.

31. According to the new Constitution, the President will lose his powers with regard to the appointment of judges and prosecutors. The appointment of judges, as well as prosecutors, has often been mentioned as one of the main obstacles to the independence of the judiciary. The revision of the appointment procedures, as mandated by the changes to the Constitution, could therefore play an important role in improving the much needed independence of the judiciary. In this context it is important to note the elaborate, sometimes overlapping system of judicial self-government in Armenia, which, according to the latest evaluation report by GRECO, gives considerable powers to the Chair of the Cassation Court, including with regard to appointments, promotions and disciplinary procedures, which could affect the internal, as well as the external, independence of the judiciary. The Minister of Justice informed us that the new laws on the judiciary and on the High Council of Justice will be presented to the parliament after the forthcoming elections, which are foreseen to take place on 2 April 2017.

32. The fight against the pervasive corruption, including among the judiciary, is a stated priority for the authorities. A key piece of legislation developed in this respect is the Law against Illicit Enrichment. This law will increase the powers of the law enforcement agencies to investigate discrepancies between assets and declared income, and should give “teeth” to the law on asset declarations. An anti-corruption bureau is foreseen to be established that, *inter alia*, will be tasked with investigating any discrepancies in the declarations as well as unexplained assets. In addition, the number of people covered by the law on asset declarations and conflict of interests will be increased and the scope of declarations and incompatibility of interests enlarged. Lastly, new legislation with regard to party and campaign financing is being prepared as well as a law on whistle-blowers. The latter will be based on the recommendations made by the Assembly in its report on the protection of whistle-blowers.

V. Concluding remarks

33. When fully implemented in line with European standards, the constitutional reform, as well as the other reforms to which the new constitutional reform has given rise, in particular with regard to the judiciary, will constitute a marked progress by Armenia in honouring its membership obligations and accession commitments to the Council of Europe. The further consolidation and strengthening of the new political environment that we noted during our last two visits, will be essential for this process and the upcoming parliamentary elections, scheduled for 2 April 2017, will be a litmus test in this respect. If combined with concrete and marked progress in the fight against the pervasive corruption in the country, these developments could herald a new stage in the monitoring of Armenia’s honouring of obligations and commitments to the Council of Europe. We therefore intend to present a full report on the honouring of obligations and commitments to the Council of Europe by Armenia by the end of 2017, or early 2018, to take stock of these developments.

Appendix - Programme of the fact-finding visit to Yerevan (22 and 23 November 2016)**Tuesday, 22 November 2016***Arrival of members of the Delegation*

- 13:00 Meeting with Mr Arevik Saribekyan, Director, British Council in Armenia
- 14:00 Briefing on current situation by the Head of the Council of Europe Office (*)
- 14:30-15:10 Round table think tanks on recent political developments and reform process (*)
- Regional Studies Centre, Mr Richard Giragosian, Founding Director
 - Center for Political and Legal Studies, Mr David Shahnazaryan, Senior Analyst
 - Caucasus Institute, Mr Alexander Iskandaryan, Director Founder
- 15:20-16:10 Round table with experts on reform of the justice system and judiciary (*)
- Open Society Foundation, Ms Maria Aghajanyan, HR Senior Officer
 - Civil Society Institute, Ms Anna Melikyan, Director, and Mr Artak Kirakosyan
 - Protection of Rights without Borders, Mr Haykuhi Harutyunyan, Director
 - Transparency international, Ms Sona Ayvazyan, Executive Director

Meetings organised by the National Assembly of Armenia

- 16:30-16:55 Meeting with H.E. Mr Galust Sahakyan, President of the National Assembly
- 17:00-17:40 Meeting with Mr Karen Karapetyan, Prime Minister
- 17:45-18:45 Meeting with Mr Davit Harutyunyan, Minister – Chief of Government Staff
- 19:00 Dinner on behalf of Ms Hermine Naghdalyan, Chair of the Armenian Delegation to PACE

Wednesday, 23 November 2016

- 09:30-10:30 Meeting with Mr Artur Davtyan, Prosecutor General
- 10:45-11:45 Meeting with Ms Arpine Hovhannisyan, Minister of Justice
- 12:00-13:00 Visit to the Memorial to the Victims of the Armenian Genocide and the Museum of the Armenian Genocide
- 13:00-14:15 Lunch
- 14:30-15:30 Meeting with Mr Vardan Yeghiazaryan, Deputy Head of the National Police
- 15:45-17:00 Meeting with Mr Gagik Harutyunyan, President of the Constitutional Court
- 17:00-17:55 Meeting with Ms Hermine Naghdalyan, Chair of the Armenian Delegation to PACE, and Members of the Delegation
- 18:00 Meeting with H.E. Mr Serzh Sargsyan, President of the Republic of Armenia
- 19:30 Dinner

Thursday, 24 November 2016*Morning: Departure of members of the delegation*

(*) Meetings organised by the Council of Europe Office in Yerevan