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The functioning of democratic institutions in Armenia

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Co-rapporteurs: Mr Kimmo KILJUNEN, Finland, Socialists, Democrats and Greens Group, and Ms Boriana ÅBERG, Sweden, Group of the European People's Party

Summary

The Monitoring Committee welcomes the fact that Armenia has made marked progress in its democratic development since the change of political leadership in 2018 and has successfully emerged from the serious political crisis triggered by the outcome in the Nagorno-Karabakh conflict, which was overcome by parliamentary elections in June 2021.

The committee assesses the achievements made, and challenges remaining, with regard to, inter alia, electoral reform, the balance of institutional power, the political environment, judicial reform and the media environment, and makes a number of concrete recommendations.

The committee will continue to closely follow the developments with regard to the functioning of democratic institutions in Armenia, including in the context of the Council of Europe Action Plan for Armenia.

1. Reference to Committee: Resolution 1115 (1997).

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A. Draft resolution[2]

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 overlapping with the priority reforms that the Assembly had identified in its most recent resolution on Armenia, Resolution 1837 on "The functioning of democratic institutions in Armenia" adopted in 2011: electoral reform, ensuring institutional power is correctly balanced and enabling democratic culture to take root in 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 in 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 Processing of Personal Data (STCE n° 223) in October 2019, the ratification of the 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 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 from 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 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. In addition, the Assembly calls again on the Armenian authorities to release, without delay, all landmine maps in their possession to the Azerbaijani authorities. It once again calls for a just and lasting resolution of the Nagorno-Karabakh conflict, within the framework of the Organisation 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 of the issue of national security on the political agenda, or the intense polarisation of the political scene over the issue of responsibility for the defeat led by the signing of the Trilateral Statement of 9-10 November 2020.

2. Draft resolution adopted by the committee on 14 December 2021.

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, both 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 Venice Commission and the OSCE/Office for Democratic Institutions and Human Rights (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 the votes 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 side-lined 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 participate actively 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 providing a precise legal definition of campaign expenditure, abolishing the ban on bi-nationals standing for election, penalising "slander" during election campaigns 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 from parliamentary elections.

11. As regards ensuring institutional power is correctly balanced and enabling 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 the latter 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 be the President of the Republic of Armenia in his 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 on 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 interests and assets disclosure 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 pre-trial judges, and has reportedly resulted in a sharp rise in refusals of prosecutorial requests for pre-trial 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 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 Constitutional Court judges, in particular the length of their term, in order to prevent some of them from serving beyond the 12 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 that any early retirement scheme for members of the Court must be voluntary and not abrupt and immediate so as to avoid undermining the principle of irremovability of judges. 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, both 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 view of the curbs they placed on freedom of expression, even if the aim pursued was legitimate. They 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 they are 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 democratic culture taking root in the Armenian political sphere, judicial reform and the media situation. In particular, it will follow the implementation of the co-operation programmes related to these themes contained in the Council of Europe Action Plan for Armenia 2019-2022 and ensure that they are also taken into account in the 2023-2026 Action Plan.

B. Explanatory memorandum by Mr Kimmo Kiljunen and Ms Boriana Åberg, co-rapporteurs

1. Introduction

1.1. Monitoring procedure

1. Armenia joined the Council of Europe on 25 January 2001 and, since its accession, has been subject to a Parliamentary Assembly monitoring procedure resulting in the adoption of 11 resolutions. The most recent report on Armenia's obligations and commitments was presented to the Assembly in 2007[3] and five resolutions on the functioning of democratic institutions in Armenia were adopted from 2008 to 2011.[4] They concerned the events of 1 March 2008 in which 10 people lost their lives during a spontaneous demonstration against the election of Mr Serzh Sargsyan as President of the Republic of Armenia.

2. These five resolutions were a testament to the Assembly's activism. The Assembly, which had been a regular advocate for the adoption of amnesty laws for those imprisoned after the events of 1 March, achieved this objective. It also stressed the need to shed light on these events and on the search for those responsible for the deaths. Furthermore, it identified the underlying causes of this tragedy and indicated the priority reforms to be carried out (genuinely democratic elections, the emergence of a robust democratic and pluralist political environment that has the full trust of the Armenian public, the establishment of an open and pluralist media environment and reform of the police and the judiciary with a view to guaranteeing their independence).

3. Although the 2011 report (Doc. 12710) outlined plans for a full monitoring report to be submitted to the Assembly in 2013 (paragraph 6 of the report), that has not been possible until now. From 2011 to 2019, however, the various co-rapporteurs for Armenia continued the monitoring procedure by carrying out annual country visits and systematically reporting back to the Committee members during meetings, but also through information notes, producing eight during that period.[5] These were all made public and can be found on the Assembly's website.

1.2. Rationale for a report on the functioning of democratic institutions

4. Since 2018, Armenia has faced, in a short period of time, a series of events which have each exerted, could have exerted or may exert influence on the functioning of its institutions. First, a broad-based peaceful movement led to a change in Armenia's political leadership. This was confirmed by a snap parliamentary election, the organisation and conduct of which were commended by international observers, including our Assembly. Armenia then became involved in a military conflict, which it lost, and its parliament and government buildings were subsequently stormed by demonstrators. It 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. After an electoral reform was adopted in co-operation with the Council of Europe, it finally held early parliamentary elections which were intended to serve as a way out of the political crisis following the country's military defeat.

5. With those elections having taken place and a new government having won the confidence of parliament, it seemed to be a particularly good time to take stock of the situation through a report. In so doing, we wanted to assess what lasting achievements have emerged from the democratic reform process that Armenia has embarked on, despite its recent difficulties, what remains to be done and what may raise questions. In this respect, we thought it appropriate to focus on the political developments since 2018 and the issues directly related to the functioning of democratic institutions without providing a comprehensive overview of the situation in each of the three pillars that are usually subject to a monitoring procedure, namely democracy, the rule of law and human rights. These themes overlap with the priority reforms identified by the Assembly in 2011: electoral reform, ensuring institutional power is correctly balanced and enabling democratic culture to take root in the political sphere, judicial reform and the media situation. A more comprehensive report may be submitted to the Assembly in the near future to deal with all the issues usually addressed in a monitoring report, in particular in the field of human rights, which we have mainly explored through the situation of the media.

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3. Resolution 1532 (2007).
4. Resolution 1609 (2008), 1620 (2008), 1643 (2009), 1677 (2009) and 1837 (2011).
5. See the full list in Committee document AS/Mon/Inf (2021) 11.

1.3. Preparation of the report

6. Appointed co-rapporteurs on 11 December 2019[6] and 10 September 2020[7], we, like all our colleagues, were subject to the public health measures introduced in connection with the Covid-19 pandemic. Although they made it hard to arrange a country visit to Armenia in 2020 and the first half of 2021, they did not prevent us from closely following the various developments in Armenia and taking action whenever we saw fit. We were in close contact with the Chairperson of the Armenian delegation, Mr Ruben Rubinyan, who is also a member of the Monitoring Committee, and Mr Edmon Marukyan, also formerly on this committee, for example to seek clarification on the draft amendments to the Law on the Human Rights Defender (Ombudsman), the attacks on parliament and certain government buildings in November 2020 and incidents that occurred in parliament. We also conducted several remote interviews (listed in the 2020 annual report on the progress of the monitoring procedure) and continued this practice in 2021.[8] In addition, we have maintained regular contact with the Permanent Representation of Armenia to the Council of Europe. This monitoring work did of course feed into this report, as did the dozen official statements issued by co-rapporteurs past and present since 2019.

7. As with any Assembly report, we made extensive use of the activities and reports of other Council of Europe entities performing a monitoring function under their terms of reference. We also relied on relevant documentation from other international organisations and, in some cases, from Armenian organisations.

8. Lastly, we drew on the high-level political dialogue which took place during our country visit to Yerevan from 3 to 5 November 2021. Our meetings during this visit included those with various representatives of civil society organisations, ambassadors, representatives of the different parliamentary groups in the National Assembly, members of the National Assembly's standing committee on legal affairs, members of the National Assembly's standing committee on the protection of human rights, the President of the National Assembly, the President of the Constitutional Court, the acting Chairperson of the Supreme Judicial Council, the Human Rights Defender (Ombudsman), the President of the Commission for the Prevention of Corruption, the Minister of Foreign Affairs, the Minister of Justice and the Prime Minister. We also visited the municipality of Yeraskh, on the border with the Autonomous Republic of Nakhchivan, and met with the mayor. We would like to thank the Armenian authorities for the warm welcome we received, as well as the secretariat of the Armenian parliamentary delegation to the Assembly and the former Permanent Representative of Armenia to the Council of Europe, Ambassador Paruyr Hovhannisyan, for organising and greatly facilitating this visit.

2. Political situation and recent developments

9. Reviewing the developments which have taken place since 2018 will provide a better understanding of the whys and wherefores of the current context. Four different chronological periods can be identified.

2.1. The political crisis triggered by Serzh Sargsyan's appointment as Prime Minister (April-December 2018)[9]

10. Adopted by referendum in December 2015, one of the effects of the amendments to the Armenian Constitution was to turn Armenia's presidential regime into a parliamentary system. These changes were due to come into force at the end of President Serzh Sargsyan's term of office on 9 April 2018. Several opposition parties and civil society organisations had claimed at the time that the amendments were mainly designed to enable President Serzh Sargsyan to remain in power beyond his two-term limit. Mr Serzh Sargsyan had been elected President in 2008 and again in 2013, after having served as Prime Minister in 2007. These allegations had then been denied and President Sargsyan had given public assurances on several occasions, including to our predecessors, that he had no intention of running for Prime Minister.

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6. Mr Kimmo Kiljunen (Finland, SOC) was appointed co-rapporteur to replace Ms Yuliya Lovochkina (Ukraine, SOC).
7. Ms Boriana Åberg (Sweden, EPP/CD) was appointed as co-rapporteur, replacing Mr Bernard Fournier (France, EPP/CD).
8. These were interviews with the Human Rights Defender of the Republic of Armenia, with the acting-Secretary of the Venice Commission on the Constitution of Armenia, with the Chairperson of the Specialised Commission on Constitutional Reforms and Representative of the Republic of Armenia before the European Court of Human Rights, with a Carnegie Foundation expert on the Nagorno-Karabakh conflict (Doc. 15211, paragraph 11 of the explanatory memorandum). On 13 April 2021, we also discussed at length the forthcoming early elections with Armenian experts.
9. For a detailed description of this period, see information notes AS/Mon(2018) 09rev and AS/Mon (2019) 14.

11. On 14 April 2018, however, Serzh Sargsyan's Republican Party nominated him for Prime Minister, and on 17 April, the parliamentary majority elected in 2017 (consisting of the Republican Party and the Armenian Revolutionary Federation) appointed him in that role after a vote. The move sparked a wave of protests and spontaneous demonstrations in the country, apparently prompted on the one hand by Mr Sargsyan reneging on his promise, and on the other, by what this signified for some Armenians: propping up a system that was perceived as overtly corrupt and that had little electoral legitimacy as elections were regularly marred by vote buying and voter intimidation. The demonstrators were therefore protesting against what they saw as a sign that reforms would be postponed indefinitely, leading to further political stagnation.

12. The second largest opposition group in the National Assembly, the Yelk (Way Out) Alliance, swiftly capitalised on the protest movement. Mr Nikol Pashinyan, leader of the Civil Contract party that was the dominant force in the Yelk Alliance and one-time critic of Mr Sargsyan's appointment as Prime Minister, soon became the spearhead of the social protest movement, with large numbers joining what developed into a campaign of civil disobedience. After some unsuccessful attempts at negotiation which were followed by Mr Pashinyan being briefly detained, Mr Serzh Sargsyan resigned on 23 April 2018. Two days later, the Armenian Revolutionary Federation withdrew from the governing coalition and announced that it would back Nikol Pashinyan, as did the leading parliamentary opposition political group, the Tsarukyan Alliance.

13. When Mr Pashinyan's bid for the post of Prime Minister was initially rejected, not least because the Republican Party retained an absolute majority of seats in parliament, this triggered further mobilisation and a call for a general strike. On 8 May 2018, Mr Pashinyan was finally elected unopposed by the Republican Party and took over the leadership of a minority government with a programme approved by the National Assembly in June.

14. Holding early elections under a new legislative framework proved to be a major hurdle for the new government as the parliamentary majority was opposed to such changes. In October 2018, an electoral reform bill aimed at bringing in proportional representation to replace the existing mixed electoral system failed to gain the required three-fifths majority of parliamentarians' votes. Prime Minister Pashinyan then resigned, triggering, with the tacit agreement of the majority of parliamentarians who refrained from electing his successor, a snap election which was held on 9 December 2018.

15. The democratic conduct of the elections was welcomed by international observers, who noted that they had been held with due regard for fundamental freedoms and enjoyed broad public trust.

16. The elections gave a landslide victory to Prime Minister Pashinyan's My Step Alliance, which won 70% of the vote, in what was to be a major shake-up of the political landscape. The two other parties that made it into parliament and formed the government's opposition were Prosperous Armenia (8% of the vote) and Bright Armenia (6%). No other political party managed to pass the 5% electoral threshold required for parliamentary seats – not even the Republican Party (4.8%) or the Armenian Revolutionary Federation (3.9%).

17. The elections legitimised a peaceful change of government which took place in strict compliance with constitutional provisions. Known as the Velvet Revolution, this change is a milestone in Armenia's turbulent political history, particularly in the light of the violent events of 1 March 2008, and should be celebrated.

2.2. The government formed after the December 2018 elections (December 2018-November 2020)

18. The government was officially formed when the new parliament adopted its programme on 14 February 2019 after three days of debate. The government programme was primarily geared towards reviving Armenia's stagnant economy by bringing about an "economic revolution". This initiative was aimed both at shaping Armenia's future economic model and reducing poverty levels. Other policies explicitly mentioned in the programme included: resuming peace talks on Nagorno-Karabakh (in the presence of its representatives), strengthening co-operation with Russia, furthering relations with the European Union and fighting corruption.

19. During their country visit in March 2019, our predecessors met Prime Minister Pashinyan in Yerevan to discuss his government's top four priorities. The independence of the judiciary was first on the list, followed by a general need to strengthen Armenia's institutions, mostly by reforming the electoral system. Fighting corruption was the third priority. Lastly, the Prime Minister said it was crucial that the government system be made more "citizen friendly". The rapporteurs also noted that public expectations of the new authorities were running particularly high.

20. In the period from February 2019 to November 2020, the authorities seized the opportunity to continue some vital work that was already under way, including reforming, in co-operation with the Council of Europe, the Criminal Code and the Code of Criminal Procedure along much more progressive lines.[10] It also paved

the way for future actions: a comprehensive strategy for judicial reform was adopted in October 2019 alongside one for tackling corruption; a human rights strategy was adopted in December of the same year and, in February 2020, the Ministry of Justice presented its strategy for police reform, including setting up a Ministry of the Interior, as had long been recommended by our Assembly. At the same time, the government managed to push several reforms through parliament, including that of the Judicial Code, the amendments to which entered into force in May 2020, and electoral reforms targeting political parties and, in particular, political funding, adopted in June 2020.

21. During their country visit in March 2019, the previous co-rapporteurs noted the general consensus among those they spoke with – ranging from representatives in civil society and the judiciary to the Human Rights Defender's (Ombudsman's) office – that the will to respect, protect and promote human rights was present at the highest levels of the State and that this was reflected in the widespread consultation of civil society when preparing draft laws. That positive trend continued, with the European Commission for Democracy through Law (Venice Commission) referring, in the two opinions it issued on the reform of the Judicial Code and that of the Law on Political Parties, to the broad and inclusive public consultations, which were also recognised as such by the NGOs it met in Yerevan. Regarding the reform of the Judicial Code, it even noted that this dialogue had spurred the government to abandon its most radical proposals for reform and develop more "tailor-made solutions".[11]

22. In general, co-operation between the Council of Europe and the Armenian authorities increased as many reforms were launched and remained at a high level, whether in terms of the support offered by the Council of Europe's office in Yerevan, the quality of the political dialogue or the requests for ad hoc assistance from the Armenian institutions, with the Venice Commission receiving five such requests for opinion over the period concerned.

23. In May 2020, Armenia became the 47th country to ratify the Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, Lanzarote Convention), in a move which should be commended.

24. While the new authorities pushed ahead with their reforms, Armenian political life was marred by some unwelcome developments between December 2018 and September 2020.

25. The first of these, described in Part 5 of this report, concerns difficulties in the government's dealings with the judiciary and the Constitutional Court. On 19 May 2019, Prime Minister Pashinyan called on Armenians to block entrances and exits to courts across the country on the grounds that the judiciary was untrustworthy and remained close to the corrupt former regime. The call followed the release from pre-trial detention of former President Robert Kocharyan who had been charged over his role in the events of 1 March 2008, in which 10 people died.

26. From 2019, the tension between the government and certain judges of the Constitutional Court, particularly its President, reached a crescendo, with the Prime Minister accusing the latter of allowing political considerations to influence what should be an impartial role and the President condemning the government for putting pressure on the judges to resign. This unprecedented level of confrontation led the co-rapporteurs and the President of the Venice Commission to call for restraint in statements issued separately in 2019 and 2020.[12] The conflict finally ended in September 2020 when three Constitutional Court judges were replaced. We will take a closer look at these events in section 5.2 of this report.

27. The second trend noted during this period was the deterioration of the political climate after the euphoria of the Velvet Revolution. The new government, backed by a solid parliamentary majority, seemed persuaded that its drive for reform was being held back or even challenged by those it thought remained loyal to the old regime. It was also facing a fairly constant stream of criticism from several media outlets, some of which had ties with the former regime. This may partly explain why some members of the majority showed less tolerance for criticism from independent institutions, including the Ombudsman. For example, the Ombudsman was accused of protecting the rights of Armenians, but not those of majority politicians and senior civil servants who were also the target of verbal attacks and smear campaigns. When he presented his annual report in 2021, the tension in parliament was more palpable than a year earlier.

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10. These codes were finally adopted in 2021.
11. See paragraph 13 of CDL-AD(2020)004 and paragraphs 12 and 13 of CDL-AD(2019)024.
12. The co-rapporteurs' press release of January 2020 and the President of the Venice Commission's statements of October 2019 and February 2020.

28. This deterioration in the political climate was clearly apparent on 8 May 2020 when the leader of the National Assembly's Bright Armenia party and political group, Mr Edmon Marukyan, was physically assaulted by a member of the majority after speaking from the rostrum, prompting the Speaker of the Assembly to suspend the proceedings and intervene as parliamentarians' tempers flared. Although Mr Marukyan was a member of the opposition at the time of these events, he had been Mr Pashinyan's ally in 2017, chairing the Yelk political group in the National Assembly, which included both Mr Pashinyan's Civil Contract Party and Mr Marukyan's Bright Armenia Party and a third alliance member, the Republic Party. This was a telling event because, while fervent, or even heated, reactions and vigorous verbal sparring have long been part of Armenian political life, politicians had not truly come to blows in parliament since the Velvet Revolution.

29. Tensions also rose after the parliamentary immunity of Mr Gagik Tsarukyan, leader of Prosperous Armenia, the first opposition group, was lifted in June 2020 and he was remanded in custody in September. Mr Tsarukyan, one of Armenia's wealthiest businessmen, was prosecuted for a number of financial crimes and vote buying during the 2017 parliamentary elections – nearly 17 000 votes according to the Prosecutor General – a practice that election observation missions had frequently condemned. The entire parliamentary opposition joined by some parties with no National Assembly seats, including the Republican Party and former National Security Service (NSS) chief Artur Vanetsyan's Homeland Party, condemned the lifting of immunity as politically motivated, while the NSS and the Prosecutor General presented the evidence found during the raid on Tsarukyan's home. Some analysts have argued that prosecuting Mr Tsarukyan should be seen as a strategic "determination to show an end to the previous culture of impunity that prevailed under the old government for many wealthy businessmen that entered politics".[13] Mr Tsarukyan was released on bail in October under martial law declared at the start of the Nagorno-Karabakh conflict.

30. Already hard hit by the Covid-19 pandemic in the winter of 2020, Armenia was engaged in a military conflict with Azerbaijan – which had Turkey's support – from 27 September to 9 November 2020. The tripartite agreement signed on 9-10 November 2020 by Prime Minister Pashinyan, President Putin and President Aliyev ended 44 days of military operations, resulting in approximately 30% of the territory of the self-proclaimed Nagorno-Karabakh Republic (Artsakh in Armenian) effectively coming under Azerbaijani control. In addition, the seven districts of Azerbaijan that had been partially or fully occupied by Armenian forces since 1994 were either recaptured by the Azerbaijani authorities or returned to them – see section 3 for a more detailed account of the conflict. The prevailing atmosphere on the Armenian political scene during the hostilities was one of unity.

2.3. From the political crisis triggered by the Nagorno-Karabakh conflict to the snap election in June 2021 (November 2020-June 2021)

31. This united front abruptly collapsed on 9 November 2020 when Prime Minister Pashinyan announced that he had signed a Trilateral Statement. During the night, a group protesting against the ceasefire agreement broke into the National Assembly in what the observers whom we spoke to described as a well-orchestrated operation. The Speaker of the National Assembly was so badly beaten that he had to be admitted to hospital and government buildings where the Prime Minister might be found were stormed. The gravity of the situation and concerns that a violent overthrow of country's institutions might be under way led us to issue a press release in which we stated that whatever the Armenian people's feelings about the latest developments in Nagorno-Karabakh, these should not be allowed to turn into violence against one another or against the symbols of the democratic institutions of the Republic of Armenia. We stressed that Armenians were entitled to expect accountability from their political leadership, but that this should be done within the framework of a democratic State that upholds the rule of law.[14]

32. The institutions were not overthrown, but the defeat at the hands of the Azerbaijani armed forces left quite a rift in Armenian society between those who held the Prime Minister personally responsible and wanted him to step down and those who did not. From November 2020 onwards, protestors held regular demonstrations in Yerevan and other cities. The two opposition parties represented in the National Assembly, Prosperous Armenia and Bright Armenia, called for Prime Minister Pashinyan and Armenian President Armen Sarkissian to resign and for an interim government to be formed with a view to holding a snap election. Catholicos Karekin II, head of the Armenian Apostolic Church, also called for the Prime Minister to step down. Extra-parliamentary factions (the Republican and Homeland parties) played an active role in organising the demonstrations and were particularly scathing in their criticism of Prime Minister Pashinyan, with some members even branding him a "traitor". The Prime Minister, for his part, argued that signing the Trilateral

13. Richard Giragosian, quoted in Raffi Elliot's article in the *Armenian Weekly* of 17 June 2020, "Business tycoon Gagik Tsarukyan charged with bribery, corruption".
14. Press release of 10 November 2020.

Statement had been the only viable option given the balance of power on the battlefield, blaming the former regime for leaving the Armenian armed forces outclassed by Azerbaijan's superior military technology and stressing that the unstable situation left the achievements of the Velvet Revolution under threat.

33. In December 2020, Prime Minister Pashinyan entered into discussions with the opposition, but these did not yield any concrete results. Refusing to resign, he presented a roadmap for government action up to June 2021, promising that early elections could be held if the situation stabilised.

34. In February 2021, after a high-ranking military officer was fired, the General Staff of the Armenian Armed Forces issued two successive statements calling for the Prime Minister to stand down. These were seen by the parliamentary majority as an attempted coup d'état and by some opposition parties, including Bright Armenia, as a public political statement in breach of the constitutional requirement for the armed forces to remain neutral. As co-rapporteurs, we responded by publishing a press release[15] stating that the military's call for the resignation of a democratically-elected government was unacceptable. The Chief of the General Staff Onik Gasparyan was subsequently removed from office, a decision which he challenged in the administrative court, and Prime Minister Pashinyan organised some rather sizeable rallies in support of the government.

35. The Prime Minister then announced that he was willing to resign in April so that early elections could be held on 20 June, in accordance with the procedure laid down in the Constitution. He stayed on as acting Prime Minister until that date in a step that drew criticism from the opposition. At the same time, the majority took up several proposals of the working group set up in 2020 to reform the electoral framework ahead of the poll. Two packages of amendments to the electoral code were adopted, one on 1 April, the provisions of which were applied to the snap election on 20 June, and the other on 7 May, with provisions that will apply to the next elections. For the first set of amendments, the Speaker of the National Assembly requested the joint opinion of the Venice Commission and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR), under the urgent procedure. This opinion, issued on 21 April and endorsed on 2-3 July, was very positive, with both the Venice Commission and the ODIHR welcoming the package of amendments as it addressed the majority of the recommendations set out in their previous opinions. While the Venice Commission and the ODIHR noted that these changes to electoral rules were being made only a short time before the elections were to be held, they considered that the main measure in the package of amendments – abolishing the regional open lists to turn the existing electoral system into a mixed system with full proportional representation – simplified the electoral system and seemed to be broadly supported by most of the political forces and civil society; these changes had also been discussed and prepared for a long time as part of an inclusive and transparent political process.[16] The President of Armenia refused to sign the amendments because he considered that they had been adopted too close to the elections and without the support of the two opposition parties represented in the National Assembly – Prosperous Armenia and Bright Armenia did not take part in the vote. The President did not, however, challenge the amendments before the Constitutional Court, so the Speaker of the National Assembly was able to sign them instead.

36. The various political parties were not deterred from conducting their campaigns by the very late nature of this electoral reform, which, while simplifying the existing system, left it unclear until very close to the election which type of voting system would ultimately apply. The Central Election Commission (CEC) registered the candidate lists of 22 political parties and four alliances. After one political party withdrew before 10 June, 25 lists with 2 498 candidates, including 925 women (37%), remained in the race. The three former presidents of Armenia, Levon Ter-Petrosyan, Robert Kocharyan and Serzh Sargsyan, were heavily involved in the election campaign which officially lasted just 12 days – as compared with the usual 35-45 days. It is striking that most political stakeholders considered the elections to be particularly open and worth entering in view of the issues at stake. With the exception of the December 2018 elections, this makes a welcome change from previous ballots. It should also be noted that these elections were truly open: Mr Robert Kocharyan was not only able to take an active part in the campaign by leading the Armenia Alliance (Hayastan), but was even able to run for parliament after the criminal charges brought against him for his involvement in the events of 1 March 2008 were dismissed on appeal by a Yerevan Court on 1 April 2021. Similarly, Mr Artur Vanetsyan, who had been briefly detained in November 2020 on suspicion of, inter alia, participating in an attempt on Prime Minister Pashinyan's life, was able to lead his Homeland Party, form the I Have Honour Alliance with the Republican Party and stand for parliament.

15. Press release of 26 February 2021.
16. CDL-AD2021(025), paragraphs 11 and 12.

37. The International Election Observation Mission, in which our Assembly participated, found that "Armenia's early parliamentary elections were competitive and well-managed within a short time frame. However, they were characterised by intense polarisation and marred by increasingly inflammatory language from key contestants, as well as by the sidelining of women throughout the campaign".[17]

38. The election results gave a large majority to the incumbent Prime Minister's party: almost 54% of the votes cast went to his Civil Contract party (71 seats). The Armenia Alliance, supported by Robert Kocharyan and mainly composed of the Armenian Revolutionary Federation (Dashnak), came second with 21% of the vote (29 seats), followed by the I Have Honour Alliance which won 7 seats (5%). No other political grouping managed to reach the threshold for representation in the National Assembly. The turnout was just under 50% of registered voters.

39. The Armenia Alliance, I Have Honour and two other groups that failed to reach the threshold for representation in the National Assembly filed a complaint with the Constitutional Court challenging the official election results and the distribution of seats. On 17 July, the Court rejected all the petitioners' legal arguments and evidence and ruled that the results announced by the CEC be upheld.

2.4. The newly elected government takes office (June 2021 onwards)

40. The Armenia and I Have Honour Alliances did not boycott parliament, however, taking their seats when it reconvened. On 2 August, Nikol Pashinyan was sworn in as Prime Minister by the National Assembly elected on 20 June. The Assembly then proceeded to elect its Speaker and three Deputy Speakers, one of whom belongs to the Armenia Alliance's Dashnak party in the opposition. It also voted to set up 12 standing parliamentary committees, dividing the chairs among them, with three reserved for the opposition.[18] On 11 August, a physical altercation broke out between members of the majority and the opposition, leading the Speaker of the Assembly to suspend the proceedings and call in the building's security staff to restore order.

41. Prime Minister Pashinyan formed a government of 12 ministers, keeping the tight format he had favoured after the December 2019 elections. On 24 August 2021, he came to parliament to present his government and its programme, which was adopted on 26 August. The programme is divided into six sections: Security and Foreign Policy, Economy, Infrastructure Development, Human Capital Development, Law and Justice and Institutional Development. It will be observed that the government's priorities differ from those that the Prime Minister discussed with our predecessors in March 2019, with the need for security in a tense regional context now coming first. At the same time, the Prime Minister revived the idea of broad consultations on the possibility of revising the Constitution in the light of what he perceived as institutional shortcomings arising from the political crisis of 9 November 2020.

3. The Nagorno-Karabakh conflict and its impact on Armenian politics

42. The Nagorno-Karabakh conflict having had a major impact on Armenia, we felt it was vital to keep the members of our committee and the Assembly informed of recent developments while also analysing the consequences for Armenian political life. The Monitoring Committee and its co-rapporteurs in respect of both Armenia and Azerbaijan commented on numerous occasions during and after the hostilities. Details can be found in the Committee's Work overview. The Monitoring Committee also regularly discussed the situation between Armenia and Azerbaijan and supported holding a current affairs debate on "Armenian prisoners of war, other captives and displaced persons" on 20 April 2021, during the April part-session. Our colleague Paul Gavan (Ireland, UEL) also presented a comprehensive report on the humanitarian consequences of this conflict[19] to the Assembly that makes a worthwhile reading companion to the resolution and recommendation it then adopted.[20]

43. As the course of the confrontation has already been charted by the Chairperson of our Committee, Mr Michael Aastrup Jensen, in his report on the progress of the monitoring procedure (January-December 2020),[21] we shall simply recapitulate what was said and bring this up to date by describing the events which have taken place since January 2021.

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17. Appendix 3 to the report on the observation of the early parliamentary elections in Armenia (20 June 2021) by Mr George Katrougalos (Greece, UEL) of the Bureau of the Assembly's ad hoc committee.
18. The Committee on the Protection of Human Rights and Public Affairs, the Committee on Regional and Eurasian Integration and the Committee on Economic Affairs.
19. Doc. 15363.
20. Resolution 2391 (2021), Recommendation 2209 (2021).
21. Doc. 15211, paragraphs 160 et seq.

3.1. The end of the military conflict and the aftermath of 9-10 November 2020

44. The military conflict between Armenia and Azerbaijan, sometimes referred to as the Second Nagorno-Karabakh war in reference to the 1991-1994 war, began on 27 September 2020 along the line of contact that had separated Azerbaijani and Armenian positions in Nagorno-Karabakh and the seven adjacent Azerbaijani districts since the 1994 ceasefire. It ended on 9 November 2020 when Prime Minister Pashinyan and Presidents Aliyev and Putin signed a so-called Trilateral Statement, brokered by Russia, bringing in a ceasefire. More than 6 000 military personnel died in the 44-day conflict: 3 773 on the Armenian side[22] and 2 881 on the Azerbaijani side.[23] The number of civilian casualties was estimated at 163 on the Armenian side and 548 on the Azerbaijani side.[24] The number of persons displaced by the conflict was estimated at nearly 140 000, including 90 000 to 100 000 Armenians, accounting for 70% of the population of the self-proclaimed Nagorno-Karabakh Republic, and 40 000 Azerbaijanis. In addition to these figures, the number of Armenians who left the districts recaptured by/returned to Azerbaijan under the Trilateral Statement is hard to estimate – the newspaper *Eurasianet* put the number of Armenians living in those territories at between 34 000 and 40 000. The Russian authorities declared in December 2020 that 40 000 displaced persons had returned to Nagorno-Karabakh under their protection.[25] For reference, the Azerbaijani authorities estimated that at the end of the first Nagorno-Karabakh war in 1994, there were 600 000 internally displaced persons in Azerbaijan from Nagorno-Karabakh or neighbouring districts.[26] The Gavan report states that around 65 % of them might wish to return to the seven recaptured or retroceded districts, as well as to the part of Nagorno-Karabakh taken by the Azerbaijani authorities.[27]

45. The Jensen report noted several violations of humanitarian law during the conflict (failure to distinguish between civilian and military targets or to respect the principle of proportionality, use of cluster munitions that do not discriminate between civilians and combatants, executions of prisoners and the use of Syrian mercenaries by Azerbaijan, with Turkey's assistance, to support its military operations in the Nagorno-Karabakh conflict zone) and recalled that the Turkish authorities had repeatedly stated that they would support Azerbaijan "in the field" and "at the table of negotiations".[28]

46. It should be noted that both Armenia and Azerbaijan lodged inter-state applications with the European Court of Human Rights during and after the conflict, one of which was also against Turkey. By a decision of 29 September 2020, the Court applied Rule 39 of the Rules of Court, calling on both Azerbaijan and Armenia to refrain from taking any measures, in particular military actions, which might entail breaches of the rights of the civilian population guaranteed by the European Convention on Human Rights (ETS No. 5), including putting their life and health at risk. It also asked them to comply with their engagements under the Convention, notably in respect of Article 2 (right to life) and Article 3 (prohibition of torture and inhuman or degrading treatment or punishment)[29] (). On 6 October, it extended these measures to all States directly or indirectly involved in the conflict, including Turkey.

47. In addition to introducing a ceasefire along Armenian and Azerbaijani positions as occupied on 10 November in paragraph 1, the Trilateral Statement provided for the deployment of Russian military peacekeeping forces initially for a five-year period; set up a peacekeeping centre to monitor the ceasefire; agreed on a timetable for returning the three districts still under Armenian control, excluding the Lachin Corridor,[30] to Azerbaijan; and foresaw the opening of transport links between the western regions of the

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22. According to the figures Prime Minister Pashinyan gave when presenting his government's programme to the National Assembly on 24 August 2021. See Armenpress, 24 August 2021. The Gavan report (paragraph 14) mentions a slightly different figure of 3 945 victims among the Armenian armed forces.
23. See figures published by Azerbaijan's Ministry of Defence on 2 March 2021. The Gavan report (paragraph14) noted 2 907 victims among the Azerbaijani armed forces.
24. The figures provided to Mr Gavan by the Armenian Human Rights Defender and the Azerbaijani authorities differ quite considerably from those established by the International Crisis Group, which put the number of civilian casualties at 77 on the Armenian side and 92 on the Azerbaijani side.
25. French Office for the Protection of Refugees and Stateless Persons, "The Nagorno-Karabakh conflict from 27 September to 10 November 2020", 12 December 2020, p. 17 et seq. The Gavan report refers to an estimate of 650 000 IDPs, Doc. 15363, paragraph 98.
26. Office of the United Nations High Commissioner for Refugees, 2009, p. 1.
27. Doc. 15363, paragraph 101.
28. Doc. 15211, paragraph 163.
29. Link to press release.
30. According to provisions of the 9 November 2020 Trilateral Statement.
"The Republic of Armenia shall return the Kalbajar District to the Republic of Azerbaijan by November 15, 2020, and the Lachin District by December 1, 2020. The Lachin Corridor (5 km wide), which will provide a connection between Nagorno-Karabakh and Armenia while not passing through the territory of Shusha, shall remain under the control of the Russian Federation peacemaking forces."

Republic of Azerbaijan and the Nakhchivan Autonomous Republic under the supervision of the border police of the Russian Federation's Federal Security Service. The Trilateral Statement also provided for the return of internally displaced persons and refugees to Nagorno-Karabakh and the surrounding districts under the control of the Office of the UN High Commissioner for Refugees and the exchange of prisoners of war, hostages and other detained persons and bodies.

48. From November 2020 to May 2021, the implementation of the Trilateral Statement got under way; 2 000 Russian Federation peacekeepers were deployed. The Agdam, Kalbajar and Lachin districts, still held by Armenian forces, were handed back to Azerbaijan from November to December, the search for and return of the bodies of fallen soldiers began and prisoner exchanges took place from December under the supervision of the International Committee of the Red Cross. On 11 January 2021, Prime Minister Pashinyan and Presidents Putin and Aliyev signed a second Trilateral Statement brokered by the Russian Federation. It sought to implement paragraph 9 of the agreement of 9-10 November 2020 on unblocking all the region's economic and transport links. To this end, it provided for setting up a tripartite working group led by the deputy prime ministers of the Republic of Armenia, the Russian Federation and the Republic of Azerbaijan that would be responsible for drawing up a list of the main areas of work arising from the implementation of paragraph 9 of the ceasefire agreement of 9 November 2020, setting rail and road links as priorities. The working group was also asked to prepare a list and timetable of activities to restore or build new transport infrastructure necessary for initiating, implementing and providing for the safety of international traffic through Azerbaijan and Armenia and ensuring the safety of transportations carried out by the Azerbaijan and Armenia through their territories. The working group was to be supported by several expert subgroups which it then proceeded to set up after its activities got under way.

49. Tensions began to rise, however, from 12 May 2021 when Azerbaijani troops advanced up to 3.5 kilometres into Armenian territory in two locations, one in the Syunik and the other in the Gegharkunik region. The Azerbaijani government pointed to the lack of a clear border demarcation line in this area and the fact that, according to some Soviet-era maps, the places in question were located in Azerbaijani territory. At the time of writing this report, Azerbaijani troops had not withdrawn from these locations. Despite Russian mediation and the Russian Federation's call for an acceleration of border demarcation operations, the border areas between Armenia and Azerbaijan are now subject to incursions, capture of military personnel[31] and sporadic exchanges of fire, some of which have been fatal for soldiers on both sides. The tripartite working group did, however, meet again on 17 August and held the first part of its 8th meeting on 20 October 2021. Besides these renewed tensions, we have identified five areas of concern.

50. The first is the issue of returning prisoners and other captives. At the time of writing, this aspect unfortunately remained unresolved, with Azerbaijan still holding more than 150 Armenians even though the European Court of Human Rights, in an unprecedented decision of 9 March 2021, had notified the Committee of Ministers of the provisional measures it had ordered Azerbaijan to take with respect to 188 Armenians that it had allegedly captured, "having regard to the Azerbaijani Government's failure to respect the time-limits set by the Court for the submission of information on the individuals concerned and the rather general and limited information provided by them". The Court did not, however, order interim measures against Armenia, despite a request from Azerbaijan to do so, as Armenia had repatriated 12 of the 16 citizens it had allegedly held captive and claimed that it was not detaining the other four. The issue of captives is complicated by two factors. Firstly, the Azerbaijani authorities consider that Armenian fighters captured after the signing of the 9-10 November Trilateral Statement are not covered by the provisions of its paragraph 8 stipulating that all detained persons would be exchanged. In addition, they brought criminal proceedings against some Armenian prisoners, notably for having "illegally entered Azerbaijani territory".[32] Some of these convicts were subsequently handed over to the Armenian authorities, like the 15 prisoners released and sent back in June 2021 in exchange for Armenia providing maps of land mines laid in districts retaken by Azerbaijani, leading some analysts to suggest that the trials brought by Baku could be motivated by considerations other than the pursuit of justice.[33] On 3 July 2021, a further 15 prisoners were released by Azerbaijan and a further five on 19 October who had been previously convicted.[34] On 31 August 2021, Russian Foreign Minister Lavrov for the first time called on the Azerbaijani authorities to release all Armenian prisoners without any conditions.[35]

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31. Statement by the Co-Chairs of the OSCE Minsk Group of 28 May 2021, noting in particular the detention of six Armenian soldiers on 27 May.
32. On 30 July 2021, the news site Open Caucasus, estimated that around 40 Armenian fighters had already been convicted of illegally crossing the Azerbaijani border, while about 20 others were awaiting trial, making 60 in total. See also: "Azerbaijan jails 13 Armenian military personnel for six years", 23 July 2021, *Reuters*.
33. *Eurasianet*, "Armenian soldiers on trial in Azerbaijan", 1 July 2021.
34. *JAMnews*, "Five Armenian prisoners returned from Azerbaijan to Yerevan", 19 October 2021.
35. *TASS*, "Moscow calls on Baku to release all Armenian prisoners without any conditions - Lavrov", 31 August 2021.

51. The second area of concern is the preservation of Armenian cultural heritage in the areas regained by or returned to Azerbaijan. This heritage includes dozens of religious buildings, some dating back to the 5th century. In November 2020, UNESCO reiterated countries' obligation to protect cultural heritage in terms of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict to which both Armenia and Azerbaijan are parties. It had proposed to carry out an independent field mission of experts to draw up a preliminary inventory of significant cultural properties as a first step towards the effective safeguarding of the region's heritage in and around Nagorno-Karabakh. In December of the same year, it noted that the Azerbaijani authorities had been approached several times to allow such a mission to be sent, but to no avail.[36] The Azerbaijani Ministry of Foreign Affairs responded with a press release stating that UNESCO had remained silent on the destruction of Azerbaijani cultural heritage by the Armenian occupying forces over the past 30 years and that the Ministry of Culture had sent the first results of an assessment of the extent of this destruction to UNESCO and hoped that the organisation would take this into account.[37] Whatever the merits of Azerbaijan's argument,[38] there are real fears that Armenian cultural heritage will bear the brunt of a war on memory designed to rewrite history. The precedent set in Nakhchivan, where, according to credible sources,[39] Armenian cultural heritage was destroyed, raises legitimate fears of this happening again.

52. The third area of concern relates to the increasing number of speeches or acts that do not lay the groundwork for appeasement or normalisation of relations between Armenia and Azerbaijan. In this respect, we can but regret the claims that the highest Azerbaijani authorities, namely the Minister of Culture and President Aliyev,[40] have repeatedly expressed publicly, denying the "Armenian" origins of the majority of religious buildings constructed before the 19th century and arguing that they are part of "Caucasian-Albanian" heritage in line with a theory that gained traction during the Soviet era. This thesis seeks to deny an Armenian presence in Azerbaijani territory prior to the 19th century – even though there is ample evidence of it – and suggests that classifying cultural heritage is more an affair of politics than history.[41] In the same vein, President Aliyev's ambiguous statements are hardly designed to create a climate conducive to peace. This is particularly true of the remarks he made on 14 July 2020,[42] referring to the province of West Zangazur, namely the Armenian province of Syunik, as the "ancestral land" to which Azerbaijanis must return without anyone being able to stop them and to which they "will return", once "all communications are opened" [namely in line with the 9-10 November Trilateral Statement, as well as returning to their "native land", the Goycha district, Iravan, which is the former Persian name for Yerevan, the modern-day capital of Armenia. The Jensen report noted that manipulation of information and hate speech were widespread during the conflict.[43] If Armenia and Azerbaijan are to emerge from 30 years of mistrust, we believe it is imperative that these phenomena be stopped and that the political classes in these countries set an example and reverse the trend of the past 30 years.

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36. UNESCO, press release of 21 December 2020.
37. Press release no. 479/20 of 23 December 2020.
38. In paragraph 18.1 of Resolution 2391 (2021) "The consequences of the conflict between Armenia and Azerbaijan / Nagorno-Karabakh conflict", the Assembly condemned "the damage and destruction for which Armenia is responsible in the former conflict areas returned to Azerbaijan, and in particular the almost total destruction and looting of Agdam, Fuzuli and other areas over the last 30 years, as well as the transfer of cultural heritage".
39. See *The Guardian*, "Monumental loss: Azerbaijan and 'the worst cultural genocide of the 21st century'", 1 March 2019; Thomas de Waal, "Unfinished business in the Armenia-Azerbaijan conflict", in *Carnegie Europe*, 11 February 2021; and the in-depth report by the online publication *Hyperallergic*, "A regime conceals its erasure of indigenous Armenian culture", 18 February 2019.
40. *Anadolu*, "Azerbaijan will restore, revive all liberated lands", 25 November 2020.
41. For an in-depth account of the nationalist narratives of the history of the "Caucasian Albanians" put forward by both Armenia and Azerbaijan, see *Eurasianet*, "Who were the Caucasian Albanians?", 7 June 2021.
42. According to a speech published in English on the website of the Azerbaijani press group APA, President Aliyev said: "[The] Soviet government tore Zangazur apart from Azerbaijan and handed it over to Armenia. This is a relatively recent date – 101 years ago. So why should we say that this didn't happen? Why? We are telling the truth. It is the land of our ancestors: the whole of Zangazur – East and West Zangazur. It is now being said in Armenia that Ilham Aliyev is making territorial claims. If there is East Zangazur, then there is also West Zangazur. Yes, West Zangazur is our ancestral land. I said that we have to go back there. I said this 10 years ago. All my speeches are available in the media. I said that it is the land of our ancestors, that we must return there, we will return and we are already returning there. No-one can stop us. We will definitely return because there is no other way. When all communications are opened, we, the people of Azerbaijan will return to their ancestral land, of course. The 10 November Trilateral Statement states: all refugees must return to their homeland. Our native land is Zangazur, our native land is Goycha district, Iravan. We will definitely return there".

    For an analysis of this rhetoric see *Eurasianet*, "What's the future of Azerbaijan's 'ancestral lands' in Armenia?", 16 July 2020.
43. Doc. 15211, paragraph 164.

53. The fourth area of concern relates to the sometimes interrelated issues of refugees and demining former occupied Azerbaijani areas. Although President Aliyev announced the launch of a major investment plan for the recaptured or liberated territories, displaced Azerbaijanis will only be able to return to the seven districts and the gained part of the self-proclaimed Nagorno-Karabakh Republic if a large-scale demining operation is carried out because these mines regularly claim victims.[44] On the Armenian side, receiving and managing refugees who have left the recaptured or retroceded territories and do not wish to return will be a challenge for the authorities. The Gavan report discusses in detail the need for co-operation in mine clearance operations and the plight of displaced persons and refugees, with paragraphs 65-103 of the report being of particular interest here.

54. The final area of concern relates to the currently differing visions of Armenia and Azerbaijan for a full-scale resolution of the conflict. Beyond the issue of border demarcation discussed above, security guarantees for the corridor between the self-proclaimed Nagorno-Karabakh Republic and Armenia on the one hand and a transport connection[45] between Nakhchivan and the rest of Azerbaijan on the other, as well as the issue of the enclaves which the Azerbaijanis and, to a lesser extent, the Armenians are demanding be returned,[46] the stumbling block is, for the time being, the status of the self-proclaimed Nagorno-Karabakh Republic. At present, the Azerbaijani position is that the conflict with Armenia has now ended, that a peace agreement with Armenia is necessary and that the bottom line is to focus on the economic development of the South Caucasus region. No mention has been made of any special status that might be granted to the former Nagorno-Karabakh Autonomous Oblast, as it was called in the Soviet era.[47] On the contrary, the Armenian authorities are insisting that the question of status be fully addressed in the whole of the former oblast, including the part under Azerbaijani control. They consider it a condition for a peace agreement. If a full-scale resolution is not reached, the danger is that the Nagorno-Karabakh conflict, which was frozen for 30 years before flaring up again for 44 days, will freeze over once more.

55. In view of these concerns, we believe that the essence of the Monitoring Committee's statement of 22 April 2021 on the Armenia-Azerbaijan conflict remains valid. The Committee noted that the clear intention of paragraph 8 of the Trilateral Statement was the exchange of all detained persons without distinction as to the status assigned to them by either party and called on Azerbaijan to ensure that all Armenian detainees were released without delay into the care of the Armenian authorities. In the committee's view, establishing an independent international mission responsible for investigating the conflict and allegations of human rights and humanitarian law violations during the recent hostilities was essential to create an environment that was conducive to reconciliation and the establishment of genuine peace. It affirmed the importance of the cultural heritage to all parties to the conflict and called for the urgent establishment of the mechanisms necessary for its protection and renovation. Lastly, the committee called on both parties to constructively engage with the relevant international institutions, in particular the OSCE Minsk group, with a view to fully implementing the Trilateral Statement, and to start the peace negotiations.

56. The spirit and content of the Monitoring Committee's statement of 22 April 2021 were further reinforced by the recent publication of a memorandum by the Commissioner for Human Rights on the humanitarian and human rights consequences of the conflict.[48] The memorandum makes eight recommendations for urgent human rights protection. For each of these recommendations, the Commissioner's views are fully in line with those of our Committee, our views as co-rapporteurs, and those expressed in the Gavan report.

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44. On 6 June 2021, the Azerbaijani authorities reported that 7 military personnel and 15 civilians had been killed by mines and more than 100 had been injured since the ceasefire of 9 November 2020. Source: *Radio Free Europe Radio Free Liberty,* "Mine Kills Two Azerbaijani Journalists, Village Official In Areas Recaptured From Armenian Forces", 4 June 2021.

45. According to provisions of the 9 November, 2020 Trilateral Statement.

"9. All economic and transport connections in the region shall be unblocked. The Republic of Armenia shall guarantee the security of transport connections between the western regions of the Republic of Azerbaijan and the Nakhchivan Autonomous Republic in order to arrange unobstructed movement of persons, vehicles and cargo in both directions. The Border Guard Service of the Russian Federal Security Service shall be responsible for overseeing the transport connections."

46. For the Azerbaijanis, this includes seven villages in the Kazakh district and the village of Kerki, near Nakhchivan; for the Armenians, the Artsvashen enclave. Source: Thomas de Waal, "Unfinished business in the Armenia-Azerbaijan conflict", op. cit.

47. President Aliyev said that a proposal for autonomous status had been made before the war, but had been rejected, and that now the status had "gone to the grave". See *Eurasianet*, "Down with Nagorno-Karabakh – long live Karabakh", 2 April 2021.

48. Commissioner for Human Rights, memorandum, 8 November 2021.

57. Our visit to the municipality of Yeraskh, on the border with the Autonomous Republic of Nakhchivan, and our discussions with the municipal authorities, reminded us, if there was any need, that in the absence of a comprehensive peace agreement, insecurity persists on the border. The military are the first to pay the price, but the civilian population also suffers the consequences.[49] In this case, the description we were given of the situation in Yeraskh is edifying: on both sides of the border, the armed forces of the two countries have set up their positions overlooking two villages, one Armenian, the other Azerbaijani. While incidents were non-existent in this locality before the September 2020 conflict, they have reportedly become sporadic since the summer of 2021, according to what we were told. Civilians do not appear to be deliberately targeted, but have to live with the constant risk that they may become so, and with the risk of stray bullets or shells in the event of exchanges of fire between Armenian and Azerbaijani military positions, which has already occurred.

3.2. The conflict's impact on Armenian politics

58. From the interviews we conducted and the information at our disposal, we draw three conclusions.

59. The first is that the conflict has, of course, brought the security of Armenia and Armenians to the forefront of political debate. The issue of security dominated the snap election campaign in June 2021 in the context of the country's military defeat and, from 12 May, the Azerbaijani armed forces' incursion into Armenian territory on the ground that there was no clear border demarcation. The return of the seven previously occupied districts to Azerbaijan also heightened concerns about insecurity in the Syunik and Gegharkunik provinces. These used to be sheltered by the buffer zone created by the seven districts, but have now reverted to being on the border with Azerbaijan and have been the focus of most of the incidents that have occurred since then. It is not surprising therefore that Syunik province was the scene of some turmoil, notably in April 2021 when local elected officials clashed with Prime Minister Pashinyan during a visit,[50] or that it took on a remarkable symbolic importance during the electoral campaign – with Prime Minister Pashinyan threatening to "cut off" the hand of those seeking to pit Syunik province against the rest of Armenia.[51] This pursuit of security is obviously to be appreciated in the light of the prominent place occupied by the Armenian genocide of 1915-1916 in the Armenian psyche and identity. Armenian political leaders were keen to draw a parallel between this genocide and the armed conflict of September to November with Turkey-backed Azerbaijan.[52] Not only has "security" become the priority of the government formed after the June 2020 elections, but Prime Minister Pashinyan has also announced a major reform of the armed forces, the purchase of modern weapons from Russia, closer ties with the Collective Security Treaty Organisation (CSTO), of which Armenia is a member, and the deployment of Russian border guards on parts of the Armenian-Azerbaijani border, especially in the northern province of Tavush. There is a general political consensus that Russia is the first and only guarantor of the security that Armenia needs and that the country should strengthen its ties with the Federation.

60. The second tangible effect of the conflict has been the intense polarisation of the political scene over the issue of responsibility for the defeat since the Trilateral Statement of 9-10 November 2020 was signed. The Armenia and I Have Honour Alliances held the Prime Minister solely responsible and denied he had the right to sign the Trilateral Statement, with former President Kocharyan even describing him as a "traitor".[53] The Prime Minister, for his part, blamed members of past governments. This is still an extremely sensitive issue: on 26 August 2021, a member of the ruling party blamed the former defence ministers for the defeat and called them "traitors", leading to blows being exchanged in the National Assembly and bringing proceedings to a temporary halt.

61. The fear of a deterioration of Armenia's relations with certain international organisations like the European Union and the North Atlantic Treaty Organisation (NATO) came up in the interviews we held. It is rooted in Armenian politicians' disappointment with what they perceived as the inaction or feeble responses of these organisations and some of their members when NATO member Turkey supported Azerbaijan "in the field" and "at the table of negotiations" and was accused of having assisted the Azerbaijani authorities in using mercenaries from Syria during the conflict.[54] This disappointment was also expressed by members of the Armenian delegation. From the talks we held and the information received, we are convinced that, while this

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49. *Azatutyun*, "Armenian village chief wounded in border skirmish", 20 July 2021.
50. *RFE/RL*, "Arrests Made After Anti-Pashinian Protests", 22 April 2021.
51. *The Armenian Mirror-Spectator*, "Pashinyan Promises to 'Cut off the Hand' that Would Try to Oppose Syunik to Rest of Armenia", 15 June 2021.
52. See, for example, Thomas de Waal, "Unfinished business in the Armenia-Azerbaijan conflict", op. cit. where President Sarkissian is cited using the term "second genocide" and Prime Minister Pashinyan refers to "Azerbaijani-Turkish aggression".
53. Paragraph 38 of the report by Mr George Katrougalos cited above.

fear of a deterioration in Armenia's relations with certain international organisations may be the subject of political debate in Armenia, it is currently unfounded insofar as the Council of Europe is concerned, and even more so as regards the commitments and obligations undertaken by Armenia when it joined our Organisation.

4. Electoral reform

62. This is a long-standing recommendation of the Assembly and the various international election observation missions. After the parliamentary elections of 2 April 2017, both the OSCE/ODIHR and the ad hoc committee of the Bureau of the Assembly noted that the election campaign had been tainted by credible and repeated allegations of vote buying, voter intimidation, particularly of public servants in schools and hospitals and employees of private companies, who were encouraged to vote for certain parties, and by abuse of administrative functions.[55] Ms Liliane Maury Pasquier, head of the Assembly's election observation delegation, summed up the international organisations' findings by pointing to "long-standing doubts about the reliability and integrity of electoral processes in the country" and stating that "the use of new voting technologies [set up for the elections] cannot alone restore confidence in elections – crucial in a genuine democracy – just the same as better legislation is only effective if applied in good faith".[56]

63. The organisation and conduct of the early elections in December 2018 saw a promising departure from previous practices, however, and this was welcomed by the international observers. The general absence of electoral malfeasance, including of vote buying and pressure on voters, allowed for genuine competition. Mr Aleksander Pociej, head of the Assembly's election observation delegation, summed up this new electoral dynamic as follows: "PACE has observed every election in Armenia since 1995... [and notes that] the recurring electoral irregularities which tainted many elections in the past were absent".[57] This finding by the international observers seems to have been confirmed by Armenian voters. The most recent Caucasus Barometer survey, published in 2020, showed a remarkable improvement in the voters' feelings about the parliamentary elections of December 2018 compared with the 2017 vote. 63% of respondents considered that the 2018 elections had been conducted "completely fairly" and only 3% "not at all fairly", compared to 10% and 41% respectively after the 2017 elections.[58]

64. The question therefore was firstly whether the electoral framework would be reformed in line with the international observers' recommendations and secondly whether this momentum would continue in practice.

4.1. A markedly improved electoral framework

65. In October 2018 Nikol Pashinyan's minority government tried to pass an electoral reform, whose main aim was to put an end to the mixed electoral system introduced by the constitutional amendments of 2015. This system, which was considered very complex by the international observers, provided that at least 101 MPs would be elected through a two-tier proportional system from a closed national list and 13 open constituency lists (the so-called regional constituency system). The ballot paper included both the national list and the relevant constituency list, and voters could indicate their preference for a constituency candidate. This system had been criticised by the opposition and Nikol Pashinyan because they claimed that in practice it allowed for the establishment of electoral fiefdoms, facilitating fraudulent manoeuvres and making the vote less proportional. In October 2018, however, the Republican Party majority rejected the proposed reform.

66. Following the elections of December 2018, Prime Minister Pashinyan reiterated the need to reform the electoral framework, since, as noted above, reform was seen as a means of strengthening institutions by restoring citizens' trust. The electoral framework, which is governed by the Constitution, the 2016 Electoral Code as amended, the Law on the Financing of Political Parties and other texts, including, where penalties for offences are concerned, the Criminal Code, was continually amended until May 2021. The mandate of the Constitutional Revision Commission set up by the government in February 2020 also included the drafting of proposals in the electoral field. The reform was carried out in two stages, most of which involved the Council of Europe and the OSCE/ODIHR.

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54. Doc. 15211, paragraph 163: "The use of Syrian mercenaries by Azerbaijan, with Turkey's assistance, to shore-up and sustain its military operations in the Nagorno-Karabakh conflict zone, including on the front-line was reported, notably by France and the Russian Federation, as well as by the United Nations".
55. Doc. 14325, Appendix 5 and the OSCE/ODIHR final report, p. 2.
56. Doc. 14325, Appendix 5.
57. Doc. 14801, Appendix 3 – Press release of the International Election Observation Mission (IEOM).
58. Caucasus Research Resource Center, 21 February – 15 March 2020, Caucasus Barometer 2019 Armenia.

67. Parliament began by introducing radical changes to the legislation on political parties in order to make their funding more transparent. Donations to political parties by legal entities were banned and the annual permitted amount of donations from natural persons was substantially lowered, from 10 000 to 250 times the minimum wage. In addition, the rules on entitlement to public funding were updated: the number of votes that a party was required to have received in the last parliamentary elections to be entitled to such funding was lowered from 3 to 2%; a tiered mechanism was introduced whereby the amount of public funding allocated was equivalent to one minimum wage per vote for parties receiving 2 to 5% of the votes. It was then reduced as the number of votes increased – a mechanism which, as the Venice Commission pointed out, particularly helped small parties and hence political pluralism;[59] and lastly, the allocation of public funds was made subject to the preparation of a quarterly report – a previous recommendation of the OSCE/ODIHR, which saw this as a crucial measure to safeguard the integrity of the system of political finance and to enhance transparency and accountability.[60] This reform also transferred supervision of parties' financial activities from the Oversight and Audit Service (OAS) of the CEC to the Commission for the Prevention of Corruption, in partial compliance with a former recommendation of the OSCE/ODIHR, and relaxed the rules on the establishment and registration of political parties and their internal management. The OSCE/ODIHR and the Venice Commission welcomed many of these measures, which if properly implemented, could help to further political pluralism. The latest amendments forming part of the reform of the rules on political parties were adopted in December 2019.

68. As stated above, the second stage of electoral reform occurred in April and May 2021, in the run-up to the early elections of June 2021. While the main change was a simplification of the voting system, with the abandonment of regional constituencies in favour of full proportional representation, namely with a single constituency, the amendments of 2021 represented a major reform. In their joint opinion on the package of amendments of 1 April, the Venice Commission and the OSCE/ODIHR stated that the package was to be "broadly welcomed as it [addressed] the majority of recommendations raised in previous … opinions, as well as in ODIHR Election Observation Missions' final reports".[61] The following measures are relevant to the nine issues raised by the Venice Commission.[62] Firstly, the premium awarded to a coalition receiving more than 50% of the vote was lowered by 2 points, meaning that such a coalition is now allocated 52% of the seats instead of 54%, as was previously the case. In so doing, the parliamentary majority complied with the provisions of the Constitution which call for a "stable majority in Parliament", while at the same time reducing the impact of this requirement. In a welcome move, the April amendments reduced the threshold for political parties to participate in the distribution of seats from 5% to 4%, although the threshold to be represented in the National Assembly was raised slightly for electoral alliances. The amendments also defined exhaustively what administrative resources are and prohibited their use during the organisation and conduct of election campaigns.

69. The OSCE/ODIHR and the Venice Commission welcomed the inclusive and transparent nature of both the amendments to the legislation on political parties and those of 1 April, and the fact that these changes had been discussed and prepared for a long time in advance.

4.2. Possible additional adjustments

70. In their opinion, both the OSCE/ODIHR and the Venice Commission pointed to a concern about the funding of election campaigns, which the Armenian authorities had only partly addressed. A long-standing recommendation calls for the law to provide a legal definition of campaign expenditure so that all campaign costs are included. The Armenian authorities only partly followed this recommendation as the amendments of 1 April merely gave a non-exhaustive list of expenditure which should only come out of campaign funds. Yet, in its preliminary conclusions on the early elections of 20 June 2021, the OSCE/ODIHR noted that the new legal definition of campaign expenditure did not cover organisational costs, and this enabled candidates to use these expenses as a means of circumventing spending limits. Some parties also used charitable

59. CDL-AD(2020)004, paragraph 36.
60. *Ibid*., paragraph 37.
61. CDL-AD(2021)025, paragraph 12.
62. "Enabling the formation of governing coalitions by extending the required time limits and removing the restriction in the number of parties to form a coalition; reducing the electoral deposit for political parties, thus facilitating the right to be elected; increasing the type and amount of information provided to the electorate via the Central Electoral Commission's website; requiring the publication of the list of electors on the Central Electoral Commission's website; providing for wider coverage of the activities that constitute election campaigns and increased transparency of campaigns on the media; offering clarifications on the use of administrative resources; reinforcing provisions for campaign finance reporting and auditing leading to increased transparency; strengthening the quota mechanism for promoting the participation of women as candidates; including additional provisions to facilitate the participation of people with disabilities as voters".

organisations and personal publicity to bypass limits.[63] These loopholes seem to have been dealt with by the Armenian authorities as the amendments of 1 April introduced new penalties for infringements of campaign funding rules, particularly for donations and charity events, which will apply from 2022 onwards.[64] It would however be in the Armenian authorities' interest to follow the OSCE/ODIHR's initial recommendation about providing a precise legal definition of campaign expenditure.

71. The OSCE/ODIHR also pointed out in its preliminary conclusions that the ban on bi-nationals standing for election under the Constitution stemming from the amendments of 2015 was incompatible with European standards, and regretted that recent amendments to the Criminal Code criminalised concealment of dual nationality, including in order to stand for elections, making it punishable by up to 5 years' imprisonment. As the OSCE/ODIHR points out, the Venice Commission is of the opinion that this amendment is in breach of Article 3 (right to free elections) of the additional protocol to the European Convention on Human Rights, as interpreted by the European Court of Human Rights in its *Tănase v. Moldova* judgment of 2010.[65]

72. In their urgent joint opinion on the draft amendments of 1 April, the Venice Commission and the OSCE/ODIHR recommended clarifying a provision penalising the publication during election campaigns of "false information or slander via information and communication technologies, anonymous source, about a political party (alliance of political parties) or a candidate running in elections, for the purpose of damaging the reputation thereof". Their main concerns were the notion of "slander", which they considered to be subjective, and the risk that this provision, which amounts to a restriction on the freedom of expression guaranteed by Article 10 of the Convention, may interfere with legitimate aims such as those pursued by investigative media.[66]

73. Lastly, in their joint opinion, the Venice Commission and the OSCE/ODIHR pointed out, in relation to electoral disputes, that while the standing in complaints and appeals procedures was wide, and had been extended to NGOs, voters were still not entitled to challenge voting results in their constituency. They concluded from this that the right to an effective remedy was not guaranteed.[67]

74. As co-rapporteurs, we believe that the local aspect of electoral reform should not be forgotten, given the importance of the municipal level in local political issues and its role in fostering political awareness. We noted the reforms carried out by the authorities, particularly in May 2020, when a proportional system replaced the first-past-the-post system in municipalities with more than 4 000 inhabitants, and the further reforms in April 2021, when the bonus received by a party if it won at least 40% of the vote was abolished. Municipal elections are still not held simultaneously on a single date, however. In 2016 and 2017, the Congress of Local and Regional Authorities stated in its information reports on the local by-elections in Armenia and the elections to the Council of Elders of the City of Yerevan that the scattered nature of local by-elections was impractical, decreased the attention paid to each election, was confusing for voters and, in general, eroded public interest in elections at the grassroots level. It suggested that local elections should be held on the same day and at least six months before or after parliamentary elections so as to alert public opinion to important grassroots issues.[68] We can only urge the Armenian authorities to adopt this recommendation.

4.3. The limits of electoral reform

75. Overall, the reform of the electoral framework has been real and far-reaching, although improvements are still possible. It is to be hoped, therefore, that the reform will help to restore voter trust in the electoral process. The recent parliamentary elections, although held in a very specific context, do nevertheless suggest that some electoral practices remain, despite the legislative changes.

76. For instance, although measures to improve equal gender representation were strengthened for the most recent elections, the effect of these enhancements is barely noticeable. The quota of women candidates to be included on each list was increased from 25 to 30%. The move away from the mixed system to a fully proportional one was also expected to increase the number of women on lists. Lastly, parties were required to ensure that there was one woman candidate for every three candidates on the list so that they were not tempted to place women in positions where they were unlikely to be elected, at the bottom of the list.

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63. OSCE/ODIHR, International Election Observation Mission – Republic of Armenia – Early Parliamentary Elections, 20 June 2021, "Statement of Preliminary Findings and Conclusions", p. 10.
64. CDL-AD(2021)025, paragraphs 89 and 91.
65. In paragraph 172 of its judgment the Court holds that "where multiple nationalities are permitted, the holding of more than one nationality should not be a ground for ineligibility to sit as an MP".
66. CDL-AD(2021)025, paragraphs 73 et seq.
67. CDL-AD(2021)025, paragraph 101.
68. CPL31(2016)02, paras. 12 and 51 and CPL33(2017)04, paras. 8 and 58.

Unfortunately though, the observers' findings were not entirely positive as they noted that women had been sidelined throughout the campaign, although the election result had led to an improvement in their representation. The new National Assembly has 36 women MPs, accounting for 33% of all parliamentarians, compared to 24% in 2018 and 17% in 2017. The current 33% is slightly higher than the quota for lists and is part of a positive trend, which has been constant since 2017, and is to be welcomed. However, as pointed out by Ms Kari Henriksen, Head of the OSCE Parliamentary Assembly delegation, with reference to the sidelining of women during the election campaign, "it is important that women are not just equally represented, but are also given the opportunity to engage actively in public and political life".

77. Another shortcoming, which relates more to practice than to the legal framework itself, is that, in the last elections, there were allegations of intimidation of public and private sector employees, and of vote buying.[69] As to vote buying, investigations were opened in 14 cases according to the report by the ad hoc committee of the Bureau of the Assembly, a figure very close to that of the 2018 elections, which were considered to be free from the bad practices frequently observed in Armenia. Voter intimidation is more of a concern, as it appeared to have been eliminated in previous elections. Let us hope that the trend that began in 2018 will continue and that increased penalties will gradually bring an end to these practices which may be limited and on the decline but taint elections nonetheless.

78. During our visit to the country, we were informed that the majority in the National Assembly of Armenia is planning to initiate a reform of the electoral framework as early as 2022, in order, *inter alia*, to take into account the recommendations of international organisations, and to present this reform sufficiently in advance of the next parliamentary elections scheduled for 2026. We will follow with interest the launching of this process.

5. Governance and relations between institutions

79. After their visit to Yerevan in March 2019, our predecessors stated that both the majority and the opposition at the time had agreed that Armenia needed not only reforms but a new political culture. During their meeting with Prime Minister Pashinyan, he had presented the strengthening of institutions as a response to the "emotional democracy" often practised in Armenia. In addition, most of the politicians they spoke to, including members of the then majority, recognised that there was a lack of checks and balances in the institutional system and a need to set them up. Lastly, the highest authorities of the State emphasised that the culture of the "verticality of power" inherited from the tsarist and communist periods still permeated the political and administrative life of the country.[70]

80. According to the annual rankings established by the NGO Freedom House, the trend since the December 2018 elections has been a fairly marked improvement in the area of political rights and civil liberties and more measured progress in the area of democracy. For example, in 2018 Freedom House gave Armenia a score of 45 out of 100 for political rights and civil liberties. By 2021 this score had risen to 55. As a result, Armenia is regarded as a "partly free" country.[71] As regards democracy, Freedom House awarded Armenia 26 out of 100 in 2018 and 33 out of 100 in 2021. On the basis of this aggregate score, Freedom House considers Armenia to be a "semi-consolidated authoritarian regime".

81. As noted above, the democratic regime that emerged from the December 2018 elections had to contend with the Coronavirus pandemic, the armed conflict with Turkey-backed Azerbaijan, the ensuing political crisis, and the economic crisis – in 2020, gross domestic product fell by more than 7%, prompting the authorities to make budget cuts in public services. Unlike what happened in some member states faced with similar circumstances, Armenia's institutions were not overthrown. The political crisis brought on by the military defeat even culminated in the majority obtaining a fresh mandate through the ballot box in the June 2021 elections. This, in itself, deserves to be highlighted and welcomed.

82. Democratic institutions do nevertheless require co-operation between the various branches of power, an obligation for the majority to be accountable, and the possibility for the latter to govern without being impeded by institutions that do not enjoy democratic legitimacy and with due respect for the checks and balances put in place. Given these requirements and the current context, our conclusions vary from one area to another.

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69. See the report by Mr Katrougalos cited above, paragraphs 43, 44, 69 and 79.
70. Information note AS/Mon (2019) 14, paragraphs 15 and 20.
71. *Freedom House*, "Freedom in the world 2018 Armenia", "Freedom in the world 2021 Armenia".

5.1. The institutional balances currently being set up

5.1.1. The National Assembly

83. As to the legislature, the rules of procedure of the National Assembly grant a number of rights to the opposition. We noted that one of the Vice-Speakers of the National Assembly was a member of the opposition and had been entitled to sit as chairperson of three of its Standing Committees. During the previous parliament, before the political climate deteriorated in May 2020, the majority had set up several working groups to prepare major reforms, in which the opposition was represented. At the time it was possible for the opposition to play a constructive role, as for example when the legislation on political parties and their funding was amended: many proposals by the second opposition party, Bright Armenia, were taken up and the parliamentary group voted with the majority on the various texts. The question is whether the majority that emerged from the 2021 elections and the new opposition will be able to play their roles in a constructive and non-confrontational way given that the election campaign was marred by inflammatory statements. At present, it has to be said that although Armenia Alliance and the I Have Honour Alliance have not boycotted parliamentary activities, four relatively major violent incidents occurred in the Assembly Chamber in the space of fifteen days in August.[72] We hope that these are not indicative of the type of relationship that will be cultivated between the majority and the opposition.

84. In this respect, our visit to Armenia gave us reason for hope, although it also confirmed a less positive state of affairs. First of all, the level of tension that prevailed in the parliament during the summer of 2021 has decreased. It seems that, at the initiative of the President of the National Assembly, the different political groups have agreed to use more respectful language and are sticking to it as best they can. Furthermore, the mechanisms for the opposition to exert real influence are respected. For example, the current chairperson of the Commission for the Prevention of Corruption (CPC), an independent institution with broad powers, was nominated by the opposition. The majority did not reject her, even though the CPC occupies a central place in the fight against corruption, which has been one of the priorities of Nikol Pashinyan's Government.

85. On the other hand, an observation made by experts we met and shared by our parliamentary colleagues, from both the majority and the opposition, caught our attention: politically speaking, Armenia's problem does not or no longer lie in its electoral system, but in its party system. In other words, political affiliation is only imperfectly based on shared ideological convictions, a tendency that is favoured by the regulation of electoral alliances, which only aim at increasing the number of seats in the elections, the question of political programme being relegated to the background. One of the consequences would be that the confrontation on the political scene would not always allow the emergence of competing political options, corresponding to clearly divergent choices. Our feeling is that this ideological weakness of the parties must be taken into account. In our discussions with our parliamentary colleagues, a significant part of the debates focused on the alleged attempts of the majority to silence the opposition, whether it is a question of its failure to respect the freedom of the media or a form of persecution that it would exercise against members of the opposition, some of whom are subject to measures restricting their freedom, despite their parliamentary immunity. We have of course discussed these accusations with the majority and the authorities. They told us that the opposition holds almost 90% of the media landscape, a proportion also cited by some experts we met and which confirms the diagnosis that an independent international newspaper[73] seems to indicate. This proportion would make any attempt to silence the opposition futile. With regard to the measures restricting freedom, they indicated that the prosecutions had taken place before the elections and that those of the opposition parliamentarians currently deprived of their liberty had been so, not as a result of the intervention of the authorities, but after the Central Electoral Commission, an independent body, had sovereignly considered that the persons concerned could not be granted the status of member of parliament, thus indirectly depriving them of the possibility of invoking parliamentary immunity. They recalled that in 2020, the majority had voted to lift the immunity of the chairman of the first opposition group, Mr Gagik Tsarukian, in the context of proceedings relating to various financial crimes and vote-buying, in strict compliance with parliamentary and criminal procedures. Finally, the parliamentary majority pointed out that in the case of an opposition member of the Armenian delegation to our Assembly who had been banned by court order from leaving Armenia, a letter had been sent by the presidency to the judge concerned requesting that the MP be allowed to travel to Strasbourg during the October 2021 part-session.[74] Apart from this criticism, when we sought to know what alternatives the opposition parties envisaged to the government's action, particularly in the field of justice or

72. In addition to an incident on 11 August 2021, three others occurred on 24 and 25 August: *Radio Free Europe Radio Free Liberty*, "Three brawls broke out in two days in Armenian parliament", 25 August 2021.
73. *Eurasianet*, "Media polarization rising in Armenia", 30 October 2019.
74. Mr Armen Gevorgyan also referred his case to President Daems in letters dated 30 September and 10 October 2021, which we were able to consult and to which a reply was given on 16 November 2021.

the media, the replies obtained were very few and not very elaborate. Furthermore, our parliamentary colleagues, from both the majority and the opposition, told us that, given the current context and the weight of the past, it was unlikely that the political debate would become more constructive and less confrontational in the short term. Although we are aware of this reality, we nevertheless call for the working methods deployed during the previous parliament, which enabled reforms to be carried out across party lines, to be adopted again in the National Assembly and for attention to be given to developing a strong parliamentary culture. The development of a strong parliamentary culture requires an opposition that is prepared to play a constructive role and to propose alternative policies.

86. At the same time, we took the opportunity of this mission to remind our parliamentary colleagues and, in particular, the President of the National Assembly, of the importance of taking into account the recommendations of the Group of States against Corruption (GRECO) on the prevention of corruption by MPs. GRECO considers in particular that its recommendations ii and iv on the adoption of a code of ethics for MPs and on the strengthening of mechanism for monitoring compliance by members of parliament with standards of ethics and conduct within the National Assembly have only been partially implemented.[75] An informal working group had been set up in 2020 by the former majority, which had sent a draft code of ethics for parliamentarians to the opposition political groups at the time. We call for the resumption of its work as soon as possible.

5.1.2. The Government

87. With regard to the executive, the experts our predecessors met said that the Armenian political system was more of a “prime ministerial” one than a parliamentary one, with a high concentration of powers and limited parliamentary control of government action. In this respect, we noted that the new government formed following the June 2021 elections still did not have a Minister of the Interior, which is, as stated above, one of the Assembly's long-standing recommendations. Both the police and the National Security Service (NSS) are under the direct authority of the Prime Minister. The creation of a Ministry of the Interior, which did exist until December 2002, would increase government accountability, as the Minister concerned would have to answer to the National Assembly for the actions of his or her government, whereas at present this is theoretically the Prime Minister's responsibility. The reinstatement of a Ministry of the Interior was proposed in February 2020 by the Minister of Justice in his strategy for the reform of the police forces. The war with Azerbaijan and the ensuing political crisis do not seem to have affected the government’s determination on this point, although there was reason to fear a degree of reluctance on the part of the Prime Minister to make way for somebody else in the security sphere. In April 2021, the government approved a draft text bringing together various services, including the police, under the authority of a “Minister of Internal Affairs”. Under the new law, the Prime Minister would appoint the heads of the services making up this new ministry on a proposal from the Minister of Internal Affairs. By contrast, the director in charge of the police forces would be appointed by the President of Armenia. As it now stands, this plan is to be welcomed and we call on the new government to implement it as soon as possible.

88. In the same vein, civil society representatives we met argued that the various investigative bodies, particularly in the criminal field, should no longer be placed under the authority of the prime minister, but should become independent. While the justification put forward relates to the legitimacy that such independence would give to the investigations carried out by these bodies, such a proposal would also contribute to redistributing certain powers, currently held by the prime minister. It is therefore worth considering in the longer term.

89. On another matter of accountability, we talked to experts about the Prime Minister's direct relationship with voters through social media and his frequent live statements on Facebook. We welcome the increased transparency that this practice has brought about, as noted by the NGO Freedom House[76]. We are also aware that it has played an important role in preserving institutions at crucial times. Following the call by the General Staff of the Armed Forces in February 2021 for the resignation of the Prime Minister, which was interpreted by the Armenian authorities as an attempted coup d'état, Prime Minister Pashinyan organised large-scale demonstrations of support for the government making direct use of social media, thus highlighting the support for democratically elected institutions. This shows that this direct rapport with the people cultivated by the Prime Minister has real advantages. It also reinforces the personalisation of power and raises the

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75. See GRECO, 22 September 2021, Fourth Evaluation Round, Corruption prevention in respect members of parliament, judges and prosecutors, Interim Compliance Report.

76. Freedom House, “Freedom in the World 2021”, “The Pashinyan government has also worked to expand the public’s access to information, speaking more frequently to the press and the general population, including through live video streaming on social media”.

question of the room it leaves for elected members of the National Assembly. In this connection, the Pashinyan Government has been criticised for concealing information about the number of people killed in the Nagorno-Karabakh conflict as well as for the decision to sign the Trilateral Statement without prior consultation. Nevertheless, after the signing of the Trilateral Statement, the Prime Minister addressed the National Assembly on 16 November 2020 during a public debate.

5.1.3. Checks and balances and independent institutions

90. On 18 August 2021, Prime Minister Pashinyan spoke of the launch of a broad consultation on the possibility of revising the Constitution. In February 2020, his previous government had established an ad hoc committee for the revision of the Constitution, which had been relatively broad in scope and gone beyond institutional aspects. The work of this committee was interrupted by the conflict with Azerbaijan before any conclusions had been drawn. The August 2021 statement talks of a potential reform of the institutional system. Nikol Pashinyan said in particular that the events following the defeat had revealed problems affecting "constitutional structures" and referred to the attempted coup, when the situation regarding the Chief of Staff of the Armenian Armed Forces was only resolved after a month. Without going into detail, he said that the question was whether the "system of government" should be reformed or changed.[77] We will follow the debates he has called for closely, making sure that checks and balances have been strengthened.

91. With regard to checks and balances, two institutions are worth mentioning: the President of Armenia and the Human Rights Defender (Ombudsman), as both have fully played their part in this respect.

92. The country's President, Armen Sarkissian, was elected for a seven-year term in 2018 by a parliament then dominated by the Republican Party majority. The constitutional amendments of 2015 turned the Presidency into a largely ceremonial function, but one with a number of prerogatives. Under the Constitution, the President must be impartial and his/her decisions must be guided exclusively by the interests of the State and the country. Our predecessors saluted his role during the Velvet Revolution, stating that he had duly performed his constitutional function of bringing the nation together, independent of the parties, and had played a decisive role during the events as a mediator between the protesters and the ruling majority. They noted that there was broad consensus on both sides that his contribution to the peaceful and constitutional settlement of the April 2018 crisis should be welcomed.[78] Subsequently, the President continued to take a public stance on sensitive issues, in which he seemed to want to calm the situation down, while quite clearly setting himself apart from the government's positions. This was the case during the particularly polarised debates on the ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, the Lanzarote Convention), which was fiercely criticised by some of the parliamentary and extra-parliamentary opposition. In their view, the Convention represented foreign interference in "Armenian values" (the education of children) and the fact that the protection of victims should be guaranteed without discrimination on the basis of "sexual orientation" was strongly condemned. Once the ratification had been voted through, President Sarkissian downplayed the importance of ratification and highlighted the importance of future measures to implement the Convention. He also said that it was up to Armenians to decide how they would treat the Convention – as a declaration (of principles) or a binding document.[79]

93. He has also made full use of his powers to sign laws and decrees and to refer them to the Constitutional Court. As guardian of the Constitution, he has the right, when a law adopted by parliament or some types of administrative texts are submitted for his signature, to sign them, to refer the text to the Constitutional Court for a review of constitutionality, or to refuse to sign them unless they are referred to the Court, leaving it to the Speaker of the National Assembly to do so. President Sarkissian has had no hesitation in making use of all three options. For example, in April 2021, he asked for a ruling by the Constitutional Court on a legislative package on higher education and science, which included provisions to alter the make-up and method of selection of university councils, enabling the government to appoint most of the members and hence the vice-chancellor of the universities concerned. The Constitutional Court declared the contested provisions unconstitutional in August. The President did the same thing in March 2021 when the draft decree to dismiss the Chief of Staff of the Armenian Armed Forces who had called for the Prime Minister's resignation was submitted to him and he referred to the Court for a ruling on the constitutionality of the Law on Military Service of 2017, on the basis of which the decree had been issued.[80] He also refused to sign the draft law

77. *Armenpress*, "Government open for holding debates on Constitutional changes with various circles – PM Pashinyan", 18 August 2021.
78. See AS/Mon (2018)06 rev.
79. Website of the President of Armenia, statement of 6 June 2020.

appointing new judges to the Constitutional Court in July 2020 and the legislative package of April 2021 amending the voting system for the elections of June 2021, but on these occasions he did not refer the legislation to the Constitutional Court but left it to the Speaker of the National Assembly to do so.

94. Lastly, he played an active role in the aftermath of the war against Azerbaijan by calling on the Prime Minister to resign and hold early elections, conducting consultations with political parties and travelling to Moscow.

95. Clearly, President Sarkissian takes a broad view of his powers and is not afraid to use them, even if it means opposing the will of the government and its majority and being criticised by the opposition, as was the case with his decisions on the Constitutional Court or the change in the voting system. It was therefore with some surprise that we learned that a group of 53 lawyers had initiated criminal proceedings in March 2021 on the grounds that he had not given up his British nationality early enough before being elected President in 2018, as required by the Constitution, and as such was not eligible for the Presidency of the Republic of Armenia.[81]

96. The Human Rights Defender (Ombudsman), who is elected by parliament for a six-year term, is another countervailing power that enjoys significant legitimacy. As an ombudsman and a national human rights institution, he has been granted international "A" status by the European Network of National Human Rights Institutions, which is the highest level of accreditation, certifying that he performs his duties in full accordance with the Paris Principles. Furthermore, the current Ombudsman, Mr Arman Tatoyan, says that according to recent opinion polls, 63% of Armenians trust his institution and that the Ombudsman is the most popular institution in Armenia after the armed forces.[82] The Ombudsman has a fairly broad mandate covering violations of rights and freedoms by public authorities (State and local authorities) and public service providers. He is also tasked with implementing a number of convention provisions in Armenia and in this connection, he is responsible for the National Torture Prevention Mechanism (Optional Protocol of 18 December 2002 to the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). As part of his duties, he has regularly taken a stand on important issues: for example, he criticised a bill increasing the fines for publicly insulting a public official; he criticised the legislative package on higher education and science; and during the June 2021 election campaign, he condemned the virulent nature of comments made at several rallies and called on all candidates, including the Prime Minister, to refrain from using such language. It is because we believe that he is playing his full role as a defender of rights and freedoms and a countervailing power that we were disturbed by a plan to remove a legislative provision protecting him from a drastic reduction in his resources in April 2021. We duly noted that the reason for this plan was the very poor state of Armenian public finances, but considered that the removal of the litigious provision reduced the guarantees of the Ombudsman's budgetary independence. Thanks to the constructive nature of our dialogue with the Armenian delegation, the budgetary safeguard in question was able to be preserved intact.

97. Our visit reinforced the idea that, in addition to fulfilling his function, the Human Rights Defender was perfectly capable of ensuring that he was respected. He did not hesitate to submit an opinion to the Venice Commission on the legislation adopted in January 2020 concerning his staff, which he perceived as potentially affecting his independence. The Venice Commission largely agreed with him and invited the Armenian authorities to revise the legislative framework of the Human Rights Defender in order to clarify and guarantee his full independence in staff policies.[83]

98. Finally, we had the opportunity to meet the members of the Commission for the Prevention of Corruption (CPC), an independent institution whose composition and mandate are the result of a reform that took place in November 2019 and was completed in 2020 and 2021. Its competences are quite broad. It is responsible for a good number of procedures to guarantee the integrity of senior officials, including magistrates and certain public officials, including elected representatives. For example, it is responsible for checking financial declarations of judges (declaration of assets, income and interests), implementing the code of conduct for all civil servants, checking the integrity of judges who are to be appointed, etc. In addition, when the legislation on political parties was reformed, it was given responsibility for checking the financing of election campaigns during legislative elections, as well as the declarations of expenditure made by political parties. In its 2021 interim compliance report, GRECO considers that in the area of asset declaration, "on the whole the measures taken so far go in the right direction but the system remains relatively new and more time

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80. On 2 November, the Constitutional Court concluded that the contested provisions of the Law on Military Service of 2017 were in line with the Constitution.
81. *Azatunyun*, "Armenian President Investigated Over British Citizenship", March 2021.
82. Statement of 13 June 2021.
83. CDL-AD(2021)035, paragraphs 92-93.

will be needed for it to produce credible results.[84]" In general, this is also our feeling. In particular, we noted that the Armenian authorities had taken into account the risk of politicisation implied by the former system of appointment of the five members of the CPC by the National Assembly, had reformed it in a way that was in line with GRECO's expectations and that this reform had produced its effects for the fifth member, appointed in September 2021, according to the new procedure.[85] On the other hand, both GRECO, as regards the system of interests and assets disclosure, and the Venice Commission, as regards the financial control of political parties, have indicated that the resources of the CPC do not appear to have been increased in view of the additional workload that these competences represent.[86] We can only encourage the Armenian authorities to also follow the recommendations of GRECO and the Venice Commission in this respect. Similarly, further strengthening of the guarantees of independence could be envisaged, for example by constitutionalising the status of the CPC. The forthcoming revision of the Constitution would provide the opportunity for this.

5.2. Difficult relations with and reform of the judiciary and the Constitutional Court

5.2.1. The judiciary

99. In its 2020 Nations in Transit report, Freedom House said that public trust in the justice system in Armenia remained low. In its 2021 report, it noted that the courts were among the least trusted institutions whereas public trust in several other institutions had improved. The 2019 Caucasus Barometer for Armenia showed that 22% of respondents fully or rather trusted the judicial system whereas 48% fully or rather distrusted it.[87] In another study cited by Freedom House, out of the respondents who did not consider the Armenian judicial system to be independent, 51% said that this was because it was not protected from outside influence, 41% because it was corrupt, and 35% because it depended on the former regime.[88] This issue of trust in the judiciary is a long-standing concern of the Assembly. In its fourth evaluation round on corruption prevention in respect of members of parliament, judges and prosecutors, the GRECO concluded in its second compliance report of 12 December 2019 on Armenia that four of its five recommendations on judges remained only partly implemented, that is, with no significant improvement since the previous report. This was reiterated in its interim compliance report of 22 September 2021.

100. It was in this context that on 19 May 2019, Prime Minister Pashinyan called on citizens to block the entrances and exits of courts across the country on the grounds that the judiciary was not trustworthy and was one of the remnants of the corrupt old regime, as mentioned in section 2.2 above. This call followed the release on bail from pre-trial detention of the former President, Robert Kocharyan, who had been charged over his role in the events of 1 March 2008, during which 10 people had died. This release, ordered by a court of first instance in Yerevan, occurred after former Armenian political leaders and former leaders of the self-proclaimed Republic of Nagorno-Karabakh had offered guarantees for Robert Kocharyan and paid his bail. The Prime Minister's call sparked protests, particularly from the Supreme Judicial Council (SJC), the autonomous body of the judiciary, and the Human Rights Defender (Ombudsman), and our predecessors published a press release reiterating the need for independence of the judiciary while recognising Armenians' low level of trust in their judicial system.[89] The day after, on 20 May, Prime Minister Pashinyan said that there should be a vetting procedure for all judges, which should take account of matters including decisions which constituted gross violations of human rights and were recognised as such by the European Court of Human Rights. This procedure was to form part of a wider package of reforms of the judiciary and the Constitutional Court, including an amendment to the Judicial Code, various pieces of legislation and a revision of the Constitution. The Council of Europe played an active part in this reform, after a high-level delegation visited Yerevan on 30 and 31 May 2019. In their joint opinion of 14 October 2019, prepared at the request of the Armenian authorities, the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe broadly welcomed this reform package. They stated that "in the process of preparation of the Package the Government of Armenia acted in a responsible and thoughtful manner and demonstrated openness to dialogue with all interlocutors, within and outside the country. The large majority of

84. GRECO, 22 September 2021, Fourth Evaluation Round, Corruption prevention in respect members of Parliament, judges and prosecutors, Interim Compliance Report, paragraph 73.
85. GRECO, *ibid*., paragraphs 72 and 73.
86. See GRECO, *ibid*., paragraph 73 and see the CDL-AD(2020)004 opinion of the Venice Commission, paragraphs 41 and following.
87. Caucasus Barometer 2019 Armenia.
88. "Public Opinion Survey: Residents of Armenia", Center for Insights in Survey Research, International Republican Institute, September-October 2019.
89. Press release by the co-rapporteurs.

proposals contained in the Package are in line with European standards and contribute to combatting corruption without, at the same time, encroaching on the independence of the judiciary".[90] In place of the vetting procedure, provision was made to tighten up the procedure for verifying judges' financial declarations, along with their disciplinary responsibility and their periodical assessments. While the situation seemed to have calmed down after the resignation of the Chairperson of the SJC, Mr Gagik Haruntyunyan, on 24 May 2019, conflict re-erupted after the hearing, by the National Assembly in March 2021, of the new Chairperson, Mr Ruben Vardazaryan during which he was criticised by the majority for interfering in the functioning of the courts. At issue was a public statement he made on 15 November 2020, five days after the end of the conflict with Azerbaijan and the attack on the National Assembly and government buildings. In this statement, he called on Armenian judges to prove that they were "honest professionals" and not "judges whimpering (or whining) under walls". This was a direct reference to an expression used by Prime Minister Pashinyan in 2019, when the latter had denounced the links between part of the judiciary and the former regime.[91] This statement was interpreted as a political stance by the majority at the time and a call to the judiciary to oppose the government. Mr. Vardazaryan's hearing also took place in a context where judges had cancelled numerous pre-trial detentions of demonstrators protesting against the signing of the Trilateral Statement, including opposition politicians, and where Mr Artur Vanetsyan, former head of the National Security Service and president of the political grouping Homeland, who had been in pre-trial detention imprisoned in the context of an investigation into an assassination attempt on Prime Minister Pashinyan, had also had his pre-trial detention cancelled.[92] The course of events and the importance of the context at the time were confirmed to us during our mission to Yerevan. On 15 April 2021, Mr. Vardazaryan was suspended from office by the SJC on the ground that the Prosecutor General's Office had confirmed that criminal proceedings had been initiated against him in connection with the criticisms voiced by parliamentarians during his hearing. In addition, in February 2021 the National Assembly had adopted a series of amendments to the Judicial Code and other pieces of legislation, increasing the powers of the SJC, including the right to replace judges presiding over public proceedings, increasing the number of first instance and appeal judges and appointing pre-trial detention judges. These amendments were hotly debated in the National Assembly, where some opposition members argued that they eroded the independence of the judiciary by allowing the SJC to exercise stricter control over trial judges and undermining the process for the appointment of new judges. On 24 February, President Armen Sarkissian refused to sign the amendments and referred them to the Constitutional Court.[93] Clearly, independence of the judiciary is still a major political issue.

101. Nevertheless, several measures have been taken over the past few years to promote the independence of judges and thus strengthen the confidence of the Armenian population in the judiciary.

102. Several distinct elements were brought to our attention during our mission to Yerevan. For example, the issue of judges' remuneration has been partially addressed by the authorities. In 2018, their allowances were increased by 30%, which is a substantial increase, the distribution of which apparently depends on the courts themselves, which may have budgetary constraints. Similarly, we were told that judges who will sit on new "anti-corruption" courts, which are expected to be operational from 2023, will receive a higher remuneration than ordinary judges. Beyond the financial issue, it was pointed out that the behaviour of judges is starting to change in some cases. In the area of pre-trial detention, the rate of rejection of applications by the prosecution was said to be very low, around 0.2%. Today, according to the SJC, it is around 40%, which would attest to a real increase in the independence of judges with regard to prosecutors. This trend is likely to increase as the authorities have introduced specialised judges for pre-trial detention.

103. More systemically and structurally, it is important to note that the SJC, the autonomous body of the judiciary, is considered to be a body with broad powers that it exercises in a particularly independent manner. Its composition, as it results from the 2015 amendments to the Constitution and the amended 2018 Judicial Code, is parity: the SJC has ten members, five of whom are judges elected by their peers, and five of whom are "academic lawyers and other prominent lawyers" elected by the National Assembly by a qualified majority of three/fifths of the votes. These five non-judge members are also nominated by the Bar Association, academic institutions and NGOs. The ten members of the SJC are appointed for a single term of five years, with the chairperson elected from within the SJC for a non-renewable term of one year, thus allowing for a rotating chairperson. This composition was welcomed by the Venice Commission in its 2016 opinion on the draft amendments to the Constitution and its 2017 opinion on the draft judicial code. It stated that the "equal

90. CDL-AD(2019)024, paragraphs 61 and 62.
91. *Azatutyun*, "Head Of Judicial Watchdog Under Fire From Ruling Bloc", 3 March 2021.
92. *Jamnews*, "Ex-head of Armenian state security service released following charges of plot to assassinate PM", 15 November 2020.
93. *Panorama*, "President Sarkissian refuses to sign Judicial Code amendments into law", 24 February 2021. *Azatutyun*, "Armenian President Objects To 'Unconstitutional' Bill On Courts", 12 April 2021.

number of judges and lay members ensuring inclusiveness of the society should avoid both politicization and corporatism of the Judicial Council", noted that the composition was "quite balanced" and stressed that the method of electing the President "gives a democratic legitimation to the SJC before the public.[94]" The competences of the SJC include both the career development of judges, from their appointment to the end of their term of office, including promotion and any disciplinary procedures, and the so-called "support" functions, namely budget of the courts, procurements, maintenance of court buildings, management of non-judicial staff, such as bailiffs and secretaries, organisation of IT services and publications, etc. The exercise of these support functions may lead the SJC to deal with issues that are directly related to the independence of the judiciary. During our mission to Yerevan, it was brought to our attention that as of July 2021, the electronic random case allocation system used by the courts was no longer in place, as it had been seized for verification of its integrity in the context of a criminal investigation. The consequence was a return to a system of manual allocation by the presidents of courts, with the risk of influence that this entails. The Human Rights Defender has taken a position on this issue, including the need to establish objective criteria for this manual allocation for the time it lasts. This issue is currently being dealt with by the SJC, as part of its support functions.

104. The competences of the SJC have been clarified in 2018 and 2020, in a rather positive sense, and in 2021. However, a number of stumbling blocks remain for both GRECO and the Venice Commission.

105. First, while the Venice Commission considers that the existing disciplinary procedure is broadly in line with Committee of Ministers Recommendation CM/Rec(2010)12 (paragraph 9) on judges: independence, efficiency and responsibilities, according to which disciplinary proceedings "should be conducted by an independent authority or a court with all the guarantees of a fair trial ", it considers it "necessary" to develop a mechanism for appealing against decisions of the SJC.[95] It is not satisfied with the SJC's ability to re-open a disciplinary case if new circumstances arise, which was introduced in 2020. In its 2021 interim compliance report, GRECO reiterates that it shares the same position. It makes this clear in recommendation viii (ii)[96] and concludes in recommendation vii that proper appeal mechanisms to challenge SJC decisions on the recruitment and promotion of judges have been put in place, while this is not the case in respect of dismissals.[97] We raised this issue with the Armenian authorities, who seemed open to developments in this area.

106. On the other hand, they were firmer on the deletion of the possibility for the Minister of Justice to initiate disciplinary proceedings, as requested by GRECO in recommendation viii (i). At present, three authorities can initiate disciplinary proceedings against a judge: the Minister of Justice, the Ethics and Disciplinary Commission under the Assembly of Judges, and the Commission for the Prevention of Corruption (CPC) in case of irregularities in the financial declarations of a judge. The final decision rests with the SJC. The Armenian authorities reminded us that the Minister of Justice is not both judge and party in this matter, but only the initiator of the procedures. The fact that 90% of the requests for disciplinary sanctions that he addresses to the SJC are rejected would attest to this. They also pointed out that the CPC has only a limited power to initiate proceedings, since it only concerns the financial declarations of judges. They also pointed out that the number of proceedings initiated by both the CPC and the Ethics and Disciplinary Commission was very low and that it was therefore not feasible to leave the initiation of disciplinary proceedings to these two bodies alone. They also recalled that the Venice Commission, in its opinion of October 2017, had seen no difficulty in entrusting the initiation of disciplinary proceedings to the Minister of Justice, unlike GRECO. Finally, they made it clear that they had given up the idea of vetting judges following a dialogue with their international partners, which did not mean limiting the possibilities of fighting corruption among judges, which also involve disciplinary sanctions. Although the Venice Commission's position has changed somewhat in its 2019 opinion compared to that of October 2017, since it now considers that the new composition of the Ethics and Disciplinary Commission under the Assembly of Judges brought about by the 2020 reform of the Judicial Code should make it possible, in the long term, that the power of the Minister of Justice to initiate disciplinary proceedings could be phased, the position of the Armenian authorities did not appear to be devoid of consistency.

107. With regard to its recommendation ix aimed at establishing effective rules and mechanisms for identifying undue interference with the activities of judges in the administration of justice and for sanctioning judges who practice or seek such interference, GRECO commended the adoption of preventive measures (in

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94. See CDL-AD(2015)037, paragraph 179, and CDL-AD(2017)019, paragraphs 88 et 90 respectively.
95. CDL-AD(2019)024, paragraph 62.
96. GRECO, 22 September 2021, Fourth Evaluation Round, Corruption prevention in respect members of Parliament, judges and prosecutors, Interim Compliance Report, paragraph 43.
97. GRECO, *ibid*., paragraph 38.

the form of awareness-raising activities), but called on the authorities to go further in terms of sanctions. It referred in particular to the prevalent practices of lower court judges consulting higher court judges out of fear that judgments will be reversed and judges disciplined for “illegal rulings”. It held that, in this regard, the Armenian authorities were not in a position to deliver tangible results. Indeed, according to the latter, in only two cases, judges approached the SJC to report interference in their activities.

108. Finally, GRECO noted progress in the implementation of its recommendation xi, by which it called on the Armenian authorities to pursue a deliberate policy for preventing improper influences on judges, conflicts of interest and corruption within the judiciary. In 2019, it considered that part i) of the recommendation consisting in the provision of on-going mandatory training to all judges covering these areas had been addressed. In 2021, it welcomed the start of the implementation of part ii) relating to the provision of confidential counselling within the judiciary in order to raise judges’ awareness and advise them with regard to the areas mentioned under i). It noted that the Ethics and Disciplinary Commission, which is a disciplinary body, is no longer is no longer entitled to issue advisory interpretations of the rules of judicial conduct at the request of judges, thus respecting a standard of GRECO. It was, however, awaiting the establishment of a neutral and competent body to provide confidential counselling to judges.

109. Our assessment in the judicial field is that many reforms have already been carried out or initiated. They will take some time to yield results of some magnitude, but the foundations for a more independent judiciary are being laid. The measures taken to enhance the transparency and independence of the recruitment and promotion processes of judges were considered satisfactory by both GRECO and the Venice Commission. The question of the disciplinary procedure is still under debate, because it is perceived by the Armenian authorities as a fundamental lever to guarantee a more virtuous behavior of the judges in place. That of the quality of justice as well. Some of our interlocutors raised the length of the trial delays at first instance which would be due to an insufficient number of judges. However, effective justice is certainly able to restore the image of magistrates in the population. Reforms must therefore be continued in a context that we hope will be healthier than that which prevailed between the end of the Nagorno-Karabakh conflict in November 2020 and March 2021. Political positions cannot have their place in an independent judiciary. Likewise, the respect due to the office of judges by politicians and the executive and legislative powers is an integral part of the rule of law. In addition, we have no doubt that it would greatly facilitate the pursuit of reforms of the judiciary. In this regard, we hope that the easing of tensions between the government and the National Assembly on the one hand and the SJC and the judges on the other hand, which our interlocutors told us to have observed since March 2021, continues.

5.2.2. The Constitutional Court

110. The conflict from mid-2019 to mid-June 2020 between the majority and some of the members of the Constitutional Court is another illustration of this. The reason for the conflict is that the majority formed after the Velvet Revolution saw the Constitutional Court as a tool in the hands of the former majority, secure in its composition and set to impede the reform agenda being pursued by a government with strong democratic credentials. In return, the Court condemned the pressure and the attacks to which it was being subjected and accused the majority of wishing to put an end to its independence.

111. In the legal sphere, the discussion focused on three issues.

112. The first related to the difference in status between judges making up the Court, particularly in terms of the length of their terms of office. Amendments were made to the Armenian Constitution of 1995 in 2005 and 2015, both of which changed the rules on the appointment of members of the Constitutional Court. The provisions of 1995 established a Court made up of nine members, appointed by the National Assembly and the President of Armenia for a term of office running up to the age of their retirement, at 70. The amendments of 2005 slightly altered the way in which the members were appointed and shortened their term of office by lowering their retirement age to 65. Lastly, the amendments of 2015 reflected the transition from a presidential to a parliamentary system and gave the National Assembly the power to appoint members of the Court by a 3/5ths majority. Three of them are now elected on a recommendation from the President of Armenia, three on a recommendation from the government and three on a recommendation from the General Assembly of Judges. Their terms of office are now limited to 12 years and the same person cannot be elected more than once. The amendments of 2005 and 2015 did not have any retroactive effect and the transitional provisions of the 2015 revision provided that members of the Constitutional Court appointed before the entry into force of the new rules would remain in office until their term had expired. The amendments of 2015 came into force on 9 April 2018, when the new President of Armenia took office. In practical terms, the application of the transitional rules meant that until mid-2019, the Constitutional Court had two members who were appointed in accordance with the procedure introduced in 2015, with a non-renewable 12-year term of office, while the

seven other members, appointed by previous majorities, were governed by the provisions of 1995 (departure at the retirement age of 70), which applied to two of them, or by those of 2005 (departure at the retirement age of 65), which applied to five. In practice, two judges had been in office for more than 12 years and one of them was serving a second term but had not yet reached the 12-year limit. As the government pointed out, although the constitutional amendments of 2015 had come into force in 2018, the various retirement ages of the members meant that they would not be fully applied for a very long time as the acting President would not have reached retirement age until 2035 and another member was due to retire in 2037, over 20 years after the adoption of the amendments.[98]

113. The second question related to the status of the President of the Constitutional Court. The 2005 revision had provided that the National Assembly should select the President of the Court from among its members on the recommendation of the Speaker of the Assembly. The 2015 revision provided that the President of the Court should be elected not by the National Assembly, but by the members of the Court for a six-year term without the possibility of re-election. As with other members, however, any president elected before the 2015 constitutional amendments would still be governed by the former provisions, including those relating to the length of his or her term. The former President of the Constitutional Court, Mr Gagik Harutyunyan,[99] had resigned on 5 March 2018, enabling the National Assembly to elect a new President on 21 March, barely three weeks before the entry into force of the provisions of 2015, meaning that the term of office of this new President, Mr Hrayr Tovmasyan, would be governed by the provisions of 2005 and run up to his retirement age of 65. In practice, his term was due to end sixteen years later, and not subject to the 6-year limit laid down by the provisions of 2015. The new majority elected after the Velvet Revolution interpreted this appointment as an abuse of procedure designed to avoid the implementation of the 2015 amendments, especially as Mr Tovmasyan had been a Minister of Justice, a well-known figure in the ruling Republican Party in the previous government, and an MP since 2017, as well as one of the main instigators of the constitutional revision of 2015.

114. The third question took different forms, but for the government it was about how to prevent the Constitutional Court from exercising an a priori review over any revision initiated by the majority to establish a single status for all constitutional judges. The Court maintained that the Constitution gave it this power in relation to any constitutional revision whereas the government considered that according to the Constitution, it applied only to amendments to four articles that were said to be “non-amendable”, namely Articles 1 to 3 and 203.

115. As a first step, the National Assembly voted in October 2019 to dismiss Mr Tovmasyan, but the Constitutional Court censured the vote because it considered that the Assembly did not have this power. The Armenian authorities then asked the Venice Commission and two Council of Europe directorates for a joint opinion on a draft text allowing members of the Constitutional Court appointed prior to the entry into force of the 2015 constitutional amendments to resign on a voluntary basis before the end of their term of office in exchange for several advantages. This proposal was presented as a “dignified exit” for judges whom the authorities associated with the “old regime”. The Venice Commission accepted the government's argument that all Constitutional Court judges should have the same status, whether they were appointed before or after the revision of the Constitution in 2015. It pointed out, however, that any early retirement scheme had to be voluntary and should not result in a large number of departures which would hamper the proper functioning of the Court.[100] Imposing such a procedure would undermine the principle of the irremovability of judges, which is a guarantee of the independence of the judiciary from the political authorities. The Armenian authorities followed this opinion and the National Assembly adopted a law enabling members of the Constitutional Court who so wished to retire early, with monthly financial compensation equivalent to the salary they would have earned as constitutional judges up to their scheduled retirement age (65 or 70). This possibility was open until 31 January 2020. None of the members appointed before 9 April 2018 took up the offer and the composition of the Court remained unchanged. At the same time, the relationship between the President of the Court and the majority became increasingly strained.[101] In February 2020, the National Assembly amended the transitional provisions on the term of office of constitutional judges so that the President of the Court and the

98. CDL-AD(2020)016, paragraph 42.
99. This is the same Mr Harutyunyan who became Chairperson of the Supreme Judicial Council (SJC) cited above and resigned from this position on 24 May 2019.
100. CDL-AD(2019)024, paragraphs 57 and seq.
101. The Prime Minister said *inter alia* that Mr Tovmasyan had tried several times to get him to endorse Mr Tovmasyan as the legitimate President of the Constitutional Court and that his appointment to the position of head of the Court was the result of fraud. Mr Tovmasyan said that the Prime Minister was lying and that he had asked his lawyers to bring a lawsuit against him. Mr Tovmasyan has been the subject of prosecutions and criminal investigations for “abuse of power” and misappropriation of funds dating back to the time when he was Minister of Justice.

seven judges appointed before the 2015 amendments came into force would have to leave office. It also submitted the final adoption of this amendment to a referendum, which was not subject to the Court's constitutional review. The referendum was scheduled by presidential decree for 5 April. It was postponed, however, because of the state of emergency declared in the wake of the Covid-19 pandemic. The authorities then requested a second opinion from the Venice Commission on how to implement the Constitutional Court model provided for by the amendments of 2015. The Armenian authorities also asked the Venice Commission about the scope of the Court's review of constitutional amendments and the National Assembly's authority to cancel the planned referendum. The Venice Commission reiterated the position of principle it had adopted in 2019 on the irremovability of judges and the legitimacy of the Armenian authorities' desire to ensure that the composition of the Constitutional Court reflected within a reasonable time-frame the provisions of the Constitution, as amended in 2015. This prompted it to advocate a gradual change in the composition of the Court in order to avoid "any abrupt and immediate change endangering the independence of this institution". With regard to the President of the Court, it called for a transitional period "instead of immediately terminating the mandate of the current [President]". As to procedural questions, it considered, firstly, that the Court did not have a general power of ex ante review of amendments to the Constitution other than for its "non-amendable" articles and, secondly, that the National Assembly had the authority to cancel the referendum. The Armenian authorities have only followed this opinion to a certain extent. On 22 June 2020, the National Assembly cancelled the referendum and amended the transitional provisions of 2015 to end the terms of office of three members of the Court who had already served for over 12 years and the term of the President of the Court, Mr Tovmasyan, who nonetheless remained a judge. The Statute of the Court provided for in the 2015 amendments was therefore applied to all its members, without a transitional period. In September 2020, the Assembly voted by a 3/5ths majority to appoint three new members, bringing to an end the conflict that began in 2019.

116. We have duly noted that the Armenian authorities began by trying to find an honourable solution to the crisis which would fully respect the principle of the irremovability of judges and the independence of the judiciary. We also agree with the Armenian authorities and the Venice Commission that it was not right that the transitional provisions of the constitutional revision should act as a *de facto* hindrance to the application of the 2015 amendments. We are also conscious that the Armenian authorities have talked to the Council of Europe, referring questions to the Venice Commission on two occasions. We regret, however, that they did not follow the Commission's recommendations, which would have enabled a gradual change to the members of the Court covered by the provisions prior to the 2015 amendments without undermining the principle of irremovability, which is one of the features guaranteeing the independence of the judiciary. However, it has not escaped us that once three of the Court's judges had been replaced, it gave a decision which was presented by the majority as firm evidence of its independence. On 26 March 2021, the Constitutional Court declared that Article 300.1 of the Armenian Criminal Code, which covered the crime of "overthrowing the constitutional order" and had formed the legal basis for the proceedings against former President Robert Kocharyan for his role in the events of 1 March 2008, was unconstitutional. This case was one which the Armenian authorities felt particularly strongly about. It will be recalled that Prime Minister Pashinyan had called for the courts to be blockaded after a trial judge released former President Kocharyan on bail in May 2019. Likewise, the decision by the Constitutional Court in September 2019, holding that the pre-trial detention of the former President was illegal, had contributed to increased tensions between the Court and the Armenian authorities. In its new composition, the Court has had no hesitation in relying solely on the relevant law without taking account of any potential objections on the part of the Armenian authorities, proof that it has not lost its independence. Nonetheless, we hope that the forced departure of three of the Court's members has not created a precedent for further such moves within the judiciary.

6. The media situation

117. According to the Reporters Without Borders (RSF) World Press Freedom Index 2021, Armenia is ranked 63rd out of 180 countries. According to the index, Armenia's press is diverse but not yet independent. In its Freedom in the World 2021 report, Freedom House considers that independent and investigative media operate relatively freely in Armenia and generally publish online. Small independent media outlets provided robust coverage of the protests during the Velvet Revolution in 2018, challenging the narratives of State broadcasters and other establishment media. By comparison, most print and audiovisual media are affiliated with larger political or business interests. With regard to Internet freedom, Armenia is considered a "free" country by Freedom House.

See *Eurasianet*, "Armenian government gathers forces against senior judge", 22 October 2019 and *Caucasus Watch*, "New developments in the Pashinyan-Tovmasyan conflict", 27 January 2020.

118. In general, both international NGOs and local experts believe that the diversity of the media landscape has flourished since the Velvet Revolution. For example, in 2019, Armenia jumped 19 places in the RSF ranking from 80th to 61st. The desire of the authorities at the time not to restrict freedom of expression disproportionately, including to combat hate speech, had been clearly expressed by our predecessors' talking partners when they visited Yerevan in 2019.[102] In its report "Freedom and Media 2019: A Downward Spiral", Freedom House said that the Armenian authorities at the time were more inclined to accept criticism from a free press than the previous authorities.[103] Despite this genuine progress, the Armenian media scene is still highly polarised. As both RSF and Freedom House note, this polarisation is strongly linked to the fact that the editorial line of the main television channels or print media coincides with their owners' interests. Polarisation is reflected in particular in the fact that a large part of the Armenian press is still in the hands of people who are loyal to the authorities who were in power before the Velvet Revolution whereas a minority is "fiercely loyal to [Prime Minister] Pashinyan" and only a few media outlets have no strong party bias.[104]

119. In 2020, Armenia was confronted with events which led the authorities to severely restrict the independence of journalists and freedom of expression, albeit temporarily. For example, on 16 March 2020, the authorities adopted a decree to prevent the dissemination of false information and publications likely to cause panic in the context of the Coronavirus pandemic. The decree drew strong criticism from media representatives and was withdrawn. Instead, a package of amendments to the Criminal Code and the Administrative Code was discussed by the National Assembly on 24 March. These texts provided that any organisation engaged in journalism could only publish information on Coronavirus after this information had been published by official sources, namely by the authorities. Failure to comply with this requirement was considered an infringement of the state of emergency declared at the beginning of the pandemic, with offenders facing fines. Press representatives and the OSCE Representative on Freedom of the Media criticised the disproportionate nature of this restriction on freedom of expression and pointed to the role of media outlets in combating the dissemination of false information. On 13 April, the contested provisions were withdrawn and no media outlets were fined. This was not the case during the Nagorno-Karabakh conflict. The government issued a decree on 27 September declaring martial law on the territory of the Republic of Armenia, supplemented by legislative amendments requiring journalists to disseminate only official information on military operations. The Criminal Code and the Administrative Code were also amended to provide for penalties for infringements of the restrictions imposed by martial law. In particular, a fine of 2 000 to 3 000 times the nominal wage and a two-to-three-year prison sentence was imposed for any action infringing the rules on publication or dissemination of information during the period of martial law, defined as "causing harm to the legitimate rights or interests of individuals or organisations or to the legitimate interests of the public or the State". The police were in charge of the implementation of this legislation, which resulted in their banning 401 publications, 196 of which were put out by the media, and imposing fines in 76 cases. The press representatives considered the penalties provided for by these provisions to be disproportionate and liable to put some media outlets at financial risk. They also questioned whether the police were best placed to determine whether a publication was harmful or not to the interests of the State. The Ombudsman referred the martial law provisions restricting freedom of expression to the Constitutional Court, as a result of which they were suspended on 20 November.[105]

120. In both cases, namely measures to combat false information that could create panic in the middle of the Coronavirus pandemic and martial law, we have seen similar patterns. The authorities tend to take drastic measures, which are manifestly excessive in view of their restrictions on freedom of expression, even if they pursue a legitimate aim. However, they are able to heed criticism and relax the rules, at least with regard to Coronavirus. Lastly, judicial remedies are effective and can be successful, even if, in the case of martial law, the Constitutional Court's decision was only given after the signature of the Trilateral Statement which put an end to hostilities.

121. This approach is also reflected in the measures taken to combat hate speech and disinformation. As pointed out by the Committee to Protect Freedom of Expression, an Armenian NGO, "the press, television and social media are flooded with hate speech, explicit disinformation and manipulations, especially in the post-war period [following the war with Azerbaijan]".[106] This was also the view of the Ombudsman, who stated in 2020 that the spread of hate speech had reached "alarming proportions" in Armenia.[107] The authorities have intervened twice in this matter. A bill was tabled in September 2020 proposing to increase fivefold the

102. AS/Mon (2019) 14, paragraph 38.
103. Freedom House, "Freedom and Media 2019: A Downward Spiral".
104. *Eurasianet*, "Media polarization rising in Armenia", 30 October 2019.
105. Annual report of the Committee to Protect Freedom of Expression, an Armenian NGO, pp. 3-5.
106. *Ibid*., p. 8.
107. *Azatutyun*, "Armenian Ombudsman Alarmed By Online Hate Speech", 11 May 2020.

maximum amount of fines for "insults" and defamation. Ultimately, the law adopted in March 2021 only tripled these amounts, to 3 million and 6 million dram (about €5 150 and €10 300) respectively, probably in response to the reactions to the initial bill. This law seems to have been passed despite the reservations of the Minister of Justice and Human Rights, the Ombudsman and civil society representatives. It was particularly criticised for its potential to prompt the media to engage in self-censorship and for implicitly encouraging prominent figures sensitive to criticism to use this financial threat to deter any unwanted scrutiny. In this case, the question arises as to the right balance to be struck between the freedom of expression guaranteed by Article 10 of the European Convention on Human Rights and the dignity of the person, which forms part of the right to privacy protected by Article 8. In addition, an amendment to the Criminal Code was adopted in July 2021, mainly targeting social media. It criminalises “serious” insults in general and provides for fines ranging from 1 to 3 million dram (€2 575 to €5 150), and a maximum prison sentence of three months when they are directed at persons on account of their public activities (public officials, politicians, activists and other public persons). These changes occurred in a country where defamation was decriminalised in 2010, but journalists are still prosecuted for insult or libel. The Committee to Protect Freedom of Expression documented 89 such prosecutions in 2019 and 61 in 2020. Both the Law of March 2021 and the amendment of July 2021 were referred by the President of Armenia to the Constitutional Court. In early October 2021, the Court ruled that the relevant provisions of the March 2021 law were not unconstitutional. The constitutionality of the amendment to the penal code is currently under review.

122. We discussed both sets of amendments with representatives of civil society, but also with the authorities. The authorities consider that these legislative changes were necessary, given the level of hate-speech in the media and on social networks, and proportionate. Furthermore, the July 2021 amendment would only be a temporary measure, valid until July 2023, at which point the question of its continuation would be decided in the light of developments. In this respect, we were told that the measures voted on had had a real impact on social networks and helped to reduce the amount of hate speech. On the other hand, civil society representatives felt that the measures risked provoking a form of self-censorship by the media and posed a real financial threat, as far as the March 2021 amendments were concerned, to offenders. One of our interlocutors presented a measured view. He felt that the July 2021 amendment provided a sound definition of the new offence, that the scope of the measure was narrow and its purpose proportionate. However, he feared that the implementation of the March 2021 amendments would leave too much room for discretion to prosecutors, who might tend to interpret the concepts of insult and defamation broadly, which would be detrimental to both individuals and the media. Monitoring their implementation is therefore important. With regard to the July 2021 amendment, we were told that ten prosecutions had been initiated on the basis of this new offence and that none had so far targeted media or journalists. Again, it will be important to monitor the implementation of this new provision.

123. In general, civil society representatives regretted that the authorities do not share their vision of a comprehensive reform with them and that they are less consulted than they were after the Velvet Revolution. They also stated that investigative journalism contributes to the fight against corruption and, as such, should not be exposed to disproportionate financial risks or criticism in its activities.

124. While the challenge of combating hate speech and disinformation is real in Armenia, we believe that there are tools other than preventive punishment. For instance, the issue of training for journalists is important and ought to be addressed by the Armenian authorities, along with the issue of their insecure status. Another area that merits attention is strengthening systems of self-regulation. While the Law on Mass Media of 2003 includes provisions on the subject, self-regulation is not considered to be effective in Armenia. Lastly, polarisation of the media is partly responsible for the high level of hate speech and disinformation. In this connection, increased transparency in the area of media ownership could act as a deterrent. Since 2018, the Armenian authorities have been developing a “beneficial ownership” approach, whose aim is to set up a single register identifying the actual person or persons who own businesses. This register is supposed to include press companies.

125. In general, the requisite reform of media legislation is under way in Armenia. On 16 July 2020, the National Assembly adopted the Law on Audiovisual Media, which replaces the Law on Television and Radio, whose provisions were, to a large extent, out-of-date. It was the subject of a somewhat critical analysis by the OSCE.[108] The Committee to Protect Freedom of Expression also lamented the fact that neither the new law nor the tender procedures for the award of television broadcasting licences introduced by the legislation enacted on 16 July had really reduced the hate speech, manipulation, insults, defamation and extreme manifestations of bias which continued to be widespread on the air.[109] Furthermore, the Armenian authorities

108. OSCE, Legal Analysis of the Law of the Republic of Armenia “On Audiovisual Media”, as adopted on 16 July 2020, 22 July 2021.

are currently preparing an extensive reform of the Law on Mass Media of 2003 and have asked for assistance from the Council of Europe with this. We call on the Armenian authorities to adopt a comprehensive approach to reform in the media sector and use all the tools at their disposal to combat hate speech and not to focus solely on administrative or criminal punishment. We also call on them not to restrict freedom of expression disproportionately and to weigh protection of this freedom against the preservation of other fundamental rights and freedoms.

7. Conclusions

126. Armenia has successfully emerged from the serious political crisis following the hostilities in the context of the Nagorno-Karabakh conflict. The crisis was resolved by the holding of early parliamentary elections in June 2021, which were organised in a democratic manner notwithstanding a a highly polarised political environment. This is an important achievement, all the more so because of the Coronavirus pandemic and the general economic crisis.

127. Of the four themes covered in our report, electoral reform is perhaps the one where the most significant results have been achieved. According to the Venice Commission, the reforms addressed the majority of its recommendations as well as those of the OSCE/ODIHR. While under preparation, in an inclusive manner since 2018, they entered into force shortly before the elections. The challenge is now to ensure that the new legislative framework is also rigorously applied in the area of campaign financing and political parties and that these reforms have a positive impact on the political party culture by encouraging affiliations based on political ideology rather than personal, historical or an opportunistic basis.

128. The polarisation observed during the June 2021 elections is unfortunately present in the National Assembly. This could affect the establishment of a true parliamentary culture where the majority and opposition confront each other in a constructive and respectful manner on clearly identified political orientations. In this respect, while all the mechanisms enabling the opposition to play its role must obviously be maintained, it is also incumbent on the latter to provide real alternatives and to contribute to easing the climate of tension that prevails in parliament. Finally, as the parliamentary majority has a high number of seats, it must genuinely exercise its functions of control and evaluation of government action.

129. In general, it is clear that the institutional balances are being built and that certain checks and balances, such as the Human Rights Defender, are well established. Within the Executive Branch, the President of the Republic has not failed to use all the powers that the Constitution confers on him, even if that opened him up for criticism from opposition or ruling majority. We can only encourage the Armenian authorities to strengthen these institutional checks and balances and hope that the announced constitutional revision will be an opportunity to strengthen them, including by ensuring the genuine independence of relevant institutions, such as the Commission for the Prevention of Corruption.

130. The existing relationship between the authorities and the judiciary as well as the Constitutional Court has been marked by serious tensions since the peaceful change of majority in 2018. We are well aware that confidence of the Armenian population in the judiciary has been low for several years. We are also aware of the public political stances sometimes taken by a number of representatives of the judiciary. While that underscores a need for further reforms of the judiciary, such reforms must be carried out in full compliance with European standards, as outlined by both GRECO and the Venice Commission, in particular with regard to the principle of the security of tenure of judges. It is also important that these reforms preserve the dignity of the judiciary and do not collectively question the integrity of the office. This is important as the foundations for a more independent justice system with more transparent operating procedures have already been laid.

131. As regards the situation of the media, we are aware that the Armenian authorities and society are confronted by an unprecedented level of disinformation and hate speech, especially following the Nagorno-Karabakh conflict. The authorities have responded by tightening the framework for freedom of expression, by increasing fines for insults or by criminalising ‘serious insults’ in March and July respectively. However, we wish to reiterate the Assembly clear position against the criminalisation of defamation. Other tools that are in line with European standards and norms are available instead of exclusive preventive sanctions. We call on the Armenian authorities to develop a comprehensive medium – and long-term strategy that addresses the issues of transparency of media ownership, possible media concentration, the precarious status of journalists and self-regulation mechanisms, as these issues are linked to the proliferation of hate speech in the media sector.

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109. Committee to Protect Freedom of Expression, 1st quarterly report (January-March 2021).

132. We will continue to closely follow developments in Armenia, in particular with regard to: institutional checks and balances, the establishment of a genuinely democratic political culture and environment, judicial reform and the media situation. In this context, we will also closely follow the implementation of the co-operation programmes related to these issues contained in the Council of Europe Action Plan 2019-2022 for Armenia and will ensure that they are also taken into account in the Action Plan 2023-2026.

133. With regard to the Nagorno-Karabakh conflict, our visit to the border town of Yeraskh reminded us again that, in the absence of a comprehensive peace agreement, insecurity persists for which civilians are paying the price. Nevertheless, Armenia has been able, in a difficult context, to continue to progress on the path of democracy, the rule of law and human rights, and this deserves to be welcomed.

Appendix – Dissenting opinion submitted by Mr Samad Seyidov (Azerbaijan, EC/DA), member of the Monitoring Committee, chairperson of the parliamentary delegation of Azerbaijan, in accordance with Rule 50.4 of the Rules of Procedure of the Parliamentary Assembly

The delegation of Azerbaijan registers its strong discontent with the provisions of the report referring to the post-conflict situation between Armenia and Azerbaijan. Most regrettably the report contains serious misrepresentation of a number of important issues and uses erroneous terminology.

Above all, mentioning a non-existent entity in the sovereign territory of Azerbaijan and referring to the so-called "self-proclaimed Nagorno-Karabakh Republic" in the explanatory memorandum, which has never been used in any official documents of the relevant international organizations, including PACE, is absolutely unacceptable. This language simply contradicts the principled position of the Council of Europe on the full respect for the territorial integrity and sovereignty of its member States within their internationally recognized borders. The Assembly must strictly abide by this well-established position in its activities. Therefore, we strongly protest against this attack of co-rapporteurs on the territorial integrity and sovereignty of Azerbaijan.

Furthermore, unfortunately, the report does not adequately take into account the new realities on the ground following the 44-day war between Armenia and Azerbaijan. For instance, continuing the old narrative and talking about the so-called "Nagorno-Karabakh conflict" can only jeopardise the fragile peace perspectives that are emerging in the South Caucasus region. It should be emphasized that the 44-day war between two countries resulted in the liberation of the illegally occupied Azerbaijani territories and restoration of the territorial integrity of Azerbaijan in accordance with the international law, most particularly the respective Resolutions of the UN Security Council from 1993. No one should forget that Armenia has been directly responsible for the conflict that lasted for more than 30 years due to its aggressive policy and territorial claims. Since hundreds of thousands of Azerbaijanis were subjected to ethnic cleansing and about 20 percent of its internationally-recognized territory was occupied by Armenia, Azerbaijan was clearly the victim of this conflict. However, despite all this, Azerbaijan looks to the future, as it was reiterated by the President of Azerbaijan Ilham Aliyev on 14 December 2021: "Azerbaijan is committed to peace, stability and predictability, and our efforts are aimed at minimization of risks of any new war in the region. For that purpose the best way is to open communications to establish active dialogue, and to learn to be neighbours again. Our policy is very open and straightforward and I hope that if there is a good will from Armenian side we can start as we proposed working on a peace agreement between two countries and to put an end to hostility."

Against this background, instead of encouraging Armenia to take constructive steps to establish peaceful coexistence and cooperation in the region, the co-rapporteurs by their ill-conceived approach may unfortunately fuel revanchist calls in Armenia, contribute to dangerous misconceptions with regard to illegal claims on the internationally recognized territories of Azerbaijan and further ignite the animosity toward Azerbaijanis in the Armenian society.

Finally, the way that the respective amendments were voted and the report was adopted casts shadow on the monitoring procedure as well as on the activities of the co-rapporteurs.