Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2427 (2022)[1]

The functioning of democratic institutions in Armenia

Parliamentary Assembly

1. Armenia has made marked progress in its democratic development since 2018. At the same time, in a short period of time, Armenia has faced a series of events which have each exerted a strong influence on the functioning of its institutions. First, a broad-based peaceful movement, the Velvet Revolution, led to a change in Armenia's political leadership in May 2018. This was confirmed by a snap parliamentary election in December 2018, the organisation and conduct of which were commended by international observers, including the Parliamentary Assembly. Armenia then became involved in the Nagorno-Karabakh military conflict from September to November 2020, and its parliament and government buildings were subsequently stormed by demonstrators. This attempted overthrow of the constitutional order came after the announcement of the signing of the Trilateral Statement by the Prime Minister of Armenia, the President of the Russian Federation and the President of Azerbaijan on the night of 9 November 2020. Armenia then went through a serious political crisis, with the government's legitimacy being questioned, including by some parts of the armed forces which publicly called for its resignation in February 2021. After an electoral reform was adopted in co-operation with the Council of Europe, it finally held early parliamentary elections in June 2021.

2. In this context, the Assembly took stock of the situation to assess what lasting achievements had emerged from the democratic reform process that Armenia had embarked on, despite its recent difficulties, what remained to be done and what could raise questions. Its report focused on a limited number of themes that overlap with the priority reforms that the Assembly had identified in its most recent resolution on Armenia, Resolution 1837 (2011) "The functioning of democratic institutions in Armenia": electoral reform, institutional balances and the establishment of a democratic culture within the political sphere, judicial reform and the media situation.

3. In general, the Assembly welcomes the fact that Armenia has successfully emerged from the serious political crisis triggered by the outcome of the Nagorno-Karabakh conflict. The crisis was resolved with the early elections in June 2021, which were organised in a democratic manner, notwithstanding the highly polarised environment.

4. The Assembly also welcomes the pursuit of reforms, the launch of new projects since the change of political leadership in 2018 and the degree to which Armenia has co-operated with the Council of Europe, including at the level of its parliamentary delegation. In particular, it welcomes the signing of the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 223) in October 2019, the ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, Lanzarote Convention) in May 2020 and the adoption of the new Criminal Code and the new Code of Criminal Procedure in 2021, both of which are much more in line with European standards than the previous codes.

5. The Assembly notes that the recent conflict has had a major impact on Armenia, as described in its Resolution 2391 (2021) "Humanitarian consequences of the conflict between Armenia and Azerbaijan/ Nagorno-Karabakh conflict". In particular, it again expresses its consternation at the number of people killed, on all sides, and reiterates its demand for the return of all Armenian prisoners of war in accordance with paragraph 8 of the Trilateral Statement. It also reaffirms the importance of cultural and religious heritage and

1. *Assembly debate* on 27 January 2022 (8th sitting) (see Doc. 15432, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Kimmo Kiljunen and Ms Boriana Åberg). *Text adopted by the Assembly* on 27 January 2022 (8th sitting).

the urgent need to establish mechanisms required for its protection and restoration. It once again deplores the increasing number of speeches or acts that are not conducive to the easing of tensions or the establishment of normal relations between Armenia and Azerbaijan. The Assembly welcomes the transfer of landmine maps to Azerbaijan and calls on the parties to continue their co-operation on demining efforts in the region. It once again calls for a just and lasting resolution of the Nagorno-Karabakh conflict, within the framework of the Organization for Security and Co-operation in Europe (OSCE) Minsk Group. Finally, it calls for the implementation of the recommendations of the Commissioner for Human Rights contained in her memorandum on the humanitarian and human rights consequences of the conflict.

6. The Assembly also notes the consequences of the Nagorno-Karabakh conflict on Armenian politics, whether in terms of the place the issue of national security occupies on the political agenda or the intense polarisation of the political scene over the issue of responsibility for the defeat brought about by the signing of the Trilateral Statement of 9-10 November 2020.

7. With regard to elections and electoral reform, the Assembly commends Armenia for the conduct of the last two national elections, held in December 2018 and June 2021, which were free of the irregularities that had tainted many elections in the past. As regards the snap election in June 2021, it is also pleased to note that the opposition has accepted the results, after having used the legal means at its disposal to challenge them, and has not boycotted the new parliament's activities.

8. Overall, the Assembly welcomes the marked improvement in the electoral framework in terms of the legislation on political parties and the funding of electoral campaigns, and in terms of the voting system, as noted by the European Commission for Democracy through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR).

8.1. It welcomes the efforts made to safeguard the integrity of the system of political finance and enhance political parties' transparency and accountability. It also welcomes the lowering of the threshold of votes required for a political party to receive public funding, and the method of calculating the public funds to be allocated, which, as the Venice Commission pointed out, favours small political parties and consequently political pluralism.

8.2. It also welcomes the package of amendments, adopted in April and May 2021, which addressed the majority of recommendations raised in previous Venice Commission opinions and OSCE/ODIHR election observation missions' final reports. It notes that these amendments have, *inter alia*, simplified the voting system, lowered the premium offered to the coalition receiving more than 50% of mandates in the National Assembly and reduced the threshold for political parties to participate in the distribution of seats, thereby promoting political pluralism.

8.3. Lastly, it welcomes both the inclusive and transparent procedure for adopting these amendments and the fact that the amendments of April and May 2021 had been discussed and prepared for a long time, even though they were voted in very shortly before the elections.

9. The Assembly regrets, however, the political climate in which the June 2021 elections took place, which was characterised by intense polarisation and marred by increasingly inflammatory rhetoric among key contestants. It also deplores the fact that women were sidelined throughout the campaign, although in the end, electoral regulations led to an increase in their representation in parliament. The Assembly therefore calls on the political parties to bring about a change of culture in this respect, as equal gender representation in elected office must be backed up by a real opportunity for women to actively participate in political life.

10. The Assembly calls on the Armenian authorities to complete the reform of the electoral framework by taking on board the recommendations of the Venice Commission and the OSCE/ODIHR, in particular as regards abolishing the ban on bi-nationals standing for election and enabling voters to challenge voting results in their constituency. It also calls on Armenia to implement the recommendation of the Congress of Local and Regional Authorities of the Council of Europe by ensuring all local elections are held on the same day and at least six months apart from parliamentary elections.

11. As regards institutional balances and enabling a democratic culture to take root in the political sphere, the Assembly condemns the violent incidents that occurred in August 2021 between members of the majority and the opposition in the National Assembly. It calls on the majority and the opposition to engage with each other in a constructive and respectful manner over clearly identified and divergent policy directions. It notes that functional mechanisms are in place to protect the opposition's rights, enabling it to play its role and propose alternatives. It calls on the parliamentary majority to fully perform its role in terms of oversight and review of government action, given that it holds the large majority of seats.

12. The Assembly calls on the Armenian authorities to implement their plan to reinstate a Ministry of the Interior and entrust it with some of the law-enforcement agencies which are currently under the direct authority of the prime minister. This long-standing recommendation of the Assembly would increase the government's accountability to parliament for any law-enforcement matter. It also recommends that the authorities examine the possibility of making several investigative bodies, currently under the authority of the prime minister, independent.

13. The Assembly commends Armenia for introducing certain checks and balances which have proved their effectiveness, whether it concerns the President of the Republic of Armenia's role as guardian of the constitution or the Human Rights Defender (Ombudsman), whose independence seems to be firmly established. In this respect, the Assembly calls on the authorities to follow the recommendations of the Venice Commission for strengthening the independence of the Human Rights Defender in staff recruitment and management policies.

14. The Assembly also calls on the authorities to ensure that the Commission for the Prevention of Corruption has adequate resources to carry out checks on the disclosure of interests and assets of public officials in general and judges in particular and on the financial control of political parties. It also recommends taking advantage of the next revision of the constitution to examine the possibility of strengthening the independence of this commission by constitutionalising its status.

15. The Assembly notes that since the peaceful change of power in 2018, tensions have run very high between the Armenian authorities on the one hand and the judiciary and certain judges of the Constitutional Court on the other. It also notes the low level of public trust in the judiciary and the perception that it suffers from a significant degree of corruption and possibly has ties with opponents of the current parliamentary majority. It deeply regrets the public confrontation that took place between the government and the majority on the one hand, and the former chairperson of the Supreme Judicial Council and the former president of the Constitutional Court on the other. It points out that while it is the responsibility of the authorities to uphold the dignity of the judicial office and not to call judges' integrity into question publicly and collectively, both judges and the chairperson of the Supreme Judicial Council and the president of the Constitutional Court are required to be neutral and impartial.

16. It welcomes the measures taken to promote the independence of judges, such as increasing their allowances, setting the remuneration of future "anti-corruption" judges at a higher level than that of ordinary judges and the change in culture that seems to be under way among pretrial judges, which has reportedly resulted in a sharp rise in refusals of prosecutorial requests for pretrial detention.

17. It also notes that, in their opinions, both the Group of States against Corruption (GRECO) and the Venice Commission took a generally positive view of the composition of the Supreme Judicial Council, an independent judicial body, and of the scope of its powers.

18. The Assembly calls for the reform of the judiciary to be continued by:

18.1. introducing a proper mechanism for appealing against decisions of the Supreme Judicial Council in disciplinary matters, as is already the case with regard to the recruitment and promotion of judges and as recommended by both GRECO and the Venice Commission;

18.2. delivering tangible results in terms of sanctions against undue interference with the administration of justice, in line with GRECO's recommendations;

18.3. establishing a neutral and competent body to provide confidential counselling to judges on improper influences, conflicts of interest and corruption within the judiciary, in line with GRECO's recommendations.

19. With regard to the crisis that began in 2019 between the government and certain judges of the Constitutional Court, the Assembly considers that the implementation of the Constitutional Court model provided for by the 2015 constitutional amendments could justify introducing a single set of rules governing the conditions of service of the court's judges, in particular the length of their term, in order to prevent some of them from serving beyond the twelve years provided for by the amendments. It also notes that the appointment of the former president of the Constitutional Court was made in such a way as to make both his mode of election and the length of his term of office exempt from full application of the 2015 amendments.

20. The Assembly notes that the authorities tried to find an honourable solution to the crisis by offering early retirement to the judges in question. It welcomes the talks which were conducted in this respect, with the Venice Commission's opinion being sought on two occasions.

21. It regrets, however, that the Armenian authorities did not follow the Venice Commission's recommendations to provide for the renewal of the Constitutional Court while envisaging a transitional period which would allow for a gradual change in the composition of the court in order to avoid any abrupt and immediate change endangering the independence of this institution. The Assembly points out that the principle of irremovability is a guarantee of the independence of the judiciary from the political authorities which must be respected.

22. As regards the media, Armenia recently faced a series of events, including the Covid-19 pandemic and the Nagorno-Karabakh conflict, which led the authorities to severely restrict the independence of journalists and freedom of expression on a temporary basis. The Assembly notes that, as regards the dissemination of false information and publications likely to cause panic in the context of the coronavirus pandemic and the restrictions imposed by martial law, the authorities tended to take drastic measures which were manifestly excessive in terms of the curbs they placed on freedom of expression, even if the aim pursued was legitimate. The authorities were able to relax their rules regarding the coronavirus pandemic, however, and the judicial review of martial law initiated by the Human Rights Defender was effective.

23. Armenia has been facing an unprecedented level of disinformation and hate speech since the Nagorno-Karabakh conflict. The Armenian authorities responded by increasing the fines for “insults” and defamation, criminalising “serious” insults in general and providing for fines and a prison sentence when directed at persons on account of their public activities.

24. Reiterating its position that defamation should not be criminalised, the Assembly calls on the authorities to:

24.1. ensure that the balance between the freedom of expression guaranteed by Article 10 of the European Convention on Human Rights (ETS No. 5) and the dignity of the person, which forms part of the right to privacy protected by Article 8, is respected;

24.2. ensure that the legislation on penalties for insult and defamation is applied uniformly by the prosecutor’s office, in a restrictive sense, so that it is not used in an arbitrary manner against individuals and the media;

24.3. develop tools other than preventive punishment to combat disinformation and hate speech. In this respect, it calls on the authorities to improve the training and status of journalists, make systems of self-regulation effective and combat polarisation of the media by increasing transparency in the area of media ownership;

24.4. use the reform of the Law on Mass Media of 2003 to make comprehensive and inclusive reforms to the sector and continue the co-operation with the Council of Europe in this respect.

25. The Assembly resolves to continue to closely follow developments with regard to institutional balances and the establishment of a democratic culture within the Armenian political sphere, judicial reform and the media situation. In particular, it will follow the implementation of the co-operation programmes related to the themes contained in the Council of Europe Action Plan for Armenia 2019-2022 and ensure that these themes are also taken into account in the 2023-2026 action plan.