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

Honouring of obligations and commitments by Armenia

Information note by the co-rapporteurs on their fact-finding visit to Yerevan (16-17 March 2011)¹

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

¹ This information note has been made public by decision of the Monitoring Committee dated 14 April 2011.

I. Introduction

1. We visited Yerevan from 16 to 17 March 2011. Our visit was the first official visit in the framework of the monitoring procedure since the declaration of a general amnesty in Armenia after the events on March 2008 and the adoption by the Parliamentary Assembly of Resolution 1677 (2009). The main topics for our visit were, inter alia:

- the developments with regard to the outstanding issues relating to the March 2008 events;
- the state of implementation of the reform package announced by the authorities, in particular in relation to electoral reform; the reform of the police and the reform of the judiciary;
- the media environment in the wake of the outcome of the recent tender for broadcasting licences.

2. During the visit, we met, inter alia, the President of Armenia; the President of the National Assembly, the Minister of Justice, the Head and Deputy Head of the National Police, the Chairpersons and members of the Legal Affairs Committee, the Media Committee and Committee on Electoral Reform of the National Assembly, the Chairman of the National Commission on Television and Radio and the newly elected Human Rights Defender (Ombudsman). We would like to thank the Parliament of Armenia, and the Special Representative of the Secretary General of the Council of Europe in Yerevan for the excellent programme, as well as for the hospitality and the assistance extended to our delegation. The programme is attached in Appendix 1 and the statement issued at the end of our visit is attached in Appendix 2.

II. Outstanding issues relating to the March 2008 events

3. The two main outstanding issues relating to the March 2008 events are the remaining persons in prison as a result of these events, as well as the lack of a proper investigation into the underlying causes and responsibility for the 10 casualties that occurred. These two issues continue to dominate the political agenda and poison the political atmosphere in the country. They are a principal obstacle to the normalisation of the political environment and risk having a negative impact on the upcoming parliamentary elections in May 2012.

i. Inquiry into the 10 casualties during the March 2008 events

4. Of the 10 fatalities that occurred during the events on 1 and 2 March 2008 - two policemen and eight civilians -, one person (a policeman) died as a result of the explosion of an explosive device, five persons died from bullet injuries, three from injuries caused by being directly hit by "Cheremukha-7" gas grenades and one person died from injuries to the head caused by a non-specified blunt object. Of the five persons killed by bullets, 2 bullets came from weapons similar to the side-arms used by the police and one from an AK-47 machine gun. It should be noted that the police admitted shooting with AK-47 guns over the heads of the crowds in order to disperse them. From two persons that were shot, the bullet could not be recovered from their corpses.

5. The office of the Prosecutor General and Special Investigation Service of the police have not been able to identify any person or persons responsible for the 10 casualties. The authorities, until now, hold the view that the opening of an inquiry is not possible in the absence of hard evidence that would identify the individuals directly responsible for the 10 casualties.

6. We have underscored to the authorities that the aim of the inquiry called for by our Assembly is not only to identify, if possible, the individuals responsible for the 10 casualties, but also and equally importantly to establish how these casualties could occur during a public demonstration, to investigate possible command responsibility and to recommend what measures should be taken to avoid a similar situation during future demonstrations and unrest. Furthermore, if no individual responsibility can be established, such an inquiry should investigate why this was the case. We highlighted that other countries have held similar inquiries when police action resulted in fatal casualties, as for instance with the shooting of a Brazilian citizen by the police in the London Underground, or in the context of the troubles in Northern Ireland. Therefore, the fact that no individual responsibility can be established by the Prosecutor General is not a valid argument for not conducting a proper inquiry as described above.

7. The authorities maintain that a number of different - albeit partial - investigations into the causes of the 10 casualties have been conducted by a number of government bodies. In addition, this issue was also touched upon by the inquiries of the Ad Hoc Committee of the National Assembly of Armenia on the events of 1 and 2 March 2008 and "the reasons thereof". However, the authorities agree that none of the findings of these investigations have been combined and evaluated by an independent body. The President of the

Republic therefore informed us that he would call for an inquiry that would combine and assess the findings of the different investigations that have so far been conducted.

8. A format for such an inquiry still has to be established. The opposition has been calling for the revival of the independent fact-finding group that was established in the aftermath of the March 2008 events. It should be recalled that this independent fact-finding group was disbanded after it was rendered inoperable due to the continuous politicisation of its work by the representatives of both the authorities and opposition. It is more than likely that any inquiry into the 10 casualties based on a similar format is doomed to fail for the same reasons and this format is therefore not recommended. At the same time, it is clear that an inquiry conducted by the police and Prosecutor General would not be seen as credible by the Armenian public. We suggested that such an inquiry could take place under the aegis of the Ombudsman of Armenia, given the overall positive and impartial role of this institution in the aftermath of the events.

ii. Remaining persons in prison as a result of the March 2008 events

9. Following the declaration of amnesty in June 2009, most, but not all, persons detained in relation to the March 2008 events were released by the authorities. The Assembly has always maintained that all persons detained in relation to these events - with the exception of those that personally committed grave violent crimes - should be released in order to normalise the political environment and to overcome the schism that occurred as a result of these tragic events.

10. After the declaration of amnesty, a number of additional prisoners were released when their request for a Presidential pardon was granted. However, according to Armenian legislation, a pardon can only be granted when guilt is admitted by the person in question, which, for understandable reasons, is not an option for a number of detainees.

11. Another opportunity to release persons arose in summer 2010, when a number of persons in prison in relation to the March 2008 events became eligible for parole.² This issue was raised by Mr Prescott during his visit to Yerevan for the Forum for the Future of Democracy in October 2010. Since then, a number of prisoners have been released, most recently two persons during our stay in Yerevan.

12. With these releases, the number of persons in prison in relation to the March 2008 events has been reduced to less than five³, depending on what convictions are considered to be related to the March 2008 events. However, the continued detention of these persons, and especially of two prominent members of the opposition, Mr Nikol Pashinyan and Mr Sasun Mikayelyan, continues to be a main impediment for the normalisation of the political situation.

13. The opposition informed us that the release of the remaining prisoners, in their view, would remove the last impediment for the start of a dialogue between the opposition and authorities and a normalisation of the political climate. However, it is clear that the authorities consider Mr Pashinyan and Mr Mikayelyan to be the main leaders of the March 2008 events and are not willing to demonstrate any leniency towards these two persons. In our view, their continued detention is also highly problematic for several other reasons. Both the grounds for Mr Pashinyan's conviction, as well as the manner in which his sentence was handed out, raise very serious questions.⁴ As for Mr Mikayelyan, his health is reportedly deteriorating rapidly and he should therefore be considered for early release on humanitarian grounds as suggested by the Human Rights Commissioner during his recent visit to Yerevan in January 2011. We also urged the authorities to release Mr Mikayelyan on humanitarian grounds. Mr Pashinyan is normally eligible for parole in June 2011. Any obstacles placed in the way of his release at that time would raise serious doubts about the political will of the authorities to resolve that issue satisfactorily.

III. Reform package

14. In response to the recommendations made in the report of the Ad Hoc Committee of the National Assembly of Armenia on the events of 1 and 2 March 2008 and "the reasons thereof", as well as those made

² According to Armenian legislation a person becomes eligible for parole after serving half of his sentence.

³ Based on a list of prisoners circulated by the Armenian national Congress, which also contains a number of persons whose conviction is not related to the March 2008 events.

⁴ Mr Pashinyan was convicted on the basis of Article 225 (Mass Disorder) of the Criminal Code. The use of this article in the context of the March 2008 events was deemed highly questionable by the Assembly. Moreover, he was sentenced to 7 years in prison, one year more than demanded by the prosecution. All other opposition leaders for whom the prosecutor had asked for 6 year sentences were given 5 years and released under the amnesty provisions (only persons sentenced to 5 years or less were eligible for immediate release under the amnesty that was declared).

in Assembly resolutions on the subject, the authorities announced a comprehensive reform package which is centred on reform of the judiciary and police, as well as electoral reform.

15. During our visit, we were informed of a significant number of concepts and strategies for these reforms. While welcoming these initiatives, we stressed to the authorities that the many concepts developed should now be translated into draft legislation and concrete policies, in order to implement the reforms needed for the country.

16. Several of the proposals focus on amending existing, or introducing new, legislation. However, legislative changes alone will not achieve the desired reforms. Many of our interlocutors, from both the authorities and opposition, admit that, although existing legislation is often adequate, it is not actually implemented coherently and in good faith. The reform proposals should therefore not focus on legislative change *per se* but equally on changing existing practice and mentalities. We realise that such changes will not be easy to achieve and will meet resistance from vested interests. However, we are convinced that, with commensurate political will, it is possible to achieve these necessary changes of practice and mentality.

17. We welcome the many police reforms that have been initiated under the auspices of the dynamic new Deputy Head of Police. A key element of the police reforms is the establishment of an independent police complaints mechanism. A draft proposal for such a mechanism was sent to the Council of Europe by the authorities for assessment. The assessment by Council of Europe experts was generally very positive and a number of recommendations were made to further strengthen this mechanism, especially with regard to its independence. Regrettably, we were informed that the authorities are now hesitating to implement such a complaints mechanism. If this position is maintained, it would be a serious set back and would overall weaken the proposed police reforms.

18. Electoral reform is a key element of the reform package of the authorities. The reforms in this area are especially important in the light of the upcoming parliamentary elections that are foreseen for May 2012. As we have stated in previous notes and reports, free and fair elections that result in a parliament that reflects the different views and forces existing in the Armenian society are essential for the normalisation of the political situation and democratic consolidation in the country.

19. The authorities organised an international conference on the topic of electoral reforms. The European Commission for Democracy through Law (Venice Commission) and OSCE/ODIHR, as well as a number of independent experts, participated in this conference, as did most of the political forces in Armenia, with the regrettable exception of the Armenian National Congress of Mr Levon Ter Petrossyan. The authorities subsequently prepared a draft text for a new electoral code and sent it for discussion to the electoral working group that was established after the 2008 events. However, the discussions in the working group were boycotted by the opposition, including by those that had participated in the conference, who felt that the draft prepared by the authorities did not reflect any of the views and suggestions of the opposition as expressed during the international conference. As a result, the opposition feared that it would be unlikely that any of their views would be reflected in the new code and that their participation therefore would only serve to give legitimacy to a text which, in practice, they would have no concrete possibility to influence. In response, instead of participating in the working group, the opposition prepared its own alternative draft for a new code.

20. The Monitoring Committee decided to ask the Venice Commission for an opinion on the alternative electoral code prepared by the opposition, in order to ensure that both versions would benefit from its expertise and assessment. In order to avoid a protracted standoff on this issue, the chairman of the electoral working group decided to table both drafts for discussion in the parliament, in order to ensure that all different views and suggestions would be heard and discussed. This solution is to be welcomed, but should also be accompanied by the political will of the authorities to seriously consider the alternatives put forward by the opposition. As we have stated several times before, any electoral code that is not based on an as broad as possible consensus among the different political forces in the country will not help to generate the necessary public trust in the electoral system.

21. The current Law on Meetings, Assemblies and Manifestations, if implemented coherently, could adequately guarantee the right to Freedom of Assembly in Armenia. However, a relative large number of requests for demonstrations are still refused for technical reasons, especially relating to the requested venues. The implementation of the current law has been monitored by the Human Rights Defender (Ombudsman) of Armenia. The Ombudsman noted a number of shortcomings in its implementation, including uneven application of the law. In response to these findings, the Human Rights Defender, jointly with the Office of the President of Armenia, prepared a new draft Law on Assemblies. This draft law was prepared in close co-operation with civil society representatives and the international community, including the Venice Commission and OSCE/ODIHR. In their joint opinion on this draft law, the OSCE/ODIHR and the

Venice Commission welcomed the wording of the draft law, which, in their view, would improve the legal framework for the protection of the right of freedom of assembly.

22. The recent developments in the media environment have given rise to some controversy, especially in relation to the recent tender for broadcasting licences, in which the bid of A1+ was - once again - rejected. While not wishing to comment on the merits of that decision, especially since it is still *sub judice*, we stressed on all occasions that the pluralism criterion has not been sufficiently taken into account by the licensing authority when making its decision. As a result, the tendering process did not lead to a more pluralist media environment, which was one of the recommendations of our Assembly. This matter should be urgently addressed by the authorities.

23. One of the key problems with regard to the regulatory and licensing framework is the composition of the National Commission on Television and Radio. While the recently amended legislation strives to ensure the independence of the individual members, it does not require that the Commission in its entirety is truly representative or reflects the different views that exist in the Armenian society. It is clear that the current formula for the composition of the Commission - 50% nominated by the President of the Republic and 50% by the parliament (in which the ruling coalition has a comfortable majority) - does not lead to a heterogeneous and impartial composition from a political point of view. This shortcoming should be remedied.

IV. Conclusions

24. While we welcome the many initiatives for reform, these initiatives and concepts should now be translated into concrete action. In that respect, it is important to note that legislative changes alone are not sufficient and that they should be accompanied by policies aimed at changing existing practice and mentalities. This is especially important with regard to the reform of the judiciary.

25. The ongoing detention of persons for their role in the March 2008 events, as well as the lack of a proper inquiry into the causes of the 10 casualties that occurred during these events, continue to poison the political environment in Armenia and risks having a negative impact on next year's elections.

26. The successful conduct of the elections is essential for the normalisation of the situation and democratic consolidation of Armenia. The current *status quo* with regard to reforms, combined with the ongoing political polarisation and the deteriorating social and economic environment, could potentially lead to renewed social unrest if unaddressed and not followed by genuinely democratic elections. All political forces, ruling coalition and opposition, have a responsibility to avoid such a situation. The statements made by some opposition leaders that the upcoming elections will be fraudulent before the campaign has even begun is not very helpful in that respect.

27. The coming months are going to be crucial in terms of resolving the outstanding issues from the March 2008 events, implementing the reforms and preparing the upcoming elections. We therefore intend to prepare a report on the functioning of democratic institutions in Armenia for the 2011 autumn part-session of the Assembly.

APPENDIX 1

Programme of the fact-finding visit to Yerevan (16-17 March 2011)

Mr John PRESCOTT, member of Parliament

Mr Axel FISCHER, member of Parliament

Mr Bastiaan KLEIN, Secretary of the Monitoring Committee of the Parliamentary Assembly

Wednesday, 16 March 2011

- 10:00 Briefing by the Special Representative of the Secretary General of the Council of Europe in Armenia, Ms Silvia ZEHE (breakfast meeting)
- 11:00 Meeting with the national delegation of Armenia to the Parliamentary Assembly
- 12:00 Meeting with the working group on electoral reform
- 13:00 Lunch with Mr Vartan OSKANIANS, Chairman of the Board of Directors of Civilitas Foundation and former Minister of Foreign Affairs
- 14:30 Meeting with media representatives (A1+, Yerevan Press Club, Public Broadcaster)
- 15:30 Meeting with Think Tanks (International Center for Human Development, Open Society Institute Assistance Foundation Armenia)
- 17:00 Meeting with the diplomatic community in Yerevan
- 18:30 Meeting with Mr Levon TER-PETROSSYAN and HAK leadership
- 20:00 Dinner hosted by the Head of PACE Armenian delegation

Thursday, 17 March 2011

- 08:30 Meeting with the relatives of the 10 fatalities of the March 2008 events
- 09:00 Meeting with NGOs dealing with Human Rights
- 10:00 Meeting with the Minister of Justice
- 11:00 Meeting with the Head of the National Police
- 12:00 Meeting with the Chairman of National Commission on Television and Radio
- 13:00 Lunch meeting with the Ombudsman of Armenia
- 14:30 Meeting with the Committee on Legal Affairs
- 15:30 Meeting with Media Committee of the National Assembly
- 16:30 Meeting with the Speaker of the National Assembly
- 17:30 Meeting with the President of the Republic
- 20:00 Dinner hosted by the Speaker of the National Assembly

APPENDIX 2

PACE rapporteurs for Armenia welcome progress, but stress that announced reforms should now translate into concrete action

Strasbourg, 23.03.2011 – At the end of a two-day visit to Yerevan, the monitoring co-rapporteurs for Armenia of the Parliamentary Assembly of the Council of Europe (PACE), John Prescott (United Kingdom, SOC) and Axel Fischer (Germany, EPP/CD) have welcomed the significant number of reforms with regard to the police, judiciary and election framework that were initiated by the authorities to address the recommendations made in the wake of the March 2008 events by, among others, PACE and the National Assembly of Armenia.

At the same time they stressed that the many concepts developed should now be translated into draft legislation and concrete policies in order to implement the reforms needed for the country.

“The successful completion of a number of reforms, especially electoral reform, is essential to ensure genuinely democratic parliamentary elections in 2012,” said the rapporteurs, highlighting the importance of these elections for the democratic development of the country.

While welcoming the progress made by the authorities since their last visit, the rapporteurs also noted that there are still a number of outstanding issues related to the March 2008 events that need to be addressed. “The ongoing detention of persons for their role in the March 2008 events, as well as the lack of a proper inquiry into the causes of the 10 casualties that occurred during these events continue to poison the political environment in Armenia,” they said.

“This risks having a negative impact on next year’s elections,” they added. “We therefore call upon the authorities to show the necessary political will to satisfactorily resolve these issues without further delay.”

The rapporteurs intend to present a report on the progress made by Armenia with regard to these issues during the Assembly’s September session.