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The implementation by Armenia of Assembly Resolutions 1609 (2008) and 1620 (2008)

Addendum to the report

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

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

1. On the request of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), we visited Armenia for meetings with the authorities on 15 January 2009. The aim of our visit was to assess if any progress had been made with regard to resolving the issue of persons deprived of their liberty in relation to the events on 1 and 2 March 2008 and to urge the authorities to take concrete steps with regard to this issue in order to avoid the application of sanctions in respect of the Armenian delegation to the Parliamentary Assembly, as proposed by the Monitoring Committee at its meeting of 17 December 2008.
2. During our visit to Yerevan, we held meetings with, *inter alia*, the President of Armenia, the Speaker of the National Assembly of Armenia, the General Prosecutor, the Chairman of the Constitutional Court, the Chairman and members of the Armenian delegation to the Parliamentary Assembly, the Secretary of the Security Council, the Human Rights Defender of Armenia, the Chairman of the parliamentary Ad Hoc Inquiry Committee into the events which occurred on 1 and 2 March 2008, and the fact-finding group of experts set up to inquire into the events of 1 and 2 March 2008 (set up by presidential decree on the basis of recommendations by the Commissioner for Human Rights of the Council of Europe), as well as representatives of the international community in Yerevan. We would like to express our gratitude to the National Assembly of Armenia for the excellent programme and for the logistical support provided for our visit. In addition, we would like to thank the Special Representative of the Secretary General of the Council of Europe in Yerevan and her staff for the support extended to our delegation.
3. The proceedings with respect to the seven people whose cases have been recently brought before the court and who are considered by the authorities to be the "ringleaders" of the events of 1 and 2 March 2008 have been opened, but have constantly been adjourned since the outset as a result of actions by the seven defendants that are considered to be in "contempt of the court". While the refusal to stand up when a judge enters the court room at the beginning of the trial, as required by Armenian legislation, could probably be best sanctioned by a fine, other actions by the defendants are clearly not conducive to the pursuit of the court proceedings.
4. In our meetings with the authorities and especially with the general prosecutor, we underlined the concerns of the Monitoring Committee with regard to charges brought under Article 300 (usurpation of power) and Article 225 (mass disorder) of the Criminal Code of Armenia. In relation to Article 300, we stressed that we have not received compelling information, including from the reference materials provided by the general prosecutor's office, that would indicate that the events of 1 and 2 March 2008 were aimed at the usurpation of state power or the violent overthrow of the constitutional order of Armenia. We have not received evidence that the seven opposition leaders organised violent actions with premeditation with the aim to usurp the state



power, for which they have been charged under Article 300. In relation to Article 225, we expressed our concern about the aggravated clause of mass disorder accompanied by murder (Article 225-3), while no one has been charged for the 10 deaths that occurred during the events of 1 and 2 March 2008.

5. Despite our detailed arguments, the general prosecutor insisted that, in his opinion, the evidence in his possession is sufficient to conclude that the events of 1 and 2 March 2008 were an organised attempt to overthrow the state power and that the charges brought against persons under Articles 300 and 225 were warranted.

6. In all our meetings with the authorities, we stressed that the insistence on bringing charges under Articles 300 and 225-3 and the systematic use of aggravated charges over more lenient ones – notwithstanding that the evidence to do so appeared weak – as well as the charges and convictions on the basis of police testimony alone, clearly indicated in our opinion that the charges brought against, and convictions of, these persons may have been politically motivated and that, under those conditions, political prisoners could exist in Armenia.

7. While categorically rejecting the notion that political prisoners could exist in Armenia, several interlocutors indicated that they agreed that the evidence available did not indicate that the events of 1 and 2 March were an organised attempt to usurp the state power. In that respect, they noted that, except in the cases of the seven opposition leaders that were recently brought before the court, in all other cases the charges under Article 300 were dropped by the prosecution or rejected by the courts. Other interlocutors also openly questioned whether the charges under Article 225-3 could withstand court scrutiny.

8. All government officials we met, as well as the President of the Republic, stressed the intention of the authorities to resolve the issue of persons deprived of their liberty as a result of the events of 1 and 2 March 2008. The President pointed out that, to date, he had received 12 requests for pardon of persons convicted in relation to those events and that, in all these cases, the pardon was granted. He indicated that it was his clear intention to consider favourably all requests for pardon in this respect.

9. We strongly suggested to the President that he consider the possibility of amnesty, especially in respect of Articles 300 and 225-3, also taking into account that a request for a pardon entails an admission of guilt. The President indicated that he did not rule out the possibility of a declaration of amnesty at a later stage. However, he made clear that any consideration of such a possibility could only take place when the court proceedings had been finalised or, at least, were well under way, and taking into account the arguments presented by both the prosecution and defence in court. In his opinion, any consideration of declaring an amnesty at an earlier stage would undermine the status of the legal institutions in Armenia. In addition, it is our impression that the President would see it as inappropriate to consider the possibility of amnesty as long as the obstruction of the court proceedings by the seven opposition leaders continues.

10. The Speaker of the National Assembly, in our meeting with him, recognised that there are shortcomings with respect to the Articles 300 and 225, as mentioned by the Council of Europe Commissioner for Human Rights as well as in our reports to the Assembly, which allow for a very broad interpretation by the prosecution and give rise to our concerns that the charges under these provisions seem to be politically motivated.

11. Following our visit, in a letter dated 22 January 2009, the Speaker of the National Assembly informed us that he had signed a decree setting up a special working group within the assembly that is tasked with drafting, within a one-month period, in co-operation with the relevant bodies of the Council of Europe (notably the European Commission for Democracy through Law (Venice Commission) and the Commissioner for Human Rights), amendments to Articles 225 and 300 of the Criminal Code of Armenia, in order to address the legal shortcomings in these articles and to bring them in line with Council of Europe standards. These amendments will be adopted by the National Assembly and sent to the President for promulgation within approximately one month after the working group has finalised its work. This group is chaired by Mr David Harutyunyan, chairman of the Armenian delegation to our Assembly. The letter of the Speaker of the National Assembly is appended to this addendum.

12. Under the Armenian Constitution, any changes to the law that are mitigating or allow for a more favourable interpretation for the defendants are retroactive with respect to the charges brought against persons under the relevant provisions.

13. As the decree of the Speaker of the National Assembly could have a significantly favourable impact on the situation of the persons charged, as well as of those convicted, in relation to the events of 1 and 2 March, we consider that this initiative, although belated, is a signal indicating the readiness of the Armenian authorities to begin to address the concerns of the Assembly in relation to the situation of the persons deprived of their liberty in relation to the events of 1 and 2 March 2008.

14. Moreover, 16 more people were pardoned by presidential decree on 24 January 2009, and others are reportedly under consideration.

15. We therefore consider that the initiative of the National Assembly to revise Articles 225 and 300 of the Criminal Code in accordance with Council of Europe standards, the number of pardons granted (a total of 28 to date), as well as the positive steps taken towards the establishment of an independent, transparent and credible inquiry, should be seen as an indication of the readiness of the Armenian authorities to address the demands of the Assembly expressed in [Resolutions 1609 \(2008\)](#) and [1620 \(2008\)](#). We would therefore recommend to the Assembly, at this stage, not to suspend the voting rights of the members of the Armenian parliamentary delegation to the Assembly, under Rule 9, paragraphs 3 and 4.c, of the Rules of Procedure.

16. However, we would like to stress that we continue to be dissatisfied with, and seriously concerned by, the situation of persons deprived of their liberty in relation to the events of 1 and 2 March 2008, such as those charged on the basis of police testimony alone. In addition, we would like to express our expectations that the authorities will continue considering the use of pardons, dropping of charges and, especially, amnesty, to resolve the issue of persons deprived of their liberty in relation to the events of 1 and 2 March 2008. Therefore, we would like to recommend that the Assembly remains seized of this matter and invites its Monitoring Committee, at its next meeting, before the April part-session of the Assembly, to examine the progress achieved by the Armenian authorities with regard to the implementation of the resolution which the Assembly will adopt on the basis of our report and the previous resolutions and to propose any further action to be taken by the Assembly, including the possibility of considering sanctions, as required by the situation.

17. In the light of our findings, we would like to recommend the following amendments to the preliminary draft resolution contained in our report on “the implementation by Armenia of Assembly [Resolutions 1609 \(2008\)](#) and [1620 \(2008\)](#)” (Doc. 11786).

Proposed amendments to the draft resolution

Amendment A

In the first sentence in paragraph 4 of the draft resolution, replace the words “limited progress has been made” with the following words: “, until the last moment, only limited progress was made”.

Amendment B

Replace paragraph 5 of the draft resolution with the following text:

“The Assembly notes that doubts have been voiced regarding the nature of the charges brought under Articles 225 and 300 of the Criminal Code, as well as with regard to the legal proceedings against those convicted in relation to the events of 1 and 2 March 2008, including by the Council of Europe Commissioner for Human Rights. The Assembly therefore considers that, under such conditions, the charges against a significant number of persons, especially those charged under Articles 225-3 and 300 of the Criminal Code and those based solely on police evidence, could have been politically motivated. The Assembly is seriously concerned about the implications of this situation if left unaddressed.”

Amendment C

After paragraph 5, add two new paragraphs as follows:

“The Assembly welcomes the decision of the Speaker of the National Assembly of Armenia, of 22 January 2009, to establish a working group within the National Assembly, within a one-month period, to draft, in co-operation with the relevant bodies of the Council of Europe (notably the Venice Commission and the Commissioner for Human Rights) amendments to Articles 225 and 300 of the Criminal Code of Armenia, in order to address the legal shortcomings in these articles as noted, inter alia, by the Assembly and the Commissioner for Human Rights of the Council of Europe, and to bring them in line with Council of Europe standards. The Assembly also notes the assurances given by the Speaker of the National Assembly that these amendments will be adopted and sent to the President for promulgation within approximately one month after the working group has finalised its work. The Assembly notes that, under the Constitution of Armenia, any positive changes to the law would be retroactive with respect to the charges brought against the persons deprived of their liberty in relation to the events on 1 and 2 March 2008.

The Assembly considers that this initiative of the Speaker of the National Assembly of Armenia, although belated, is a signal indicating the readiness of the Armenian authorities to begin to address the concerns of the Assembly in relation to the situation of the persons deprived of their liberty in relation to the events of 1 and 2 March 2008.”

Amendment D

In current paragraph 6, at the beginning, replace the words “The Assembly regrets” with the following text:

“The Assembly welcomes the increasing number of pardons, 28 to date, that have been granted by the President of Armenia and notes that more are under consideration. The Assembly expresses its expectation that this process will continue unabated. It regrets however”.

Amendment E

In current paragraph 6, before the words “legal means”, add the word “other”.

Amendment F

Replace current paragraph 9 with the following text:

“Notwithstanding the recent positive development in this area, the Assembly remains dissatisfied with, and seriously concerned by, the situation of persons deprived of their liberty in relation to the events of 1 and 2 March 2008 and who may have been charged and imprisoned for political motivations. Nevertheless, it considers that the recent initiative of the National Assembly to revise Articles 225 and 300 in accordance with Council of Europe standards, the number of pardons granted, as well as the positive steps taken towards the establishment of an independent, transparent and credible inquiry, should be seen as an indication of the readiness of the Armenian authorities to address the demands of the Assembly contained in Resolutions 1609 (2008) and 1620 (2008). Therefore, the Assembly decides, at this stage, not to suspend the voting rights of the members of the Armenian parliamentary delegation to the Assembly, under Rule 9, paragraphs 3 and 4.c, of the Rules of Procedure. It decides to remain seized of the matter and invites its Monitoring Committee, at its next meeting, before the April part-session, to examine the progress achieved by the Armenian authorities with regard to the implementation of this and the previous resolutions and to propose any further action to be taken by the Assembly as required by the situation.”

Appendix

Letter from Mr Hovik Abrahamyan, President of the National Assembly of the Republic of Armenia

Yerevan, 22 January 2009

Dear Mr Prescott, Dear Mr Colombier,

At the outset, I wish to once again express my sincere appreciation for your committed and principled approach to addressing the difficult issues that Armenia has been facing since the beginning of last year. Your latest visit to Armenia on 15 January was most instrumental in outlining solutions with respect to Armenia's obligations as reflected in previous Assembly [Resolutions 1609](#) and [1620](#). I am most grateful to you for your critical, profound and detailed understanding of both political and legal aspects of our positions. Once again, while we pay considerable attention to the integrity of legal and judicial institutions of the country, we also act in demonstration of our political will to resolve the present problems in the broader public and national interests and restore the political stability and democratic development in Armenia.

Therefore, with this letter I wish to reiterate my intention to address the legal deficiencies with respect to certain articles of the Criminal Code of Armenia, which are applied in the indictment of the persons appearing before the Court in connection with the tragic events of 1 and 2 March. I recall that in your previous reports you have drawn our attention to such deficiencies. We have also given serious consideration to the report of the Commissioner for Human Rights, Mr Thomas Hammarberg, in which he, *inter alia*, noted that the wordings in Articles 225 and 300 of the Criminal Code of Armenia imply broad interpretation of their provisions. In particular, the definition of the usurpation of power "allows for a very broad interpretation and fails to give clear guidance on the dividing line between legitimate expressions of opinion and incitement to violence".

I therefore signed today my decree establishing a working group within the National Assembly of Armenia, to be chaired by Mr Davit Harutyunyan, Chairman of the Standing Committee on State and Legal Issues, which is tasked with drafting amendments to Articles 225 and 300 of the Criminal Code in order to eliminate the present deficiencies and to bring these articles in line with the established standards and best practices of the Council of Europe. The working group will co-operate with the Directorate General of Human Rights and Legal Affairs of the Council, the Venice Commission and the Commissioner during the drafting process.

The working group is instructed to complete its work within one month, following which I will be introducing the amendments to our Assembly for consideration. I intend to complete the established procedures for the adoption of the amendments and their submission to the President of the Republic, as stipulated by law, within approximately one month following the introduction of the draft to our Assembly.

Finally, I wish to reiterate that this initiative bears significant relevance to the ongoing judicial process with respect to persons accused in connection with the tragic events of 1 and 2 March. At the same time, I initiate this process without prejudice to the use of all other means, including the legal means available to the authorities with respect to those persons as reflected in paragraph 5 of Resolution 1620 and in accordance with the relevant provisions of the Constitution of the Republic.

In conclusion, I wish to express my deepest satisfaction with the impressive quality of our dialogue and co-operation and will look forward to our continued friendship.

Yours sincerely,

Signed:

Hovik Abrahamyan, Mr John Prescott, Mr Georges Colombier, Co-rapporteurs

cc: Bas Klein, Co-secretary, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Parliamentary Assembly of the Council of Europe, Strasbourg

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

Reference to committee: [Resolution No. 1115 \(1997\)](#).

Draft resolution unanimously adopted by the committee on 26 January 2009.

Members of the committee: Mr Serhiy **Holovaty** (Chairperson), Mr György **Frunđa** (1st Vice-Chairperson), Mr Konstantin **Kosachev** (2nd Vice-Chairperson), Mr Leonid **Slutsky** (3rd Vice-Chairperson), Mr Aydin Abbasov, Mr Pedro **Agramunt**, Mr Miloš Aligrudić, Mrs Meritxell Batet Lamaña, Mr Ryszard **Bender**, Mr József **Berényi**, Mr Luc **van den Brande**, Mr Mevlüt **Çavuşoğlu**, Mr Sergej Chelemendik, Ms Lise **Christoffersen**, Mr Boriss **Cilevičs**, Mr Georges **Colombier**, Mr Telmo **Correia**, Mrs Herta Däubler-Gmelin, Mr Joseph Debono Grech, Mr Juris **Dobelis**, Mrs Josette **Durrieu**, Mr Mátyás **Eörsi**, Ms Mirjana **Ferić-Vac**, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Marcel **Glesener**, Mr Charles Goerens, Mr Andreas **Gross**, Mr Michael **Hagberg**, Mr Holger Haibach, Ms Gultakin **Hajiyeva**, Mr Michael **Hancock**, Mr Davit **Harutyunyan**, Mrs Olha **Herasym'yuk**, Mr Andres **Herkel**, Mr Raffi Hovannisian, Mr Kastriot **Islami**, Mr Miloš Jevtić, Mrs Evguenia **Jivkova**, Mr Hakki **Keskin**, Mrs Katerina Konečná, Mr Andros Kyprianou, Mr Jaakko **Laakso**, Mrs Sabine Leutheusser-Schnarrenberger, Mr Göran Lindblad, Mr René **van der Linden**, Mr Eduard Lintner, Mr Pietro Marcenaro, Mr Dick Marty, Mr Miloš **Melčák**, Mr João Bosco **Mota Amaral**, Mr Theodoros Pangalos, Mr Ivan Popescu, Ms Maria Postoico, Mr Christos **Pourgourides**, Mr John **Prescott**, Mr Andrea **Rigoni**, Mr Armen **Rustamyan**, Mr Indrek **Saar**, Mr Oliver Sambevski, Mr Kimmo **Sasi**, Mr Samad **Seyidov**, Mr Christoph Strässer, Mrs Chiora **Taktakishvili**, Mr Mihai Tudose, Mr Egidijus **Vareikis**, Mr José Vera Jardim, Mr Piotr **Wach**, Mr Robert **Walter**, Mr David **Wilshire**, Mrs Renate Wohlwend, Mrs Karin S. **Woldseth**, Mrs Gisela Wurm, Mr Boris Zala.

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

Secretariat of the committee: Mrs Chatzivassiliou, Mr Klein, Ms Trévisan, Mr Karpenko.