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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 (9 to 11 June 2015)**

Co-rapporteurs: Mr Axel Fischer (Germany, Group of the European People's Party) and Mr Alan Meale (United Kingdom, Socialist Group)

### **I. Introduction**

1. This visit focussed on the ongoing constitutional reform process in Armenia. The Constitutional Commission has, inter alia, proposed to change the political system from a presidential to a parliamentary system and to drastically change the electoral system. These proposals are understandably topical and contentious in Armenia. In that context, we also looked at the political environment in the country and relations between the ruling majority and opposition.

2. During our visit we met with, inter alia, the President of the Republic; the Speaker of the National Assembly; the Minister of Foreign Affairs, the Deputy Speaker of the Parliament; the Minister responsible for the co-ordination of the Cabinet of Ministers; the Secretary General of the National Assembly; the Chairman of the Committee on State and Legal Affairs of the National Assembly, the Chairman and members of the Armenian Delegation to PACE; the leadership of the Heritage, Armenian Revolutionary Federation, Armenian National Congress and Prosperous Armenia factions in the National Assembly of Armenia; the Chairman of the Central Election Commission; the Personal Representative of the Chairman-in-office of the OSCE on the conflict dealt with by the OSCE Minsk Conference; the Charge de Affairs of the EU delegation in Armenia; members of the diplomatic community in Yerevan; as well as representatives of 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, including with the organisation of the programme.

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<sup>1</sup>Document declassified by the Monitoring Committee at its meeting on 3 September 2015.

## II. Constitutional reform

4. In June 2013, President Sargsyan established a Specialized Commission on Constitutional Reform with the aim of *“improvement of constitutional mechanisms to ensure the fundamental human rights and freedoms, guaranteeing full balance of power and raising the efficiency of public administration.”* This commission is composed of constitutional law experts and therefore, regrettably, had no members formally representing the opposition. To a certain extent this avoided the politicisation of its work; on the other hand it has raised some questions about its impartiality. At the same time, the commission conducted its work on the basis of a number of public consultations organised by the OSCE and in consultation with experts from the Venice Commission. The professional commission presented its draft concept paper in mid-June 2014. The concept paper was sent to the Venice Commission for opinion on 4 September 2014. The Venice Commission adopted its opinion<sup>2</sup> at its 100<sup>th</sup> plenary in Rome on 10 and 11 October 2014.

5. The concept paper proposes a comprehensive reform touching on all aspects of the Constitution. However, most of the attention and political debate has focussed on the proposed change from a presidential to a parliamentary political system and the connected reform of the electoral system. Several opposition parties, as well as a number of civil society organisations, questioned the need for constitutional reform in general. They allege that the constitutional reform process, and in particular the change of political system, is driven by the wish of the current authorities to perpetuate the power of the current President, who cannot be re-elected as a result of the present constitutional term limit. For their part, the authorities decry the, in their view, politicisation of the constitutional reform process for short-term party interests by opposition parties. In this context they point to the fact that, until very recently, most of these political parties and civil society organisations had been strong proponents of a change from a presidential to a parliamentary system, while, at the same time, President Sargsyan has publicly stated that he will not stand for the post of Prime Minister, therefore moving himself out of the equation in the debate on the reform of the political system.

6. Regrettably, the debate on the constitutional reform has been dominated by the proposals for a change of political system, overshadowing some other important proposals for constitutional changes with respect to the protection of fundamental human rights and the rule of law in Armenia

7. The concept paper was formally presented to President Sargsyan on 14 October 2014. Subsequently, the concepts for reform were transformed into concrete draft amendments by the Constitutional Commission. At the request of the Chairman of the Constitutional Court of Armenia and co-ordinator of the Constitutional Commission, the Venice Commission was asked to provide assistance to the Commission and to assess the constitutional amendments. After our visit, on 30 July 2015, the Venice Commission issued a preliminary opinion on the draft amendments to Chapters 1 to 7 and Chapter 10 of the Constitution of Armenia<sup>3</sup>. These Chapters deal with the foundations of the constitutional order, fundamental human and civil rights and freedoms, the division of powers, and the courts and Supreme Judicial Council. The remaining chapters will be covered by the Venice Commission in a future opinion.

8. For a detailed discussion on the proposed amendments we would like to refer to the preliminary opinion of the Venice Commission. In this note we would like to highlight a few key issues that were also brought to our attention during our visit to Yerevan.

9. The Venice Commission underscores the importance and high quality of the work of the Constitutional Commission, as well as its willingness to incorporate the Venice Commission’s recommendations in the draft amendments. This should be welcomed and is also a sign of the willingness of the authorities to honour their commitments and obligations to the Council of Europe.

10. In the view of the Venice Commission, the fundamental rights and freedoms that are constitutionally guaranteed have been substantially increased and enriched. It is important in this respect that their formulation closely follows that of the ECHR and the case law of the European Court of Human Rights and codifies the supremacy of international law and treaties in the Constitution. At the same time, the Venice Commission notes that the amendments are overly detailed and contain a number of issues that could possibly better be regulated outside the Constitution.

11. Freedom of religion and freedom for religious organisations to exercise their activities, as well as the separation of State and church will be enshrined in the Constitution. The Armenian Apostolic Holy Church is an extremely important symbol of the Armenian identity, which is recognised in the Constitution. While recognition as a State Church poses no problems from the perspective of the ECHR, the recognition of its

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<sup>2</sup> CDL-AD(2014)027

<sup>3</sup> CDL-PI(2015)015

“exclusive mission”<sup>4</sup> could contradict the principle of freedom of religion and worship guaranteed in other paragraphs of the Constitution. We hope this will be remedied before the amendments are adopted.

12. There is some confusion with regard to the exact wording of paragraph 34 on the freedom of marriage. In the translation provided by the authorities, the new paragraph 34 reads “*Men and women of marriageable age shall have the right to marry and found a family by free expression of their will*”. However we were informed by a number of civil society organisations that the correct translation would be “*Men and women of marriageable age shall have the right to marry with each other and found a family by free expression of their will*”. This would imply a constitutional prohibition on same-sex marriages and would be a step back with regard to the provisions in the current Constitution. We ask the authorities to clarify this and urge them to ensure that this article under no circumstances could be used to prevent the legal recognition of same sex marriages.

13. In our last note we have already lauded the authorities for the implementation of a proper alternative service. If the constitutional amendments are adopted this right would even be enshrined in the Constitution, which cannot but be warmly commended. Armenia is an example for the region in this respect.

14. The constitutional prohibition for persons with a double nationality to be elected to the parliament is maintained, as are the lengthy residency requirements to obtain passive voting rights. As mentioned in various election observation reports by the Assembly, this interdiction and excessive residency rights are in contradiction with the voting rights as enshrined in Article 3 of Protocol One to the European Convention on Human Rights, which has been signed and ratified by Armenia. While we are sensitive to the particular situation of a country where the largest part of its population does not live within its geographical borders, we hope that these provisions will be changed by the National Assembly before they are adopted.

15. As mentioned, the proposed constitutional amendment introduces a parliamentary system for the country. Accordingly, the role and powers of the President have been considerably reduced, foreseeing a largely ceremonial and arbitration role. The President would no longer be elected directly by the people, but indirectly by a College of Electors composed of members of parliament and representatives of local self-government bodies. While each country in principle is free to choose its political system, we have some questions regarding the indirect election of a President as, in a polarised political environment, the indirect election of the President could result in increased politicisation of the post of President and a source of discord in the political system. Similarly, in its opinion, the Venice Commission also points to the dangers of “*behind-the-scenes manipulations which could endanger the authority and legitimacy of the institution*”.<sup>5</sup>

16. With the establishment of a parliamentary republic, the powers of the parliament would considerably increase. At the same time, executive power would nearly exclusively be held by the government and in particular by the Prime Minister, who would be elected by the parliament. It is to be welcomed that with the increased power of the parliament, the draft constitutional amendments also aim to strengthen the constitutional rights of the opposition in the parliament.

17. In our view, the most controversial change would be the proposed introduction of the so-called “Italian model”, ostensibly to guarantee the stability of government. According to the proposed model, if after an election it turns out to be impossible to obtain a majority to form a government, a second round of elections would be organised between the two parties that obtained the best results in the general election. The winner of this second round would obtain sufficient additional seats to obtain a 54% majority in the parliament and thus to form a government. It is important to note that these additional seats would be added to the total number of members of the parliament, and not deducted from other factions. The total numbers of MPs is therefore not fixed in the Constitution.

18. While repeating that it is up to each country to decide on its electoral system - as long as it reflects the democratically expressed will of the people - we have strong reservations about the introduction of this so-called “Italian model”. Our reservations are echoed by the Venice Commission in the remarks on this issue in the preliminary opinion. As we stressed to the relevant authorities during our visit, the two round election model was introduced in the Italian system after a long history of institutional instability. In our view, it is wrong to assume that the introduction of the parliamentary system would *per se* result in an instable government and the introduction of such a drastic correctional mechanism seems therefore rather premature. Secondly, in a political environment where a large part of the opposition, as well as civil society,

<sup>4</sup> The Armenian authorities informed the committee that this is a misunderstanding based on an incorrect translation of the constitutional amendments and that there is in fact no reference to such an exclusive mission in the amendments proposed.

<sup>5</sup> CDL-PI(2015)015 § 122

assumes that the constitutional reform is driven by the wish of the ruling party to perpetuate its hold on power, the introduction of the Italian system, which forces an absolute majority in the second round, is sure to feed, and inadvertently to give credence to, these allegations. This would undermine public trust in the political system - which is an issue in Armenia - and could damage the legitimacy of the new constitutional framework. We therefore urge the authorities and National Assembly, not to include this model in the new Constitution. If, at a later stage, there is a clear and objective need for a corrective mechanism to assure institutional stability, a form of the Italian model could always be introduced in the electoral code, especially if the total number of MPs remains flexible in the Constitution.

19. The constitutional amendments introduce a number of provisions that aim to guarantee the independence of the judiciary. However, the Constitution continues to foresee the involvement of a political body, the National Assembly, in the appointment of judges and their potential dismissal for disciplinary reasons. In the view of the Venice Commission, no political body should be involved in the dismissal of judges for disciplinary reasons or in the appointment of appellate court judges and court presidents, as is currently foreseen.

20. In the context of the polarised political environment of Armenia, it is essential that the constitutional reform process is inclusive and aimed at strengthening political pluralism and the accountability of the government towards the National Assembly. In the light of the diverging views on the political system for the country, as well as the need to augment trust in the political structures of the country, it is to be welcomed that the constitutional amendments will be adopted on the basis of a national referendum. A fully democratic referendum process, based and a comprehensive public debate on the constitutional changes, is crucial for the democratic legitimacy of the new Constitution. The authorities should ensure that such public consultation and public debate is organised before the referendum takes place

### III. Political environment

21. Over the last year, the debate on the constitutional reform process has dominated the political landscape in Armenia and relations between the ruling majority and opposition, as well as within the opposition. While originally united on a 12-point reform programme, the main coalition of parliamentary opposition parties started to break up over the constitutional reform process. The Armenian National Congress, Prosperous Armenia and the Heritage Party opposed the move from a presidential to a parliamentary republic, while the Armenian Revolutionary Federation (Dashnaksutyun) supported the change.

22. The differences over the political system led to increased tension between President Sargsyan and his main political rival, businessman Gagik Tsarukian, who was the leader of the Prosperous Armenia Party. Prosperous Armenia came out second in the last parliamentary elections and could be a potential rival to the ruling party. The party is reportedly close to former President Kocharian, who has been increasingly critical of his successor. It is clear that the alignment of Prosperous Armenia with the other opposition parties caused some concern in some circles of the ruling party.

23. The Prosperous Armenia Party had originally been reluctant to join the Heritage Party and the Armenian National Congress in their calls for early parliamentary and presidential elections. However, on 5 February 2015, referring to the socio-economic situation in the country, Mr Tsarukian announced that Prosperous Armenia was seeking early presidential and parliamentary elections unless the ruling majority dropped its proposal for a parliamentary republic. This change in stance was seen as a direct challenge<sup>6</sup> to President Sargsyan, who reacted promptly and harshly. In a speech he called Mr Tsarukian a traitor and instructed Prime Minister Abrahamian to start an investigation into alleged tax evasion. In addition, he demanded that Mr Tsarukian be stripped of his parliamentary mandate for chronic absenteeism in the National Assembly<sup>7</sup> and removed him from the National Security Council. We have some questions with regard to this reaction and the action taken, which seems to exceed normal democratic norms.

24. The stand-off between the President and Prosperous Armenia was resolved on 17 February 2015 when President Sargsyan and Gagik Tsarukian held a private meeting arranged by the Armenian Revolutionary Federation. Following this meeting, Mr Tsarukian dropped his demands for pre-term elections and called off Prosperous Armenia's participation in the opposition demonstrations that were planned for the

<sup>6</sup> A visit to Moscow and meetings with the United Russia leadership by Mr Tsarukian was rumoured by the Armenian press to be an attempt by Mr Tsarukian to obtain Russian support for a change of leadership in the country.

<sup>7</sup> The rules of the National Assembly allow a member to be stripped of his mandate if he consistently fails to attend the Assembly sessions. However, it seems that this provision is hardly, if at all, enforced.

end of February. The withdrawal of Prosperous Armenia threw the opposition coalition into disarray and the protests effectively ended. Mr Tsarukian later announced his complete withdrawal from active politics. There has been much speculation about the reasons for Mr Tsarukian's sudden change of heart. Regrettably, Mr Tsarukian declined our request to meet him, so we are unable to give his view on these developments. However most interlocutors were of the opinion that a "mutually beneficial agreement" had been reached between President Sargsyan and Mr Tsarukian

25. These developments underlined the personality driven and essentially closed nature of Armenia's political system which favours closed-door political negotiations and under-the-table agreements over public debate and deliberation. This is also the *modus operandi* of the opposition which often seems to prefer a strategy of protest and demonstrations to force the ruling majority to the negotiating table, rather than constructive engagement. Regrettably, this lack of transparency in the political decision-making process negatively affects public trust in the political system.

#### IV. Miscellaneous issues and concluding remarks

26. During our visit some interlocutors raised the issue of the conviction of political activist Shant Harutyunyan and some of his supporters – including his son - following clashes with the police during a protest in 2013. On 5 November (Guy Fawkes Day) 2013, Mr Harutyunyan, who is the leader of the Tzseghakron (Race religion) party organised a reportedly unauthorised rally "to start a revolution" in Yerevan. According to the authorities many of the protesters were armed with large sticks and homemade explosive devices<sup>8</sup>. When the protesters moved towards the Presidential Palace they were ordered to disperse by the police. Clashes erupted when protesters reportedly attacked the police with sticks and homemade explosive devices. In total, 20 protesters were arrested as a result of these clashes<sup>9</sup>. Charges were filed against 16 of them. On 17 October 2014, the Court in Yerevan sentenced these persons to prison terms of 1 to 7 years for hooliganism aggravated by violence resulting in bodily harm. Mr Harutyunyan received a six year prison term, while his 15 year old son received a suspended prison term of four years. Some opposition parties and civil society organisations decried the, in their view, excessive, sentences which they consider to be politically motivated. This is strongly denied by the authorities who point to the fact that the protesters were armed and that the violence that erupted had been premeditated by the protesters. They argue that any person who committed a similar act would face the same charges and punishment, irrespective of their political convictions. The Human Rights Commissioner, in his report on his visit to Yerevan from 5 to 9 October 2014, noted, with respect to the suspended prison term for Mr Harutyunyan's son, that the juvenile justice system in Armenia had a number of deficiencies that needed to be addressed.

27. Large protest were organised in Yerevan on Monday 19 June 2015 following the announcement that the price of electricity would increase by 22% as from 1 August 2015. During the evening of 22 June 2015, these protests degenerated into violence when the police tried to prevent protesters from moving towards the Presidential Palace. Reportedly disproportionate and excessive violence was used by the police when dispersing the protesters, including journalists that were reporting the protests, which is of concern. These protests continued during the following days but remained peaceful as a result of an agreement reached between the organisers of the protests and the head of the national police about the conditions under which the protest could take place. The protests subsided after President Sargsyan announced that the price increase would be postponed and covered by the general budget of the government. We made a statement in relation to these protests on 25 June 2015 in which we welcomed the agreement reached between the police and protesters, urged maximum restraint from all sides and called on the authorities to investigate impartially and transparently the allegations of purposeful targeting of journalists and excessive use of force by the police during the protest on 22 June 2015.

28. The constitutional reform can be a very important instrument for the transformation and consolidation of democracy in Armenia. We will continue to follow these developments closely and intend to visit the country in this context during the second half of this year before the referendum takes place.

<sup>8</sup> This seems to be confirmed by video material posted on the internet including by the protest organisers themselves, e.g. <http://youtu.be/G1MQYaHc4Rk>.

<sup>9</sup> <http://armenianweekly.com/2013/11/05/activists-clash-with-police-on-guy-fawkes-day-in-yerevan/>

## **APPENDIX**

### **Programme of the fact-finding visit to Yerevan (9-12 June 2015)**

Mr Axel Fischer, Germany, Group of the European People's Party (EPP/CD)  
Mr Alan Meale, United Kingdom, Socialist Group (SOC)

#### **Tuesday, 9 June 2015**

- 13:00 Briefing on current situation by the Head of the Council of Europe Office
- 14:30-16:00 Round table with civil society representatives and think tanks on recent political developments in particular with regard to reform agenda and relations between ruling majority and opposition:
- Mr Richard Giragosian, Regional Studies
  - Mr David Shahnazaryan, Center for Political and Legal Studies
  - Mr Tevan Poghosyan, International Center for Human Development
- 16:15-18:00 Round table with experts and civil society representatives on Constitutional reform
- Mr Armen Mazmanyanyan, Apella Institute for Policy Analysis and Dialogue
  - Mr Ashot Khurshudyan, International Center for Human Development
  - Mr Artak Zeinalyan, Human Rights Advocate

#### **Wednesday, 10 June 2015**

- 09:00-10:00 Meeting with Ambassador Andrzej Kasprzyk, the Personal Representative of the Chairperson-in-Office on the conflict dealt with by the OSCE Minsk Conference (\*)
- 10:30-12:00 Individual meetings with the leadership of the Armenian National Congress, Heritage and Prosperous Armenia factions in the National Assembly
- 12:30-13:45 Lunch
- 14:00-14:45 Meeting with Mr Hrayr Tovmasyan, member of the Committee on Constitutional Reforms, Secretary General of the National Assembly
- 14:50-15:20 Meeting with H.E. Mr Galust Sahakyan, President of the National Assembly of the Republic of Armenia
- 15:25-16:10 Meeting with Members of the Armenian Delegation to PACE
- 16:15-17:00 Meeting with Mr Hovhannes Sahakyan, Chair of the Standing Committee on State and Legal Affairs of the National Assembly
- 17:00 Individual meeting with the Armenian Revolutionary Federation faction

#### **Thursday, 11 June 2015**

- 09:00-10:00 Meeting with Mr Dirk Lorenz, Chargé d'affaires of the EU Delegation to Armenia
- 10:15-11:00 Meeting with Mr Boris Navasardyan, President of Yerevan Press Club
- 12:30-13:40 Lunch
- 14:00-14:45 Meeting with the Central Election Commission
- 15:00-15:45 Meeting with H.E. Mr Edward Nalbandyan, Minister of Foreign Affairs of the Republic of Armenia

- 16:00-16:40 Meeting with H.E. Mr Vache Gabrielyan, First Deputy Prime Minister of the Republic of Armenia and Mr Davit Harutyunyan, Minister - Chief of Staff of the Government
- 17:00 Meeting with H.E. Mr Serzh Sargsyan, President of the Republic of Armenia
- 19:30 Dinner on behalf of the Armenian Delegation to PACE

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