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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 (16-17 January 2012)¹

Co-rapporteurs: Mr John PRESCOTT, United Kingdom, Socialist group, and Mr Axel FISCHER, Germany, Group of the European People's Party

¹ This information note has been made public by decision of the Monitoring Committee dated 13 March 2012.

I. Introduction

1. The fact-finding visit to Yerevan took place from 16 to 17 January 2012. Regrettably, Mr Fischer had to cancel his participation at the last minute due to illness. The main objectives for this visit were to discuss:

- the follow up to Resolution 1837 (2011) and accompanying report (Doc. 12710 (2011)),
- preparations for the May 2012 parliamentary elections,
- the ongoing monitoring procedure in respect of Armenia.

During the visit, we met, inter alia, the President of Armenia, the President of the National Assembly, the Minister of Justice, the Head and Deputy Head of the National Police, the Chairman of the Central Election Commission, the Prosecutor General of Armenia, the Human Rights Defender (Ombudsman) of Armenia, the leadership of the individual factions in the National Assembly, representatives of the Armenian National Congress, relatives of the victims of the 1 March 2008 events, as well as members of the civil society and diplomatic community in Yerevan. We would like to thank the Parliament of Armenia, and the Council of Europe Office in Yerevan, for the excellent programme, as well as for the hospitality and the assistance provided during our visit. The programme of the visit is attached as an appendix.

II. Follow up to Resolution 1837 (2011)

2. In Resolution 1837 (2011), the Parliamentary Assembly closed the special chapter on the events of March 2008. At the same time, it emphasised that a number of its findings and recommendations with regard to the 2008 events were to be considered as priorities in the ongoing monitoring procedure. In order to underscore this point in relation to credible investigation into the ten deaths, the resolution explicitly stated that the Assembly's "*monitoring of Armenia's human rights and democracy obligations, including in respect of the investigation into the 10 casualties, will continue unabated*".

i. Investigation into the ten deaths

3. As mentioned in our last report, on 20 April 2011, President Sargsyan ordered the law enforcement agencies to give renewed impetus to the investigations into the 2008 events and especially with regard to the ten casualties that occurred during these events. In order to ensure that these investigations would be considered credible by the Armenian population, we strongly recommended that the President ensure that the investigations take the form of a public inquiry. To this end, we provided the authorities with the reports of inquiries that took place in the United Kingdom after the fatal shooting of a Brazilian immigrant, as well as after the "Bloody Sunday" events in Northern Ireland.

4. During our previous visit in July 2011, we were informed about the ongoing investigation by the Special Investigation Service, which was re-evaluating the available evidence and calling for new witnesses to come forward. In addition, the Prosecutor General had sent letters to several Embassies and Missions of International Organisations, asking for experts to help with questions related to ballistics, as well as with the analysis of new video footage of the events that had surfaced on YouTube. Regrettably, no such expertise was made available to the Armenian authorities.

5. On 27 December 2011, the Prosecutor General, in line with recommendations of the Assembly, published an interim report on the investigation and its findings. This extensive report, of more than 200 pages, is at the time of writing, only available in Armenian. We are studying the possibility of having it translated into English in order to be able to analyse it first hand.

6. As the interim report of the Prosecutor General is not available in English, we are not able to comment on its contents or conclusions. However, based on the information we received, some reflections can be made.

7. It is clear from the report that only a criminal investigation has taken place. This is not the same as the inquiry we had in mind and recommended to the authorities. In our view, a proper inquiry would have allowed anyone directly affected by these events, and first and foremost the families of the victims, to come forward and clarify or challenge the findings. This in turn would have given the authorities the opportunity explain the report, obtain new avenues for investigation and possibly dispel some of the more outlandish conspiracy theories that are circulating in society. Most of all, in our view, this could help those who have lost their close relatives in these events, to find some solace and closure.

8. The need for a public inquiry, in the sense recommended by the Assembly, was clear from the meeting with the relatives of the ten victims of the March 2008 events. The relatives present all told us that they had not heard from the authorities in the course of the inquiry and that the many questions they have were not answered. In addition, they questioned some of the findings and the conclusions of the interim report. When we confronted the General Prosecutor with these complaints by the relatives, he informed us that all relatives who claimed to have information regarding the events on March 2008 had been heard as witnesses by the Special Investigative Services. This, in our view, underscores the limitations of a purely criminal investigation in comparison to a public inquiry. At the same time, the authorities emphasised that, in their view, the relatives of the March 2008 victims were politicising the investigation, as a number of them had appeared as key note speakers at opposition rallies denouncing the authorities.

9. President Sargsyan said he was open to our suggestions and asked the Head of the Legal Affairs Committee of the National Assembly of Armenia, Davit Harutyunyan, who is also the Chairman of the national delegation of Armenian to our Assembly, to work out a concept, in close consultation with the rapporteurs, for a public hearing on the results of the criminal investigation to date. In addition, he emphasised that the Prosecutor General had only published an interim report and that the investigation was still ongoing. At the same time, he also expressed his concern that this issue was being politicised and could therefore be misused for political purposes, especially in the context of the upcoming parliamentary elections of 6 May 2012. He therefore suggested that the timing of the hearing be chosen in such a way as to minimise the possibility that it would be misused for electoral campaign purposes..

ii. Reform of the judiciary

10. In Resolution 1837 (2011), the Assembly considered the reform of the judiciary, especially with a view to guaranteeing its independence both in law and practice, as one of the priorities for the democratic development of the country. In this respect, the Assembly underlined that this reform of the judiciary cannot be achieved through legislative changes alone, but needs to be accompanied by a change in mentality and practice.

11. During our visit, we met with Minister of Justice, Hrayr Tovmasyan, who outlined the latest reforms initiated by his ministry. In a first phase, priority had been given to improving the physical infrastructure and working conditions of the courts. These had been lagging behind and had seriously undermined the effectiveness of the courts. In addition, the salaries of judges had been raised in order to combat corruption. However, despite these infrastructural improvements, recent surveys had shown that 80% of the public still has no trust in the judiciary.

12. The Minister also confirmed that the legal framework in Armenia gives too large a discretion to judges, both in their rulings and in the manner in which the courts are administered. As a result, court chairmen rule their courts like little sovereigns with regard to the administration of cases. This, in turn, facilitates a system of favouritism and corruption. The latter is compounded by the fact that, as recent studies have shown, 75% of the population is willing to pay bribes. This is also a mentality issue that needs to be addressed.

13. In order to improve the independence of the courts and reduce their vulnerability to corruption, a number of reforms are planned. On the legislative side, new criminal and civil codes are being drafted and the Criminal Procedure Code will be amended. A major concern is the fact that the justice system is still too much prosecution driven. This will be addressed in the amendments to the Criminal Procedure Code. In addition, this question also needs to be tackled through new human resources policies, as prosecutors are often hired as judges. In addition, the provisions should put high barriers for evidence that can be admitted in court and testimonies will in future only be admissible in court when repeated in front of a judge. This should remove one of the possible incentives for members of the law enforcement agencies to resort to pressuring witnesses or falsifying evidence.

14. The Minister of Justice recognised that the use of detention on remand is still widespread and that too much discretion is given to the prosecution to request, and to the courts to grant, such preventive detentions. The new Criminal Procedure Code is expected to contain provisions that considerably limit the possibility for detention on remand.

15. At the same time, the administration of the courts will be automated and the cases distributed via a random system. Also it is foreseen that the position of chairperson of the court will rotate between the judges.

16. In addition, reforms are being planned with the aim of improving the functioning of the judges themselves. A new evaluation system will be put in place and sanctions for misconduct increased. We were informed that, last year, a series of cases were initiated against judges for judicial misconduct.

17. The priority given to improving the justice system and the independence of the judiciary by the Armenian authorities should be welcomed. However, as confirmed by the Minister, these reforms alone will not be enough to ensure the independence of the courts or make corruption disappear. For that to happen, a change of mentality is needed. It is hoped that the appointment of a new generation of young and better educated judges will bring about such a change of mentality.

iii. Police reform

18. In Resolution 1837 (2011), the Assembly emphasised the need for police reform in Armenia, including institutional reform, with a view to establishing firm civilian control over the police forces. In addition, the Assembly underscored the need for an independent police complaints mechanism and asked the authorities to ensure that the preconditions for establishing such a mechanism be put into place without delay.

19. Since our last visit, a new and more reform-minded Head of the Police has been appointed by the President of Armenia. He emphasised the priority given by him to reforming the police into a full public service institution. To this end, reforms were being implemented to bring the police closer to the people and to increasing their visibility on the ground. According to the Head of the Police, the new structure and goals emphasise pro-active crime prevention over crime solving, which is a 180 degree turnaround from previous policies. In order to implement these policies, a special division for the co-ordination of reforms has been set up in the national police that is closely co-operating with the OSCE and several Council of Europe member States, as well as with the USA. Training is considered to be a pillar to implement these reforms on the level of the individual police officer.

20. In Resolution 1837 (2011), the Assembly recommended a thorough review of the crowd management policies and capacities of the police. We were informed that, in the planned reforms, considerable importance will be given to improving police performance in relation to crowd control and maintenance of public order during demonstrations. Specific training has been put in place and new regulations have been adopted which govern the use of special means, such as tear gas and rubber bullets. In addition, new uniforms have been issued that allow police officers to be identified in the event of a formal complaint about their behaviour and the use of force.

21. Corruption in the police force remains a concern. We were informed that the national traffic police, which had been a source of corruption, had been disbanded. Their functions have been integrated into regional police forces, which are considered by the authorities to be less prone to corruption.

22. As mentioned in our last report to the Assembly (Doc. 12710 (2011)), Armenia has no ministry of the interior and the police is basically self-governing under the direct authority of the President of Armenia and is only accountable to him. The Assembly has repeatedly recommended that the police be brought under genuine civilian control. In its last resolution, the Assembly invited the authorities to consider the establishment of a ministry to which the police and security forces would be subordinate. The authorities indicated that they were willing to address these recommendations. However, they informed us that any change in the institutional set-up of the police and security forces would have to be regulated in the Law on the Cabinet of Ministers. This law is planned to be changed when the new government is established after the parliamentary elections in Armenia, which are scheduled for May this year. Any changes to the institutional arrangement for the police and security forces will be adopted at that time.

23. The establishment of an independent police complaint mechanism that could independently investigate any allegations of police misconduct, was a key recommendation of the Assembly in its last resolution. A proposal for such a mechanism was prepared by the authorities and sent to the Council of Europe for an opinion. In their opinion, the experts generally welcomed the proposal and made further recommendations to strengthen the effectiveness and independence of such a mechanism. During our previous visit, the authorities had indicated that they did not consider it appropriate to implement such a mechanism at that time. In their view, such a mechanism, in the existing institutional context, could easily add another layer of corruption for citizens seeking justice from police abuse. The Assembly, in Resolution 1837 (2011) therefore asked the authorities to ensure that the necessary preconditions for such a mechanism be put in place without delay, in order to ensure that such a mechanism could be established in the near future.

24. During this visit, to our great satisfaction, the authorities informed us that a complaints mechanism - possibly initially in a modified form - would be established in the near future. We urged the authorities to

ensure that the recommendations of the Council of Europe experts on the original proposal would be fully taken into account and that any changes to the proposed structure would take place in close consultation with the relevant Council of Europe departments. This is a considerable point of progress that should be closely followed by the Assembly.

25. Pending the establishment of an independent complaints mechanism, a draft law, setting up a disciplinary committee within the police force, was sent to the parliament. We were informed that this law is expected to be adopted before the summer of 2012.

iv. Fight against corruption

26. The fight against corruption is another important priority for the Assembly and, as mentioned above, is also closely related to the establishment of an independent police complaint mechanism as recommended by the Assembly.

27. Armenia is a signatory State to the Group of States Against Corruption (GRECO). The reports of the third evaluation round for Armenia were adopted in December 2010. While welcoming the comprehensive legislation with regard to corruption and bribery, the report concluded that several shortcomings still exist that affect the implementation of the legislation.

28. In its report on the transparency of party funding, which is very relevant in the context of the forthcoming elections, GRECO notes that public funding of political parties plays a minor role in Armenia and that most parties are heavily dependent on private donations. This increases the potential for conflicts of interests and corruption and underscores the intertwinement of political and financial interests, which were flagged as problematic on several occasions by the Assembly. In this respect, the legislation on party financing contains a number of shortcomings. For example, there are no ceilings for private donations to parties and the regulations for the transparency of donations are not considered to be adequate. In this context, it should be noted that the financial declarations from the candidates in the majoritarian races for the parliament are only available upon request, which limits public scrutiny of what are, in general, the more problematic elections from the perspective of intertwinement of financial and political interests. GRECO also raises questions with regard to the independence of the bodies that are supposed to supervise the appropriateness and transparency of party funding, be it the CEC or the Ministry of Justice.

29. The authorities are planning a number of reforms aimed at fighting corruption in the bureaucracy, which regrettably is still widespread. These reforms aim at considerably limiting the discretion granted to civil servants and law enforcement personnel, but also at reducing the necessary bureaucracy and permits needed for citizens and businesses to conduct their activities.

30. An anti-corruption council had been functioning under the Prime Minister. However, this Council lacked a proper secretariat and executive powers. In order to strengthen its functioning and powers, it was recently placed under the direct auspices of the President of Armenia. In addition, in order to fight corruption in the law enforcement agencies, a new law on the oversight of law enforcement bodies, as well as amendments to the Criminal Procedure Code, are in the process of being drafted.

v. Alternative service and conscientious objectors

31. An issue of concern is the lack of a proper alternative service - despite many efforts in this direction - and the ongoing arrests and convictions of conscientious objectors. When acceding to the Council of Europe, Armenia committed itself to the adoption of a proper alternative service and to pardon all conscientious objectors sentenced to prison terms as a result of the absence of a proper alternative service. The law on an alternative service has been in force since 2004. However, as mentioned in Assembly Resolution 1976(2009), this law is not fully adequate as it does not offer conscientious objectors a guarantee of a genuine civilian alternative service. As a result, for several groups of citizens, most notably Jehovah's Witnesses, the alternative service continues to run counter to their religious or ethical principles and, as a result, adherents continue to refuse to serve in the army or participate in the alternative service in its current format.

32. The problem with the alternative service is recognised by the authorities and amendments have been prepared that were sent to the European Commission for Democracy through Law (Venice Commission) for opinion. However, the amendment process has taken an excessively long time, especially given that persons that refuse both military and alternative service are being arrested and sentenced to prison, in contradiction with Armenia's commitments to the Council of Europe. In addition, the use of pre-trial detention is widespread and excessive in Armenia and conscientious objectors are routinely detained pending trial.

33. On 7 July 2011, the European Court of Human Rights issued a judgment against Armenia on the basis of Article 9 of the Convention (freedom of religion) for continuing to convict and imprison conscientious objectors who refuse to serve as a result of the non-availability of a proper alternative service, despite the international commitment to do so.

34. The issue of conscientious objection is understandably sensitive in a country that is, technically, still at war. However, the current situation is clearly at variance with Armenia's commitments to the Council of Europe. We therefore urged the authorities to:

- adopt without delay the necessary amendments to the Law on Alternative Service, taking into account the Venice Commission's comments on them;
- freeze the prosecution of conscientious objectors pending the adoption of the new law and refrain from requesting pre-trial detention for the persons concerned;
- use all legal means available to the authorities to release those convicted - or in pre-trial detention - for refusing to serve in the absence of a proper civilian alternative service on conscientious grounds

35. The authorities reacted positively to our request. They underscored the difficulties of implementing an alternative service in the context of the geo-political situation of the country. They agreed to speed up the adoption of the amendments to the law on alternative service, but also emphasised that the alternative service should not be a vehicle that would allow people to dodge the draft. We will follow developments on this issue as a matter of priority.

III. Preparations for the 2012 parliamentary elections

36. Parliamentary elections will take place in Armenia on 6 May 2012. These elections are crucial for the consolidation of democracy in Armenia. If these elections are conducted in a genuinely democratic fashion, they will help to consolidate the normalisation of the political environment in Armenia and help rebuild public trust in the political system.

37. As we mentioned in our reports on this subject, the events of March 2008 were most of all the result of a total breakdown of public trust in the democratic system as it was then. It is therefore important that all the contestants, notwithstanding the existing polarised political environment, refrain from actions that would undermine, *a priori*, public trust in the elections and the democratic system. Regrettably, in Armenia, as in a number of other countries, questioning the fairness and democratic nature of elections before they have taken place, and without any clear evidence of electoral fraud, has become part of the electoral strategy of a number of parties. We therefore called upon all electoral contestants to be aware of their responsibility not to undermine unnecessarily public trust in the electoral process.

38. The political environment has changed dramatically in the run up to the parliamentary elections. The opposition is currently a well-organised viable political force in Armenia. At the same time, neither the opposition nor the ruling majority are currently a homogenous political force. On the side of the opposition, the main parties – the Armenian National Congress, ANC, the Heritage Party and the Armenian Revolutionary Federation Party - are competing against each other as well as against the parties in the ruling majority. In addition, a number of groups have split from the ANC to compete separately in the elections, the most notable one being led by former Foreign Minister Alexander Arzumanyan, who was one of the prominent opposition leaders imprisoned after the March 2008 events.

39. As mentioned, the unity of the ruling coalition has also come under stress. The main parties in the ruling coalition - the Republican Party of Armenia of President Sargsyan and the Prosperous Armenia Party, which is considered close to former President Kocharian - are in open competition and have clashed in public. Former President Kocharian has publicly criticised the political performance of President Sargsyan and some speculate that Kocharian intends to return to active politics. Under considerable pressure from its partner, the Prosperous Armenia Party signed a co-operation agreement with the Republican party in which they recognise the leading role of the Republican Party in the coalition and in which they pledge to support

President Sargsyan's re-election bid in 2013, as well as not to try to change the balance of seats within the coalition. The Prosperous Armenia Party is reportedly considering not honouring this agreement if it is felt to be too detrimental to its own interests. This has considerably increased the tension within the ruling coalition.

40. As a result of these developments, the forthcoming elections are generally expected to be genuinely competitive. In addition, the fact that, potentially, no single political force is controlling the election process and its administration, could aid the democratic nature of the elections.

41. In October 2011, the Venice Commission and the OSCE/ODIHR adopted their joint opinion (CDL-AD(2011)032) on the election code adopted by the Armenian parliament on 26 May 2011 (see also § 42 to § 57 in our report Doc. 12710 (2011)). In this opinion, the Venice Commission stated that the new election code is an improvement over previous electoral legislation and, in principle, adequate for democratic elections. However, the Venice Commission underscored that this will depend on the implementation, in good faith, of this code and the commensurate political will of all political stakeholders to abide by democratic principles. It should be welcomed that most, albeit not all, recommendations of the Venice Commission on previous drafts of the election code have been taken up by the authorities.

42. The current election code, in line with constitutional provisions, contains a blanket prohibition for convicted prisoners. Such provisions have been ruled to be in violation of the Convention on Human Rights by the European Court of Human Rights in Strasbourg. Changing this provision would however need a change of the Constitution, which is not feasible before the next election.

43. The election code introduces a professional election administration, which is to be welcomed. However, this places additional responsibility on the authorities to ensure that the members of the election commissions have the trust of the public and election contestants.

44. The current election code contains a ten year residency and ten year citizenship requirement in order to stand in the parliamentary elections, which is considered to be excessively high, especially given the considerable size and influence of the Armenian Diaspora.

45. The parliamentary opposition parties have launched an appeal for the introduction of a fully proportional system for the parliamentary elections. This proposal is also supported by the ANC. The choice of an election system, within limits, is the choice of each individual country. In order to avoid being seen as taking sides, we did not comment on this proposal. At the same time, we emphasised the importance and necessity of a stable legal framework for elections, especially after these have been called. From the reaction by the ruling majority, it seems rather unlikely to us that any change to the election system will be made for these elections.

46. The Chairman of the Central Election Committee died unexpectedly at the end of 2011. A successor has been appointed and it is not expected that preparations for the upcoming elections will suffer from this otherwise tragic development.

47. In all our contacts with the authorities, as well as with parties from the ruling coalition and opposition, we stressed the importance of participating in these elections in good faith. We therefore urged all the parties and stakeholders to implement confidence building measures that could improve the election climate and framework.

48. The international observation of these elections is crucial for building public trust. We therefore welcome the Bureau of the Assembly's decision to observe them with a large delegation from our Assembly. Given their importance for the issues under monitoring, as well as the crucial role of the monitoring process in the run up to these elections, we wish to emphasise that members of our committee should be closely involved in the observation of these elections.

APPENDIX

Programme of the fact-finding visit to Yerevan (16-17 January 2012)

Mr John PRESCOTT, member of Parliament
Mr Axel FISCHER, member of Parliament
Mr Bastiaan KLEIN, Secretary of the Monitoring Committee of the Parliamentary Assembly

Monday, 16 January 2012

- 10:00 Briefing by the Head of the Council of Europe Office in Armenia, Ms Silvia ZEHE (breakfast) (*)
- 10:30 – 11:45 Meeting with selected NGOs and think-tanks regarding the political developments with regard to Resolution 1837 (2011) and upcoming elections (*)
- 12:00 – 12:30 Meeting with the Chairperson and members of the Armenian delegation to the PACE
- 12:35 – 13:05 Meeting with the representatives of “Heritage” faction
- 13:15 – 14:45 Lunch-meeting with Mr Georgi KUTOYAN, Assistant to the President on Anti-Corruption matters
- 15:00 – 15:30 Meeting with the representatives of “Armenian Revolutionary Federation” faction
- 15:35 – 16:05 Meeting with the representatives of “Rule of Law” faction
- 16:10 – 16:40 Meeting with the representatives of “Prosperous Armenia” faction
- 16:45 – 17:15 Meeting with the representatives of “Republican Party” faction
- 17:30 Meeting with HAK leadership (*)
- 19:00 Meeting with Mr Edward NALBANDYAN, Minister of Foreign Affairs of the Republic of Armenia
- 19:45 Dinner hosted by PACE Armenian delegation

Tuesday, 17 January 2012

- 08:00 – 09:00 Meeting with Mr Vartan OKSANIAN, Chairman of the Civitas Foundation and former Minister of Foreign Affairs
- 09:00 – 09:30 Meeting with relatives of the victims of the 1 March 2008 events
- 09:30 – 10:30 Meeting with Mr Aghvan HOVSEPYAN, Prosecutor General, and Mr Andranik MIRZOYAN, Head of the Special Investigation Service
- 10:45 – 11:45 Meeting with Mr Vladimir GASPARYAN, Head of Police of the Republic of Armenia
- 12:00 – 13:50 Lunch-meeting with Mr Tigran MUKUCHYAN, Chairperson of the Central Election Commission of the Republic of Armenia
- 14:00 – 14:45 Meeting with Mr Karen ANDREASYAN, Human Rights Defender of the Republic of Armenia
- 15:00 – 15:45 Meeting with Mr Hrayr TOVMASYAN, Minister of Justice of the Republic of Armenia
- 16:00 – 16:50 Meeting with Mr Samvel NIKOYAN, President of the National Assembly of the Republic of Armenia
- 17:00 Meeting with Mr Serzh SARGSYAN, President of the Republic of Armenia

18:30 Meeting with the Ambassadors of Council of Europe member states

20:00 Dinner hosted by Mr Samvel NIKOYAN, President of the National Assembly of the Republic of Armenia

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