

**Doc. 11117**  
20 December 2006

## Honouring of obligations and commitments by Armenia

### Report

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

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### *Summary*

The Monitoring Committee welcomes legislative measures taken so far to implement Armenia's constitutional reform, carried out with Council of Europe assistance. Conditions conducive to the fulfilment of many of the country's commitments have now been created, including: a better balance of powers; the election by Parliament of the Human Rights Defender; the right of access to the Constitutional Court for citizens, the Human Rights Defender and the parliamentary opposition.

However, the report regrets the irregularities that affected the constitutional referendum and the failure to take steps to sanction the cases of observed fraud. It warns that an improved political climate and dialogue between the ruling coalition and opposition would be necessary for the effective implementation of the new system of government provided for in the revised Constitution. Moreover, implementation of certain reforms, such as the reform of the judicial system and the fight against corruption, pluralism and independence of the media, as well as improvement in detention conditions and police conduct, takes more time than the reform of the legislation itself.

Armenia must now furnish proof of how far it has progressed along the road to democracy and European integration: the forthcoming elections must comply with European standards for free and fair elections and media coverage of the election campaign and the elections must be pluralist and unbiased. The report gives full backing to any action by the Council of Europe and its member states aimed at assisting Armenia in accomplishing this task.

**A. Draft resolution**

1. Armenia joined the Council of Europe on 25 January 2001 and, since its accession, has been subject to a Parliamentary Assembly monitoring procedure, which has led to the adoption of Resolutions 1304 (2002), 1361 (2004), 1374 (2004) and 1405 (2004). In Resolution 1458 on the constitutional reform process in Armenia, which was adopted in June 2005 on the occasion of a debate under urgent procedure, the Assembly called on the Armenian authorities to hold a constitutional referendum by no later than November 2005, as only this would make it possible to implement a number of fundamental reforms requiring a revision of the Constitution and to ensure that the constitutional reform entered into force as soon as reasonably possible.

2. The constitutional referendum in the end took place on 27 November 2005 and permitted the adoption of the constitutional reform. The Assembly welcomes the successful completion of this reform process, throughout which Armenia received the Council of Europe's close support, notably via the Venice Commission. At the same time, the Assembly deplores the irregularities which tainted the conduct of the referendum and the failure to sanction the cases of fraud noted, which marred the credibility of the official results.

3. An ambitious action plan for the adoption or amendment of some 51 laws over a two-year period (2006-2007) has been approved by the Armenian government with a view to implementing the constitutional reform. The constitutional reform itself and the accompanying legislative reforms have paved the way for fulfilment of many of the commitments entered into by Armenia on acceding to the Council of Europe, for most of which the deadlines for completion initially set in Opinion 221 have long expired. They have also enabled Armenia to make progress in complying with the statutory obligations incumbent on it as on all member states of the Council of Europe in the fields of democracy, the rule of law and human rights.

4. With regard to Armenia's obligations and commitments in the field of pluralist democracy:

4.1. the Assembly welcomes the constitutional amendments which have improved the separation of, and balance between, the legislative, executive and judicial powers. The revised Constitution is now consistent with European standards and principles of democracy and the rule of law and offers a new foundation for developing the democratic functioning of Armenia's institutions. The Assembly nonetheless points out that effective implementation of the new system of government requires an improvement in the political climate and the institution of dialogue between the ruling coalition and the opposition;

4.2. the Assembly attaches particular importance to the organisation and conduct of the forthcoming parliamentary elections in spring 2007 and the presidential elections in 2008. It is disappointed that, since Armenia's accession to the Council of Europe in 2001, not a single election held there has been deemed fully free and fair. It is essential that the next ballot should at last comply with European standards for free and fair elections as proof of Armenia's progress along the road to democracy and European integration;

4.2.1. the Assembly notes with satisfaction that the amendments to the Electoral Code adopted in May 2005 improved the legal framework for elections. However, two main areas of concern require a further revision of the legislation: electoral administration and the complaints and appeals process. The Assembly expects that, following its close co-operation with the Venice Commission, the Armenian Parliament will now address these issues as part of the amendments to the Electoral Code which it is currently discussing;

4.2.2. beyond the revision of the Electoral Code, democratic elections can be guaranteed only if it is implemented in good faith and if the political will exists at the highest level. A clear message must be conveyed that in the next elections fraud will simply not be tolerated;

4.2.3. since the accuracy of voter lists is an indispensable condition for the holding of democratic elections, the Assembly calls on the Armenian authorities to do everything they can to ensure that the lists are updated in good time for the forthcoming elections;

4.3. with regard to local self-government, the Assembly:

4.3.1. welcomes the fact that the revised Constitution now provides for direct or indirect election of the mayor of Yerevan and restricts the possibility of removing mayors from office so that it is confined to cases provided for by law and requires a decision by the Constitutional Court;

4.3.2. takes note that the laws on local self-government, on local taxation and charges and on territorial administration of the state are being revised. The law on the status of the city of Yerevan, determining how its mayor is to be elected and the status of its twelve districts, will be drawn up by the new parliament only after the elections of spring 2007. The Armenian authorities must consult the Council of Europe, in a timely manner, on all of the above pieces of draft legislation so as to guarantee that the laws passed strengthen local self-government in accordance with the recommendations of the Congress of Local and Regional Authorities and the European Charter of Local Self-Government.

5. With regard to Armenia's obligations and commitments in respect of the principle of the rule of law:

5.1. implementation of the constitutional reform and the legislative reforms that should accompany it requires an acceleration of the legislative process. Nonetheless, draft legislation of importance to both the democratic process in Armenia and the honouring of the country's commitments vis-à-vis the Council of Europe should be the subject of a genuine debate both inside and outside parliament in which all the political parties and civil society participate and which is conducted with the support of international experts. In addition, simply passing legislation is not enough to implement democratic reforms. The Assembly calls on the Armenian authorities to take the necessary steps so that the law is effectively applied, which does not always appear to be the case at present;

5.2. the Assembly welcomes the fact that the revised Constitution has granted a right of access to the Constitutional Court to ordinary citizens, the Human Rights Defender, members of the National Assembly, subject to the requirement that at least one-fifth of all of its members support an application, local authorities and the courts. Armenia has thus been able to honour its commitment on the subject. This possibility was rapidly utilised by hundreds of individuals, the Human Rights Defender and the opposition, and the Constitutional Court has started to play a vital role as guarantor of the country's institutions and of human rights. The Assembly hopes that it will also play a major role in deciding any complaints or appeals relating to the forthcoming elections, thereby guaranteeing that the election process complies with democratic standards;

5.3. in the wake of the constitutional reform, the membership of the Judicial Council is now in conformity with European standards. A number of laws have already been amended to implement the new constitutional provisions on independence of the judiciary. Other reforms, such as those relating to ethics and the training of judges, are included in a draft Judicial Code, currently undergoing an expert appraisal by the Council of Europe, which should be debated in parliament before the end of 2006. The Assembly calls on the Armenian authorities to implement the reform of the judicial system, not least the Prosecutor General's Office, as soon as possible, taking into account the recommendations made by the Council of Europe experts. To reinforce de facto independence of the judiciary and eradicate corruption, apart from reforming the law, it will also be necessary to resolve the problems linked to financing of the judiciary and judges' remuneration and to enhance the training effort;

5.4. the Assembly deplores the fact that allegations of ill-treatment, particularly during police custody, and of extortion by the police and the National Security Service are still being made. The limited number of complaints lodged which result in members of the police being found guilty of abuse of authority or of exceeding their authority, as well as the greater number of allegations concerning which no complaint is lodged for fear of reprisals, continue to fuel the feeling that impunity prevails. The Assembly takes note of the recent or current legislative reforms, introduced with the Council of Europe's assistance, and hopes they will enable the image of the Armenian police to be improved and the guarantees of democratic supervision of police activities to be strengthened. It points out that in a state governed by the rule of law it is not enough to impose disciplinary penalties on members of the police who have committed criminal offences; criminal proceedings must also be taken against them;

5.5. the Assembly is pleased that Armenia has ratified both Council of Europe Conventions on combating corruption, the Civil Law Convention, which entered into force on 1 May 2005, and the Criminal Law Convention, which came into force one year later, on 1 May 2006. The Assembly notes that, despite a number of institutional measures aimed at taking more effective action, corruption, which is fed in part by the underground economy, a high level of tax evasion and the existence of international organised crime, remains a serious problem in Armenia affecting many public-service sectors. These include the courts, the police, the customs service, the tax inspectorate, the education and health sectors, the licensing office and the privatisation process. The Assembly urges the Armenian authorities to act upon the recommendations of the Group of States against Corruption (GRECO) and on MONEYVAL's recommendations concerning the fight against money laundering. The new anti-corruption strategy for the period 2007-2009 should be finalised as soon as possible with the Council of Europe's assistance.

6. With regard to Armenia's obligations in the human rights field:

6.1. the Assembly welcomes the fact that, thanks to the constitutional reform, the institution of the Human Rights Defender (Ombudsperson), the election by parliament and the principle that the person cannot be removed from office have found their place in the Constitution, enabling the person to play an increasingly active role in the protection of Armenians' human rights. The Assembly calls on the Armenian authorities to amend the law on the Human Rights Defender in order to take into account the forthcoming recommendations of Council of Europe experts and the Venice Commission;

6.2. a few months away from the forthcoming parliamentary elections, the Assembly attaches special importance to pluralism of the electronic media and the reform currently in progress, since equitable access to the electronic media by all political parties is an absolute prerequisite for the holding of free and fair elections;

6.2.1. the Assembly notes that the revision of the Constitution has paved the way for greater independence of the bodies which regulate the electronic media. Nonetheless, legislative amendments subsequently drawn up by the government without first consulting media or Council of Europe representatives have met with strong criticism, not least concerning the membership of the National Television and Radio Commission (NTRC) and the method of appointment of its members. The Assembly urges the Armenian authorities to consult the Council of Europe's experts and take into account their recommendations before adopting amendments to the law on television and radio;

6.2.2 the Assembly also calls on Armenia to adopt an open, transparent process of appointment of members of the Public Television and Radio Council, as recommended by the Venice Commission;

6.2.3. apart from reforming the legislation, the Armenian authorities must take steps to ensure the freedom and pluralism of public television and radio on a day-to-day basis;

6.2.4. the Assembly gives its full backing to the monitoring of electronic media programmes with a view to assessing their independence and impartiality, as provided for in the Action Plan to support the parliamentary elections in Armenia in 2007 approved by the Committee of Ministers following a request by the Armenian authorities;

6.3. with regard to the print media, which are reputed to be free and pluralist but play only a minor role in the provision of public information on account of their small circulation, the Assembly notes with satisfaction that no criminal libel proceedings have been instituted against journalists for some years now. Since the reform of the Criminal Code in 2004, libel has been punishable by a prison sentence only in the event of a repeat offence. The Assembly welcomes this progress and encourages the Armenian authorities to decriminalise libel completely and repeal Article 318 of the Criminal Code, which establishes the offence of "insulting a representative of the public authorities";

6.4. freedom of assembly is also very important in view of the forthcoming elections. In this connection, the Assembly:

6.4.1. notes that the amendments to the law on organising meetings, assemblies, rallies and demonstrations adopted on 4 October 2005 took into account most of the Venice Commission's recommendations and welcomes improvements regarding freedom of assembly since the adoption of these amendments;

6.4.2. asks the Armenian authorities to ensure in practice that the law is applied in a manner compatible with the requirements of Article 11 of the European Convention of Human Rights, including by local authorities, especially in view of the forthcoming parliamentary elections. Arbitrary arrests and excessive use of force by the police must no longer be tolerated and those responsible must be sanctioned;

6.5. the Assembly notes with satisfaction that the constitutional reform finally put an end to the practice of administrative detention;

6.6. the Assembly welcomes the publication, on 16 November 2006, of the report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its ad hoc visit to Armenia in April 2004. It encourages the Armenian authorities to continue the reform of the prison system and applauds the setting up of a monitoring group, consisting of civil society representatives,

to exercise public supervision of the situation in prisons. To bring Armenia's prison system into line with European standards, the Assembly urges the Armenian authorities to give serious consideration to the relevant recommendations of the CPT and to adopt an action plan for their implementation. Although some of the difficulties hampering the reform are linked to the available resources, where the treatment of detainees is concerned, political will at all levels to do away with ill-treatment and bring those guilty of it to justice would in itself contribute to improving the image of Armenia's prison system;

6.7. as regards Armenia's commitment to adopt a law on alternative service "in compliance with European standards" and "pardon all conscientious objectors sentenced to prison terms", the Assembly is disappointed to note that the current law, as amended in 2005 and subsequently in June 2006, still does not offer conscientious objectors any guarantee of "genuine alternative service of a clearly civilian nature, which should be neither deterrent nor punitive in character", as provided for by Council of Europe standards. It is deeply concerned that, for lack of a genuine form of civilian service, dozens of conscientious objectors, most of whom are Jehovah's Witnesses, continue to be imprisoned, since they prefer prison to an alternative service not of a truly civilian nature. The Assembly urges the Armenian authorities to revise the law on alternative service in accordance with the recommendations made by the Council of Europe experts currently studying this issue and, in the meantime, to pardon the young conscientious objectors currently serving prison sentences.

7. The Assembly congratulates the Armenian authorities on having signed, on 14 November 2006, an Action Plan with the European Union, under the European neighbourhood policy, which opens up a new era for the country, but also the region, as regards European integration.

8. The Assembly regrets that, despite the three meetings between the Presidents of Armenia and Azerbaijan organised in 2006 and the increased efforts by the Co-Presidents of the Minsk Group, no significant progress can be registered to date towards a peaceful settlement in the Nagorno-Karabakh conflict. It reiterates that it is in the interest of both countries to end this conflict as soon as possible, ruling out the use of force, in accordance with the commitment entered into at the time of their accession. Without a final settlement, prospects for stability and prosperity in the entire region remain precarious. The Assembly itself is committed, notably through the "Ad Hoc Committee of the Bureau on the implementation of Resolution 1416 (2005) on the conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference", to help engender a positive negotiating climate and foster dialogue at the parliamentary level and between the populations of the two countries concerned, and also with the population of Nagorno-Karabakh, while refraining from interfering in the negotiation process.

9. The Assembly acknowledges the progress made by Armenia towards compliance with its obligations and commitments, in particular since the adoption of the constitutional reform. It decides to pursue its monitoring procedure until the current or proposed reforms in the spheres mentioned in this resolution have produced tangible results. The Assembly attaches particular importance to the implementation of reforms in the fields of electoral law, the media and the justice system and expects Armenia to demonstrate its capacity to hold the parliamentary elections in 2007 and the presidential elections in 2008 in accordance with international standards for free and fair elections, not least with regard to pluralist, impartial media coverage of the election campaign.

**B. Explanatory memorandum by Mr Colombier and Mr Elo, co-rapporteurs**

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## 1. INTRODUCTION

### 1.1. The monitoring procedure

1. When Armenia joined the Council of Europe, on 25 January 2001, it agreed to honour the obligations incumbent on all member states under Article 3 of the Organisation's Statute and a number of specific commitments, set out in Opinion No. 221 (2000) on Armenia's application for membership of the Council of Europe.

2. Pursuant to Resolution 1115 (1997) and in accordance with paragraph 16 of Opinion No. 221, the monitoring procedure was initiated immediately upon Armenia's accession<sup>1</sup>.

3. The Monitoring Committee has since presented five reports to the Parliamentary Assembly on progress made by Armenia in honouring its obligations and commitments.

4. The first report was submitted in September 2002 and resulted in the adoption by the Assembly of Resolution 1304.

5. A second report, submitted in January 2004, which led to the adoption of Resolution 1361, took note of the progress made by the country in honouring its obligations and commitments following the presidential and parliamentary elections in 2003 (which the Assembly observed) and the failure to adopt the revision of the Constitution for lack of a quorum in the referendum held in May 2003 on the same day as the parliamentary elections.

6. Three months later, the organisation of a series of protests by the opposition parties in Armenia, calling for the holding of a "referendum of confidence" in President Kocharyan, and the violence with which the Armenian authorities reacted between the end of March and mid-April 2004 led the Assembly to hold a debate under urgent procedure on honouring of obligations and commitments by Armenia during its April 2004 part-session and to adopt Resolution 1374 on the basis of a third report by the Monitoring Committee.

7. A fourth report on implementation of the last two resolutions – 1361 and 1374 – was submitted to the Assembly in October 2004 and resulted in the adoption of Resolution 1405. This resolution took stock, firstly, of the steps taken to comply with the Assembly's requests in relation to the events of March-April 2004 and, secondly, of the monitoring procedure and the state of co-operation between the Council of Europe and the Armenian authorities.

8. In both Resolution 1361 of January 2004 and Resolution 1405 of October 2004 the Assembly called on the Armenian authorities to organise a new referendum on the Constitution by June 2005 at the latest, since a number of fundamental reforms linked to the commitments entered into by Armenia were contingent on a revision of the Constitution.

9. In view of the failure to meet the deadline for organising the constitutional referendum set in the previous resolutions, the Monitoring Committee submitted a fifth report on the constitutional reform process in Armenia to the Assembly during its June 2005 part-session, on which an urgent procedure debate was held. Resolution 1458, adopted by the Assembly subsequent to this debate, called on the Armenian authorities and the parliamentary majority to, *inter alia*, fully implement the Venice Commission's recommendations on the draft revised Constitution, and those of the Assembly with regard to media pluralism, launch a well-prepared, professional awareness-raising campaign immediately after the adoption of the text at second reading, update voter lists, hold the referendum not later than November 2005 and ensure that the constitutional reform would enter into force as soon as reasonably possible.

10. The referendum on constitutional reform in Armenia in the end took place on 27 November 2005 and was observed by an ad hoc committee of the Bureau of the Parliamentary Assembly, of which one of the co-rapporteurs, Mr Colombier, was a member. The outcome of the referendum was that the constitutional reform was adopted. In January 2006, in the light of the conclusions of the Bureau's ad hoc committee, the Monitoring Committee adopted a declaration on the constitutional reform in Armenia, in which it welcomed the positive outcome of the referendum, noting that the changes made to the Armenian Constitution with the Venice Commission's assistance would at last allow the country to make progress in honouring its

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<sup>1</sup> The honouring by Armenia of its obligations and commitments is also monitored by the Committee of Ministers of the Council of Europe via its Monitoring Group (GT-SUIVI.AGO). The latter presented its 7<sup>th</sup> Progress Report in July 2006; see Doc. CM(2006)100 final, declassified at the 971<sup>st</sup> Ministers' Deputies meeting (12 July 2006); see also the Deputies' decisions in CM/Del/Dec(2006)971/2.3.

commitments. The committee nonetheless deplored the irregularities affecting the ballot and the serious abuses noted by the Assembly observers, giving rise in particular to doubts as to the real voter turnout and whether the quorum had actually been reached.

11. Following the constitutional amendments the Armenian government approved an ambitious action plan for the adoption or amendment of some 51 laws over a two-year period (2006-2007). This action plan was sent to us by the Speaker of Parliament and Chairman of Armenia's national delegation to the Assembly, Mr Torosyan, in June 2006<sup>2</sup>.

12. In this context the main purpose of this report is to take stock of implementation of the constitutional reform and of progress with the legislative reforms that should accompany it, one year after the constitutional referendum and a few months before the parliamentary elections to be held in late April/early May 2007. As the constitutional reform and the attendant legislative reforms are of relevance to most of the commitments which Armenia has not yet honoured, we shall examine their scope and their implementation in the light of the fundamental statutory obligations incumbent on Armenia as on any other member state of the Council of Europe: pluralist democracy, the rule of law and human rights. We have paid particular attention to the electoral reform process and to media freedom and pluralism in view of their importance in ensuring that the forthcoming parliamentary elections in 2007 and the presidential elections of 2008 are held in accordance with European standards.

13. Our report is based to a large extent on the discussions we had and the information we obtained during our visit to Armenia from 25 to 28 September<sup>3</sup>. It naturally takes account of developments since the visit.

14. We wish to thank the Armenian national delegation, in particular its Chairman, Mr Torosyan, and its secretariat, for their excellent organisation of our visit, which enabled us to hold very frank exchanges of views at all levels. Our thanks also go to Ms Bojana Urumova, Special Representative of the Secretary General of the Council of Europe in Armenia, for her active assistance in making our visit a success.

## **1.2. The political, economic and international context**

15. One year before the parliamentary elections and two years before the presidential elections, which will mark the end of President Kocharyan's ten years in office<sup>4</sup>, there have been significant upheavals on the Armenian political scene in 2006 with the emergence of new political parties, politicians who have switched camp from the majority to the opposition, and vice versa, and a change of leadership in the party dominating the ruling coalition. The following can be noted in particular:

16. In January 2006 two new political parties were formed, "Mother Country" (*Mayr Hayrinick*) and "Prosperous Armenia". The latter party is led by Gagik Tsarukyan, an extremely wealthy businessman.

17. A few months later, in May 2006, "Rule of law" (*Orinats Yerkir*), one of the three parties in the ruling coalition, joined the opposition. The party's leader, Artur Baghdasaryan, subsequently resigned as Speaker of the National Assembly. On 1 June 2006 Mr Tigran Torosyan, at the time Deputy Speaker for the coalition-member Republican Party, was elected as new Speaker of the National Assembly, while remaining Chairman of Armenia's national delegation to the Parliamentary Assembly of the Council of Europe. The members of *Orinats Yerkir* holding office as Minister for Education and Minister for Culture were replaced respectively by members of the Armenian Revolutionary Federation (*Dashnak*) and the United Labour Party.

18. On joining the opposition, *Orinats Yerkir* immediately lost eleven members, almost all businessmen. They set up a new parliamentary group, "Entrepreneur", and declared their support for the authorities.

19. In July and September 2006 the strength of the opposition was further reduced when a number of MPs from the "Justice" bloc left to join either the new "Prosperous Armenia" party or the Republican Party.

20. At the same time, the opposition, which is reputed to be disunited and to lack a joint strategy, has recently been placing growing emphasis on the fight against organised crime and corruption as the key

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<sup>2</sup> See appendix I.

<sup>3</sup> The programme of the visit can be found in Appendix II.

<sup>4</sup> Under the Constitution the President can serve only two consecutive terms of office. Mr Kocharyan, who is currently serving his second, accordingly cannot stand for re-election without an amendment to the Constitution, which he himself rules out.



theme of its pre-election campaign. A joint platform of the principal opposition parties in the forthcoming parliamentary elections cannot be ruled out.

21. Another important political event in recent months was the election of the Minister for Defence, Serge Sarkissian, as one of the leaders of the Republican Party in July 2006. He told us he might stand for President in 2008, depending on the score obtained by his party, the main one in the ruling coalition, in the forthcoming parliamentary elections.

22. As the elections approach economic and political power is increasingly concentrated. A number of our international contacts said the economy was being monopolised by the oligarchs, who are also increasingly present in Parliament. The role of the Parliament in the political life of the country has been strengthened in the recent years in particular following the constitutional reform of November 2005. This fact may explain the increased interest of businessmen in the parliamentary elections.

23. We congratulated President Kocharyan on the country's economic development, an unquestionable success for his government over the last four years. The Armenian government has stepped up economic reforms, resulting in two-figure GDP growth, averaging 12.2%. This growth has been fed *inter alia* by a boom in agriculture and building.

24. Nonetheless, it is to be regretted that the benefits of this development are not equally shared. Although poverty has declined compared with 2000-2001, approximately 39% of the population is still under the poverty line. It is also said that the decline in the artificial exchange rate between the local currency (the dram) and the dollar enriched some people but impoverished many others. Both the World Bank and the International Monetary Fund consider that the country's good economic performance could be jeopardised by gradual appreciation of the dram during the last two years.

25. Simultaneously, significant disparities in standards of living persist between the capital and rural areas. President Kocharyan confirmed that rural development currently remains the biggest challenge for the government. The US Millennium Challenge Program, whereby Armenia has received a total of 235.6 million dollars over five years (providing it continues the economic and democratic reforms), is aimed at improving living conditions in rural communities, particularly in remote border areas. The assistance of the Armenian diaspora, traditionally a significant source of financing, has also been sought.

26. The failure to find a lasting solution to the Nagorno-Karabakh conflict and the fact that most of Armenia's borders, notably with Turkey and Azerbaijan, remain closed makes the situation in the border regions even more difficult and generally endangers the country's economic development.

27. Only the borders with Iran and Georgia are open. A number of energy projects are being pursued with Iran, and President Kocharyan informed us that relations with Iran and Georgia are excellent. All trade with Russia, the country's principal strategic partner, transits via Georgia. However, the recent tensions between Russia and Georgia are having repercussions in Armenia; because the border between Russia and Georgia is closed, Armenia finds itself cut off from one of its main partners. At the same time, Armenia has increased economic relations with European Union (EU) member states. For instance, the commercial turnover with the latter was three times higher than that with Russia in 2005 and during the first nine months of 2006.

28. As regards European integration, a new era has just begun for the country, but also the region in general, with the signature, on 14 November 2006, of an Action Plan under the European neighbourhood policy (ENP)<sup>5</sup>. The aim of the ENP is to strengthen relations with and promote the gradual integration of the three South Caucasus countries, notably by affording them access to the EU's internal market. Negotiations with each of the countries concerning the action plans began at the end of 2005. Each plan is adapted to the partner country's specific needs. The Action Plan constitutes a wide-ranging economic and political co-operation instrument, enabling progress towards achievement of the commitments and objectives laid down in the partnership and co-operation agreement.

29. Armenia does not intend to accede to NATO but is currently devising an individual partnership programme with that organisation.

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<sup>5</sup> The same day similar action plans were signed between the European Union and the two other South Caucasus countries, Azerbaijan and Georgia.

## **2. SIGNATURE AND RATIFICATION OF COUNCIL OF EUROPE CONVENTIONS**

30. As of 4 December 2006, Armenia has ratified 49 Council of Europe conventions out of 198. We are pleased to note that Armenia has ratified all of the conventions mentioned in Opinion No. 221 (2000).

31. Since the adoption of Resolution 1361 in January 2004, in accordance with the recommendation made by the Assembly at the time, Armenia has ratified the Civil Law Convention on Corruption, on 7 January 2005, and the Criminal Law Convention on Corruption and its additional protocol, on 9 January 2006. Given the fact that corruption is widespread in Armenia, the ratification of these two instruments is a very welcome move<sup>6</sup>.

32. On 7 December 2004 Armenia also ratified Protocol No. 12 to the European Convention on Human Rights (ECHR), followed, on 7 January 2005, by Protocol No. 14. On 19 May 2006 it also signed Protocol No. 13 to the ECHR concerning the abolition of the death penalty in all circumstances, but has not yet ratified it.

## **3. IMPLEMENTATION OF THE CONSTITUTIONAL REFORM AND HONOURING OF OBLIGATIONS AND COMMITMENTS**

33. The constitutional reform approved in the referendum held on 27 November 2005 paved the way for fulfilment of many of the commitments entered into by Armenia on its accession to the Council of Europe, for most of which the deadlines for completion initially set in Opinion 221 had long expired<sup>7</sup>.

34. A few preliminary comments must be made before discussing in greater detail the consequences of the constitutional reform for each of the country's commitments and the state of progress of the various pieces of draft legislation.

35. Firstly, it is a great satisfaction to see the successful completion of this reform process, throughout which Armenia received the Council of Europe's backing, notably via the Venice Commission. At the same time, we deplore the irregularities which marred the conduct of the constitutional referendum and unfortunately prevented its outcome, and hence the constitutional reform itself, from being accepted by all of the country's political parties and by public opinion.

36. Effective implementation of the new system of government requires an improvement in the political climate and the institution of dialogue between the ruling coalition and the opposition. The opposition no longer systematically boycotts sittings of Parliament, but has declared itself to be very wary of the government and the democratic process in general, a situation which prevents it from playing an active role in the country's political life<sup>8</sup>.

37. We understand that implementation of the constitutional reform requires an acceleration of the legislative process, in particular since the forthcoming elections substantially reduce the time available to Parliament to pass the necessary legislation. Nonetheless, we suggest that no use is made of urgent procedures when what is at stake is draft legislation of importance to both the democratic process in Armenia and the honouring of its commitments vis-à-vis the Council of Europe, such as, for instance, in the case of legislation related to the media<sup>9</sup>.

38. Lastly, simply passing legislation is not enough to implement democratic reforms in the country. The laws must also be applied, which does not always appear to be the case at present.

### **3.1. Pluralist democracy**

#### **3.1.1. Separation of powers**

39. The former Constitution of 1995 established a political regime centred on a strong executive. One of the key criticisms of this Constitution concerned deficiencies in the separation of powers and the lack of checks and balances between the legislative, executive and judicial branches. In particular, the role of the

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<sup>6</sup> See below section 3.2.4.

<sup>7</sup> For a history of the reform, see Doc. 10601 of 21 June 2005, report by the Monitoring Committee on "constitutional reform process in Armenia".

<sup>8</sup> All the opposition parties complain of being denied access to public television and some, in particular the "Rule of law" and "Heritage" parties, have denounced the authorities for launching an intimidation campaign against them.

<sup>9</sup> See below, paragraphs 175-177.

President of the Republic was unclear and the combination of powers vested in the President created a serious imbalance given the lack of countervailing powers – whether parliamentary or judicial<sup>10</sup>.

40. The current revised Constitution guarantees improved separation, and a better balance, of powers and is consistent with European principles of democracy and the rule of law. In particular, the Venice Commission's recommendations in the following areas have been taken into account<sup>11</sup>:

- the President no longer enjoys general immunity; instead the new constitution draws a distinction between the President's non-liability for acts arising from his or her presidential duties during and after his or her term of office and immunity from prosecution during the term of office for acts not arising from his or her presidential duties;
- it is now the Speaker of the National Assembly (and no longer the President of the Republic) who convenes extraordinary sittings or sessions of the National Assembly at the request of the President of the Republic or at least one-third of the members of parliament;
- with regard to the President's power to dissolve the National Assembly for "technical" reasons, the involvement of the Speaker of the National Assembly or the Prime Minister is now provided for;
- the revised provisions on formation of the government now establish guarantees for the necessary balance between the main constitutional organs in Armenia. For instance, the President of the Republic appoints as Prime Minister "the person who enjoys the confidence of the majority of the members of parliament" or, where that is impossible, "the person who enjoys the confidence of the largest number of members of parliament"<sup>12</sup>; the Prime Minister can now only be dismissed by the National Assembly following a vote of no-confidence – as a compromise solution the motion of no-confidence may be tabled, *inter alia*, by the President;
- the composition of the government is now determined by law;
- regarding foreign policy, formerly the sole preserve of the President, the revised Constitution now provides that the government shall "determine and implement foreign policy with the President";
- the President can convene and chair meetings of the government solely in connection with foreign policy, defence and state security issues.

41. We welcome these amendments, which have improved the balance of powers and offer a new foundation for the democratic functioning of Armenia's institutions. Nonetheless, this ultimate goal cannot be achieved through the wording of the Constitution alone. We reiterate that effective implementation of the new system of government requires an improvement in the political climate and the institution of dialogue between the ruling coalition and the opposition.

### **3.1.2. Electoral reform**

42. In Resolution 1361, adopted in January 2004, the Assembly expressed its profound disappointment at the conduct of both the presidential elections in February and March 2003 and the parliamentary elections in May 2003, which had given rise to "*serious irregularities and massive fraud and led the international observers to conclude that the electoral process as a whole had not complied with international standards.*" The Assembly consequently invited the Armenian authorities:

- to conduct a thorough investigation into the electoral fraud and put an end to the judicial impunity of those responsible for it by the end of 2004;
- and to revise the Electoral Code in close co-operation with the Council of Europe (in particular the Venice Commission) and the OSCE/ODIHR, especially the provisions concerning the composition of electoral commissions, the role and status of observers and the transparency of vote counting and the totalling of results.

<sup>10</sup> See Doc. 10601, section 3.2.

<sup>11</sup> See the Final Opinion on Constitutional Reform in the Republic of Armenia adopted by the Venice Commission at its 64th session on 21 and 22 October 2005, doc. CDL-AD(2005)025.

<sup>12</sup> As the wording is not very clear, we assume that the first hypothesis refers to an absolute majority of members of parliament, and the second to a relative majority.

43. We shall separately examine the follow-up action given to these two recommendations.

*3.1.2.1. Holding of the constitutional referendum and the authorities' response to the allegations of electoral fraud*

44. With regard to the follow-up action given to the allegations of fraud during the 2003 elections, in its Resolution 1405 of October 2004 the Assembly, on reviewing the implementation of its earlier recommendations, considered that it had not received a convincing reply from the authorities. In fact, all of the 27 fraud investigations opened were subsequently dropped.

45. Unfortunately the constitutional referendum held one year later was a missed opportunity to demonstrate the Armenian authorities' ability to organise free and fair elections. The report by the ad hoc committee of the Bureau which observed the conduct of the referendum – unfortunately in a limited number of polling stations<sup>13</sup> – is highly critical. While concluding that the referendum generally reflected the free will of those who voted, the Assembly observers witnessed "*serious abuses in several polling stations*"<sup>14</sup>. Their findings and the many media and NGO reports could but cast doubt on the credibility of the official results<sup>15</sup>. The extremely low level of activity noted in a significant number of polling stations in Yerevan and other regions was inconsistent with the high turnout announced by the electoral commissions<sup>16</sup>.

46. Clear instances of forged signatures on the electoral rolls and of ballot stuffing were also observed.

47. According to the Assembly observers, the irregularities noted were to a large extent attributable to the poor keeping of the lists of voters, which contained numerous "dead souls", a high number of duplicate registrations and the names of many citizens living abroad<sup>17</sup>.

48. The electoral regulations required that the ballot paper be stamped after the vote had been cast, which resulted in frequent violations of the secrecy of the ballot. Military personnel also appeared to have been forced to vote rather than being allowed to exercise their free will.

49. To improve polling procedure in future elections the Assembly observers recommended the following measures:

- stamping of ballot papers before giving them to the voter; once the voter had made his or her choice the ballot paper should go straight into the ballot box without anyone being able to read it or tamper with it;
- the procedure for voting by military personnel and people with disabilities should be revised to take account of the Assembly delegation's observations;
- the permanent National Voters Register should be set up as planned (by early 2006), and the state of voter lists should be significantly improved.

50. In view of the doubts that had arisen about the real turnout figure and whether the quorum had actually been reached, the Assembly observers warned that unless the authorities took decisive immediate measures to investigate the instances of fraud observed, the adoption of the new Constitution, supposed to bring Armenia closer to European values and principles, would forever be tainted by doubts as to its credibility. The delegation stressed the need for the investigation into the instances of fraud to be as independent and impartial as possible.

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<sup>13</sup> The Council of Europe delegation, composed of 14 members of the Parliamentary Assembly and of the Congress of Local and Regional Authorities, was the only international observation mission. No other international organisations usually involved in election monitoring, nor any specialised international NGOs received an invitation to be accredited with the Central Election Commission (CEC).

<sup>14</sup> See Doc. 10778, Ad Hoc Committee for the observation of the referendum on the constitutional reforms in Armenia (27 November 2005), Appendix 2 (Press release); see also the observation report adopted by the Congress of Local and Regional Authorities on 10 February 2006, doc. CG/Bur (12) 97.

<sup>15</sup> To be adopted, the constitutional amendments had to be approved by more than 50% of the votes cast and at least one-third of the registered voters. On 29 November 2005 the Central Electoral Commission (CEC) announced a turnout figure of 1,514,545 (65.4% of all registered voters), with 1,411,711 (93.2%) having voted for the constitutional amendments and 82,018 (5.4%) against.

<sup>16</sup> Also see, in Appendix III, the declaration on constitutional reform in Armenia adopted by the Monitoring Committee in January 2006. The Committee, noting that "*the end does not justify the means*", asked: "*Was it really necessary to stuff the ballot boxes and inflate the turnout artificially to get the [constitutional] reform through?*"

<sup>17</sup> See Doc. 10778, paragraphs 14-16.

51. The opposition's highly regrettable decision to boycott the electoral commissions deprived it of the possibility of bringing before the courts the cases of fraud and irregularities it complained of. In response to the opposition's request that it annul the official results, the Central Electoral Commission (CEC) pointed out that only the Constitutional Court had jurisdiction to invalidate the results of the referendum on the basis of relevant documents and complaints. However, no application for revision of the results was lodged with the Constitutional Court within the prescribed time-limit. Nor did the ordinary courts, the CEC or the precinct electoral commissions receive any applications regarding the results of the ballot.

52. In these circumstances the Bureau's ad hoc committee called on the Prosecutor General to make use of his *ex officio* investigating powers and to conduct inquiries in full transparency and in compliance with human rights and the rule of law, guaranteeing that no one would be made a scapegoat. The Prosecutor General set up a commission to detect abuses and infringements and sanction the perpetrators. He also appealed in the media for people to come forward with any information relevant to infringements.

53. According to written information provided to us by the Prosecutor General's Office, dated 27 February 2006, thirty complaints or reports concerning the conduct of the ballot were lodged with the Prosecutor General. After they had been examined, three prosecutions for multiple voting were brought under Article 153 of the Criminal Code<sup>18</sup>.

54. We are disappointed to note that only three people were in the end prosecuted for minor breaches committed during the referendum.

55. The failure to take steps to sanction the cases of electoral fraud, albeit openly denounced at the time by the then Speaker of the National Assembly, is in our opinion extremely regrettable and would seem to indicate that the Armenian authorities are not unambiguously committed to punishing fraud and making progress towards democracy and the rule of law. Acknowledging that some local officials "overdid things", as representatives of the authorities told us, does not suffice. Sanctions are necessary to ensure that those responsible do not adopt the same attitude in the forthcoming elections. A clear message that in the next ballot fraud will not be tolerated must be conveyed by the very highest authorities.

56. On the subject of voter lists, a key issue when it comes to avoiding future abuse, the Chair of the CEC has informed us that the national register of voters is now published on the Internet and is updated on a daily basis by the visas and passports office. For example, as soon as a person reaches the age of 18, their name is immediately added to the register. All precinct electoral commissions will moreover have voter lists available for consultation. Armenians living abroad can vote in the country's foreign consulates, which draw up their own voter lists and send the relevant information to the visas and passports office so that the names of persons voting abroad can be removed from the lists of voters resident in Armenia.

57. Since the accuracy of the electoral roll is an indispensable condition for the holding of democratic elections, we call on the Armenian authorities to do everything they can to ensure that the lists are updated in good time for the forthcoming elections. The assistance of the OSCE/ODIHR could be requested to this end.

58. As we reiterated at virtually each of our meetings with the authorities during our recent visit to Armenia, including at the highest level, on the occasion of the parliamentary elections in 2007 and the presidential elections in 2008, the country simply cannot allow itself to make the same mistakes as in the past. The referendum observers pointed out that since Armenia's accession to the Council of Europe not a single election held there has been deemed fully free and fair<sup>19</sup>. It is essential that the next ballot should at last comply with European standards for free and fair elections, as proof of how far Armenia has progressed along the road to democracy and European integration. The Council of Europe for its part, helps Armenia via an Action Plan on the Parliamentary Elections in 2007, which was approved by the Committee of Ministers on 11 October 2006<sup>20</sup>.

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<sup>18</sup> In 17 other cases it had been decided not to bring criminal proceedings and in six cases explanations had been given. One application was still being examined. Following a complaint of acts of violence during an opposition demonstration on 24 November 2005, criminal proceedings had been brought for premeditated acts of vandalism.

<sup>19</sup> See Doc. 10778, para. 53.

<sup>20</sup> See Doc. DGAP/INF (2006) 23 rev.

3.1.2.2. *Revision of the Electoral Code*

59. As recommended by the Parliamentary Assembly in Resolutions 1361 and 1405 of 2004, a number of amendments were made to the Armenian Electoral Code on 17 May 2005.

60. According to the Joint Opinion of the Venice Commission and the OSCE/ODIHR of 25 October 2005, the amendments to the Electoral Code adopted in May 2005 improved the legal framework. The opinion stated, however, that it was in particular at the level of implementation of the Electoral Code that there had been serious shortcomings in the conduct of elections in Armenia. Good faith implementation remained, and remains, crucial for the holding of genuinely democratic elections.

61. The 2005 opinion nonetheless noted two main areas of concern which could require a further revision of the Electoral Code: electoral administration and the process for filing complaints and appeals concerning elections.

62. On 28 March 2006 the then Speaker of the National Assembly submitted to the Venice Commission and the OSCE/ODIHR approximately one hundred draft amendments to the Electoral Code, four draft amendments to the law on political parties and twelve draft amendments to the Criminal Code.

63. In their joint opinion, adopted in June 2006, the Venice Commission and the OSCE/ODIHR considered that the draft amendments to the Electoral Code would result in a number of improvements to the legal framework for elections<sup>21</sup>.

64. However, they also identified a series of draft amendments which required clarification and others which might have ambivalent or negative effects and should be reconsidered.

65. Lastly, the Venice Commission and the OSCE/ODIHR pointed out that some of the recommendations made in their earlier opinions had not been addressed by the authorities, in particular those concerning provisions for filing complaints and appeals, the lack of special voting procedures within the country, the marking of voters' fingers with ink to show they had already voted and the possibility of voting against all the candidates standing for election.

66. A meeting was convened at the National Assembly at the initiative of its Speaker in September 2006, with the aim of bringing together representatives of the Venice Commission and the OSCE/ODIHR and both majority and opposition members of the National Assembly to discuss these outstanding issues.

67. The mere fact that, at this meeting, representatives of most of the political groups present in the National Assembly were gathered around the same table is to be welcomed, and we congratulate the Speaker on having taken this initiative. In addition, following this meeting one of the most important questions, the procedure for lodging appeals, seems to have been settled in a satisfactory manner. It naturally remains to be seen how the amendments on this subject ultimately adopted by the National Assembly are worded.

68. A number of other questions raised in the most recent opinion or in earlier ones nonetheless remain without a satisfactory response. Mention can be made in particular of the excessively complicated procedure for voting, counting the votes and summarising the voting results provided for in the draft amendments under consideration or the issue of inking voters' fingers. Other important issues not addressed by the last series of draft amendments include the balanced composition of electoral commissions and impartial, professional administration of elections.

69. Amendments to the Electoral Code were approved by the National Assembly at first reading on 26 October 2006. We are currently unable to determine to what extent they reflect the recommendations made by the Venice Commission and the OSCE/ODIHR, since the Venice Commission has not yet received the latest version of these amendments.

70. We wish to stress that it is not for us to take the place of the Armenian Parliament or the experts in doing this work. From our point of view the essential need is for the National Assembly to bear in mind the recommendations made by the Venice Commission and the OSCE/ODIHR over the last two years so that

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<sup>21</sup> See Doc. CDL-AD(2006)026. Particularly positive draft amendments concerned the right to vote in local elections for non-citizens (and not just refugees), secrecy of the vote as both a right and an obligation, a relaxation of the requirements concerning signature of electoral documents, a reduction in the size of electoral precincts, an improvement in the status of proxies and the remuneration of electoral commission members.

the amendments ultimately adopted constitute a significant improvement in the country's electoral law and enable it to hold democratic elections.

71. Since the next parliamentary elections will take place in just a few months' time and the rules applicable should be known well in advance, we are particularly concerned about the fact that the adoption of these amendments is taking so much time. In this connection, we fully concur with the Chair of the CEC who voiced regrets that before an election there are always last minute changes in the law. This does not help to ensure that high quality training can be dispensed to the members of the electoral commissions on the various levels under optimum conditions<sup>22</sup>.

72. Lastly, we again reiterate our observation that, despite the efforts to revise the Electoral Code, democratic elections can be guaranteed only if the legislation is implemented properly and in good faith and if the political will exists at the highest level.

### **3.1.3. Local self-government reform**

73. Reform of local self-government is one of the commitments entered into by Armenia upon acceding to the Council of Europe which for years remained contingent on the failed constitutional reform.

74. Although, on joining the Organisation, Armenia undertook to "*amend, before the next local elections [October 2002], the current legislation governing the powers of local authorities so as to give them greater responsibilities and independence, taking into account the recommendations made in this respect by the Congress of Local and Regional Authorities of Europe (CLRAE)*" (Opinion No. 221, paragraph 13 iii. h.)<sup>23</sup>, no significant reform was possible before the Constitution was revised.

75. The 1995 Constitution indeed contained a series of provisions which curtailed local authorities' independence and prevented a genuine reform, since they included the possibility for the government to dismiss a mayor from office on a proposal by the Governor of the relevant province, also appointed by central government, and the appointment and dismissal of the mayor of the city of Yerevan by the President of the Republic, on a proposal from the Prime Minister<sup>24</sup>. Election of the mayor of the capital was one of the thorniest problems encountered during the constitutional reform process, since over one-third of the country's population and more than 60% of its economic potential are concentrated there.

76. The rapporteurs welcome the fact that the constitutional amendments in this field were in the end fully consistent with the Venice Commission's recommendations and made it possible for Armenia at last to honour its commitments on local self-government reform:

- mayors can now be dismissed only in the cases provided for by law, and a decision by the Constitutional Court is required; the law implementing the revision of the Constitution on this point has moreover been passed by the National Assembly;
- the city of Yerevan now qualifies as a municipality (and no longer a province) and must have an elected mayor; according to the Constitution, detailed provisions on the formation and functioning of local self-government bodies in the city of Yerevan will be laid down by law, and provision will also be made for the direct or indirect election of the mayor of Yerevan.

77. Indirect election of the capital's mayor, i.e. election by the Municipal Council, itself elected by direct universal suffrage, is in accordance with the provisions of the European Charter of Local Self-Government and seems likely to be the recommended solution. The question also subsists of the future status to be given to the twelve districts currently composing the city of Yerevan, whose mayors have until now been elected by direct suffrage. A number of options are being discussed. The Minister for Territorial Administration informed us that the legislation dealing with all these issues, in particular the law on the status of the city of Yerevan, will be passed only after the parliamentary elections of spring 2007 by the new National Assembly, probably in September 2007, since the election of the next mayor of Yerevan will not take place until 2008.

<sup>22</sup> The Electoral Code makes it obligatory to dispense training to the members of the precinct electoral commissions as from 1 January 2006. The Chair of the CEC told us that, with effect from 2007, the electoral commissions on all levels will be made up solely of citizens who have undergone training. He quoted a figure of 25,000 people already trained.

<sup>23</sup> See in particular the Recommendation 140 (2003) of the Congress of Local and regional Authorities on local democracy in Armenia.

<sup>24</sup> Under the 1995 Constitution in Yerevan local self-government was implemented through the districts.

78. The laws on local self-government, on local taxation and charges and on territorial administration of the state are also being revised. Amendments to the law on local self-government adopted at second reading on 3 October provide that local authorities will be entitled to appeal to the Constitutional Court against central government decrees and decisions, in keeping with the constitutional amendments.

79. Following a meeting on local government reform in Armenia, held on 29 and 30 March 2006 in Yerevan, a Council of Europe expert prepared "*Guidelines on the reforms concerning inter-municipal co-operation and the status of Armenia's capital*", which were submitted to the Armenian authorities in June<sup>25</sup>.

80. The timely consultation of the Council of Europe on the various bills currently being drawn up concerning the organisation of local self-government and the state's territorial administration and on the law on the status of the city of Yerevan, as promised by the Minister for Territorial Administration, is essential. So far, the Council of Europe has received no reactions or draft legislation following the transmission of the "guidelines" to the Armenian authorities.

81. The last local elections took place in the autumn of 2005 and were observed by the Congress of Local and Regional Authorities. The Congress observers noted that significant progress had been made in the organisation and implementation of these elections as compared with the previous ones, held in 2002. To improve the conduct of future elections, the Congress recommended a number of measures concerning, *inter alia*, the time-table for local elections, the training and conduct of civil servants, access to the media, voter lists and the amount of candidates' deposits<sup>26</sup>.

## **3.2. The rule of law**

### **3.2.1. The Constitutional Court**

82. Constitutional reform has finally made it possible for Armenia to honour its commitment:

*"to grant access to the Constitutional Court, within two years of accession, also to the government, the Prosecutor General, courts of all levels, and – in specific cases – to individuals"* (Opinion No. 221, para 14.ii).

83. The new Constitution creates a right of individual petition to the Constitutional Court and substantially widens the powers of the Court and the scope for access to it. The right of access to the Constitutional Court is henceforth granted, in circumstances and conditions defined in the Constitution itself or in the law on the Constitutional Court, to ordinary citizens and to the following persons or institutions: the President of the Republic, the National Assembly, at least one-fifth of all members of the National Assembly (meaning that the opposition now has access to the Court), the government, local authorities, the courts and Prosecutor General, the Human Rights Defender, and candidates for the offices of President of the Republic and Member of Parliament. In the past, only the President, the government and one-third of the members of the National Assembly had access to the Constitutional Court.

84. So that the constitutional reform could be implemented and the Constitutional Court take on the new powers granted to it in terms of individual petitions, a new law on the Constitutional Court was adopted on 1 June 2006. It has been the subject of prior consultation with the Venice Commission.

85. According to the Venice Commission, the new law should allow the Court to assume its widened jurisdiction, although certain outstanding issues were listed<sup>27</sup>.

86. The President of the Constitutional Court, Mr Harutyunian, told us that two of these issues had found a solution, in conformity with the recommendations made by the Venice Commission, in the Rules of Procedure adopted by the Court ("the Charter"). This Charter now provides for appeals against the "rejection" of individual petitions by the Registry of the Court to be examined by the judges of the Court, and not just by its President.

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<sup>25</sup> Report prepared by Professor Robert Hertzog (Strasbourg University, municipal councillor, Urban Community of Strasbourg, France), doc. PCRED/DG1/EXP (2006)32.

<sup>26</sup> See the report on the local elections in Armenia - CG/CP (12)13, adopted on 9 November 2005.

<sup>27</sup> Opinion on amendments to the law on the Constitutional Court of Armenia, doc. CDL-AD (2006) 017, adopted on 9-10 June 2006.



87. Another matter of major importance, as it is linked to electoral disputes, related to the setting up by the Constitutional Court of committees tasked with collecting evidence in the event of disputes connected with the results of referendums or of electoral disputes. These investigation committees are made up of one member of the Constitutional Court (who takes the chair), staff of electoral commissions, MPs and local and international observers, and this, according to the Opinion of the Venice Commission, created a problem of separation of powers. The Charter adopted by the Court now provides that it is not the committees as such which report to the Court, but that a report should be drawn up by the participating Constitutional Court judge alone. The other participants may then present their opinion individually to the Court, but separately from the judge's report.

88. The President of the Court told us that, since the constitutional reform, 380 citizens had applied to the Court. 12 applications had already been declared admissible. Two had been lodged by the Human Rights Defender, one relating to the honouring of the right of ownership, the other to the law on political parties and, in particular, conditions for the dissolution of parties. Following the first application by the Human Rights Defender, the relevant provisions of the Civil Code and Land Code had been declared unconstitutional in April 2006. The Court had asked for a law on expropriation for public and state needs to be adopted by 1 October 2006. The new law was adopted by the Parliament on 27 November 2006. The Court had also ruled in favour of individual applicants when it examined the first case brought by citizens, which related to social security cards. Following the Court's judgment, 1,317 retired persons are to be paid pensions, initially denied them by the State Social Protection Fund. This case, like that relating to the right of ownership, was very important to citizens' daily lives and was given great prominence.

89. Furthermore, 27 opposition MPs (1/5 of the total number) had appealed to the Constitutional Court against some provisions of the Electoral Code relating to the presence of judges on electoral commissions. On 7 November 2006, the Constitutional Court ruled in favour of the application lodged by the opposition and declared unconstitutional the provisions of the Electoral Code which provided for two judges from the Court of Cassation to participate in the Central Electoral Commission. As a result, the judges from the Court of Cassation who had already been appointed members of the Central Electoral Commission will no longer be entitled to take part.

90. Over the past 10 years, the Constitutional Court had dealt with eight cases of unconstitutionality, while examination of 16 cases relating to unconstitutional laws had begun since the new Constitution had come into force. The Constitutional Court's workload thus having grown considerably, the staff had also been increased. The President of the Court told us that, to date, all his requests for increased resources had been met by the government. He had requested the inclusion in the 2007 budget of the opening of three offices representing the Court in the provinces.

91. We welcome the fact that the broadening of its jurisdiction and of the scope for application to the Constitutional Court has not only enabled a commitment made on accession to the Council of Europe to be honoured, but also resulted in citizens, the opposition and the Human Rights Defender speedily making use of the scope granted to them under the new Constitution. We hope that the Constitutional Court will also play a major role in resolving any electoral disputes during the forthcoming legislative and presidential elections, thus guaranteeing that the process complies with democratic standards. It is a fact that a lawful election process, the conformity of which with the law can be verified by an independent court – and ultimately by the Constitutional Court – safeguards the legitimacy of institutions. Let us note in this context that, early in October 2006, Armenia's Constitutional Court held its 11th International conference, organised in co-operation with the Venice Commission, on the specific subject of "The role of constitutional courts in ensuring genuine elections".

### **3.2.2. Reform of the judicial system and the Prosecutor General's Office**

92. When it joined the Council of Europe, Armenia pledged:

*"to fully implement the reform of the judicial system, in order to guarantee, inter alia:*  
 – *the full independence of the judiciary;*  
 – *full and immediate access to a defence lawyer in criminal cases (compulsory for minors); if necessary, the costs should be borne by the state"* (Opinion No. 221, para. 13. iv. a).

and

*"to reform the Judicial Council in order to increase its independence within three years of accession"* (Opinion No. 221, para. 14. iii).

93. Structural reform of the judicial system began in 1998-99. The Council of Europe gave assistance mainly with the training of judges. As the 1995 Constitution, however, offered insufficient guarantees of the independence of the judiciary, the failure of constitutional reform prevented the progress of judicial reform and a true increase in the independence of judges. Thus it was only after the November 2005 constitutional reform that the second stage of the process of judicial reform truly took place.

94. The revised Constitution clearly states that the independence of judicial bodies is guaranteed by the Constitution and legislation (and no longer by the President of the Republic).

95. The Judicial Council is henceforth responsible, *inter alia*, for listing the candidates for judges' posts and for drawing up the lists relating to their promotion. It also puts forward names for appointment by the President of the Republic as presidents of courts at every level, including the Court of Cassation. The Judicial Council comprises nine judges elected for a five-year term of office by the General Assembly of Judges of the Republic of Armenia in a secret ballot, two legal experts appointed by the President of the Republic and two legal experts appointed by the National Assembly. It is chaired by the President of the Court of Cassation, who does not have the right to vote (and no longer by the President of the Republic). According to the Opinion of the Venice Commission, the membership of the Judicial Council is now in conformity with European standards.

96. Amendments were adopted to various laws in June 2006, so as to bring Armenian legislation into conformity with the new constitutional provisions on urgent matters relating to the independence of the judiciary, such as the membership of the Judicial Council.

97. At the same time, a committee was set up by the President of the Republic to draw up a more detailed plan for reform of the judiciary. This committee, chaired by the Ministry of Justice, and made up of MPs and representatives of the government, Prosecutor General's Office, academia, etc, has prepared a draft Judicial Code covering three main aspects:

- reform of the functioning of the judicial system;
- the selection, appointment, transfer, ethics and training of judges; and
- the setting up and functioning of the Judicial Council.

98. This draft was the subject of an expert appraisal by the Council of Europe in May 2006. Other international organisations also submitted comments. The Minister of Justice told us that a draft Judicial Code taking account of all these comments would be submitted to the government in mid-October 2006, and then to Parliament. The Speaker of Parliament thought that the process of preparation of this reform should be accelerated, so that there would still be time for the law to be adopted before the April 2007 legislative elections. We share his concern about meeting the deadline, while emphasising that true reform of the judiciary, long awaited in Armenia, is such a vital task that it is crucial for the laws concerned to be well prepared. We remain confident that Council of Europe involvement in this reform will continue.

99. Reform of the relevant legislation is certainly an important first step, so as to strengthen the independence and impartiality of the judiciary, but it is not enough. In the view of the Minister of Justice, the greatest problems at the moment remain the financing of the judiciary and judges' remuneration. The GRECO report published in March 2006<sup>28</sup> notes another major problem, and one probably connected with that of remuneration: the corruption within the judiciary always condemned by representatives of society, as it was again during our latest visit. The *de facto* eradication of corruption and increase in the independence of the judiciary is bound to take much longer than reform of the law.

100. Where the Prosecutor General's Office is concerned, the Minister of Justice reminded us that this was an institution from the Soviet era which had significant prerogatives and was finding it difficult to stomach the loss of some of these. Reform had got off to a good start in 1995, particularly with the abolition of the legality control system. Amendments to the 1998 law on the Prosecutor General's Office had been adopted in 2001, 2002 and 2005.

101. The second stage of reform of the Prosecutor General's Office began after the constitutional reform. Under the revised Constitution, the Prosecutor General's Office is now part of the judiciary. The Prosecutor General is appointed by the National Assembly on a proposal by the President, and no longer directly appointed by him. The deputy Prosecutors General are appointed and dismissed by the President of the Republic, on the recommendation of the Prosecutor General.

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<sup>28</sup> Doc. Greco Eval I-II Rep (2005) 2. See below section 3.2.4.

102. Amendments to the law on the Prosecutor General's Office were thus adopted in June 2006, so as to bring legislation into conformity with the constitutional amendments. As they were not examined by Council of Europe experts before being adopted, the Speaker of Parliament subsequently forwarded them for the Organisation's experts to indicate whether further revision of the law was needed.

103. Other amendments are being drafted, but the Minister of Justice considers it politically inappropriate to submit these to parliament during an election campaign.

### **3.2.3. The police**

104. In Resolution 1361 (2004), the Assembly asked the Armenian authorities:

*"to take resolute and more active steps to remedy misconduct by law enforcement officials, especially acts of violence, ill-treatment, corruption and bribery, which remain commonplace".* The Assembly also expected the law on the police to be revised.

105. Amendments to the law on the police were recently adopted (1 June 2006), following expert appraisal by the Council of Europe. A law on police ethics is due to be adopted in the near future.

106. Allegations of ill-treatment, especially during police custody, and of extortion by the police and the National Security Service (NSS) were reported by local and international NGOs to have occurred in 2005. It was reported that excessive force and arbitrary arrests had been used against opposition members and supporters, who had been arrested and held for several hours following a protest demonstration on 2 December 2005 following the constitutional referendum. Several of the persons held claimed to have been beaten up by the police during their detention.

107. A monitoring group comprising representatives of civil society, set up by the Ministry of Justice in 2004 to monitor the situation in detention centres and prisons (see below para. 141), has the right to visit the cells used for pre-trial detention, but not police stations, where most of the ill-treatment unfortunately seems to occur. The NGO representatives expressed a wish for their right of access to be extended to police stations.

108. We discussed the problems relating to police conduct with the Chief of Police and the Prosecutor General. The Chief of Police confirmed that allegations of abuse of authority continued to be made against members of the police force, but said that their numbers had fallen sharply. He told us that, between January 2004 and September 2006, 2,531 members of the police force had had disciplinary penalties imposed on them, of whom 192 had been removed from office for abuses of authority. Two officers of the police force had been sent to prison for two years for exceeding their authority, and had also been deprived of the right to hold certain posts for a two-year period<sup>29</sup>. Another two members of the police force had been brought before the court of first instance.

109. According to the Chief of Police, reforms had been implemented in the traffic police and several training courses had been organised with a view to bringing extortion to an end. Among the measures taken to prevent police corruption, he referred to an increase in police pay with effect from January 2007.

110. Particular attention was being given to in-service training at all levels of the police force, either through the police academy or via seminars and courses held in several European countries, and also in the United States.

111. We hope that the recent or current legislative reforms and the structural police reforms will enable the image of the Armenian police to be improved and the guarantees of democratic supervision of its activities to be strengthened. For the time being, impunity is still felt to prevail because of the small proportion of the complaints lodged which result in members of the police being found guilty of abuses of authority or of exceeding their authority, as well as the high numbers of allegations not leading to the lodging of complaints because of a fear of reprisals. In a state governed by the rule of law, it is not enough to impose disciplinary penalties, or even to remove from office members of the police force who have committed criminal offences: criminal proceedings must be taken against them as well, especially if the intention is to increase public confidence in the law-enforcement agencies and to prevent the recurrence of abuses. The Council of Europe should continue to offer the Armenian authorities assistance with the provision of more

<sup>29</sup> According to written information supplied by the Prosecutor General, following a decision of the National Assembly on an "Amnesty on the occasion of the 1 700<sup>th</sup> anniversary of the adoption of Christianity by Armenia", the two police officers concerned were spared the main penalty.

training for the police so as to increase their awareness of the need to respect human rights and to make them more professional.

### **3.2.4. Combating corruption**

112. In Resolution 1361 (2004), the Assembly said that it was "*concerned at the scale of corruption in Armenia, which has reached intolerable proportions*", and asked the Armenian authorities "*to express a real political will to take effective action against corruption*" and to ratify the Criminal-Law Convention on Corruption and to sign and ratify the Civil-Law Convention on Corruption.

113. We welcome Armenia's ratification of both these conventions. The Civil-Law Convention on Corruption came into force on 1 May 2005, and the Criminal-Law Convention one year later, on 1 May 2006. Armenia has also been a member of the Group of States against Corruption (GRECO) since 20 January 2004.

114. The first GRECO report on Armenia, encompassing the first and second cycles, was published on 10 March 2006<sup>30</sup>. It analyses the problem and its causes, and makes no fewer than 24 recommendations to the Armenian authorities in order to help them improve the efficiency of their fight against corruption.

115. The GRECO report summarises the causes of corruption in Armenia: as it moves towards a market economy, the country faces several major economic and social problems, including the emergence of large sectors which are part of the "grey economy", a high level of tax evasion and the existence of international organised crime. Public authorities and civil society alike consider corruption to be a significant problem affecting many public-service sectors. A distinction is made between corruption "high up", meaning abuses of the political or public authority vested in them by politicians or senior public officials seeking to gain personal advantage or to protect their own interests, and corruption "low down", meaning the administrative corruption typical of the middle and lower tiers of the public service, involving officials who are in daily contact with the public. The sectors generally said to be worst affected are the justice system, the police, the customs service, the tax inspectorate, the education and health sectors, the licensing office and the privatisation process<sup>31</sup>. Corruption is perceived as being high in Armenia. According to Transparency International's Corruption Perception Index for 2006, Armenia is 93<sup>rd</sup> of the 163 countries listed (with a score of 2.9 out of 10).

116. As already mentioned in the previous monitoring reports on Armenia, the fight against corruption has been regarded as an Armenian government priority since 2003. The main components of Armenia's anti-corruption system are:

- a government Anti-corruption Strategy for the period 2004-2006, adopted on 6 November 2003, and an Implementation Programme for this Strategy;
- the Anti-Corruption Council, set up in June 2004 under a presidential decree and comprising the Prime Minister (who takes the chair), the Deputy Speaker of the National Assembly, the Chairman of the National Assembly's Control Chamber, the Prosecutor General, the adviser to the President of the Republic on the fight against corruption, the head of the Prime Minister's private office, the Minister of Justice, the President of the Central Bank, the chairman of the Committee for the preservation of economic competitiveness, and the head of the supervisory unit attached to the office of the President of the Republic. The core task of this Council is to compare the work of the responsible bodies in the context of the preparation of measures to prevent corruption, to implement the measures for which the Anti-corruption Strategy provides or which derive from the international obligations accepted by Armenia, and to co-operate with regional and international organisations in the fight against corruption;
- a monitoring committee, comprising seven MPs and representatives of the executive, civil society and international organisations, including the Council of Europe and OSCE, which has prepared a system for evaluating the Strategy, and particularly the laws adopted in order to implement it.

117. According to GRECO, an analysis of Armenia's anti-corruption system reveals that most of the institutional instruments for increasing the effectiveness of the fight against corruption are already in place, and the others (such as a legislative framework and an anti-money-laundering system) are soon to be

<sup>30</sup> See Greco Eval I-II Rep (2005) 2, of 10 March 2006; also see the first detailed evaluation report on Armenia drawn up by MONEYVAL, doc. Moneyval (2004) 23, of 9 July 2004.

<sup>31</sup> See Greco Eval I-II Rep (2005) 2, paragraphs 5, 6 and 11.

adopted and become operational. The GRECO report nevertheless concludes that *"the system still suffers from several shortcomings both in the areas of legislation, of implementation of existing anti-corruption measures/legislation, and with regard to the organisation of the justice and law enforcement systems. Furthermore, the existence of some serious obstacles to collecting evidence, to depriving offenders of the proceeds of corruption together with the almost total absence of significant results in prosecuting and indicting individuals involved in serious cases of corruption call for substantial efforts in the anti-corruption field"*. More specific conclusions on each field covered by the report, as well as detailed recommendations, have been sent to the Armenian authorities.

118. The Armenian authorities, for their part, confirmed that the situation in the fight against corruption was not satisfactory at the moment. The Prime Minister, who chairs the Anti-Corruption Council, told us that permanent monitoring of the situation was conducted by Armenia's anti-corruption bodies, with the assistance of international experts. A special programme had been drawn up in order to take action on each of GRECO's recommendations. Since publication of the GRECO report, assistance had been requested from the Council of Europe in order to draw up a law on special investigation means. The opinion of the Council of Europe expert was forwarded to the Armenian authorities on 30 October 2006.

119. According to the authorities, the new constitutional guarantees of the independence of the judiciary, the adoption of the law on public service, the amendments being drawn up to the Criminal Code and the current reform of the judiciary and the Prosecutor General's Office with, in particular, planned provisions on the proper conduct of judges, containing a detailed definition of the concept of "bribe", should improve the situation. Those to whom we spoke were nevertheless aware that it would be a long time before tangible results were discernible.

120. A new strategy for the period 2007-2009 is to be finalised as soon as possible, given that the strategy adopted in 2003 expires at the end of the year. We hope that the Council of Europe will be involved in this, and that the Strategy will be in line with the recommendations made by GRECO and those made by MONEYVAL concerning the fight against money laundering.

### **3.3. Human Rights**

#### **3.3.1. The Human Rights Defender**

121. Armenia has undertaken:

*"to adopt, within six months of its accession, the law on the ombudsman"* (Opinion No. 221, para 13.iii.b).

122. The law on the Human Rights Defender was adopted on 21 October 2003 and came into force on 1 January 2004. The authorities initially envisaged not adopting this draft law until revision of the Constitution was complete, so as to give the future Ombudsman constitutional status. As this idea came to nought, the authorities nevertheless decided to set up the office of the Human Rights Defender in Armenia, and drew up a compromise solution enabling the Constitution to be complied with pending its revision. Provision was thus made, as a transitional measure, for the President of the Republic – and not the National Assembly – to appoint the first Human Rights Defender, after consultation of the parliamentary groups and factions. The provisions of the law relating to the appointment of the Human Rights Defender by the Assembly would thus come into force only after the revision of the Constitution<sup>32</sup>. Accordingly, early in 2004, Mrs Larissa Alaverdian was appointed by the President of the Republic as Armenia's first Human Rights Defender.

123. The constitutional reform of November 2005 enabled the institution of the Human Rights Defender (Ombudsperson) to find its place in the Armenian Constitution. This represents significant progress towards protection for human rights in Armenia. The revised Constitution now makes express provision for the Human Rights Defender to be elected by a majority of three-fifths of the Members of Parliament. The principle that he/she cannot be removed from office is also guaranteed by the Constitution.

<sup>32</sup> The authorities felt that, under the 1995 Constitution, only the President had the power to appoint the Ombudsman, and that it would be contrary to the Constitution to provide for his or her appointment by the National Assembly. The Parliamentary Assembly did not share this opinion, and asked the Armenian authorities *"to set up a transparent and credible interim procedure enabling the Armenian National Assembly, including the opposition parties, to examine and give their opinion on candidatures, while officially preserving the President's right to nominate the successful candidate"*. See doc. 10027, paragraphs 100 to 104, and Resolution 1361 (2004), paragraph 11.

124. Following the entry into force of the Constitution, the President of the Republic, in a decree signed on 4 January 2006, entrusted the interim administration of the Human Rights Defender's Office to a committee with three members, all high-ranking officials, one from the Constitutional Court, one from the private office of the President and one from the Ministry of Justice<sup>33</sup>. The presidential decree was based on the provisions of the law on the Human Rights Defender, which provided for the term of office of the appointed Defender to expire on the 30th day after the constitutional amendments came into force (ie on 9 January 2006). The law nevertheless made no provision for the replacement of the Defender by another person or another body pending the election of the next Human Rights Defender by the National Assembly. Mrs Alaverdian, who was thus in practice relieved of her duties, appealed to the Constitutional Court against the presidential decree, but the Court rejected her appeal on the grounds that she was no longer Armenia's Human Rights Defender<sup>34</sup>.

125. Ultimately, the new Human Rights Defender, Mr Armen Harutyunyan, was elected by the National Assembly early in February 2006. We had a discussion with him during our latest visit to Armenia.

126. He explained to us that he was allowed to participate in the legislative work of Parliament. He could take part in the preparatory process by submitting proposals for legislation, and he could refer laws already passed to the Constitutional Court, an action that he had already taken on several occasions.

127. The Human Rights Defender had thus applied to the Constitutional Court concerning expropriations conducted in the context of building projects in the centre of Yerevan. The Court had ruled that the provisions of the law used as a legal basis to justify these expropriations were unconstitutional, and that the expropriations were therefore unlawful. The Court had asked for a law on expropriation for public and state needs to be adopted by 1 October 2006<sup>35</sup>.

128. Since the Court's judgment, the Human Rights Defender has been actively co-operating with the Ministry of Justice and Parliament on preparing the new law on expropriation for public and state needs, for which thousands of people were waiting. Some of his proposals have been taken up by the Ministry of Justice, others not. The new law was finally adopted by the Parliament on 27 November 2006.

129. During our visit, the Defender expressed serious concerns about the draft amendments to the law on television and radio broadcasting tabled by the Ministry of Justice, saying that the amendments did nothing to improve freedom of expression and media freedom in Armenia.

130. Schools and universities are among the priorities of the new Human Rights Defender, who feels that it is through education that mentalities can be changed and moved on, so that legislative reforms can also be implemented. He also studies issues relating to equality between women and men, and he makes visits to prisons, military camps, etc. His office also deals with refugee issues, particularly their housing.

131. During the first six months of his term of office (20 February to 31 August 2006) he received a total of 1,794 individual complaints, 854 of these in writing. 62 complaints were treated as collective complaints, involving 1,973 complainants. Of the 854 written complaints, 121 had been resolved in favour of the complainants. The majority of complaints related to the functioning of the courts and the right to an effective judicial remedy, particularly in cases relating to social problems such as housing, unlawful dismissals, etc.

132. In terms of resources, the Human Rights Defender's Office comprises specialist advisers and representatives of minorities and civil society. The staff in 2007 will total 46, and there will be a new building, which should make the institution more efficient. The Human Rights Defender plans to ask the government for resources in 2007 to set up regional centres.

133. We welcome the fact that Armenia finally has a Human Rights Defender who has been elected to the post, guaranteeing his independence and increasing his credibility. We hope that he will increasingly win the trust of citizens and will be consulted ever more frequently by the government and National Assembly when legislation relating to human rights is being drafted.

134. Where the relevant legislation is concerned, following the constitutional reform, and in order to implement this reform, the law on the Human Rights Defender was amended on 1 June 2006. It was forwarded for expert appraisal to the Council of Europe by the Speaker of the National Assembly in mid-

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<sup>33</sup> One week later, the government decided to suspend the work of the staff of the Defender's Office.

<sup>34</sup> The Monitoring Committee, in its declaration on the constitutional reform, adopted in January 2006, expressed regret about the controversy surrounding the functioning of the Defender's Office during the transitional period.

<sup>35</sup> Also see above: 3.2.1.

September 2006. Although the expert appraisal has not yet been completed, the experts have nevertheless advised us of the main questions left open by the law, even following the amendments of 1 June 2006, which should be dealt with on the occasion of a forthcoming revision:

- The law clearly denies the Human Rights Defender the opportunity to intervene in cases which are pending in the courts. It nevertheless remains uncertain to what extent such intervention by the Human Rights Defender would be possible so that he could at least ensure that cases are dealt with by the public prosecution service within a reasonable time, and that court decisions are delivered and executed in a reasonable time as well.
- The extent of the Human Rights Defender's immunity is inadequate. Both he and his staff should benefit from immunity in respect of any statement made orally or in writing, and any act committed in the exercise of their duties, both during and after the end of the Human Rights Defender's term of office or of staff members' contracts with the institution. The law also lacks clarity in respect of the procedure for lifting immunity.

135. We hope that the questions above will be solved on the occasion of a forthcoming revision of the law concerned, in accordance with the assurances given to us by the Speaker of the National Assembly. As the institution of the Human Rights Defender is required to play an important role in the protection of human rights in Armenia, it is vital for the law governing it to be in full conformity with the relevant European standards.

### **3.3.2. Abolition of administrative detention**

136. The Assembly has, ever since its first monitoring report on Armenia in 2002, been urging the Armenian authorities to abolish administrative detention<sup>36</sup>. Such detention was provided for in the Administrative Code, and it was one of the true relics of the communist justice system, enabling the judge to have an accused person who was brought immediately before the court detained for a maximum of 15 days, in most cases without the assistance of a lawyer. This procedure, in blatant contravention of the European Convention on Human Rights (ECHR), was used, *inter alia*, against opposition members and supporters arrested during or after the demonstrations which took place between the two rounds of the presidential elections of February 2003, and was used again during the demonstrations of March and April 2004.

137. The constitutional reform of November 2005 finally put an end to the practice of administrative detention. The revised Constitution now contains a full list of the situations in which people may be deprived of their liberty in accordance with Article 5 of the ECHR. As soon as these provisions of the revised Constitution were implemented, the Court of Cassation ruled that administrative detention on judges' orders was no longer allowed, as it was contrary to the Constitution. The relevant provisions of the Administrative Code were subsequently repealed.

### **3.3.3. Detention conditions**

138. In Resolution 1361 (2004), the Assembly asked the Armenian authorities to "*make further efforts to improve conditions of detention, which includes speedily implementing the recommendations of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*".

139. Following transfer of responsibility for the prison system to the Ministry of Justice in 2002, a monitoring group made up of representatives of civil society (including one representative of the Armenian Apostolic Church) was set up and given free access to the country's detention centres and prisons by the Ministry of Justice. We welcome this initiative, which strengthens democratic supervision of the prison system and should enable the situation to be improved.

140. The group presented its annual report for 2005 last October. It noted some improvements since Armenia joined the Council of Europe, but said that conditions in most prisons remained difficult, and in a few cases "inhuman". The group expressed the view that the four largest prisons in the country were not up to international standards and should be transferred to other buildings. The report also concluded that most detainees were poorly fed and did not have access to adequate medical care.

141. The NGO representatives from the monitoring group to whom we spoke also told us of their concern about persistent allegations of ill-treatment in prisons, pre-trial detention centres and police cells. Ill-

<sup>36</sup> See Resolution 1304 (2002), para 9; Resolution 1361 (2004), para 14; Resolution 1374 (2004), para 5 (i); and Resolution 1405 (2004), para 10 (i).

treatment was said to be used to obtain confessions during police custody and pre-trial detention, and also as a punishment for prisoners already serving sentences. In most cases, detainees were said to have had no access to a forensic medical examination to show evidence of the treatment suffered, and acts committed by members of the police force or prison staff reportedly went unpunished.

142. Where the situation in prisons is concerned, the Minister of Justice confirmed to us that, although improvements had been made since his Ministry took over responsibility for the prison system, many difficulties were still hindering reform, mainly as a result of the dilapidated conditions, inappropriateness and inadequacy of detention centres and the shortage of prison staff. The government was nevertheless determined to resolve these difficulties, and investments were being made each year, enabling some progress to be made. Thus, the penitentiary centres of Varadzor and Artik had been completely renovated. The construction of a new penitentiary centre had started in 2006 and should be finished in 2008. It was a long-drawn-out process, however. The Minister of Justice thought that it would take 15 years to make truly satisfactory progress.

143. The Council of Europe, for its part, through its European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), has identified the fields in which priority action is needed and recommended the measures that the Armenian authorities should take to improve the situation at pre-trial detention centres and in prisons.

144. The first CPT report on Armenia was published in July 2004, following a periodic visit to the country made in October 2002. The report was published with replies from the Armenian authorities, indicating the action taken in response to the CPT's recommendations.

145. Two years after its first periodic visit, the CPT made a three-day ad hoc visit to Armenia from 20 to 23 April 2004. The main aim of the visit was to examine the treatment of persons deprived of their liberty in the course of or following demonstrations organised by opposition parties in Yerevan in April 2004.

146. During our recent visit, we were given assurances by the Armenian authorities that serious consideration would be given to publication of the CPT report on this ad hoc visit of 2004. We are happy that, following our visit, on 16 November 2006, the Armenian authorities authorised the publication of this CPT report, accompanied by their response<sup>37</sup>. In its report, the CPT has recommended measures to stamp out ill-treatment by the police, ensure the effective implementation of the existing legal provisions related to police custody, and improve conditions of detention in police and prison establishments.

147. A second periodic visit to Armenia was made in April 2006. The CPT delegation was able to assess the progress made since the October 2002 periodic visit and to examine the treatment of people in police custody and the situation in prisons. Particular attention was paid to the way in which life prisoners were treated and the regime applied to them, as well as to the situation of female and minor detainees. The treatment of persons compulsorily placed in a psychiatric hospital was another focal point.

148. We discussed with the Minister of Justice the case of 42 persons whose death sentences had been commuted to life imprisonment, with a minimum of 20 years to be served, following the abolition of capital punishment in August 2003. The Assembly, in Resolution 1361 (2004), took the view that this subject should be dealt with on a case-by-case basis, and urged the authorities concerned "*to re-examine as soon as possible the cases of those who have asked for a change of sentence or a retrial*".

149. The Minister of Justice told us that a re-examination of the cases of these convicted prisoners had been completed this year (2006). As a result, their life sentences remained in force, but they would be able to benefit from conditional release once they had served 20 years<sup>38</sup>. According to clarifications we received in writing on 4 December 2006 by the Ministry of Justice upon our request, 13 persons convicted to death sentence had requested the re-examination of their cases before the adoption of the new Criminal Code; the cases of the remaining 29 persons were re-examined by a court, according to Article 52, paragraph 2, of the Code of Criminal Procedure (as amended in June 2006), upon the request of the Prosecutor General. All death sentences had been commuted to life imprisonment according to the provisions of the new Criminal Code and the principle of the retroactive application of the least severe criminal law provisions.

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<sup>37</sup> The CPT's visit report and the response of the Armenian Government are available on the CPT's website at <http://www.cpt.coe.int>.

<sup>38</sup> It is worth noting that, following criticism expressed by the Council of Europe (see Resolution 1361 (2004), para. 16. i.) and the OSCE, amendments to the Criminal Code, adopted in November 2003, which excluded persons sentenced to life imprisonment for particularly serious crimes from amnesty or conditional release, were abolished in May 2004.



150. We strongly encourage the Armenian authorities to continue the reforms undertaken in the prison sphere, and we applaud the setting up of a monitoring group to exercise public supervision of the situation in prisons. It nevertheless has to be said that much remains to be done to bring Armenia's prison system into line with Council of Europe standards. We therefore urge the authorities to give serious consideration to the relevant recommendations of the CPT and to adopt an action plan enabling these to be put into effect. We understand that certain improvements to the prison system inevitably depend on the resources available; where the treatment of detainees is concerned, however, a political will at all levels to put an end to ill-treatment and to bring those guilty to justice would contribute to improving the image of Armenia's prison system.

### **3.3.4. Alternative service and conscientious objectors**

151. When it joined the Council of Europe, Armenia undertook:

*"to adopt, within three years of accession, a law on alternative service in compliance with European standards and, in the meantime, to pardon all conscientious objectors sentenced to prison terms or service in disciplinary battalions, allowing them instead to choose, when the law on alternative service has come into force to perform non-armed military service or alternative civilian service"* (Opinion No. 221, para 13. iv. d).

#### *3.3.4.1. The law on alternative service*

152. A law on alternative service came into force in July 2004. This introduced two forms of alternative service, one strictly civilian, the other military (making it possible for a person called up for service not to bear arms and to be assigned to civilian duties within the armed forces). While welcoming the adoption of this law, the Assembly, in Resolution 1361 (2004), took the view that the length of alternative civilian service, set at 42 months (three and a half years), as against 36 months for alternative military service and 24 months for ordinary military service, was excessive. It therefore called on the Armenian authorities to amend the law before its entry into force, on 1 July 2004, by reducing the length of alternative civilian service to 36 months (three years).

153. No action has been taken by the Armenian authorities to comply with this request from the Assembly, and the set length of alternative civilian service remains 42 months.

154. Without affecting the problem of length, which in itself seems to have a punitive aspect, some amendments to the law on alternative service came into force on 9 January 2005, without prior consultation of the Council of Europe, making certain aspects of alternative service subject to military, and not civilian, supervision. They also made it compulsory for persons performing alternative service to remain at their duty post round the clock, seven days a week, aggravating the punitive nature of the conditions of alternative service<sup>39</sup>.

155. Revision of the law on alternative service was on the legislative work programme undertaken by the Armenian authorities to put into practice the constitutional reform of November 2005. Amendments to the law were adopted on 1 June 2006 and forwarded to the Council of Europe by the Speaker of the National Assembly for expert appraisal. These amendments, however, do not seem to solve the problems raised in respect of the length of alternative service and the arrangements for performing it. As amended, the law still offers conscientious objectors no guarantee of "genuine alternative service of a clearly civilian nature, which should be neither deterrent nor punitive in character", as provided for by the Council of Europe's guidelines on this subject<sup>40</sup>. In order for Armenia to comply with the undertaking made on accession, the law concerned would have to be "in compliance with European standards", which it does not seem to be at present<sup>41</sup>.

<sup>39</sup> See in particular Articles 17, 18 and 21 of the law.

<sup>40</sup> See Recommendation 1518 (2001) on the exercise of the right of conscientious objection to military service in Council of Europe member states, Resolution 337 (1967) on the right of conscientious objection and Recommendation 816 (1977) on the right of conscientious objection to military service. Also see Recommendation No. R (87) 8 of the Committee of Ministers regarding conscientious objection to compulsory military service.

<sup>41</sup> See paragraph 166 below for the explanations given by the Armenian authorities who they accept that the alternative civilian service is long but do not agree that there are problems with the arrangements for performing it.

### 3.3.4.2 *The trials of persons accused of desertion from alternative service*

156. After the law on alternative service came into force on 1 July 2004, 23 young conscientious objectors, 22 of whom were Jehovah's Witnesses<sup>42</sup>, opted in December 2004 for alternative service, convinced that this would be truly civilian service. They were assigned to psychiatric hospital departments and specialised institutions for the elderly, which is a not unusual form for alternative civilian service to take<sup>43</sup>.

157. As soon as the above-mentioned amendments to the law on alternative service came into force on 9 January 2005, however, these conscientious objectors did not wish to continue their alternative service, considering that it was henceforth subject to military supervision. They therefore left their posts, an action which was not at that time a statutory offence. Despite this, they were prosecuted for desertion from alternative service.

158. At the same time, amendments to the Criminal Code were prepared, making desertion from alternative service an offence in the same conditions as desertion from military service, and these came into force in 2006.

159. The trials of conscientious objectors before courts of various levels took place over a period of approximately 7 months, from October 2005 to April 2006. During this period, the young people concerned remained in prison. Some were sentenced by the court of first instance to prison terms of between two and three and a half years, while others were held pending trial. Throughout this period, they argued in the various courts that their prosecution and trial were unlawful, as the offence of desertion from alternative service did not exist under the law at the time of their action, in accordance with Article 35, para 1 (2) of the Criminal Code. This provision would enable them subsequently to request compensation for unlawful prosecution and detention.

160. In February 2006, while these trials were in progress, the representatives of the Prosecutor General's Office requested the return to them of the cases of all these young people for a "supplementary investigation". Subsequently, all the cases were discontinued, one after the other, on grounds of a "change in circumstances" (without any other explanation), in accordance with Article 37, para 2 of the Criminal Code. The conscientious objectors were released, but as they had not obtained a decision recognising the unlawful nature of their prosecution, they were not entitled to request compensation for their detention. 19 applications on this subject have been lodged with the European Court of Human Rights.

161. Finally, in September 2006, all the persons concerned were informed that, by a decision of the Prosecutor General, superseding the previous decision by the representatives of his office, their prosecutions had been terminated in accordance with Article 35.1 (2) of the Criminal Code for absence of any legal basis. The Prosecutor General's Office apologised to them and told them that, in accordance with Article 66 of the Criminal Code, they were entitled to apply for compensation from the civil courts for violation of their rights.

162. We welcome this outcome, which constitutes a positive recent development and will probably enable the cases before the Strasbourg Court to be withdrawn or to be the subject of a friendly settlement.

### 3.3.4.3 *The continuing detention of conscientious objectors*

163. In the absence of genuine civilian service, nobody opted for alternative service in 2006. Conscientious objectors, most of whom are Jehovah's Witnesses, prefer, on call-up to the army, to be convicted and imprisoned for refusing to perform military service.

164. As of 4 December 2006, 50 young Jehovah's Witnesses were in prison, 4 of them in pre-trial detention. Of the 46 who were serving sentences, 45 had been sentenced to prison terms varying from 18 to 30 months in pursuance of Article 327 I of the Criminal Code, which provides for a maximum prison sentence of 36 months (three years). One person had been sentenced to four years in prison, in pursuance of Article 327.III, which provides for prison sentences of five to ten years if the act is committed in wartime or during military actions.

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<sup>42</sup> It should be noted that, as repeatedly requested by the Assembly (see Resolution 1304 (2002), para.15, and Resolution 1371 (2004)), Jehovah's Witnesses were registered as a religious organisation in Armenia on 8 October 2004. Subsequently, over 9,000 Jehovah's Witnesses have enjoyed the freedom to practise their faith unrestricted by the authorities.

<sup>43</sup> One co-rapporteur met some conscientious objectors at Sevan psychiatric hospital in May 2005.

165. It should be noted that the maximum sentence, which had been reduced from three to two years in prison when the new Criminal Code came into force, has been increased to three years again by the amendments adopted in December 2005.

166. We have discussed the problems relating to alternative service with the Minister of Defence, who referred to Armenia's uncertain geopolitical environment, the lack of a final settlement of the Nagorno-Karabakh conflict and the border tensions with neighbouring countries, with frequent violations of the ceasefire occurring. In these circumstances, he did not think it expedient to create an alternative form of service which would encourage young people not to perform military service.

167. We can understand the Minister's reluctance. At the same time, it has to be said that Armenia has not honoured its commitment in this respect: the law on alternative service does not comply with European standards, and remains virtually a dead letter, as nobody requests its application; some conscientious objectors are still in prison: in the authorities' view, they have only to opt for the alternative service for which the law provides; in their own view, that would go against their conscience until such time as the law creates a genuine alternative civilian service.

168. We thus urge the authorities to reconsider their position on this matter, to revise the law in accordance with the recommendations to be made to them in the near future by the Council of Europe experts, and, in the meantime, to pardon the young conscientious objectors currently serving prison sentences. Once the law on alternative civilian service is consistent with European standards, conscientious objectors will no longer be able to refuse to apply it, and we shall be able to consider that Armenia has honoured its commitment in this respect.

### **3.3.5. Media pluralism and freedom of expression**

#### *3.3.5.1 Electronic media*

169. At the time of our recent visit, media pluralism was the focal point of our attention. A few months away from the forthcoming legislative elections, we emphasised to those to whom we spoke, even at the highest level, that media pluralism and fair access for all political parties to television and to other methods of disseminating information were absolute prerequisites for the holding of free and fair elections.

170. In Resolution 1361 (2004), the Assembly, while noting the adoption in December 2003 of the law on the mass media and of amendments to the law on radio and television broadcasting, expressed concern "*at developments in the audiovisual media in Armenia and [...] serious doubts as to pluralism in the electronic media, regretting in particular that the vagueness of the law in force has resulted in the National Television and Radio Commission being given outright discretionary powers in the award of broadcasting licences, in particular as regards the television channel A1+*".

171. A recent report by Mr Haraszi, OSCE Representative on Freedom of the Media, refers to the legislative framework when explaining the lack of pluralism in media coverage of politics. The law on radio and television broadcasting in fact provides for two regulators: the National Television and Radio Commission (NTRC) and the Public Television and Radio Council, all the members of which are appointed by the President of the Republic, exposing the media regulated by these two bodies to government influence.

172. The fact that a private TV channel which was very popular and supposed to be independent of the government – A1+ – had its broadcasting licence withdrawn in 2002<sup>44</sup>, does not argue for the transparency and objectivity of the NTRC, which awards such licences. Since 2002, A1+ has had 12 applications for a broadcasting licence rejected<sup>45</sup>.

173. Constitutional reform has cleared the way for a remedy to this problem and for greater independence for the bodies which regulate the electronic media. The members of the NTRC, for instance, are no longer appointed by the President, but half by the National Assembly and the other half by the President. We welcome this solution, which is an important step towards independence for the NTRC. We nevertheless emphasise the need for the National Assembly and the President to pursue a transparent and merit-based candidate selection procedure.

<sup>44</sup> See doc. 10027, section V.E.3. Noyan Tapan TV channel had also its broadcasting licence withdrawn in 2002.

<sup>45</sup> A1+ consequently lodged an application with the European Court of Human Rights, and this has been declared admissible.

174. Besides, in its Final Opinion on Armenia's constitutional reform, the Venice Commission pointed to the need for the members of the boards of management of public-service broadcasting organisations to be appointed in such a way as to avoid the risk of any political or other interference. In this context, the Venice Commission regarded as problematic the appointment by the President of the Republic of all members of the Public Television and Radio Council, and emphasised the need for the appointment process, if this power of the President was to be retained, to be open and transparent and not open to political abuse. The Commission noted the importance of adopting rules in this field, with the assistance of the Council of Europe, which met the European standards in force<sup>46</sup>.

175. Clearly the implementation of constitutional reform requires the earliest possible adoption of amendments to the law on radio and television broadcasting, which must in any case take place before the 2007 legislative elections. It is equally true, however, that representatives of the media and of civil society in general need to be consulted before the legislative framework governing the electronic media is revised, particularly in the run-up to an election.

176. We were therefore very surprised to find out, at the start of our visit, on the afternoon of 26 September, that draft amendments to the law on radio and television broadcasting, drawn up by the Ministry of Justice, had been tabled for discussion at an extraordinary sitting of Parliament that very morning, without any discussion in the competent committee of Parliament, and without prior consultation of the media representatives or international organisations, such as the Council of Europe. Not even knowing at that stage what was in the draft, we immediately advised the Speaker of the National Assembly, Mr Torosyan, of our concern about the procedure chosen.

177. We are very grateful to Mr Torosyan for agreeing to see us immediately and casting some light on this draft. Following this action on our part, he announced the next day (Wednesday 27 September), at the opening of the sitting, that the draft would be widely discussed and the opinions of media representatives and international experts would be taken into account, at the latest before the second reading. Mr Torosyan explained to us that he himself was not in agreement with all the proposals in the draft, particularly in respect of the proposed abolition of "Parliament Hour", a broadcast covering debates in the National Assembly and featuring replies from MPs, including members of the opposition, to the questions put to them. He promised us that the broadcast would continue.

178. The main objections to the government's draft amendments raised by the media representatives and by (coalition and opposition) members of the National Assembly relate to the membership of the NTRC and the method of appointing members, and the proposed abolition of the advertising restrictions on public radio and television (currently only 5% of radio and television airtime may be devoted to advertising). The Human Rights Defender has also criticised the amendments proposed by the government as adding nothing to the protection of freedom of expression in the country.

179. Mr Torosyan told us that, in spite of the problems effectively posed by the government's draft, it would be preferable, given the need for the amendments to be adopted as soon as possible, for it to be approved by Parliament at its first reading and improved subsequently, prior to the second reading. He assured us that the draft would be sent to the Council of Europe for expert appraisal, at the latest before its second reading, and at a sufficiently early stage for the experts' comments to be taken into account, although he asked for provision to be made for an accelerated expert consultation procedure.

180. On 3 October 2006, the draft was presented to Parliament again, but was not approved at first reading, as there was no quorum. The main opposition parties and one coalition party (*Dashnak*) did not in fact take part in the vote. On 4 November, the Minister of Justice organised a round table session with representatives of civil society, including the media, at which the content of the draft was discussed, particularly the issues relating to NTRC membership and the commercial/advertising activity of the public-service media. At the time of writing, no draft has been forwarded to the Council of Europe for expert appraisal.

181. Looking beyond the revision of the legislative framework, the problem arises of ensuring the day-to-day freedom and pluralism of the electronic media, particularly public-service radio and television. The

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<sup>46</sup> The Chairperson of the Public Television and Radio Council told us that the members of the Council would continue to be appointed by the President, while the Council would be the body responsible for setting guidelines for public-service radio and television programming. The OSCE Representative on Freedom of the Media has criticised this approach, saying that a board of management appointed by the President of the Republic was inconsistent with the concept of a public broadcasting service.

absence of pluralism in public-service television was reported to us by both opposition parties and representatives of civil society and the media. It was also confirmed by the OSCE Representative on Freedom of the Media in his recent report. According to Mr Haraszi, apart from a few programmes which presented differing viewpoints, the electronic media did not offer the public objective and pluralist news, in spite of the transformation of state television into a public broadcasting service and the existence of several private channels.

182. The Armenian authorities, disputing this assessment, suggested that the Council of Europe begin monitoring electronic media programmes, enabling their degree of independence and impartiality to be appraised as objectively as possible, particularly where their coverage of political parties' activities were concerned. The start of such monitoring is provided for in the Action Plan to support parliamentary elections in Armenia in 2007, approved on 11 October by the Committee of Ministers of the Council of Europe. In practice, one of the two main elements of this plan is assistance with consolidation of the electoral environment so that the media are better able to provide free, independent and impartial coverage of the election campaign and the elections themselves.

183. We fully support the action taken in this field by the Committee of Ministers, and hope that the necessary resources will be provided for efficient implementation of the action plan. We reiterate that, in our view, it is vital to the success of the forthcoming legislative elections in 2007 and the subsequent presidential elections of 2008 for fair access to the electronic media to be guaranteed to all political parties, and for coverage of the campaign and the actual elections to be pluralist and impartial. We also reiterate the importance of prior consultation of Council of Europe experts before amendments to the law on radio and television broadcasting are adopted. This consultation should be so organised (for instance through round table sessions in Armenia) that the experts' conclusions may be taken into account without delaying the reform process, which should be completed before the forthcoming legislative elections.

#### 3.3.5.2. *The print media*

184. The print media in Armenia are said to be free and pluralist, and we welcome this. News coverage is varied and often openly critical of politicians from the different political parties, including the government. Newspaper distribution is nevertheless limited (a maximum of 3,000 to 4,000 copies per day), so the print media play only a tiny part in the provision of public information. The main reasons for the weakness of the print media are the inadequacy of the distribution system and the limited scope of the advertising market.

185. Where journalists' situation is concerned, we welcome the fact that no criminal libel proceedings have been opened for several years. Since the Criminal Code was revised in 2004, libel has been punishable by a prison sentence only if committed by the same person more than once. It is otherwise punishable by a maximum fine equivalent to 1,000 times the minimum wage. Article 318 of the Criminal Code provides for specific liability for "insulting a representative of the authorities". The 2004 revision was a step in the right direction. We encourage the Armenian authorities to complete the relevant reform, fully to decriminalise libel and to repeal Article 318 of the Criminal Code.

186. In contrast, we are concerned about a number of recent incidents involving violence and intimidation against journalists. On 6 September 2006, for example, Mr Hovhannes Galajyan, chief editor of opposition newspaper *Iravunk*, was beaten up by two unknown criminals. On 12 July 2006, a trainee journalist, Mr Gagik Shamsian, who works for opposition newspapers *Chorrord Ishkhanutiun* and *Aravot*, was subjected to threats and abuse.

187. The Human Rights Defender, the press secretary to the President and some civil society organisations have condemned these acts of violence against journalists.

188. The Prosecutor General told us that criminal proceedings had been opened by the public prosecution service, and that investigations were in progress into both cases. He even sent us detailed information in writing about the current situation of the two investigations.

189. According to the annual Worldwide Press Freedom Index for 2006, published by international non-governmental organisation Reporters without Borders and listing 168 states, Armenia is in 101<sup>st</sup> position.

#### 3.3.6. *Freedom of assembly*

190. In Resolution 1361 (2004) the Assembly asked the Armenian authorities:

*"to immediately begin examining, in co-operation with the Council of Europe, the question of the balance to be struck between freedom of assembly and demonstration and respect for public order, and to adopt a law on demonstrations and public meetings in full compliance with Council of Europe principles and standards."*

191. The amendments to the law on organising meetings, assemblies, rallies and demonstrations, adopted on 4 October 2005, took into account most of the Venice Commission's recommendations<sup>47</sup>.

192. Civil society and opposition representatives informed us that the few meetings and demonstrations organised since early 2005, especially in the wake of the referendum of 27 November, again gave rise to arbitrary action by the authorities, excessive use of force and arbitrary arrests by the police.

193. With the approaching parliamentary elections, being held in the spring of 2007, we urge the Armenian authorities to ensure that the law is applied in practice, including by local authorities, in a manner compatible with the requirements of Article 11 of the ECHR and that freedom of assembly is fully guaranteed. Arbitrary arrests and excessive use of force by the police should no longer be tolerated and those responsible should be sanctioned.

#### **4. THE NAGORNO-KARABAKH CONFLICT**

194. Upon acceding to the Council of Europe, Armenia entered into the following commitments with regard to the conflict in Nagorno-Karabakh:

- a. to pursue efforts to settle this conflict by peaceful means only;*
- b. to use its considerable influence over the Armenians in Nagorno-Karabakh to foster a solution to the conflict;*
- c. to settle international and domestic disputes by peaceful means and according to the principles of international law (an obligation incumbent on all Council of Europe member states), resolutely rejecting any threatened use of force against its neighbours." (Avis No 221, para. 13. ii).*

195. The Nagorno-Karabakh conflict is currently the greatest obstacle to peace and stability in this part of the Caucasus. Over a decade has elapsed since the start of the hostilities and the subsequent ceasefire, but the parties have still not succeeded in reaching agreement on tangible measures that might lead to a lasting peace and the return of the hundreds of thousands of displaced persons. A negotiated settlement is more than overdue, firstly in the interests of the populations concerned and also with a view to restoring neighbourly relations between the two states.

196. In its Resolution 1416 (2005) entitled "*The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference*", adopted on 25 January 2005, the Assembly called on the states that had participated in the Minsk conference to step up their efforts to achieve the peaceful resolution of the conflict and invited their national delegations to the Assembly to report annually to it on the action of their governments in this respect. For this purpose, the Assembly asked its Bureau to establish an ad hoc committee.

197. The ad hoc committee was set up by the Bureau on 28 January 2005 and reconstituted in 2006<sup>48</sup>. As the Monitoring Committee's co-rapporteurs on Armenia, we are members of this ad hoc committee, which is chaired by Lord Russell-Johnston and also includes the Chairs of the national delegations of the two states concerned, the Monitoring Committee's co-rapporteurs on Azerbaijan, representatives of the political groups which would otherwise be unrepresented (currently the ALDE and the UEL)<sup>49</sup> and representatives of the main parliamentary opposition parties of the two states concerned.

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<sup>47</sup> See doc. CDL(2005)039.

<sup>48</sup> Initially the committee's name and terms of reference were confined to "implementing paragraph 5 of Resolution 1416 (2005) on the conflict over the Nagorno-Karabakh region dealt with by the Minsk Conference". Following the committee's first report to the Bureau in January 2006, and in line with one of the report's conclusions, the committee was reconstituted in 2006 with a changed name and terms of reference. It is now called the "Ad Hoc Committee of the Bureau on the implementation of Resolution 1416 (2005) on the conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference". These new terms of reference allow it to broaden its field of action and actively contribute to the development of a positive climate around the peace process without encroaching upon the negotiations.

<sup>49</sup> Lord Russell-Johnston represented the ALDE and Mr Platvoet the UEL.

198. The negotiations conducted up to the end of 2005 with a view to a peaceful settlement of the conflict and the positions of Armenia and Azerbaijan on the question are presented in the report by the Chair of the ad hoc committee dated 10 January 2006, to which we refer for a more detailed description<sup>50</sup>.

199. Since January 2006 three meetings of the Presidents of Armenia and Azerbaijan have been held, in Rambouillet in February, in Bucharest in June and in November in Minsk. However, no significant step towards a peaceful settlement of the conflict would unfortunately seem to have been made to date, although the negotiations are continuing.

200. Moreover, in early October 2006, the Co-Presidents of the Minsk Group, who had increased their efforts over the last two years, visited the region in order to re-launch the process.

201. During our discussions with him at the end of September 2006, President Kocharyan did not seem very optimistic about any significant change in the two states' positions in the near future.

202. We can but reiterate that it is in the interest of both parties to end this conflict as soon as possible, ruling out the use of force, in accordance with the commitments they entered into on joining the Council of Europe. Without a settlement in this more than a decade old conflict, prospects for stability and prosperity will remain precarious in both countries and, beyond their borders, in the entire region.

203. The Parliamentary Assembly, in particular through the Bureau's ad hoc committee, will attempt to help engender a positive negotiating climate and foster dialogue at the parliamentary level and between the populations of the two countries concerned, and also with the population of Nagorno-Karabakh, while refraining from interfering in the negotiating process.

204. As pointed out in the report by the Chair of the ad hoc committee, nothing has been done to prepare the populations of the two countries for the possibility of a compromise. None of the communities seems ready to make concessions or to accept the measures currently being negotiated by the two foreign ministers.

205. As the next step, the ad hoc committee has decided to hold a meeting of the national delegations of Armenia and Azerbaijan during the January 2007 part-session, before deciding on future action, such as a visit to the region or the organisation of an interparliamentary conference.

206. In the meantime, Mr Platvoet, the rapporteur on missing persons in Armenia, Azerbaijan and Georgia of the Committee on Migration, Refugees and Population, visited the Nagorno-Karabakh region, among others, in June 2006 and is currently preparing his report on this subject. The same committee presented a report on refugees and displaced persons in Armenia, Azerbaijan and Georgia to the Assembly at its April 2006 part-session, which resulted in the adoption of Resolution 1497 (2006). We refer to these recent documents as regards the situation of refugees and displaced persons in Armenia.

## 5. CONCLUSIONS

207. The constitutional reform carried out with the Council of Europe's assistance has created conditions conducive to the implementation of many of the commitments entered into by Armenia on joining the Organisation. For instance:

- improved separation, and a better balance, of powers is now guaranteed;
- the revised Constitution provides for direct or indirect election of the mayor of Yerevan;
- the right to apply to the Constitutional Court has been granted to citizens and to institutions such as the parliamentary opposition and the Human Rights Defender, local authorities, etc; these institutions and citizens alike have speedily taken advantage of the scope offered to them by the new Constitution, and the Constitutional Court has started to play a very important role as the guarantor of institutions and human rights;
- the foundations have been laid for independence of the judiciary, and it will now be possible to begin the second stage of the process of reforming the judicial system, including the Prosecutor General's Office;

<sup>50</sup> Doc. AS/Bur/NK (2005) 02 rev. 2. Also see the Progress Report of the Bureau of the Assembly and the Standing Committee (27 January – 10 April 2006), Doc. 10874, p. 9.

- the institution of the Human Rights Defender, his/her election by parliament and the principle that he/she cannot be removed from office have found their place in the Constitution, enabling him/her to play an increasingly active role in the protection of Armenians' human rights;
- administrative detention has been abolished;
- the Constitution now provides for the body which regulates the electronic media (the National Television and Radio Commission, NTRC) to have a different membership, and this will strengthen its independence.

208. At the same time, the irregularities that affected the constitutional referendum, which we deplored, and the failure to take steps to sanction the cases of fraud noted marred the credibility of the official results and unfortunately prevented them, and hence the constitutional reform itself, from being accepted by all of the country's political parties and by public opinion. Only an improvement in the political climate and the institution of dialogue between the ruling coalition and the opposition can guarantee the effective implementation of the new system of government provided for in the revised constitution.

209. Implementation of the constitutional reform and of the legislative reforms that should accompany it requires an acceleration of the legislative process. Nonetheless, draft legislation of importance to both the democratic process in Armenia and the honouring of its commitments vis-à-vis the Council of Europe, such as the bills on reform and independence of the electronic media, should be the subject of a genuine debate both inside and outside Parliament, in which all the political parties and civil society participate and which is conducted with the support of international experts.

210. Lastly, simply passing legislation is not enough to implement democratic reforms in the country. The laws must also be applied, which does not appear to be always the case at present. In addition, implementation of certain reforms, such as the reform of the judicial system and the fight against corruption, pluralism and independence of the electronic media and an improvement in detention conditions and in police conduct, takes more time than the reform of the legislation itself.

211. Over the next few months, constituting the run-up to the parliamentary elections in the spring of 2007, we shall exercise considerable vigilance over developments regarding the electoral and electronic media reforms and their implementation. Armenia must furnish proof of how far it has progressed along the road to democracy and European integration: the forthcoming elections must comply with European standards for free and fair elections, and media coverage of the election campaign and the elections must be pluralist and unbiased. We give our full backing to any action by the Council of Europe and its member states aimed at assisting Armenia in accomplishing this task.



**Appendix I**

**List of legal acts subject to be adopted or amended  
as a result of amendments and addenda to the Constitution of the Republic of Armenia**

<b><i>Legal Acts subject to be adopted or amended</i></b>	<b><i>Articles of the Constitution of Armenia, which are the basis for adopting or amending the legal act</i></b>	<b><i>Implementing Agency</i></b>	<b><i>Information provided on 19 December 2006</i></b>
1. Draft Law on making amendments and addendato the Law of the Republic of Armenia "On Legal Acts"	6-2 (8,9), 6-5, 81-2, 83.5, 86, 87, 88.1	Ministry of Justice	On the agenda of the Parliament's extraordinary session starting on 20 December 2006
2. Draft Law on amending the Law of the Republic of Armenia on "Penitentiary Service"	88.1	Ministry of Justice	
3. Draft law on amending the Law "On Service for Compulsory Enforcement of Court Acts"	88.1	Ministry of Justice	
4.Draft law on making amendments and addenda to the Law " On State Register of Juridical Persons"	88.1	Ministry of Justice	
5.Draft Law on making amendments and addenda to the Law "On the State Coat of Arms of the Republic of Armenia"	13-3	Ministry of Culture and Youth Affairs	Adopted
6. Draft Law on making amendments and addenda to the Law "On the State Flag of the Republic of Armenia"	13-3	Ministry of Culture and Youth Affairs	Adopted
7. Draft Law "On the State Anthem of the Republic of Armenia"	13-4	Ministry of Culture and Youth	On the agenda of the Parliament's extraordinary session starting on 20 December 2006
8.Draft Law on making amendments and addenda to the Law "On putting into effect the Criminal Code"	15	Ministry of Justice	
9. Draft law on making amendments and addenda to the "Code of Criminal Procedure"	22-7 56.1	Ministry of Justice	
10.Draft Law on making amendments and addenda to the "Criminal Code" (Article 13)	22-3,4,5	Ministry of Justice	

11. Draft law on making amendments and addenda to the Law "On Human Rights' Defender"	83.1	Ministry of Justice	Adopted
12. Draft Law on making amendments and addenda to the Law "On Citizenship of the Republic of Armenia"	11.3-2 30.1 43	Police	
13. Draft Law on making amendments and addenda to the "Civil Code"	31-3	Ministry of Justice	Adopted
14. Draft Law on making amendments and addenda to the "Land Code"	31-3,4	Ministry of Justice	
15. Draft Law on making amendments and addenda to the "Labor Code"	32-4 35-3	Ministry of Labor and Social Affairs	
16. Draft Law on "Chamber of Control of the National Assembly"	77 83.4	Ministry of Finance and Economy	On the agenda of the Parliament's extraordinary session starting on 20 December 2006
17. Draft Law "On the Legal Regime of Martial Law"	44 55-13) 81-1,2	Ministry of Defense	Adopted
18. Draft Law on making amendments and addenda to the Law "On Defense"	55-12) 55-13) 81-2	Ministry of Defense	Adopted
19. Draft law "On the Legal Regime of a State of Emergency"	44 55-14) 81-2	Ministry of Territorial Administration, Staff of the Government, Police	Adopted
20. Draft Law on invalidating the law "On the President of the Republic" and some other laws	49	Ministry of Justice	Adopted
21. Draft Law on making amendments and addenda to the Law on the "Rules of Procedure of the National Assembly"	54, 55-9), 58, 60, 62, 63, 65, 66, 68, 69, 70, 71, 73, 74, 74.1, 75, 77-2, 78, 79-1, 80, 81-2, 82, 83-3,4), 83.1, 83.2, 83.3, 83.4, 83.5, 84, 90, 94.1, 103	National Assembly	
22. Draft Law on making amendments and addenda to the Law "On International Treaties of the Republic of Armenia"	6-4 55-7) 81-2	Ministry of Justice	On the agenda of the Parliament's extraordinary session starting on 20 December 2006
23. Draft Law on making amendments and addenda to the Law "On Administrative Territorial Division"	82 83.5-11 108	Ministry of Territorial Administration	Adopted

24. Draft Law on making amendments and addenda to the Law "On Central Bank"	83.3	Central Bank	On the agenda of the Parliament's extraordinary session starting on 20 December 2006
25. Draft Law "On City of Yerevan"	108	Ministry of Territorial Administration	
26. Draft Judicial Code	55-11) 55-11.1) Chapter 6	Ministry of Justice	On the agenda of the Parliament's extraordinary session starting on 20 December 2006
27. Draft Law on making amendments and addenda to the Law "On Constitutional Court"	5-1, 55-10), 81-2, 83-3), 93, 96, 97 100, 101, 102, 109	Ministry of Justice	Adopted
28. Draft Law "On Prosecutor's Office"	55-9) 103 101	Ministry of Justice	
29. Draft Law on making amendments and addenda to the Law "On Local Self-Government"	Chapter 7 100. paragraph 8 101. paragraph 5	Ministry of Territorial Administration	Adopted
30. Draft Law on making amendments and addenda to the Law "On Local Referendum"	110	Ministry of Territorial Administration	Adopted
31. Draft Law on making amendments and addenda to the Law "On Formation and dismissal of the Government of the Republic of Armenia"	55-4) 74	Ministry of Justice	On the agenda of the Parliament's extraordinary session starting on 20 December 2006
32. Draft Law on making amendments and addenda to the Civil Procedure Code	93-1 of the Previous Constitution	Ministry of Justice	
33. Draft Law on making amendments and addenda to the Criminal Procedure Code	93-1 of the Previous Constitution	Ministry of Justice	
34. Draft Law on making amendments and addenda to the Law "On State Tax"	93-1 of the Previous Constitution	Ministry of Justice	
35. Draft Law on making amendments and addenda to the Law "On Political Parties"	28	Ministry of Justice	

36. Draft Law on making amendments and addenda to the Law "On Trade Unions"	28	Ministry of Justice	Adopted
37. Draft Law on making amendments and addenda to the Law "On Police"	16	Police	Adopted
38. Draft Law on making amendments and addenda to the "Customs Code"	16	Customs Service	
39. Draft Law on making amendments and addenda to the Law "On Tax Service"	28	Tax Service	Adopted
40. Draft Law on making amendments and addenda to the Law "Service in Police"	16	Police	Adopted
41. Draft Law on making amendments and addenda to the Disciplinary Code for Police	16	Police	Adopted
42. Draft Law on making amendments and addenda to the Law "On Detention Procedure of Arrested and Detained Persons"	16	Ministry of Justice	Adopted
43. Draft Law on making amendments and addenda to the Code of Administrative Infringements	16	Ministry of Justice	Adopted
44. Draft Law on making amendments and addenda to the Law "On Rescue Service of Armenia"	28	Ministry of Territorial Administration	
45. Draft Law on making amendments and addenda to the Law "On Local Taxes and Fees".	106-4	Ministry of Territorial Administration	
46. Decree of the President of the Republic on "State Administration in the City of Yerevan"	88, 1-3 108	Ministry of Territorial Administration	
47. Draft Law on making amendments and addenda to the Law "On Advocacy"	93-1 of the previous Constitution	Ministry of Territorial Administration	Adopted
48. Draft Law on making amendments and addenda to the Law "On Budget System"	106	Ministry of Finance and Economy	Adopted
49. Draft Law on making amendments and addenda to the Rules of Procedure for National Commission on Television and Radio	27	National Commission on Television and Radio	

50. Draft law making amendments and addenda to the law "On Child Rights"	32	Ministry of Labor and Social Affairs	
51. Draft law making amendments and addenda to the law "On Education"	39	Ministry of Education and Science	

## Appendix II

### Programme of the fact-finding visit to Armenia (26-28 September 2006)

Co-rapporteurs: Mr Georges COLOMBIER (France, EPP/CD)  
Mr Mikko ELO (Finland, SOC)

Secretariat: Mrs Despina CHATZIVASSILIOU, Secretary, Monitoring Committee

#### Tuesday, 26 September 2006

- 08.30 – 09.20 Working breakfast in the hotel with Mrs Bojana URUMOVA, Special Representative of the Secretary General of the Council of Europe to Armenia
- 09.30 – 09.50 Meeting with religious organisations\*:
- Mr Tigran HARUTYUNYAN, Jehova's witnesses
  - Mr Levon MARGARYAN, lawyer
- 10.00 – 11.30 Meeting with Council of Europe Ambassadors\*
- 12.00 – 13.00 Meeting with Human Rights NGOs\*:
- Mr Avetik ISHKHANYAN, Chairman, Helsinki Committee of Armenia
  - Mrs Larisa MINASYAN, Executive Director, Open Society Institute
  - Mr Artak KIRAKOSYAN, Civil Society Institute
  - Mr Mikael DANIELYAN, Helsinki Association
  - Mr Stepan DANIELYAN, Collaboration for Democracy
- 13.30 – 14.00 Meeting with:
- Mr Hovhannes HOVHANNISYAN, Chairman, Liberal Progressive Party (LPP)
  - Mr Edgar ANTINYAN, Member of the LPP
  - Mr Stepan SAFARYAN, Member of the Heritage Party
- 14.00 – 15.00 Meeting with Media NGOs\*:
- Mr Mesrop MOVSISYAN, President, "A1+" TV
  - Mrs Elina POGHOSBEKYAN, Yerevan Press Club
  - Mr Tigran HARUTYUNYAN, President, Noyan-Tapan TV
- 15.30 – 16.00 Meeting with Mr Yervand ZAKHARYAN, Mayor of Yerevan
- 16.10 – 16.50 Meeting with Mr Hovik ABRAHAMYAN, Minister of Territorial Administration of the Republic of Armenia
- 17.00 – 17.40 Meeting with Mr Gagik HAROUTYUNYAN, President of the Constitutional Court of Armenia
- 17.50 – 18.30 Meeting with Mr Armen HAROUTYUNYAN, Human Rights Defender of the Republic of Armenia

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\* Meetings co-ordinated by the Council of Europe Office in Yerevan.

**Wednesday, 27 September 2006**

09.00 – 09.50	Meeting with Mr Davit HAROUTIUNYAN, Minister of Justice of the Republic of Armenia
10.00-10.50	Meeting with Mr Aghvan HOVSEPYAN, Prosecutor General of the Republic of Armenia
11.00 – 11.45	Meeting with Mr Gagik AZARYAN, Chairman of the Central Electoral Committee and the members
12.00 – 12.50	Meeting with Mr Hayk HAROUTUNYAN, Head of the Police of the Republic of Armenia
15.30 – 16.30	Meeting with members of the National Committee on Television and Radio and Council of Public Television and Radio Company
16.45 – 17.30	Meeting with Mr Serzh SARGSYAN, Minister of Defence of the Republic of Armenia

**Thursday, 28 September 2006**

09.00 – 09.45	Meeting with Armenian delegation to PACE
09.50 – 10.40	Meeting with Mr Rafik PETROSYAN, Chairman of the Standing Committee of the National Assembly on State and Legal Affairs and Mr Armen RUSTANYAN, Chairman of the Standing Committee of the National Assembly on Foreign Relations
10.45 – 11.45	Meeting with Chairmen of opposition factions of the National Assembly
11.50 – 12.50	Meeting with Chairmen of pro-government factions and deputy groups of the National Assembly
14.30-15.45	Meeting with Mr Tigran TOROSYAN, President of the National Assembly, Head of the PACE Armenian delegation
16.00 – 16.45	Meeting with Mr Andranik MARGARYAN, Prime Minister of the Republic of Armenia
17.00	Meeting with Mr Robert KOCHARYAN, President of the Republic of Armenia

## Appendix III

### DECLARATION

#### **on the constitutional reform in Armenia adopted by the Monitoring Committee in January 2006**

Having initially failed for lack of a quorum in 2003, a revised Constitution was adopted by referendum on 27 November 2005. The changes made in the Constitution, with the Venice Commission's assistance, will at last allow Armenia to make progress in respecting the commitments it accepted on joining the Council of Europe.

The Monitoring Committee notes, however, that Armenia has not taken the opportunity offered by the referendum to ensure organisation of electoral process, in full compliance with the Council of Europe standards, on the basic values of the European family.

The positive outcome of the referendum is certainly to be welcomed. But the end does not justify the means. Was it really necessary to stuff the ballot boxes and inflate the turnout artificially to get the reform through? The conclusions reached by the Parliamentary Assembly's Ad hoc Committee which observed the referendum – unfortunately at only a few polling stations – and the many media and NGO reports can only cast doubt on the credibility of the official results.

The Monitoring Committee also regrets that the political debate on a reform of such importance for the country's future was not on a level with the issues: the absence of dialogue between the political groups, the belated organisation of a genuine public information campaign, and the opposition's appeal to voters to boycott the referendum or vote against, deprived the country of calm and constructive discussion.

Equally regrettable is the attitude of the opposition, which withdrew most of its members from the electoral commissions, thus depriving itself of the possibility of contesting in court the frauds and irregularities of which it complained.

Similarly, the Attorney General's refusal to investigate specific cases of fraud, e.g. stuffing of ballot boxes and falsification of electoral registers, even though these had been publicly denounced by the President of the Armenian Parliament, can only cast doubt on the authorities' determination to promote rule-of-law democracy. In this context, the few voters prosecuted for voting more than once seem mere scapegoats, allowing the authorities to evade their political responsibilities.

As far as the Monitoring Committee is concerned, Armenia's implementation of the new constitutional provisions will be a major test of its political determination to bring the country genuinely closer to European values. This is a question, not just of at last adopting the legislative reforms hitherto blocked by an unsuitable Constitution, but above all of creating a political climate which will ensure that the parliamentary elections in 2007, and the presidential election in 2008, respect European standards.

This will involve strengthening all the country's democratic institutions, by comparison with the excessive powers of the presidency, and promoting independence of the judiciary, free and pluralist functioning of the electronic media, and effective freedom of assembly, to mention only the most urgent priorities. In this connection, the controversy currently surrounding the functioning of the Ombudsman's Office during the transition period leading up to his successor's election by parliament does not augur well.

The Monitoring Committee now expects the Armenian authorities to produce a detailed timetable for adoption of the reforms which Armenia must complete to honour its obligations and commitments to the Council of Europe.

The Monitoring Committee will continue to work for effective co-operation between the Council of Europe and Armenia in all areas where the Organisation can provide political support and technical assistance. But it will also redouble its vigilance in the coming year, to ensure that the future reforms are fully in line with the Council's standards and requirements.



*Reporting committee:* Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee).

*Reference to committee:* Resolution 1115 (1997).

*Draft resolution* adopted unanimously by the committee on 13 December 2006.

*Members of the committee:* Mr Eduard **Lintner** (Chairperson), Mrs Hanne **Severinsen** (1<sup>st</sup> Vice-Chairperson), Mr Mikko **Elo** (2<sup>nd</sup> Vice-Chairperson), Mr Tigran Torosyan (3<sup>rd</sup> Vice-Chairperson), Mr Aydin **Abbasov**, Mr Pedro Agramunt, Mr Birgir Ármannsson, Mr Jaume Bartumeu Cassany, Mrs Mertixell Batet, Mr Aleksander **Biberaj**, Mrs Gülsün **Bilgehan**, Mrs Mimount **Bousakla**, Mr Luc **Van den Brande**, Mr Patrick Breen, Mr Mevlüt **Çavuşoğlu**, Ms Lise Christoffersen, Mr Boriss Cilevičs, Mr Georges **Colombier**, Mrs Herta Däubler-Gmelin, Mr Joseph Debono Grech, Mr Juris Dobelis, Mrs Josette **Durrieu**, Mr Mátyás **Eörsi**, Mr Per-Kristian Foss, Mr György **Frunda**, Mrs Urszula Gacek, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Marcel Glesener, Mr Charles Goerens, Mr Stef Goris, Mr Andreas **Gross**, Mr Alfred Gusenbauer, Mr Michael Hagberg, Ms Gultakin Hajiyeva, Mr Michael **Hancock**, Mr Andres **Herkel**, Mr Serhiy **Holovaty**, Mr Kastriot **Islami**, Mr Elmir Jahić, Mr Erik Jurgens, Mr Evgeni Kirilov, Mr Konstantin **Kosachev**, Mr Andros Kyprianou, Mrs Darja Lavtižar-Bebler, Mrs Sabine Leutheusser-Schnarrenberger, Mr Tony Lloyd, Mr Mikhail **Margelov**, Mr Bernard Marquet, Mr Frano Matušić, Mr Miloš Melčák, Mrs Nadezhda **Mikhailova**, Mr Neven Mimica, Mr Paschal Mooney, Mr João Bosco **Mota Amaral**, Mr Zsolt Németh, Mr İbrahim **Özal**, Mr Theodoros **Pangalos**, Mr Leo **Platvoet**, Ms Maria **Postoico**, Mr Christos Pourgourides, Mr Johannes Randegger, Mr Dario **Rivolta**, Mr Armen **Rustamyan**, Mrs Katrin Saks, Mr Kimmo **Sasi**, Mr Adrian Severin, Mr Samad Seyidov, Mr Vitaliy **Shybko**, Mrs Sabina Siniscalchi, Mr Leonid **Slutsky**, Mr Michael Spindelegger, Mrs Elene **Tevdoradze**, Mr Egidijus **Vareikis**, Mr Miltiadis **Varvitsiotis**, Mr José Vera Jardim, Mrs Biruté Vésaitė, Mr Oldřich Vojtíš, Mr David **Wilshire**, Mrs Renate Wohlwend, Mr Andrej **Zernovski**, Mr Emanuelis **Zingeris**.

N.B.: The names of the members who took part in the meeting are printed in **bold**.

*Secretariat of the committee:* Mrs Ravaud, Mrs Chatzivassiliou, Mrs Theophilova-Permaul, Mrs Odrats