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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 (6 and 7 November 2017)

Co-rapporteurs: Mr Giuseppe Galati, Italy, Group of the European People's Party and Ms Yuliya Lovochkina, Ukraine, Socialists, Democrats and Greens Group.

#### I. Introduction

1. This was our first fact-finding visit after the 2017 parliamentary elections, which marked a considerable change in the political environment in Armenia. These elections were the first step in the change of the political system<sup>2</sup> in Armenia as dictated by the adoption of the new constitution in 2015. The change of political system will be completed after President Sargsyan has finalised his term of office in 2018. Under the transitional clauses in the new Constitution, President Sargsyan will maintain the extensive powers accorded to him by the previous constitution until the end of his mandate. During our visit, we explored the political environment after the 2017 elections as well as the state of the reform programme, especially in relation to the implementation of the new constitution, the independence of the judiciary and the fight against corruption.

2. During our visit we met with, *inter alia*, the President of the Republic; the Prime Minister; the Speaker of the National Assembly, the Minister of Justice; the Deputy Minister of Foreign Affairs of Armenia, the leadership of all parliamentary factions in the National Assembly, 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. This was the last visit of Mr Alan Meale to Armenia in his function as co-rapporteur for Armenia. Mr Meale, who has been co-rapporteur for Armenia since June 2013, left the Assembly on 24 November 2017. His views and assessment of the topics discussed during the visit are reflected in this information note.

4. 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

5. Parliamentary elections took place on 2 April 2017. These were the first elections organised after the adoption of the new constitution which changed the political system from a presidential republic, with a mixed majoritarian-proportional election system for the parliament and a directly elected President, to a parliamentary republic, with a fully proportional election system with regional lists and an indirectly elected President. These elections, as such, were the first step in the implementation of this new political system. The elections were organised on the basis of a new election code that was adopted in consensus between

<sup>1</sup> Document declassifié par le Comité de suivi à sa réunion du 13 mars 2018.

<sup>2</sup> Voir § 5.

the opposition and the ruling majority. The consensual adoption of the election code, as well as of a number of mechanisms to help secure the integrity of the vote, increased the trust in the conduct of these elections and is a sign of the new, and more mature, political climate that is emerging in Armenia.

6. The elections were observed by the Assembly in the framework of the International Election Observation Mission (IEOM). According to the IEOM, the elections were well administered and respected fundamental rights and freedoms. The new legal framework for the elections was seen as an improvement, although it was noted that the complexity of the election system and election procedures could have, at times, lead to confusion among voters and election commissions, affecting the overall public trust in the election process. The improved accuracy of the voters list and the mechanisms introduced to counter the possibility of voter impersonation and multiple voting, such as the publication of the signed voters' list and the introduction of Voter Authentication Devices, had contributed to the integrity of the vote. However, regrettably, allegations of widespread vote buying, many of them credible, by all election contestants, as well as reports of abuse of administrative resources, often in favour of the incumbent authorities, tainted the election process.

7. Despite the noticeable improvements noted in the last elections, the overall conduct of democratic elections in Armenia remains a point of concern. By all accounts, vote buying<sup>3</sup> has become an entrenched part of the political culture and reports of the abuse of administrative resources have become a trend in elections, which undermines the public trust in the election system and ultimately authorities that are elected by it. These issues are of serious concern and need to be addressed promptly and resolved permanently. The existence and seriousness of this problem is recognised by all political forces. It is therefore important that all political forces work together, just as they did before the elections took place, to agree on a set of measures to combat vote buying, as well as the abuse of administrative resources, including by local political and economic interests.

8. The issues of vote buying and abuse of administrative resources were raised with all political forces as well as the relevant authorities. The Minister of Justice informed us that his Ministry was in the process of drafting legislation to address the abuse of administrative resources. While he recognised the importance of the problem of widespread vote buying, he expressed his doubts that this problem could be addressed through legalisation alone. This was compounded by the fact that any actions and measures to counter this phenomenon should address the problem of vote buying as well as vote selling. This also implied a change of behaviour and attitude of the voters, in addition to political actors. His Ministry was nevertheless always willing to take up any suggestions on how this problem could be addressed via legislation. While recognising the complexity of the problem, we expressed our hope that consultations between all political forces could be organised, in the same manner as those which took place during the drafting of the electoral code, to discuss possible solutions to this enduring menace.

9. Several interlocutors have alleged that the continued existence of a regional component in the election system, i.e. the current system of ranking of regional candidates on the ballots, has provided an incentive for vote buying and abuse of administrative resources, as the margins to change an election are arguably smaller - and therefore vote buying or abuse of public and private resources, more effective, on the local level, where often pronounced local political and economic interests exist. If the possibility to move away from the regional aspects of the proportional election system are considered, it is important that this be done in a consensual manner between all political forces.

10. The Republican Party of President Sargsyan won the 2017 elections with 49.17 % of the vote, giving it 58 out of 105 seats in the new parliament. The Tsarukyan Alliance of Prosperous Armenia leader, Gagik Tsarukyan, came in second with 27.35 % of the vote or 31 seats, followed by the Way Out Alliance (Yelk) with 7.78% (9 seats) and the Armenian Revolutionary Federation with 6.58% of the vote (7 seats). All other parties failed to pass the threshold to enter parliament. Despite the allegations of vote buying and other irregularities during the elections, all parties accepted the outcome of the elections. Following the elections, the Republican Party and the Armenian Revolutionary Federation formed a coalition and incumbent Prime Minister Karen Karapetyan was re-appointed Prime Minister.

11. An important development is the disappearance of the Heritage Party and the Armenian National Congress from the parliamentary political environment. Both parties have dominated the political opposition in recent years, but increasingly lost support among the Armenian electorate which saw them as confrontational; reducing their political relevancy and appeal. At the same time, a new political movement and election bloc called Yelk (or "Way Out") was formed around a number of prominent and independent

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<sup>3</sup> While reportedly all political forces engaged in vote buying, according to most observers especially the largest parties, the Republican Party and the Tsarukyan Bloc bear special responsibility.

political actors. Yelk aims to create a “European model of the democratic, rule of law, and social state” in Armenia and reportedly pursues a more pragmatic and less confrontational style than the opposition party, which was clearly rewarded in the elections. This approach was also clear during the debate on the adoption of a government anti-corruption package to implement GRECO recommendations, which was supported by Yelk.

12. In general, the improved, more mature and less contentious political climate emerging in Armenia that we referred to in our previous information note has continued after the parliamentary elections. It is important that all political forces continue to strengthen the political environment. The rights and the role of the opposition are guaranteed in the new Armenian Constitution, and the rules of procedure guarantee considerable rights to the opposition. However, a number of interlocutors and opposition representatives noted that the space given for the democratic functioning of the opposition is often limited to these legally provided rights only and that genuine consultation and co-operation is still very limited. We urge all political forces to give real meaning to the democratic interaction between opposition and ruling majority by fostering co-operation and consultations beyond what is strictly provided for in the law. At the same time, we recognise that this will imply a change in the manner in which the opposition and the ruling majority have historically interacted in Armenia, which will take time and will need efforts from all sides.

13. President Sargsyan’s term will end in 2018. His successor, who will have mostly a ceremonial role, will from then onwards be elected by the Armenian National Assembly. At that moment the Prime Minister will become the main political actor in the country. In line with constitutional provisions, the Prime Minister will be elected by the parliament on the basis of a candidacy by the largest party in the Parliament. The ruling party has until now not formally indicated who it will propose at that time as candidate for the post of Prime Minister. This has given rise to widespread speculation as to who will be put forward, including recurrent rumours that President Sargsyan could be the candidate<sup>4</sup>. Given these on-going speculations, which create unnecessary distraction in the political environment, we hope that the ruling majority will soon announce its candidate for the Prime Minister’s position. It is clear, in this context, that President Sargsyan’s publicly announced position that he is not a candidate has had a positive impact on the overall Constitutional reform process as well as its results.

14. The judicial process against one of the so called “Daredevils of Sasun” has started in Yerevan<sup>5</sup>. A number of the defendants alleged that they were beaten by the police while awaiting trials. Their claims seemed to be confirmed by the findings of the Armenian Ombudsman, whom we met in Yerevan. The trials against these persons are highly sensitive and bear a high risk of politicisation. It is therefore important that the authorities fully and transparently investigate these allegations and hold any perpetrators, if found, responsible before the law.

### **III. Implementation of the new Constitution and other legislative initiatives**

15. The adoption of implementing legalisation for the new constitution has been continuing unabated. The authorities informed us that they are confident that they will be ready, legislatively speaking, for the moment that the new Constitution comes fully into force. The legislative process to implement the new Constitution continues to take place in close co-operation with the Venice Commission. A key piece of legislation in this respect is the draft judicial code which has been sent to the Venice Commission for opinion. This opinion was adopted at the Venice Commission meeting on 6 and 7 October.

16. With regard to the judicial code, the Venice Commission notes in its opinion that the new Constitution provides a solid basis for a well-functioning and independent justice system and that the judicial code builds on this basis. The Judicial Law is a constitutional (organic law) that requires a 3/5 majority to change. At the same time, this law is overly complex and, for an organic law, often too detailed. In the view of the Venice Commission, many of these details would probably be better left to ordinary legislation.

17. A key component of the judicial code is the establishment of a Supreme Judicial Council (SJC) that will be responsible for the nomination of judges as well as for their promotion and possible disciplinary procedures against them. The Council is composed of ten members: five judges elected by their peers and five prominent lawyers elected by parliament. This formula in principle creates an independent body that will

<sup>4</sup> As we mentioned in previous information notes, during the Constitutional reform process President Sargsyan has at a number of occasions stated to us that he was not a candidate for the Prime Minister’s position.

<sup>5</sup> The “Daredevils of Sasun” are a group of Karabakh veterans who took a police station in central Yerevan hostage in the summer of 2016. Their actions led to the death of two persons. While this hostage taking was condemned as an act of terrorism by practically all political forces in Armenia, a number of demonstrations took place in Yerevan in support of the hostage takers and their stated motive.

strengthen the independence of the judiciary. According to the new code, judges are nominated by the SJC and appointed by the President. While the President can veto a proposal of the SJC, this veto can be overridden by the SJC, guaranteeing the latter's supremacy in the appointment and promotion of judges.

18. While welcoming the new judicial code, the Venice Commission also expressed some concerns. It warns that the right of the lower court to depart from the case law of the court of cassation should not result in de facto legislating, which is the role of the parliament. Moreover the Venice Commission urges the authorities to more precisely and narrowly define "the conduct and duties" of judges, as this that can be the basis for disciplinary proceedings. Lastly, the Venice Commission calls for the possibility of an effective appeal, in a court of law, against disciplinary decisions of the SJC.

19. The law on the Constitutional Court was drafted to implement the new constitutional provisions with regard to the Court. In its opinion the Venice Commission welcomes the clear legal guarantees for the independence of the Court and its judges, but advises to extend this also to administrative and financial matters related to the functioning of the court. According to the Constitution, the Court is composed of 9 judges, three appointed by the President of the Republic, three by the National Assembly and three by the General Assembly of Judges. However, the law on the Constitutional Court is silent on the procedures to be followed for these appointments, which is a point of concern that we urge the authorities to address.

20. A concern of the Venice Commission is the execution of Constitutional Court decisions, which has been a problem in Armenia. The current law is inadequate in this respect. A law that has been declared unconstitutional has to be repealed by the state body that rendered the act and not the court itself. It is not clear what would happen, and what remedies exist, if that state body refused to do so. In addition the law needs to clearly state that Constitutional Court decisions are binding on all legal entities, including national and local authorities. Legal consequences for non-compliance need to be provided for in the law. Failing to do so could undermine the principle of the rule of law and this should to be addressed by the legislator.

21. Pervasive corruption continues to be a main problem in Armenia. This is recognised by the authorities who have made the fight against corruption a stated priority. The country ranked 113 in Transparency International's 2016 Corruption Perceptions Index with a score of 33, down from 35 in 2015. This underscores the need for urgent and far-going action in the fight against this menace for the country. The authorities have developed a comprehensive set of reforms to combat corruption, a number of them in co-operation with the Council of Europe. However it is important that these reforms will indeed be fully implemented and that they will lead to concrete changes in behaviour and practice. Recently, a number of high level officials, including judges, have been charged with corruption, which could be an important signal that the authorities are serious in their announced crackdown on corruption, especially if those charges lead to convictions.

22. Currently, the main institutions for the implementation of the fight against corruption are the Anti-Corruption Council, which is chaired by the Prime Minister and the Corruption Strategy Monitoring Commission. In May this year the cabinet of ministers approved a draft law that establishes a new anti-corruption agency. According to the draft law, the main task of this new agency will be to monitor ethics, conflicts of interest, and other requirements for officials. In addition, the government has expressed its intention to adopt, by the end of November 2017, an action plan to reduce corruption risks in the government.

23. On 7 June 2017, the Group of States against Corruption (GRECO) published its annual report for 2016. In this report it concludes that Armenia successfully implemented all recommendations with regard to the criminalisation of corruption offences. Regrettably, it also notes that none of the GRECO recommendations with regard to prevention of corruption among members of parliament, and only half of the recommendations to prevent corruption in the judiciary, were implemented by the end of 2016<sup>6</sup>. The authorities should be urged to implement these recommendations without further delay. The authorities informed us that, since the publication of the GRECO reports, a number of steps have been taken to address the GRECO concerns. The authorities have promised us detailed information about these steps after they have been discussed with GRECO.

24. As we described in our information note following the fact-finding visit to Yerevan from 16 to 18 June 2014<sup>7</sup>; as a result of the heated and negative climate surrounding the debate on Law on "Equal rights and equal opportunities between women and men" that was adopted in May 2013, a draft law on domestic

<sup>6</sup> These recommendations were outlined in the fourth evaluation round, which we discussed in our information report published after our visit in May 2016.

<sup>7</sup> AS/Mon(2014)19

violence was withdrawn from the agenda of the national Assembly and the drafting of an anti-discrimination law was halted. Considering the current political and social climate more conducive, the authorities have made the adoption of a new law on domestic violence a priority in their legislative agenda. The priority given to this important issue, despite the fact that it is contentious among the socially more conservative segments of the Armenian society, should be welcomed. The Ministry of Justice prepared a first draft of the law which was posted on its website for public consultation and comments. At the time of our visit, the Ministry of Justice was finalising the draft law on the basis of the comments received. It will then be sent to the parliament for inclusion in its agenda. It is expected that the law will be adopted before the end of 2017. President Sargsyan informed us that its adoption would clear the way for the signature and ratification of the Istanbul Convention by Armenia.

25. The authorities have indicated that they intend to start the drafting of a comprehensive anti-discrimination law immediately after the Law on Domestic Violence has been adopted. According to the authorities this law is far more contentious and controversial and will probably face stiff opposition from certain groups in the Armenian society. As a result, no specific timetable for the adoption of this law could be given, but President Sargsyan indicated that he intends to see this law adopted before he hands over power to his successor.

26. According to a number of interlocutors, also as a result of the sheer number of draft legislation that is being prepared to implement the new Constitution, consultations with stakeholders on draft legislation is not organised in a structural and systematic manner. Consultations reportedly often take place in an ad hoc and informal manner leading to criticisms of lack of transparency. The authorities for their part emphasised that consultations with stakeholders had taken place on all relevant legislation, including via the internet. Nevertheless, we would recommend that the authorities ensure that these consultations take place in a clearly structured and public manner with a view to ensuring the consultation and input of all stakeholders and other interested parties in the legislative process.

#### **IV. Concluding remarks**

27. As we mentioned in our previous note, the reform of the constitutional framework marks a significant step forward in the democratic consolidation of the country. The improved and less confrontational political climate is an important factor contributing to this process. All political forces should continue to strengthen the new political environment and foster dialogue and co-operation. In that context, it is important that opposition parties are not only given the space accorded to the opposition by law but also have a real chance to participate in the governance of the country. Clearly this should take place with the full respect of the rights and role of the majority. The implementation of the new Constitution is well under way and several additional reforms have been initiated. While it will take some time before the concrete results of these reforms can be fully assessed, their successful implementation will mark a significant progress in honouring the country's commitments and obligations.

## **Appendix 1: Programme of the fact-finding visit to Yerevan (6-7 November 2017)**

Co-rapporteurs: Mr Alan MEALE, United Kingdom, Socialists, Democrats and Greens Group (SOC)  
Mr Giuseppe GALATI, Italy, Group of the European People's Party (EPP/CD)

Main topics:

- Recent political developments
- 2017 elections: electoral reforms to address shortcomings encountered
- On-going reforms with regard to:
  - Implementation of new constitution
  - Judicial independence
  - Fights against corruption

### **Monday, 6 November 2017**

11:30-12:15 Visit to the Geghard Monastery

14:30 Briefing on current situation by the Head of the Council of Europe Office (\*)

15:30 Meeting with the project co-ordinator for Justice reform of the Council of Europe office in Yerevan (\*)

16:00 Round table think tanks on recent political developments and reform process (\*)

17:00 Round table with experts and civil society representatives on fight against corruption and legal reforms (\*)

18:00 Meeting with Mr Arman Tatoyan, Human Rights Defender of the Republic of Armenia

19:30 Dinner on behalf of Ms Arpine Hovhannisyan, Vice-President of the National Assembly of the Republic of Armenia, Chair of the Armenian delegation to PACE with participation of the Members of PACE Delegation

### **Tuesday, 7 November 2017**

09:30-10:00 Meeting with Mr Karen Karapetyan, Prime Minister of the Republic of Armenia

10:15 Meeting with "Way Out" Faction

10:50 Meeting with "Tsarukyan" Faction

11:25 Meeting with "Armenian Revolutionary Federation" Faction

12:00 Meeting with "Republican Party of Armenia" Faction

12:45 Meeting with Mr Ara Babloyan, President of the National Assembly of the Republic of Armenia

13:15 Lunch hosted by Mr Ara Babloyan, President of the National Assembly of the Republic of Armenia

14:45 Meeting with Mr Davit Harutyunyan, Minister of Justice of the Republic of Armenia

17:30 Meeting with H.E. Mr Serzh Sargsyan, President of the Republic of Armenia

20:00 Dinner

(\*) organised by Council of Europe Office in Yerevan