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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 to 18 June 2014)

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 was our first fact-finding visit to Armenia since the 2012-2013 cycle of parliamentary and presidential elections, as well as local elections in 2013. The main objective of this visit was to update ourselves on the recent political developments in Armenia, in particular with regard to the ongoing constitutional reform; the situation with regard to alternative service; gender equality, religious and sexual minorities; as well as developments regarding the reform of the police and judiciary

2. During our visit we met with, inter alia, the President of the Republic; the Speaker of the Parliament; the Prime Minister; the Minister responsible for the co-ordination of the Cabinet of Ministers; the Minister of Labour and Social Affairs; the Deputy Ministers of Foreign Affairs and Justice; the Secretary General of the National Assembly; the Deputy Head of the National Police, the Chairman and members of the Armenian delegation to PACE; the leadership of the Heritage, Armenian Revolutionary Federation, Rule of Law, Armenian National Congress, Prosperous Armenia and Republican Party of Armenia factions in the National Assembly of Armenia; the Chairman of the Republican Commission for Alternative Service; the Deputy Ombudsperson; the Head of the Government Division for Ethnic Minorities and Religious Affairs; 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 his staff for the support given to our delegation, including with the organisation of the programme.

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\* Document declassified by the Monitoring Committee at its meeting on 3 September 2014.

## II. Recent political developments

4. The 18 February 2013 presidential elections were won by incumbent President Sargsyan. The elections were considered by the International Elections Observation Mission (IEOM)<sup>1</sup> overall in line with international standards, and an improvement over previous elections, although polling day was marked by undue interference in the election process, especially by proxies of the incumbent. Misuse of administrative resources and instances of pressure on voters continued to be matters for concern.<sup>2</sup>
5. The most prominent characteristic of the 2013 presidential election was that the main opposition parties had decided not to propose candidates, either individually or jointly, to challenge incumbent President Sargsyan in these elections. In particular the party which had surfaced as the main challenger to the ruling party in the last parliamentary elections, the Prosperous Armenia Party,<sup>3</sup> decided not to field a candidate. Some interlocutors have alleged that this was the result of pressure exerted on the Prosperous Armenia Party and its leadership. Also the Armenian National Congress, the party of former President Petrosyan, which had been the main challenger to President Sargsyan in the 2008 elections, decided not to propose a candidate.<sup>4</sup> In addition, neither party formally endorsed any of the candidates in the election. As a result, President Sargsyan did not face a serious challenger in these elections. His main opponent, American-born Raffi Hovhannisyan, was a Foreign Minister under President Levon Ter-Petrosyan and is the leader of the Heritage Party, which received 10% of the vote in the 2012 parliamentary elections. During the presidential elections he received, 36.8% of the vote, which was higher than what many interlocutors had predicted.
6. Mr Hovhannisyan originally refused to recognise the outcome of the elections. He declared himself the legitimate President and started a series of protest rallies, which were supported by a number of opposition representatives. These protests soon died out, but they regrettably precluded any major improvements in relations and co-operation between the opposition and ruling majority, which had been the hope of many interlocutors.
7. In line with constitutional provisions the President has to (re)nominate his government for approval by the parliament after the elections. With a few exceptions, President Sargsyan nominated the same outgoing government for re-appointment. No large-scale personnel changes took place immediately after the elections. However, on 3 April 2014, unexpectedly, Prime Minister Tigran Sargsyan (no relation to the President), resigned. No official explanation was given by either the President or the Prime Minister himself. Some interlocutors indicated that the reason for the PMs resignation were personal and health related, others indicated that President Sargsyan wished to install a new government team in ordered to revive the faltering reform programme and to counter the low level of public trust in the government.
8. On 13 April 2014, President Sargsyan appointed parliamentary Speaker Hovik Abrahamyan Prime Minister. Davit Harutyunyan, who until then was Chair of the Legal Affairs Committee in the National Assembly and the Chair of the Armenian delegation to PACE, was subsequently appointed to his Cabinet as Minister for the Coordination of the Cabinet of Ministers and Chief of Staff of the Prime Minister's Office. Prime Minister Abrahamyan, played a key role and worked closely with the Assembly rapporteurs, in resolving the political crisis that ensued after the 2008 presidential elections. He is seen as also having good relations with Prosperous Armenia leader, Gagik Tsarukian, as do several others of the newly appointed ministers, which could improve the political climate. Several ministers from the old Cabinet, most significantly the important posts of foreign affairs and defence, returned in the new Cabinet.
9. The Rule of Law Party (Orinats Yerkir) left the ruling coalition and joined Prosperous Armenia as a party that considers itself neither to be part of the ruling coalition, nor of the formal opposition
10. Armenia and the EU originally announced that they would initial an Association Agreement, including a Deep and Comprehensive Free Trade Agreement, during the Vilnius Summit in November 2013. However, on 3 September 2012, in an unexpected U-turn when visiting Moscow, President Sargsyan announced that Armenia would join the CIS Customs Union as precursor to a Eurasian Economic Union. President Sargsyan pointedly admitted that this decision was based on Armenia's national security interests. In the view of many interlocutors in Armenia, this decision was the result of considerable Russian pressure, especially the threat to continue – and increase - the sale of advanced offensive weaponry to Azerbaijan.

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<sup>1</sup> OSCE/ODIHR, PACE, EP and OSCE-PA.

<sup>2</sup> See the report of the ad hoc committee to observe the elections, Doc. 13172(2013).

<sup>3</sup> Prosperous Armenia is reportedly close to former President Robert Kocharian.

<sup>4</sup> One of the constituent parties of the Armenian National Congress (which is a coalition of parties) fielded a candidate, but he was not formally endorsed by the ANC.

11. With the exception of the Heritage Party of Raffi Hovhannisyan, most political parties, including the parliamentary opposition, accepted President Sargsyan's decision as inevitable.<sup>5</sup> That is not to say that the decision is not controversial within Armenian society, significant segments of which oppose Armenia joining the Customs Union or Eurasian Union. On 22 March 2014, a political movement was established by several civil society organisations that calls for closer European integration and opposes joining the CIS Customs Union. Until now, no political parties have joined this movement.

12. Many civil society representatives expressed their fear that fundamental freedoms and rights could be curtailed, over time, as a result of Armenia joining the Eurasian Union. They pointed at remarks of the Russian Ambassador in Armenia urging the Armenian authorities to follow Russia's lead in dealing with civil society. While this was rebuked by the Armenian authorities, it has sparked disquiet among Armenia's NGO community. In addition, civil society and minority representatives feared that the conservative ideology<sup>6</sup> at the basis of the Eurasian Union would, in the long run, not be conducive to the rights and freedoms of minorities, especially sexual and gender minorities, in Armenia. Other commentators have remarked on what they see as a decline in sovereignty for Armenia to operate in the international arena after it decided to join the Customs Union and broke off negotiations with the EU.

13. In general, the political climate has improved since the elections and has become more dynamic, but it continues to be polarised and characterised by mutual mistrust and lack of genuine dialogue between opposition and ruling majority.

### III. Constitutional reform

14. In June 2013, President Sargsyan established a Specialised 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. The different political forces in Armenia are not formally represented on the commission.

15. After its establishment, opposition parties urged the commission to also discuss the issue of the system of government and to propose a transition from the presidential system to a (more) parliamentary system. A possible change of political system was formally opposed by the ruling party, but some of its leading members did not want to dismiss this suggestion outright. The debate on a possible change of system of government got caught up in speculations about the political role President Sargsyan would play in Armenia when he has finished his current term as President of the Republic (he is constitutionally banned from being elected for more than two consecutive terms). Some interlocutors alleged that the constitutional reforms were driven by the need to create a strong Prime Minister post that could be taken up by President Sargsyan when he leaves office. In order to end any speculations in this regard, President Sargsyan made a public statement in which he announced that, while personally favouring a strong presidential model of government, the parliament should decide on the model of government free from any consideration about his position, and therefore he publicly ruled out either seeking a third presidential term<sup>7</sup> or the position of Prime Minister. This decision of President Sargsyan to publicly move himself out of the equation in the debate on the reform of the political system is to be welcomed.

16. 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. Regrettably, most opposition parties in Armenia did not wish to participate in these consultations. The constitutional reform commission presented its concept paper for constitutional reform in early June 2014. We have not yet received the final version of this concept paper, nor has, to our knowledge, the Venice Commission (yet) been asked for an opinion. We wish to emphasise that the constitutional reform process should be based on an inclusive and consensus-seeking approach. This is the responsibility of both government and opposition parties. In that context, we regret that some parties have announced that they contemplate boycotting the constitutional reform process in the parliament. We strongly hope they will reconsider their position in this respect.

17. The concept paper reportedly proposes a move to a more parliamentary system of government with an indirectly elected President who foremost has the role of impartial political arbiter. We have some

<sup>5</sup> During a rally on 1 March 2014 former President Levon Ter-Petrosyan said that in the current situation joining the European Union was not feasible and Armenia had therefore to align with Russia.

<sup>6</sup> Aligning itself openly and purposefully against what it considers to be the "decadence" of the western liberal societies.

<sup>7</sup> If the current constitutional two-term limit were to be changed, which, President Sargsyan does not favour (he informed us during our meeting with him).

questions with regard to the proposed indirect election of the President, as experience in other countries with highly polarised political environments, has shown that indirect election of the President often does not result in a more stable system of government. On the contrary, it has often resulted in increased politicisation of the post of President.

18. In earlier versions of the concept paper, the suggestion was made that the head of the list of the party which received the largest number of votes in the parliamentary elections should automatically become the Prime Minister and be asked to form a government. If this is maintained it would raise some questions with regard to democratic principles. While it is normal practice that the leader of the largest party in the parliament is asked to explore if they can form a government that would have the support of the majority in parliament, it would be questionable if the law stipulates that the leader of the largest party in the parliament would automatically become the next Prime Minister, even if he or she would not be supported by a parliamentary majority and thus the majority of the electorate.

19. Following the publication of the concept paper, a number of opposition parties have questioned the need for constitutional reform at all. The discussions on constitutional reform have mostly focussed on the possible change of political system. However, equally important, especially from our perspective, would be to see how constitutional reform could strengthen the independence of the judiciary and the impartiality of the justice system, which are the main obstacles to Armenia's democratic development.

#### **IV. Alternative service**

20. Final amendments to the Law on Alternative Service were adopted in 2013. Armenia has now an alternative service which is not controlled by the military, the term of which is not considered to be punitive (and at the same time not so lenient that Armenia would have problems meeting its military needs) and which is accepted by the vast majority of religious and social communities and groups. This is an important achievement, especially given that Armenia is in a *de facto* state of war with Azerbaijan.

21. Following the adoption of the Law on Alternative Service, all persons that were either convicted or prosecuted for refusing military service were given the possibility to opt for alternative service, with any detention being subtracted from their period of service. Several interlocutors, who are concerned with this issue, have publicly lauded the co-operation of the authorities and the manner in which this issue was solved. As a result, Armenia has successfully honoured its accession commitment of implementing a proper system of alternative service. From our meeting with the Republican Commission for Alternative Service – which decides on applications for alternative service - it was clear that any fears that an alternative service would lead to a peak in applications from persons trying to avoid military service, have been ungrounded. The first two military drafts resulted in 71 and 54 applications, but these included those that had refused military service previous to the adoption of the amendments to the Law on Alternative Service. It is expected that the number of applications will stabilise to 20-30 per draft, which is two times a year. Most applications until now have been on religious grounds. The Chairman of the Republican Committee told us that the Committee intends to further clarify the criteria on which applications on non-religious grounds will be judged.

22. Human rights abuses in the military and non-combat related deaths are a major concern in Armenia, especially given the number of its citizens that are under arms. Until recently, this problem was only partly recognised by the authorities. Lately the authorities have been more contrite and publicly stated that resolving this issue is a priority. In the new Human Rights Action Plan that has been adopted by the authorities, the Ombudsperson has been given the task of monitoring the human rights situation in the armed forces.

#### **V. Gender equality, religious and sexual minorities**

23. While progress was made with regard to meeting the concerns of religious minorities and especially the Jehovah's Witnesses with regard to alternative service, the acceptance of religious minorities by Armenia society is not satisfactory. This is partly the result of a socially conservative society, as well as the dominant position of the Armenian Apostolic Church, which has a central position in Armenia's cultural and ethnic identity. The dominant position of the Armenian Apostolic Church is codified in the Law on Religion, and it has a strong influence over religious matters of the State.

24. Religious minorities have complained that requests to construct places of worship have been refused on clearly discriminatory grounds by local authorities and that sometimes existing places of worship have been vandalised with the police standing idle. While the authorities are aware of these negative attitudes and

occasional manifestations of intolerance, little priority seems to be given to counter these attitudes and behaviour effectively.

25. The law on freedom of conscience and religion and the package of laws that regulate relations between the State and the Armenian Apostolic Church were considerably amended in 2011. These amendments were firstly sent to the Venice Commission for opinion. In its joint opinion<sup>8</sup> with the OSCE/ODIHR, the Venice Commission considered that the amendments were overall a marked improvement over previous legislation. The law provides for freedom of religion and belief as well as religious manifestation and gives proper legal status to religious associations and groups, which only need to register with the State (and do not need authorisation) if they have over 25 members. However, a number of shortcomings remain in the law, especially with regard to the complicated and confusing definition of what constitutes proselytism.

26. Sexual minorities are generally viewed in negative or even hostile terms in Armenian society, with several violent incidents being reported. According to LGTB organisations, the hostility to LGTB people has been increasing since the decision was taken to join the Eurasian Union, possibly as a result of the focus on conservative values and criticism on alleged western decadence that is prevalent with a number of leading Eurasian ideologists.

27. With regard to the situation of women and gender equality, a law on “Equal rights and equal opportunities between women and men” was adopted by the Armenian Parliament in May 2013. The definition of “gender” used, which included self-assumed gender status, caused strong protests from socially conservative groups in Armenian society. The Armenian ombudsman reported that a number of women’s rights NGOs were threatened in the wake of these protest, possibly as a result of the heated and negative climate surrounding the debate on the equal opportunity laws.

28. While women’s rights and equality between women and men are protected and guaranteed by law, in reality women remain in a disadvantaged position in Armenian society. Unemployment among women is disproportionately higher than among men, while the numbers receiving higher education is reportedly considerably lower, despite the availability of free education. Women remain underrepresented in political functions.

29. Domestic violence against women is a point of concern. Officially 580 cases of domestic violence against women were recorded in 2013 by the Armenian police. Civil society organisations have indicated that, in reality, the number of cases of violence against women is much higher, as many cases go unreported. A draft law on domestic violence was removed from the parliamentary agenda as its adoption was not considered to be “appropriate”.<sup>9</sup> In a positive development, the number of trafficking cases reported by the General Prosecutor decreased in 2013.<sup>10</sup> We have urged the authorities to reintroduce as soon as possible the law on domestic violence on the agenda of the National Assembly.

30. A comprehensive antidiscrimination law was drafted, in consultation with experts and civil society organisations, by the office of the Ombudsman. However, in the current political climate following the equality law, this initiative was cancelled and no draft law was tabled with the National Assembly. This is regrettable as a comprehensive anti-discrimination law is currently lacking. We therefore hope that the National Assembly will soon be ready to discuss such a law, hopefully on the basis of the draft that was prepared by the Ombudsman’s office, which was reportedly fully compliant with international standards and norms.

## **VI. Judiciary and police reforms**

31. The lack of independence of the judiciary and the lack of an impartial justice system continues to be of serious concern in Armenia. This negatively affects Armenia’s democratic consolidation and the absence of a perceived impartial arbiter has sustained tensions and polarisation in the socio-political environment.

32. During our meeting with the two Deputy Ministers of Justice, a comprehensive and ambitious reform strategy for the judiciary was outlined. A new Criminal Procedure Code, which puts presumption of innocence and equality of arms between defence and prosecution at its core, is being drafted. In this context, alternative means of restraint for persons charged by the prosecution will be drawn up, in order to reduce the

<sup>8</sup> CDL-AD(2011)028.

<sup>9</sup> Annual Report on the activities of the RA Human Rights Defender on violations of Human Rights and Fundamental Freedoms in the country in 2013, p 101.

<sup>10</sup> Idem, pp 102 and 103.

excessive use of pre-trial detention in Armenia. A new Criminal Code had also been developed that was foreseen to be adopted soon after our visit. The Venice Commission was consulted and reportedly closely co-operated with the authorities on the legislative changes that were part of these reforms. In addition, the reform of the justice system was one of the main components of the multi-million Euro co-operation programme between the Council of Europe and Armenia, which is partly financed by the European Union. These reforms are essential, but we would like to stress that a change of attitude and behaviour in the judiciary, in our view, is essential to ensure that the reforms will attain their expected result of a genuinely independent and impartial judiciary. To underline this point: the Venice Commission, in its recent opinion on amendments to the judicial code, noted persistent reports of “improper and extraordinary” interference in the work of judges and courts, including by other judges from higher level courts, which is at odds with the principle of the independence of the judiciary.

33. Police reform has been a priority of the authorities. The legal framework for the police has changed and a new disciplinary mechanism has been introduced. In addition, considerable attention to the police has been given in the National Human Rights Action Plan that was adopted in 2014. However, the complaints mechanism still functions within the police itself, and is not truly independent, as recommended by, inter alia the Assembly and the Council of Europe Commissioner for Human Rights. In Resolution 1837 (2011), the Assembly reiterated its position that the police should be brought under genuine civilian control and therefore recommended that the authorities consider the establishment of a ministry in the government to which the police and security forces would be subordinate. No initiatives in this direction have so far been undertaken by the authorities. We were informed by the authorities that recent polls indicate that, as a result of the reforms that were implemented, between 60% and 70% of the public now express trust in the police.

## **VII. Concluding remarks**

34. Armenia has continued to make progress towards honouring its membership obligations and accession commitments to the Council of Europe. The improvement in the political climate, although remaining polarised and characterised by mistrust and lack of genuine dialogue, has contributed positively to this. That notwithstanding, a number of shortcomings and concerns, some of which are serious, remain. We will continue our dialogue with the authorities and different political forces, as well as civil society, on these issues and intend to return to the country before the end of this year.

35. During our meeting with the Prime Minister of Armenia, a number of suggestions were made regarding areas where the Assembly could (continue to) make a concrete contribution to a number of topical issues that are also of interest to the Assembly. These issues need further discussion with the authorities and we hope to be able to report on them to the Monitoring Committee in the context of the report after our next visit.

## APPENDIX

**Programme of the fact-finding visit to Yerevan (16-18 June 2014)**

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

**Monday 16 June 2014**

- 12:30 Informal lunch with Oleksandr Pavlyuk, Head of the Council of Europe Office in Yerevan. (Marriott Hotel)
- 14:00-17:30 Meetings with civil society representatives (Venue: CoE Office in Yerevan)
- 14:00-14:45 Meeting on recent political developments, including the formation of the new Government
- Mr David Shahnazaryan, Center for Political and Legal Studies
  - Ms Salpi Ghazarian, Civilitas Foundation
  - Mr Alexander Iskandaryan, Caucasus Institute
- 15:00-16:30 Meeting on Constitutional reform, Police and justice reform, HR issues in the Army and alternative service, etc.
- Mr Arman Danielyan, Civil Society Institute
  - Mr Avetik Ishkhanyan, Armenian Helsinki Committee
  - Ms Larisa Minasyan, Open Society Foundation
  - Mr Boris Navasardyan, Yerevan Press Club
  - Ms Ofelya Zalyan, Helsinki Citizens' Assembly – Vanadzor
  - Ms Lala Aslikyan, Army in Reality Civil Initiative
- 16:45-17:30 Meeting on Religious minorities, Gender equality and Sexual minorities
- Ms Lara Aharonyan, Women's Resource Centre
  - Mr Stepan Danielyan, Collaboration for Democracy
  - Mr Mamikon Hovsepyan, PINK
  - Ms Gulnara Shahinian, Democracy Today

**Tuesday 17 June 2014**

- 09:15-10:45 Meeting with diplomatic community (Venue: CoE Office in Yerevan)
- H.E. Reiner Morell, Ambassador of Germany
  - H.E. Kathy Leach, Ambassador of the United Kingdom
  - H.E. Traian Hristea, Ambassador, Head of the EU Delegation
  - Mr Bradley Busetto, UN Resident Coordinator and UNDP Resident Representative
  - Mr William Hanlon, Deputy Head of the OSCE Office in Yerevan
- 11:00-11:30 Meeting with "Heritage" Faction
- 11:35-12:05 Meeting with "Armenian Revolutionary Federation" Faction
- 12:10-12:40 Meeting with "Rule of Law" Faction
- 12:45-13:30 Working lunch Mr Hrayr Tovmasyan, member of the Committee on Constitutional Reforms, Secretary General of the National Assembly
- 13:35-14:05 Meeting with "Armenian National Congress" Faction
- 14:10-14:40 Meeting with "Prosperous Armenia" Faction
- 14:45-15:15 Meeting with "Republican Party of Armenia" Faction
- 15:20-16:00 Meeting with the Armeian Delegation to PACE

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- 16:10-16:40 Meeting with H.E. Mr Galust Sahakyan, President of the National Assembly
- 17:00-17:40 Meeting with H.E. Mr Serzh Sargsyan, President of the Republic of Armenia
- 18:00-18:40 Meeting with Mr Vache Terteryan, Chair of the Republican Commission for Alternative Service
- 20:30 Dinner on behalf of the Armenian Delegation to PACE

<b>Wednesday 18 June 2014</b>
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- 11:00-11:40 Meeting with Mr Gasparyan, Head of the RA Police
- 12:00-12:40 Meeting with Mr Arsen Mkrtchyan and Mr Suren Krmoyan, Deputy Ministers of Justice
- 13:00-14:15 Working lunch with Mr Karen Nazaryan, Deputy Minister of Foreign Affairs
- 14:30-15:10 Meeting with Mr Artem Asatryan, Minister of Labor and Social Affairs
- 15:30-16:10 Meeting with Mr Vardan Ascatryan, Head of the Division for Ethnic Minorities and Religious Affairs
- 16:30-17:10 Meeting with H.E. Mr Hovik Abrahamyan, Prime Minister of the Republic of Armenia
- 17:30-18:10 Meeting with Ms. Genya Petrosyan, Deputy Human Rights Defender