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

**Information note on the conclusions of the Ad Hoc Committee of the National Assembly of Armenia on the events of 1 and 2 March 2008 and “the reasons thereof”<sup>1 2</sup>**

Co-rapporteurs: Mr Georges COLOMBIER, France, Group of the European People’s Party, and Mr John PRESCOTT, United Kingdom, Socialist Group

<sup>1</sup> This information note has been made public by decision of the Monitoring Committee dated 17 December 2009.

<sup>2</sup> The first revision of this information note was published on 21 December 2009.

## I. Introduction

1. In Resolution 1609 (2008), the Parliamentary Assembly called for an independent, transparent and credible inquiry to be conducted into the events of 1 March 2008 and the circumstances that led to them. In response, the National Assembly of Armenia set up a parliamentary ad hoc Committee to conduct an inquiry into these events and “the reasons thereof”. However, as a result of its composition - which was dominated by representatives of the ruling coalition - and the fact that it was boycotted by the forces supporting Mr Levon Ter-Petrosian, it was concluded that this committee would not have the required credibility in the eyes of the Armenian public.

2. Therefore, on recommendation of the Commissioner for Human Rights of the Council of Europe, an independent expert group was established by Presidential decree, which was tasked with establishing the facts with regard to the events of 1 and 2 March, as well as the circumstances that led to them, on which basis the parliamentary ad hoc Committee could base its conclusions and recommendations.

3. Regrettably, as a result of the insurmountable tensions between the members of this fact-finding group, as well as of the continuous attempts by all sides to politicise its work, the group broke down and was disbanded by the authorities in May 2009.

4. However, in Resolution 1677, adopted in June 2009, the Assembly considered that an independent, impartial and credible investigation into the events of 1 and 2 March 2008, as well as into their circumstances, was still necessary. Given that the parliamentary ad hoc Committee had continued its work in parallel to the fact-finding group, and that it had reportedly been more independent in its work than originally expected, the Assembly considered that this body could finalise the inquiry and that, in the end, the outcome of its investigations would determine whether the criteria of impartiality and credibility had been met or that further investigations would be necessary.

5. The parliamentary ad hoc Committee presented its report on 17 September 2009. An English courtesy translation of the report was received on 3 November 2009. This note will give a short summary and analysis of this report.

## II. Outline of the Committee Report

6. The report consists of the following parts:

- i. establishment of the Committee and working methods;
- ii. examination of the pre- and post-electoral developments in relation to the Presidential Elections in Armenia on 19 February 2008;
- iii. examination of the events taken place on Freedom Square in the morning of 1 March 2008;
- iv. examination of the events on 1 and 2 March 2008 following the disbandment of the protests on Freedom Square;
- v. examination of the circumstances regarding the death of 10 persons during these events;
- vi. examination of the declaration of the state of emergency;
- vii. recommendations of the Committee.

### *i. Establishment of the Committee and working methods*

7. In this part the report outlines the legal basis for its work and highlights the decisions that were taken to ensure the participation of the opposition as well as to ensure the objectivity of its work. It notes that decisions in the Committee were taken, at all times, on the basis of consensus, with voting being used only as a last resort.<sup>3</sup> Reference is made to the materials received from the fact-finding group<sup>4</sup> and its individual former members, mostly from those that were nominated by the opposition, which the Committee examined in the context of their own investigations.

8. When the rapporteurs of the Assembly met with the Chairman of the ad hoc Committee, the latter mentioned the difficulties the ad hoc Committee had encountered in getting materials from the authorities, especially the law enforcement and secret services. However, the report makes no mention of this.

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<sup>3</sup> However, this does not imply that all its decisions were taken in consensus. One opposition member participating in this Committee did not sign the final report as he did not agree with a number of its conclusions. See also the conclusions of this note.

<sup>4</sup> In total, 2266 pages of reports and materials.

ii. *Examination of the pre- and post-electoral developments in relation to the presidential elections in Armenia on 19 February 2008*

9. The ad hoc Committee (hereinafter “the Committee”) partially bases its conclusions with regard to the causes of the events of 1 and 2 March 2008 on the report of the Human Rights Defender on this issue. In his report, the Human Rights Defender concluded that the socio-economic polarisation, the lack of public trust in the authorities – especially in the judiciary –, the lack of checks and balances between the different branches of government, the inadequate protection of civic and human rights and the emergence of a small political and economic elite governing the country, were the main factors leading to the outbreak of discontent after the presidential elections in February 2008.

10. While agreeing with the Human Rights Defender on these underlying factors, and also highlighting the effects of a lack of pluralism in the media, the Committee, however, concludes that it is the cynical exploitation of these factors by the forces supporting Levon Ter-Petrosian as “propaganda against the authorities” that created an atmosphere of intolerance and public discontent which, in turn, was manipulated by the opposition to instigate mass disorder.

11. This rather one-sided view of the underlying causes for the political crisis, the surprising lack of criticism of the authorities and placing the blame for the polarised political climate solely on the opposition forces, especially on those supporting Mr Levon Ter-Petrosian<sup>5</sup>, is regrettable as it undermines the credibility of the report by the Committee. That said, from the recommendations contained in the report (see below) it is clear that, in reality, the Committee made a far more comprehensive, and arguably more balanced, analysis of the factors that caused the crisis, than it was willing to publicise in its report.

iii. *Examination of the events taken place on Freedom Square in the morning of 1 March 2008*

12. This section focuses on the decision of the police to intervene in the protest on Freedom Square during the morning of 1 March 2008 and on the manner in which this police operation was executed.

13. According to the police, its decision to search the protesters encampment on Freedom Square followed intelligence data that the protesters were amassing arms. The police maintains that its actions were not aimed at putting an end to the protests. Only when the police was met with strong resistance from the protesters, was the decision taken to “restore the public order”. However, based on discrepancies in the information provided by the police, the Committee concluded that the decision for a “site inspection” had been made at the very last moment and, implicitly, that therefore the police action was badly prepared. When the imminent police action was leaked and met with organised resistance from the protesters did the police on the spot decide to terminate the protest. However, in the view of the Committee, all decisions with regard to the police action had been made according to the relevant legal provisions.

14. The Committee strongly criticises the manner in which the police handled the situation and, particularly, for not implementing measures to establish a dialogue with the protesters or deploying other non-violent mechanisms of crowd control. The Committee concludes in this respect that “*the police lacked professionalism and organisational skills in organising and implementing its actions*”.<sup>6</sup> At the same time the Committee chastises the organisers of the protest on Freedom Square for calling for resistance to the police and not taking the necessary measures to prevent violence.

15. In the view of the Committee, a number of individual actions of the police during that morning, including instances of police brutality, seriously violated legal procedures and discredited the police action in the eyes of the public. In this respect, the confiscation and subsequent destruction of video materials from journalists was considered unacceptable by the Committee. However, in view of what the Committee considered as unacceptable violence against the police, it deemed the police action in the morning of 1 March “on the whole lawful and proportionate”.<sup>7</sup>

16. The report of the Committee regrettably does not address the allegations that the police actions from the onset were aimed at quelling the protests and that the weapons were planted among the protesters to justify the forceful termination of the protest by the police. However, it is clear from the report that the Committee has significant questions with regard to the underlying reasons of the police action - especially in

<sup>5</sup> The report for instance “fails” to mention that several other presidential hopefuls, which since have joined the coalition forces, made repeated and strong allegation of electoral fraud immediately after the elections.

<sup>6</sup> Conclusions of the Ad Hoc Committee, page 32, section 3.2 § 8

<sup>7</sup> Conclusions of the Ad Hoc Committee, page 35, section 3.2 § 22

the light of former President' Kocharyan's statement of 23 February that the protest actions constituted an "illegal attempt to take power" - without wanting to say so explicitly in the report.

*iv. Examination of the events on 1 and 2 March 2008 following the disbandment of the protest on Freedom Square*

17. Based on news and witness accounts, the Committee paints a picture of the protests emerging in central Yerevan, following the police actions on Freedom Square, which, fuelled by rumours that the police killed innocent protesters, quickly degenerated into practically uncontrollable riots. While the report clearly notes that opposition leaders were calling upon people to go to the area near the French Embassy, it also recognises that the overall nature of these protests was spontaneous and not premeditated. In that respect, the report confirms the position of the rapporteurs of the Assembly that the events on 1 March 2008 did not constitute a premeditated attempt at a coup d'Etat.

18. The Committee notes that police snipers were used (despite initial claims of the authorities to the contrary) and that the police decided to have police officers, "armed with AK47 sub-machine guns" [SIC] fire tracer bullets in the air to exert psychological pressure on the protesters.

19. On the basis of their analysis of the quickly deteriorating situation, the Committee concluded that the police in general had acted lawfully, but raised serious questions with regard to the use of "special means"<sup>8</sup> by the police. In addition, the Committee condemned the instances of police brutality that it recognised took place in the afternoon of 1 March 2008.

20. In general, the Committee considered that the police had been inadequately prepared – in technical, organisational and "moral-psychological" [SIC] terms – to prevent and resolve civil disorder of the scale of that took place in the afternoon of 1 March 2008.

21. Similarly, the Committee regretted and condemned that opposition leaders did not do more to avert the civil disorder and outbreak of violence. In this respect, it notes that due to contradicting decisions and inaction of opposition leaders, measures were not taken that could have prevented the further deterioration of the situation in the afternoon of 1 March.

*v. Examination of the circumstances regarding the death of 10 persons during these events*

22. The lack of concrete results from the investigation into the 10 fatalities during the events of 1 and 2 March 2008 has been of serious concern to the Assembly. The extensive attention given to this subject in the report of the Committee should therefore be welcomed.

23. The interim report of the fact-finding group, as well as individual reports by some of its members after the group was disbanded, raise a number of questions regarding the circumstances of the death of these 10 persons. These questions are discussed comprehensively in the report, in a clear attempt to demonstrate that the findings of the fact-finding group were taken into account by the Committee. The manner in which these findings are reproduced and discussed in the report, increases its overall transparency and should be welcomed.

24. The reports of the fact-finding group and its members, which are reproduced in the Committee report, regrettably underscore the level of the politicisation of the work of the fact-finding group. They seem to focus on procedural mistakes and errors by the relevant investigation services, rather than on establishing clarity with regard to the circumstances of these 10 deaths. That notwithstanding, these reports raise legitimate questions with regard to the official version of the events and contain important findings that are acknowledged as such by the Committee. It should be noted that the responses of the investigation services to the reports of the fact-finding group, which are reproduced in the Committee report, show an unacceptable level of contempt by these services for the members and the work of the fact-finding group.

25. Of the 10 fatalities, two policemen and eight civilians, one person (a policeman) died as a result of the explosion of an explosive device, five from bullet injuries, three from injuries caused by being directly hit by "Cheremukha-7" gas grenades and one from injuries to the head caused by a non specified blunt object.

26. The fact-finding group raised a number of questions with regard to the death of the policeman by an explosive device. In the view of the fact-finding group, there is enough evidence to suggest that the explosion took place at waist level (which would indicate that it most likely was caused by a grenade from the

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<sup>8</sup> Non lethal means of force for crowd control such as teargas, rubber bullets etc.

belt of the policeman) and not at his feet as claimed by the authorities<sup>9</sup> (which would indicate that the grenade was thrown by a protester). On the basis of its own investigations, the Committee rejects the conclusions of the fact-finding group (which indeed mostly consist of procedural errors) but does agree with the latter that serious questions can be raised with regard to the manner in which the police have conducted the investigation into this death.

27. In two of the five deaths from bullet wounds, the bullet could not be recovered, which makes it impossible to establish the type of weapon from which they were fired. Of the other three deaths as a result of bullet injuries, two were the result of a bullet fired by Marakov PM pistol, and one from a bullet fired by a Kalashnikov 47 sub-machine gun. Given the fact that the police was firing tracer bullets with Kalashnikov sub-machine guns over the heads of the protesters (and what goes up has to come down!), as well as the fact that the Marakov PM is the standard issue sidearm of the Armenian police, it could be expected that there would be a very high statistical chance of tracing some of these bullets to the weapons that fired them. However, surprisingly, the Committee reports that the investigation services were unable to trace any of the bullets. The fact that this conclusion is not questioned by the Committee is regrettable, as the claim that the bullets cannot be traced raises a number of serious questions and could easily be construed as a possible cover-up by the police.

28. One person died as the result of a violent impact of a blunt object on the head, which fractured the skull and penetrated the brain. The report does not elaborate further on the nature of the blunt object or the circumstances of the death of this person nor reaches any conclusions in this respect.

29. The death of three persons by tear gas grenades that were fired by the police has been a matter of great controversy. The Committee established that these tear gas grenades were acquired still in the time of the Soviet Union and had long since expired.<sup>10</sup> However, on the basis of expert testimony, the Committee concluded this fact had not contributed to their fatal use. Instead, it concluded that the fatalities were the result of grenades being fired directly at, or in the close vicinity<sup>11</sup> of, the protesters at point blank range, which is expressly forbidden in the regulations governing their use. Regrettably, international experts from Russia, the USA and Ireland confirmed to the Committee that it is impossible to match the grenade to the weapon that fired them due to the fact that the bore does not leave a suitable ballistic signature on the plastic casing of the grenade. It is, therefore, doubtful that the policemen that fired these fatal grenades will ever be found.

30. In its investigations, the Committee established that there are currently no valid legal regulations covering the use of "special means" by law enforcement forces.

31. The Committee strongly criticises the mistakes made by the police in the investigations into the 10 fatalities, which, at best, undermine the credibility of the overall investigation. To the contrary, the Committee concludes that the Prosecutor General has conducted his investigations in a professional and correct manner.

32. In its report, the Committee notes that there have been a number of proven cases of excessive force being used by the police against protesters during the events on 1 and 2 March 2008. While welcoming that four police officers have already been charged for the use of excessive force, the Committee regrets that, in a large number of cases, no action has (yet) been taken.

*vi. Examination of the declaration of the state of emergency*

33. Based on the fact that the riots were deteriorating into a violent and practically uncontrollable situation; taking into account that the first fatalities had been registered; that looting was going on and that considerable damages were being caused to both public and private property, the Committee concluded that the declaration of the State of Emergency by President Kocharyan in the early evening of 1 March 2008 was not only legal, but indeed necessary to bring the situation in central Yerevan back under control. On the contrary, the Committee regrets that the state of emergency was not declared earlier as this could, in its opinion, have avoided some of the "grave consequences" of the riots.

<sup>9</sup> During the visit of Mr Prescott on 6 March 2008, the Head of the National Police stated that the policeman had died because he had thrown himself on the grenade to protect bystanders from its blast. This version seems to be disproved by the forensic evidence that suggests that the grenade exploded at the feet of the policeman in question.

<sup>10</sup> According to the manufacturer, the maximum shelf life is no more than 5 years.

<sup>11</sup> This can create potentially lethal ricochets.

*vii. Recommendations of the Committee*

34. The recommendations of the Committee are reproduced in full in annex A to this note, as they are the central part of the conclusions by the Committee.

35. Several recommendations were made with regard to the need for reform of the police forces. Taking into account its findings that a number of legal acts governing the police had either expired, or were inadequate, especially those regulating the use of force and use of special means, the Committee requested that the government conducts a review of all legal acts pertaining the police. It recommended the parliament to ensure that all laws and legal acts regarding the police will be in full compliance with the European Convention on Human Rights, the International Covenant of Civil and Political Rights and the United Nations Principles of the Use of Force and Firearms by Law Enforcement Officials. In addition, the Committee has initiated a number of legal initiatives aimed at combating corruption and impunity.

36. In the field of political reforms, the Committee stresses the need for reform of the media, with a view to strengthening media pluralism and the impartiality of the public broadcaster; the need for political and electoral reforms with a view to enhancing the democratic functioning of, and public trust in, state institutions and the need for further reforms of the judiciary with a view to ensuring their independent functioning.

37. The Committee notes that, in a number of court cases against arrested opposition members, prosecution witnesses withdrew their original testimonies in court, claiming that they were made under police pressure. Surprisingly, the Committee comes to the conclusion that these claims are the result of pressure by, or on behalf of, the defendants (!) and therefore recommends a witness protection programme. The fact that the Committee apparently rejects the possibility of police pressure, despite credible evidence to the contrary, is deeply regrettable.

38. With regard to the implementation of the changes to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations, the Committee notes that many requests for meetings and rallies are still too often rejected on technical grounds, or that improper restrictions are placed upon them and therefore recommends further legal reforms, which are to be welcomed.

39. Finally, the Committee concludes that the political crisis that ensued after the presidential elections in February 2008 has strong socio-economic roots, including the lack of public trust in the authorities as capable of guaranteeing political and social rights and protecting basic human rights, as well as unequal economic development that has created a strong intertwinement of political and economic interests, which encourages corruption.

**III. Comments and conclusions**

40. The recommendations are a comprehensive, although not complete, response to the political crisis that came to the forefront with the events of 1 and 2 March 2008. In many areas, the Committee repeats recommendations and findings made by the co-rapporteurs of the Monitoring Committee in the course of the last few years. This is to be welcomed and it is now important to discuss these recommendations with the Armenian authorities so that their implementation can also be followed in the framework of the monitoring procedure by the Assembly.

41. The comprehensive set of recommendations indicate that the Committee has made a far more in-depth analysis of the events of 1 and 2 March 2008 than is reflected in the rest of the report. This contradiction, as well as the manner in which certain issues are either stressed or avoided, give the impression that the Committee wanted, at all cost, to avoid too overtly discrediting the official version of the events or too harshly criticising the authorities on their handling of them. This "self censorship" is regrettable as it undermines the overall credibility of the inquiry.

42. In this context, it should be noted that one of the members of the Ad Hoc Committee, Mr Aram Karapetyan, President of the "Nor Zhamanakner" party, did not sign the final conclusions of the report, *inter alia*, as he felt they were written for local consumption.<sup>12</sup>

43. The two most obvious weaknesses of the report are its rather one-sided, bordering on biased description of the events leading up to crisis of 1 and 2 March 2008 and the practically total lack of discussion and analysis of developments that followed the events of 1 and 2 March 2008, such as the arrest and prosecution of a large number of opposition supporters.

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<sup>12</sup> Letter of Mr Karapetyan to the President of the Parliamentary Assembly dated 23 October 2009.

44. As mentioned, the discussion of the circumstances that lead to the events of 1 and 2 March 2009, place the blame for the polarised and tense socio-political climate nearly solely on the opposition, and generally avoids placing any blame on the authorities. However, taking into account that the recommendations clearly address a much more comprehensive set of possible causes, a further inquiry into the circumstances that lead to the events of 1 and 2 March 2008 would be mostly academic and of limited political use. In this respect, it could be considered encouraging the Human Rights Defender to elaborate on his original report on the causes of the March 2008 crisis.

45. The apparent absence of any analysis of the developments that followed the events on 1 and 2 March is of serious concern. Taking into account the very serious shortcomings observed, by several independent observers, including the Assembly, especially with regard to the role of the judiciary, prosecution and law enforcement agencies, reforms to address these deficiencies are urgently needed. As the report of the Committee lacks any recommendations in this respect, a follow up inquiry into these aspects should be recommended.

46. The lack of any concrete results from the inquiry into the 10 fatalities that occurred during the events of 1 and 2 March 2008 is unsatisfactory. There should be further efforts to trace any of the bullets that killed five of the 10 persons as a result of the events of 1 and 2 March 2008, to find the weapons that fired them, especially as there are indications that at least three of these bullets could have been fired by weapons that were used by the police during the events. Failure to properly answer these concerns could easily lead to allegations of foul play or cover up by the police.

47. The National Assembly of Armenia is currently debating the possible follow-up to the report of the ad hoc Committee, especially with regard to the implementation of its recommendations. In general, three options have been proposed to this effect:

- reconstitution of the fact-finding group: this option is proposed by some members of the opposition;
- the continuation, in some form, of a special ad hoc Committee of the Parliament that could conduct further inquiries were needed and that would monitor and co-ordinate the implementation of the recommendations given in the report;
- to task the relevant standing committees of the Parliament with following-up the recommendations of the ad hoc Committee, without establishing any special structure that could monitor/co-ordinate the implementation of these recommendations or conduct any follow-up inquiries.

48. While the format of the follow-up given to the report is ultimately an internal issue of the Armenian Assembly, the second option could be recommended. It is unlikely that the reconstruction of the fact-finding group is either feasible or beneficial, especially as the risk for the politicisation of its work continues to exist. At the same time, abolishing, or not establishing, any specialised structure for the follow-up of this report bears the risk that the recommendations, of the ad hoc Committee, and their interconnected nature, could be diluted. In addition, as mentioned above, the developments following the events on 1 and 2 March 2008 warrant further inquiry.

49. We intend to follow closely this matter in the framework of our regular monitoring of Armenia and report back to the Committee at one of its next meetings.

APPENDIX 1

**VII. RECOMMENDATIONS OF THE COMMITTEE**

With regard to the recommendations on political, legal and other settlements preventing the recurrence of 2008 March events, the Committee chronologically classifies them into the following three stages:

1. The recommendations of the Committee, which were submitted in the course of operation of the Committee - conditioned by the necessity of quick response by the Committee at the given moment or urgent regulation of some social relations - and the implementation of which is completed, are presented in the first chapter of the Report.

2. The recommendations of the Committee, which were submitted in the course of operation of the Committee, but are chronologically still in the process of implementation.

3. The recommendations of the Committee, which are presented upon publication of this Report (both in this and other chapters of the Conclusion) and are mostly conditioned with the actions to be taken in the near future.

**RECOMMENDATIONS OF THE SECOND STAGE**

1. Taking into account that, according to the expert conclusion, "Cheremukha-7" type special means available in the arsenal of the Police of the Republic of Armenia are expired, and their application may cause undesirable effects, the Committee recommended the Police of the Republic of Armenia to destroy the mentioned expired special means, as well as to instruct the personnel on special means storage procedure, storage life, workability, procedure for application and safety rules.

2. The Committee requested the Government of the Republic of Armenia to review all legal acts relevant to the actions of the Police, which will guarantee that the laws and legal acts relating to the use of force are in full compliance with the International Covenant of Civil and Political Rights, the European Convention of Human Rights, and the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials.

3. Moreover, having regard to the Law of the Republic of Armenia HO-199-N of 28 November 2006 on repealing a number of laws of the former USSR, SSRA, and the Republic of Armenia, as well as a number of regulatory legal acts of the Supreme Council of the Republic of Armenia, according to which the regulatory legal acts of USSR are not effective on the territory of the Republic of Armenia, the Order No. 127 of the Minister of Internal Affairs of USSR of 1989 on approving the procedure for application of special means was also repealed; the Head of the Police of the Republic of Armenia was recommended to take measures to define a new similar procedure.

4. As a legislative initiative, the Chairperson of the Committee put into circulation the draft law of the Republic of Armenia on Making a Supplement to the Law of the Republic of Armenia on Legal Acts HO-320 of 3 April 2002, the objective of which is to define clear-cut terms for the adoption of legal acts - the adoption of which is envisaged by different laws - which will enable full and complete implementation of laws and ensure the complex legal regulation of different issues.

5. As a legislative initiative, the Chairperson of the Committee put into circulation the draft law of the Republic of Armenia on Making an Amendment to the Law of the Republic of Armenia on Control Chamber of the Republic of Armenia HO-4-N of 25 December 2006, the objective of which is to make the provision binding, which, in case of any doubts of criminal nature in the course of control, will oblige the Control Chamber to compulsorily send the protocols and progress reports prepared in the course of control to the Prosecutor General's Office of the Republic of Armenia upon the decision of the Council of the Control Chamber, this being one of the effective measures for combating impunity and corruption.

**RECOMMENDATIONS OF THE THIRD STAGE**

1. With regard to the recommendations of this stage, the Committee deems important that these recommendations - directed at overcoming the main reasons of the occurred events, preventing and/or neutralising possible negative developments, as well as ensuring the development of democratic, legal and social structures in the Republic - have a nature of legal and political, as well as socio-economic priorities, and require systematic approaches.



2. In this regard, the Committee, attaching value to the positive steps undertaken after March events, finds that democratic development is a continuous process, the implementation of which requires not only proclamation of rights under the Constitution and international instruments, but also ensuring consistency and systematic actions in their implementation, based on the imperative of establishing sufficient guarantees for the security and sustainable development of the Republic of Armenia.

#### LEGAL AND POLITICAL PRIORITIES

1. The Committee expresses its concern in relation to a number of negative developments, including the absence of multi-polar political and free economic systems, in the internal life and the democratic system of the Republic, addressed by the reports of the Human Rights Defender of the Republic of Armenia and of international institutions, and finds it appropriate to underline that these developments should be duly considered by competent authorities.

2. Ensure freedom of speech; provide conditions ensuring pluralism and impartiality in electronic media.

3. From the point of view of development of democratic structures, the Committee also appreciates the recommendations to the Republic of Armenia under PACE resolutions, and finds that the implementation thereof is necessary for further strengthening of democracy in the country, replacing intolerance with civil solidarity, and recovering the political system.

4. The complete assessment of the electoral process requires trust of the majority of the public in fairness of elections in all of its stages, including pre-election processes, elections day and post-election period. It is obvious that the lack of public trust in the electoral processes in general also diminishes the trust of a part of public in the election results. The insufficient transparency in the procedure of voting ballot counting and vote results tabulation further complicates the problem. It is necessary to establish a complaints and appeals system which will enable the participants of the electoral process to receive legal protection to the fullest possible extent in case of alleged electoral violations, as well as to ensure in practice equal opportunities for all political forces both during the official electoral campaign period and the period preceding it. In this regard the Committee finds that there is a need to make amendments to the Electoral Code of the Republic of Armenia.

5. In spite of positive changes, the Committee finds that notifications on holding meetings, assemblies, demonstrations and rallies are often rejected on technical grounds, or improper restrictions are imposed on them. In this regard, it is also necessary to make amendments to the Law of the Republic of Armenia on Holding Meetings, Assemblies, Rallies and Demonstrations.

6. In spite of successful legislative reforms, the courts do not yet possess the necessary level of independence to command public confidence in them as impartial judicial authorities. The courts should pay increased attention to the issue of imposing remand detention on persons as a measure of restraint. In this regard, the Committee recommends making amendments to the Criminal Procedure Code and the Judicial Code of the Republic of Armenia.

The Committee has also focused its attention on the legal proceedings in connection with the events concerned. Indeed, the Committee is not entitled to provide any evaluation to the administration of justice by the courts; however it finds it appropriate to address three important issues relating to legal proceedings that caused the concern of the Committee.

The first issue relates to those - although quite unique - cases, when the witness withdraws the testimonies given in the course of pre-trial proceedings. The witnesses justify the changing of the testimonies during the trial by the fact that the pre-trial testimonies were extorted as a result of violence, threat or deception (Arsen Mkrtychyan, Edik Khachatryan, and Yasha Melkonyan in Sasun Mikayelyan's case, and Gevorg Muradyan in Hakob Hakobyan's case). Within the framework of criminal cases instituted in connection with this, these witnesses, bringing different reasons and under the conditions of availability of evidences, withdrew their testimonies given during the trial.

There are also cases when in the course of trials, finding out about incriminating testimonies given by different witnesses, a group of people, terrorising these witnesses and their relatives, forced them to withdraw pre-trial testimonies incriminating in the commitment of crimes.

Five criminal cases were instituted in connection with the said events; three of them were examined in the proceedings conducted by the Investigation Department of the National Security Service of the

Republic of Armenia, one case was examined by the General Investigation Department of the Police of the Republic of Armenia, and one case was examined by the Special Investigation Service of the Republic of Armenia. The proceedings in connection with two cases and a part of one case were dismissed, and preliminary investigation in connection with two cases is ongoing.

Without discussing the issue of whether such “reasons” for withdrawing the testimonies are justified or not, the Committee states the fact that such phenomena have a severe negative public perception and impugn the confidence in justice, especially in the case when the court neglects these allegations and acknowledges pre-trial testimonies as more reliable.

Studying the international practice pertaining to this issue, the Committee has arrived at the conclusion that many countries effectively resolved the issue of measures aimed at the protection of witnesses and victims. In this regard, the Committee draws the attention of the legislative authority to the necessity of finding effective solutions to the said issue.

The second issue addressed by the Committee relates to holding assemblies, during the legal proceedings concerned, in the immediate vicinity of courts. It is apparent that in a democratic state governed by the rule of law, courts should not be subjected to pressures, including physiological, and threats in the administration of justice. However, we believe that assemblies held in the immediate vicinity of the courthouse, may, most probably, negatively affect the conduct of fair trial, constituting a measure for exerting pressure on the court and aiming at the formation of a relevant biased opinion of the court. Moreover, they may also influence witnesses.

Indeed, the Committee is far from the opinion that in the course of administration of justice a complete ban should be imposed on holding of assemblies in the vicinity of the court, since not in all cases assemblies in the vicinity of the court may significantly distort the administration of justice. In our opinion, such assemblies should be allowed, save for cases when they are held in the immediate vicinity of the courthouse (the distance should be clearly defined by law). Holding such assemblies obviously has a negative impact on fair and effective administration of justice, which should be assessed on a case-by-case basis. It is worth mentioning that the recommended approach is fully in compliance with the approaches of the Venice Commission; thus, we recommend settling this issue through making a relevant amendment to the Law of the Republic of Armenia on Holding Meetings, Assemblies, Rallies and Demonstrations.

The third issue relates to cases of imposing remand detention as measure of restraint. Analysis show that the majority of the motions on imposing remand detention as a measure of restraint with regard to the criminal cases instituted in connection with the events of 1-2 March were granted. Indeed, the high percentage of granted motions does not imply that the court granted those motions without having sufficient grounds; however, reasonable doubts still arise with respect to this issue. In this regard, the Committee, considering that the issue, first of all, requires professional analysis, finds it necessary to pay attention to the compliance of the provisions of the Criminal Procedure Code of the Republic of Armenia on remand detention with the European Convention on Human Rights and Fundamental Freedoms and with the judgments of the European Court of Human Rights.

7. The Committee finds that the immediate adoption of the Law of the Republic of Armenia on the Legal Regime of State of Emergency - which will be also in line with the approaches enshrined in the Constitution of the Republic of Armenia - is a necessity. As a matter of fact, the draft law of the Republic of Armenia on the Legal Regime of State of Emergency has been put into circulation by the Government of the Republic of Armenia since 31 July 2007 (Document code – K-057-31.07.2007).

## SOCIO-ECONOMIC PRIORITIES

1. With regard to socio-economic priorities of the elimination or prevention of the events, the Committee finds it appropriate to highlight that these priorities are directly linked with the socio-economic circumstances that served as the main reason for March events: continuous high level of poverty; social polarisation of the society; lack of effective state guarantees for establishing social justice; lack of trust in the legal system, and in the judicial system in particular; widespread practice and desire of acquiring property through political power, or the threat of losing it; insufficient confidence in the protection of property rights; imperfection of the systems for securing and protecting human rights, and of political systems, etc.

2. The 2008 statistical analytical report of National Statistical Service of the Republic of Armenia, covering the results of 2007 complete survey of household standards of living, shows that the poverty level in Armenia by consumption and income was 25% and 40.5% respectively. According to the Sustainable Development Programme approved by the Decision No. 1207-N of the Government of the Republic of

Armenia of 30 October 2008, the poverty in 2006, when calculated using the minimum basket of goods, was 39.8%, or 1,283,000 inhabitants of the Republic are considered poor. It is also worth mentioning that in case of applying the 11 international dollars per day poverty line used for the comparison of poverty levels in developed countries (in 2005 monetary terms it was worth 48,972 monthly drams per capita) in Armenia, the poverty level would be 85.6%. This is a vivid evidence of the fact that poverty is considered one of the top reasons, if not the major one, of social tension in the Republic.

3. Another evidence of social tension is the unequal income distribution, which, according to the Sustainable Development Programme, made 0.359 in 2006 if calculated using the Gini coefficient, and the ratio of the incomes of the poorest 20% as compared to that of the richest 20% was 7.6.

4. Reviewing the findings of the public opinion poll on corruption, carried out among the population of the Republic of Armenia (within the framework of the USAID Mobilizing Action Against Corruption Activity), the Committee finds it appropriate to underline that, according to the Report, the unemployment was considered the main problem in Armenia (65% of respondents). Poverty (37%), high prices (32%), general economic issues (21%), corruption (16%), and emigration (14%) were considered to be among other priority issues.

5. The mentioned problems appear in an acute form also in case of insufficient state guarantees for the social rights protection system. Usually it is conditioned by a number of objective and subjective circumstances such as limited realisation of the economic potential of the Republic due to the blockade; continuously insufficient level of budget revenues, especially tax collections; many shortfalls present in the targeting and distribution systems of providing the socially vulnerable groups with income; undesirable level of monopolies in the economy, and existence of a system of promotion of free economic competition and entrepreneurship, which is still underdeveloped; an imperfect organisational, technical, professional and proper remuneration system with regard to the provision of quality public services, etc.

6. In spite of the economic outcomes and continuous growth of the state budget (i.e. the GDP and the state budget expressed in AMD, have increased three-fold in 2007 as compared to 1998) registered in the Republic during the recent years, the current proportional structure of the GDP and the size of the state budget still restrain the full loosening of the social tension within the framework of public expenditures policy.

7. All this, as well as a number of issues existing in the judicial system and in the fields of human rights protection pose a threat to the national security of Armenia.

8. The Committee finds that these issues - a significant part of which, as internal threats, are justly reflected in the National Security Strategy approved by the Decree NH-37-N of the President of the Republic of Armenia of 7 February 2007 - comprise challenges targeted against the survival of the state, the society, the family and the individual, and impairing the fundamentals thereof.

9. Consequently, the Committee finds that consistency, coordinated, planned and in-depth works are required to resist these challenges and overcome the major issues concerned.

10. The Committee particularly highlights that although these issues are reflected in the socio-economic development programmes of the Republic of Armenia (Law of the Republic of Armenia on the State Budget, Action Plan of the Government of the Republic of Armenia, Sustainable Development Programme, Anti-Corruption Programme, etc.), as well as in the political coalition agreement, they have not yet been resolved and require new efforts, consolidation of the society and a new quality of civil society seeking to ensure full harmonisation of the real life with the social state governed by the rule of law and the social life as declared by the Constitution.

11. In this regard, the Committee highlights the following socio-economic priorities:

(a) establishment of social cohesion and justice, determination of the minimum basket of goods and the budget, and bringing the poverty threshold in conformity with it, as well as consistent increase of salaries, pensions, benefits based on the calculation thereof, ensuring consolidation of the society and internal political stability;

(b) systematic, consistent and effective fight against corruption;

(c) significant reduction of shadow economy, ensuring tax to GDP ratio comparable with averaged indices of the European countries, provision of level and fair competition playing field, exclusion of artificial economic monopolies;

(d) establishment of effective economic sectoral structure, implementation of an export-oriented industrial policy, proportional territorial development;

(e) reduction of the unemployment level through creation of new jobs based on the state initiative and/or encouragement of the private sector, and implementation of an active demographic policy;

(f) consistent implementation of a comprehensive system of social partnership and state, community and individual corporate social responsibility;

(g) improvement of the ownership right protection system, and protection of the rights and legitimate interests of investors, support to small and medium-sized businesses, as well as implementation of a consistent policy for the formation of middle class;

(h) approximation of the judicial system with the European standards, providing for the restoration of the public confidence in the impartiality and independence of the system.

In this regard, the Committee recommends to adopt laws of the Republic of Armenia on the Community Police, on Guaranteed Legal Aid, on Exemption from the Obligation to Give Testimony, on Compensation for the Caused Damage, on Private Detective, as well as Social Code of the Republic of Armenia. The necessity of adopting the latter is conditioned by the large coverage of social issues and the imperative of establishing a complex and uniform legal framework - void of contradictions and ambiguities - for the solution of various multifaceted social issues in the Republic of Armenia. At present, the mentioned social issue and problems are regulated in the Republic of Armenia by separate laws (including those with a very narrow scope), which, being adopted in different years, not only often contradict each other and contain different principles and approaches, but do not facilitate the effective legislative supervision over the implementation of these separate laws or the assessment of the effectiveness of their implementation. Whereas Article 9(5) and (6) of the Law of the Republic of Armenia on Legal Acts clearly define the main requirements pertaining to codes.

Therefore, legislative regulation through codes will, obviously, be much more appropriate and effective, than the adoption of separate laws - currently applied in practice – which govern homogeneous social relations and often ignore the requirements and approaches of each other.

12. For the fulfilment of the above-mentioned, the Committee recommends to the Standing Committees of the National Assembly of the Republic of Armenia to carry out studies and conduct hearings of the priorities presented with regard to the fields reserved to their authority, through involvement of the Government of the Republic of Armenia, the Human Rights Defender and representatives of the civil society.

13. The Committee finds that the implementation of the presented priorities should be monitored, and the public needs to be continuously informed on each stage of their implementation and the progress made.

In the opinion of the Committee, dismissal of several high-ranking officials of the Police and changes in the staff after the events of March 2008 were mostly connected with the events of 1-2 March.

All documentation and materials at the disposal of the Committee, including responses and other documents received from state authorities, reports and other documents received from the Fact-Finding Group and its former members, conclusions of experts, protocols of sittings and working consultations of the Committee, applications and letters received from citizens and interested bodies and responses thereto, report of the working group established by the Committee for carrying out inspection in the baggage warehouse of the Logistics Service of the Ministry of Defence of the Republic of Armenia, etc., are attached to this Report.

APPENDIX 2

**Special opinion of the Armenian Revolutionary Federation party on the conclusions of the Ad Hoc Committee of the Armenian Parliament on the events of 1 and 2 March 2008 (added to the information note by the Committee at its meeting on 17 December 2008)**

The Conclusion of the Ad Hoc Committee is a result of the tremendous work and includes detailed information on the events and reasons thereof taken place on 1-2 March 2008 in Yerevan. The Conclusion, first of all, speaks of the efficient and productive work done by the Committee. In addition, the recommendation of the Committee to carry out consistent monitoring of the implementation of priorities and recommendations set by the committee in the conclusion is extremely important and valuable.

The Conclusion includes also several assertions and evaluations, to several of which we submit descending opinion of the "Armenian Revolutionary Federation" Party. Particularly,

1. While describing the development of the events on 1 March and actions of police in Freedom Square and in the territories adjacent to it and in the places near the City Hall of Yerevan and indicating fairly the inadequate actions of some of the police representatives, nevertheless the conclusion estimates the overall actions of the police in the Freedom Square and in the territories adjacent to it as lawful and proportional, and the actions taken by the police in the territories adjacent to the City Hall as lawful. We don't share these unambiguous assessments for the following reasons:
  - a) In the Freedom square and in the territories adjacent to it, as mentioned also in the descriptive part of the conclusion, partially excess force has been applied, which places the proportionality of the police actions under doubt. Taking into consideration this fact, we find that that unproportional behaviour of the police should be explicitly reflected in Part 3.2, paragraph 19 of the conclusion, by using at the beginning of the paragraph, for example, the following wording: "Although in separate cases the unproportional behaviour of the police actions..." and followed as in the text.
  - b) The unlawful use of the special means "Cheremukha 7" in the territories adjacent to the City Hall of Yerevan, testifies the unproportionality and, in general, also the unlawfulness. Surely we don't insist in evaluating unlawful and unproportional the whole actions of the police, but the expressions "unlawful" and "unproportional", although partially, should be explicitly find their place especially in the first part of the Part 4.2 of the Conclusions of the Committee.
2. As regards the investigation of March events, as stated in PACE Resolution 1677, paragraph 8.2, we find that the conclusion should include also the following assertion: "In evaluating the level of the impartiality and credibility of March 1-2 events and reasons thereof, it should be stressed, that the detected shortcomings and deficiencies do not guarantee the total trustworthiness of complying fully with the standards of impartiality and credibility".
3. As regards the clarification of the circumstances of the death of the victims and wounded people, as well as bringing to responsibility those guilty, we find that there should be assertion in the conclusion that in order to eliminate the detected shortcomings and deficiencies, to eliminate the doubts in the society, as well as to guarantee the exclusion of the occurrence of similar events in the future /which one of the most important issues/demands additional investigation.

Our objections do not intend to underestimate the tremendous work done by the committee, we express our satisfaction and gratitude to all members of the Committee and its Chairperson for joint, full and productive work.

Artiusha SHAHBAZIAN

Artsvik MINASYAN

Members (Armenian Revolutionary Federation Faction) of the Ad Hoc Committee of the National Assembly of the Republic of Armenia on Investigation of the Events Taken Place in Yerevan on 1-2 March 2008 and the Reasons Thereof