Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1532 (2007)[1]

Honouring of obligations and commitments by Armenia

Parliamentary Assembly

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 (2005) on the constitutional reform process in Armenia, which was adopted in June 2005 on the occasion of a debate under urgent procedure, the Parliamentary Assembly urged the Armenian authorities to hold a constitutional referendum by November 2005 at the latest, 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 took place on 27 November 2005 and allowed for 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 European Commission for Democracy through Law (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 the 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 No. 221 (2000) 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

1. Assembly debate on 23 January 2007 (4th Sitting) (see Doc. 11117, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Colombier and Mr Elo). Text adopted by the Assemblyon 23 January 2007 (4th Sitting).

deemed fully free and fair. It is essential that the next ballot 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. In this regard:

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. It expects that further amendments to the Electoral Code drafted in close co-operation with the Venice Commission and adopted at the end of December 2006 will create a good basis for the organisation of the forthcoming elections;

4.2.2. beyond the revision of the Electoral Code, the Assembly considers that 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 fraud will simply not be tolerated in the next elections;

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 12 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 of the Council of Europe and the European Charter of Local Self-Government (ETS N°. 122).

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 to ensure that the law is effectively applied, as this 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 (Ombudsperson), 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, on which the Council of Europe has given its experts' opinion and which was adopted by the National Assembly in first reading at the end of December 2006. The Parliamentary Assembly calls on the Armenian authorities to implement the reform of the judicial system, not least the general prosecutor'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 the financing of the judiciary and judges' remuneration and to enhance training efforts;

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 on Corruption (ETS No. 174), which entered into force on 1 May 2005, and the Criminal Law Convention on Corruption (ETS No. 173), 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 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 and commitments 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 in office cannot be dismissed have found their place in the constitution, enabling the Human Rights Defender 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 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. the print media 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 on Human Rights (ETS No. 5), 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 prosecuted and punished;

6.5. the Assembly notes with satisfaction that the constitutional reform has 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 illtreatment 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 grant an amnesty to 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.