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## The Functioning of Democratic Institutions in Armenia

### Report

Committee on the Honouring of Obligations and Commitments by member states of the Council of Europe (Monitoring Committee)

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### *Summary*

While the outbreak of public resentment in Armenia, following the Presidential election of 19 February 2008 and culminating in the tragic events of 1 March 2008, may have been unexpected, the Monitoring Committee considers that the underlying causes of the crisis are deeply rooted in the failure of the key institutions of the state, including the parliament and courts, to perform their functions in full compliance with democratic standards and the principles of the rule of law and the protection of human rights.

The Monitoring Committee condemns the arrest and continuing detention, without adequate judicial control, of scores of persons, including more than one hundred opposition supporters and three members of parliament, on what appear to be politically motivated charges.

For Armenia to put an end to the current crisis and move forward with urgently needed reforms mentioned in the report, an open and constructive dialogue between all the political forces in Armenian society should be initiated. For such a dialogue to start, a number of pre-conditions should be met:

- an independent, transparent and credible inquiry into the events of 1 March and the circumstances that led to them, including the alleged excessive use of force by the police, should be carried out immediately. The international community should be ready to monitor and assist such an inquiry;
- the persons detained in connection with the recent events on allegedly artificial and politically motivated charges should be released at once;
- the recent amendments to the Law on conducting meetings, assemblies, rallies and demonstrations, which run counter to European standards, should be revoked with immediate effect.

Unless these conditions are met and an open dialogue on the reforms is seriously engaged between the political forces in Armenia, the credibility of Armenia as a member of the Council of Europe is put into doubt. Therefore, in the Committee's opinion, the Assembly should consider the possibility of suspending the voting rights of the Armenian delegation to the Assembly at the opening of its June 2008 part-session, if no considerable progress has been made on these requirements by then.

**A. Draft resolution**

1. On 19 February 2008, Presidential elections took place in Armenia. Although “administered mostly in line with Council of Europe standards”, the Ad hoc committee which observed this election found a number of violations and shortcomings, the most important of which were: unequal campaign conditions for all candidates, lack of transparency of the election administration and a complaints and appeals process that did not give complainants access to an effective legal remedy. In addition, a number of cases of electoral fraud were witnessed.

2. The Parliamentary Assembly regrets that the violations and shortcomings observed did nothing to increase the currently lacking public confidence in the electoral process and raised questions among the Armenian public with regard to the legitimacy of the outcome of the election. This lack of public confidence was the basis for the peaceful protests that ensued after the announcement of the preliminary results, initially tolerated by the authorities.

3. The Assembly deplores the clashes between the police and the protesters and the escalation of violence on 1 March 2008, which resulted in eight persons being killed and hundreds being injured. The exact circumstances that led to the tragic events of 1 March, as well as the manner in which they were handled by the authorities, including the imposition of the State of Emergency in Yerevan from 1 to 20 March 2008 and the alleged excessive use of force by the police, are issues of considerable controversy and should be the subject of a credible independent investigation.

4. The Assembly condemns the arrest and continuing detention of scores of persons, including more than one hundred opposition supporters and three members of parliament, on what appear to be politically motivated charges. This constitutes a *de facto* crackdown on the opposition by the authorities.

5. In a welcome development, and upon an initiative of the new President, Mr Serzh Sargsyan, four of the five parties in parliament signed, on 21 March 2008, an agreement to form a coalition government. However, the fact that the Heritage Party, as well as the extra-parliamentary parties which supported the candidature of Mr Levon Ter-Petrosyan did not join the coalition reduces the chances that this agreement will put an end to the current crisis in Armenia.

6. While the outbreak of public resentment, culminating in the tragic events of 1 March 2008, may have been unexpected, the Assembly believes that the underlying causes of the crisis are deeply rooted in the failure of the key institutions of the state to perform their functions in full compliance with democratic standards and the principles of the rule of law and the protection of human rights. More specifically:

6.1. the National Assembly of Armenia has so far failed to play its role as a forum for political debate and compromise between the different political forces. This leaves the opposition little other option than to take its case to the streets. Based on a “winner takes it all” attitude, the current political system excludes the opposition from any effective participation in the decision-making process and governance of the country;

6.2. as a result of a flawed electoral process, a considerable part of the political spectrum in Armenia is not represented in the current National Assembly. The lack of public trust in this process also generally undermines the legitimacy of the outcome of the elections in the eyes of the Armenian public. This is further compounded by the lack of impartiality of the election administration, the ineffective handling of election complaints and appeals and the lack of transparency of the vote count and tabulation procedures;

6.3. despite legislative reforms, the courts still lack the necessary independence to inspire the public’s trust as impartial arbiters including in the context of the electoral process; this explains the low number of electoral-related complaints filed with them. The same lack of judicial independence is also reflected in the fact that the courts do not appear to question the necessity of keeping in detention persons pending trial and generally grant relevant requests by the prosecutors without properly weighing the grounds given for this, as required by Article 5, paragraph 3, of the European Convention of Human Rights;

6.4. in the absence of adequate judicial control, the arrest and continuing detention of persons solely for their participation in the protest after the Presidential election – without proof that they have committed violent crimes themselves - or on seemingly artificial charges after contesting the fairness of the Presidential election, can only but point to the political motivation of such acts and thus the

existence of what are alleged political prisoners in Armenia. This is unacceptable in a Council of Europe member state and cannot be tolerated by the Assembly;

6.5. the current level of control by the authorities of the media and their regulatory bodies, as well as the absence of a truly independent and pluralist Public Broadcaster, impede the creation of a pluralistic media environment and further exacerbate the lack of public trust in the political system.

7. A few days before the expiry of the State of Emergency, on 17 March 2008, upon the government's proposal, the National Assembly, in an extraordinary session and without any debate, adopted a series of amendments to the Law on conducting meetings, assemblies, rallies and demonstrations which considerably limit the right of freedom of assembly and give great discretionary powers to the authorities to prohibit political rallies and demonstrations. They thus run counter to European standards, as enshrined *inter alia* in Article 11 of the European Convention of Human Rights, and are in breach of Armenia's obligations and commitments as a member state of the Council of Europe. In a joint draft opinion, the European Commission for Democracy through Law of the Council of Europe (Venice Commission) and the OSCE/ODIHR also considered these amendments to be unacceptable.

8. In view of the above, the Assembly recalls its Resolution 1532 (2007) on the honouring of obligations and commitments by Armenia and urges once more the Armenian authorities to undertake the following reforms without further delay:

8.1. the political system should be reformed with a view to giving a proper place and proper rights to the opposition;

8.2. the electoral process needs to be thoroughly reformed with a view to ensuring in particular: an impartial election administration that is free from control by one particular political force; a fully transparent administration of the election process especially with regard to the vote count and tabulation process, and a complaints and appeals process that gives electoral stakeholders the fullest possible access to a legal remedy in case of perceived electoral violations; an equal playing field in practice for all political forces both during the official campaign period, but also prior to it, must be guaranteed;

8.3. the independence from any political interest of both the National Television and Radio Commission and the Public Television and Radio Council must be guaranteed. In addition, the composition of these bodies should be revised in order to ensure that they are truly representative of Armenian society. The recommendations made by the Venice Commission and Council of Europe experts in this respect must finally be taken into account. The Assembly reiterates that, apart from reforming the legislation, the authorities must take steps to ensure freedom and pluralism of the public television and radio on a day-to-day basis. Also, the harassment by the tax authorities of opposition electronic and printed media outlets must be stopped;

8.4. freedom of assembly must be guaranteed in both law and practice, in compliance with Article 11 of the European Convention on Human Rights; this requires that the amendments recently adopted by the National Assembly on the Law on conducting meetings, assemblies, rallies and demonstrations be revoked with immediate effect;

8.5. the authorities should step up their efforts to guarantee a truly independent judiciary and enhance the public's trust in the courts;

8.6. arbitrary arrests and detentions, as well as the ill-treatment of detainees, in particular during police custody, should be stopped. An effective public control mechanism over the police must be guaranteed both in law and practice.

9. For their part, all opposition forces should recognise the authority of the Constitutional Court's decision which confirmed the results of the elections as announced by the Central Electoral Commission. This should not be interpreted as the obligation to accept the merits of the court's decision. All electoral contestants have the right to challenge this decision by the legal means available to them, including the European Court of Human Rights in Strasbourg.

10. The Assembly believes that the only way to put an end to the current institutional crisis in Armenia and allow the country to move forward with the above-mentioned urgently needed reforms is the initiation of an open and constructive dialogue between all political forces in Armenian society. The Assembly had already

pointed out the need for such a dialogue as a requirement to ensure the effective implementation of the constitutional reform when adopting its Resolution 1532 (2007) more than a year ago.

11. Taking into account that a considerable part of the political spectrum in Armenia is not represented in the current National Assembly, such dialogue should include both parliamentary and extra-parliamentary political forces. The Assembly stands ready to mediate between the different forces and ensure the full involvement of the expert bodies of the Council of Europe in this process, most notably that of the Venice Commission.

12. However, the Assembly considers that, for such a dialogue to start and be successful, a number of conditions need to be met as a matter of priority, in order to build confidence vis-à-vis the opposition and provide proof that the ruling majority is seriously committed to pursuing further reforms:

12.1. an independent, transparent and credible inquiry into the events of 1 March and the circumstances that led to them, including the alleged excessive use of force by the police, should be carried out immediately. The international community should be ready to monitor and assist such an inquiry;

12.2. the charges against all opposition supporters and members of parliament arrested after the Presidential election who did not personally commit any violent acts should be dropped and the detained persons - who are alleged political prisoners - should be freed at once;

12.3. the amendments recently adopted by the National Assembly to the Law on conducting meetings, assemblies, rallies and demonstrations should be revoked with immediate effect.

13. Unless these conditions are met and an open dialogue on the reforms mentioned in paragraph 8 above is seriously engaged between the political forces in Armenia, the credibility of Armenia as a member of the Council of Europe is put into doubt. The Assembly should therefore consider the possibility of suspending the voting rights of the Armenian delegation to the Assembly at the opening of its June 2008 part-session, if no considerable progress has been made on these requirements by then.

14. The Assembly will continue to follow closely the situation in Armenia on the basis of information provided by its Monitoring Committee, in particular as regards progress in the fulfilment of the above-mentioned pre-conditions.

## B. Explanatory Memorandum by Mr Colombier and Mr Prescott

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### I. Background

1. On 19 February 2008, Presidential elections took place in Armenia. This election was considered to be a touchstone for the political will and ability of the authorities to organise genuinely democratic elections and to consolidate democratic progress in Armenia. In addition, it was also considered an important indicator regarding the future political direction of the country as the incumbent President, Robert Kocharyan, could not stand for re-election as a result of the constitutional two-term limit.

2. The dynamics of this election changed with the unexpected candidature of former President Levon Ter-Petrosyan, who was the first President of Armenia from 1991 to 1998. His candidature considerably increased the competitive nature of this election, which would otherwise have been considered won in advance by the candidate of the ruling Republican Party, Prime Minister Serzh Sargsyan, and substantially sharpened the rhetoric in the run-up to these elections.

3. An Ad Hoc Committee of the Bureau of the Parliamentary Assembly observed the election as part of the International Election Observation Mission (IEOM), which also included delegations of the OSCE Parliamentary Assembly (OSCE-PA), the European Parliament (EP) and the Election Observation Mission of the Organisation for Co-operation and Security in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR). The report of the Ad Hoc Committee was presented to the Assembly in Doc 11564 (2008). In this memorandum we will only make reference to its main findings and conclusions.

4. In its statement of preliminary findings and conclusions, delivered the day after the election, the IEOM concluded that *"The Presidential Elections in Armenia, on 19 February 2008, were administered mostly in line with OSCE and Council of Europe commitments and standards [...] However, further improvements and commensurate political will are required to address remaining challenges such as: the absence of a clear separation between state and party functions, the lack of public confidence in the electoral process and ensuring equal treatment among election contestants"*.

5. The lack of public confidence in the electoral process and its outcome has been one of the main obstacles for the conduct of democratic elections in Armenia. For the Pre-electoral Mission that visited Armenia from 29 to 31 January 2008, this lack of trust was considered to be the main challenge for the authorities with respect to the conduct of this Presidential election. Regrettably, the Ad Hoc Committee that observed the election concluded in its report that the unequal campaign conditions, the problems noted during the vote count and tabulation, as well as with the handling of election related complaints, did nothing to increase the public trust in the election process.

6. On 24 February, the Central Election Commission (CEC) of Armenia announced the final results of the election which showed that, with a 70% turnout, Mr Serzh Sargsyan from the ruling Republican Party won the election with 52.7% of the votes, making a second round unnecessary. Mr Levon Ter-Petrosyan gained 21.5% of the votes and former Speaker Mr Artur Baghdasaryan 16.7% of the votes.

7. Immediately after the announcement of the preliminary results on 20 February 2008, Mr Ter-Petrosyan claimed that the elections were marred by "widespread falsification and violations" and that in reality he had won the election. In addition, Mr Artur Baghdasaryan questioned the legitimacy of the election as a result of alleged violations and Mr Vahan Hovhannisyan, who came in fourth in the election, resigned from his post as Deputy Speaker of the National Assembly as a result of the irregularities he alleged had occurred during the elections.

8. Taking into account the lack of public confidence in the election process and the denunciation of the election as fraudulent by most of the opponents to Serzh Sargsyan, it is not surprising that many people rallied behind Mr Levon Ter-Petrosyan when he called for rallies to protest the outcome of the election. And this despite that fact that he had already declared the election as fraudulent before it had taken place. Following the announcement of the preliminary election results, daily peaceful protest rallies were organised by the campaign of Mr Ter-Petrosyan and a permanent tent camp was put up on Freedom Square.

9. The protest rallies and marches were initially tolerated by the authorities. However, on 23 February, President Kocharyan hardened the official discourse when he classified the protests as an “*illegal attempt to take power*”.

10. The opposition received a boost in support when a number of high-level State officials publicly denounced the election as fraudulent and announced their support for Mr Levon Ter-Petrosyan. These officials were subsequently dismissed from their positions and a number of them, as well as several opposition activists, were arrested on seemingly artificial charges, which left the impression that their prosecution was politically motivated. According to the Helsinki Association of Armenia, a total of 14 persons were arrested and placed under investigation in the period from 20 to 29 February 2008.

11. On 26 February, Prime Minister and President-elect, Serghz Sargsyan, extended an offer for co-operation to the other Presidential candidates. On 29 February 2008, this offer was accepted by Artur Baghdasaryan after reaching a political agreement on the content of their co-operation.

12. Presidential candidates Mr Tigran Karapetyan and Mr Levon Ter-Petrosyan appealed the results of the election with the Constitutional Court on 27 and 29 February 2008 respectively. In line with legal provisions, these two cases were joined by the Constitutional Court, which then had up to 10 days, until 9 March 2008, to issue its judgment.

13. The exact circumstances that led to the tragic events of 1 March 2008, as well as the manner in which they were handled by the authorities, including the declaration of the State of Emergency, must be subject to an official independent investigation. However, according to the official version, in the early morning of 1 March 2008, the police attempted a search of the tent camp on Freedom Square. After they met with resistance from the protesters, the police took the decision to clear the tent camp. During this action, 31 persons were injured - according to official information - and Mr Levon Ter-Petrosyan was placed under *de facto* house arrest<sup>1</sup>. The protesters reconvened later in the afternoon in another part of Yerevan, which led to clashes between the police and protesters. In the evening of 1 March, the situation had deteriorated to such an extent - with 7 protesters and 1 policeman dead (according to official figures) – that President Kocharyan decided that the situation was affecting the stability of the country and declared a State of Emergency in Yerevan.

14. Following the declaration of the State of Emergency, a considerable number of supporters of Mr Levon Ter-Petrosyan were arrested on criminal charges, including the attempt to overthrow the government, in what can only be considered as a *de facto* crackdown on the opposition. This crackdown has exacerbated the already tense and polarised atmosphere in the country.

15. On the request of the President of the Parliamentary Assembly, the Chairman of the Ad Hoc Committee that observed the Presidential election, Mr John Prescott, visited Armenia, on 7 and 8 March 2008, in order to assess the post-electoral situation on the spot and explore avenues to defuse the political crisis and promote dialogue. His findings and conclusions were presented to the Monitoring Committee at its meeting in Paris, on 18 March 2008, and led to the adoption of a statement by the Committee<sup>2</sup>. They are an integral part of the present report.

16. On Saturday 8 March, the Constitutional Court issued a decision on the appeals filed by Mr Tigran Karapetyan and Mr Levon Ter-Petrosyan, in which it rejected the appeals and confirmed the results of the election as announced by the CEC. However, the Constitutional Court also found that certain aspects of the complaints and appeals process should be clarified in the Election Code and referred a number of election violations to the Office of the General Prosecutor for investigation and prosecution.

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<sup>1</sup> The authorities have said he is free to travel if he rescinds his security detail. However, the clearly existing threats to his personal safety and life make it impossible for him to do so, as is obviously known by the authorities.

<sup>2</sup> See <http://assembly.coe.int/ASP/Press/StopPressView.asp?ID=2023>.

17. Mr Levon Ter-Petrosyan refuses to accept the validity of the Constitutional Court's decision as this decision was made under the State of Emergency. According to him, the State of Emergency precludes any decision on an election appeal, as the Constitution stipulates that an election, including its appeal process, cannot be held under a State of Emergency. This argument was rejected by the Constitutional Court.

18. Two provisions of the decree establishing the State of Emergency were lifted on 10 March 2008 and the provisions regarding the media were partially lifted on 13 March 2008. The rest of its provisions were lifted on 20 March 2008 when the decree expired. However, three days before its expiry, on 17 March 2008, the Parliament, in extraordinary session, adopted a series of controversial amendments to the law on conducting meetings assemblies, rallies and demonstrations. These amendments, which will be discussed more in detail later in this report, considerably limit the right of freedom of assembly and give great discretionary powers to the authorities to prohibit political rallies and demonstrations. As a result, not only the relevant provisions of the decree establishing the State of Emergency remained *de facto* in force, but also their scope of application was extended to cover the whole territory of Armenia.

19. After the State of Emergency was lifted, several thousand people congregated in the centre of Yerevan to remember those who died during the events of 1 March. In addition, several forms of protests, such as silent marches and human chains were both organised and erupted spontaneously. In reaction the police arbitrarily detained scores of people, including, reportedly, innocent bystanders for their alleged participation in these protest actions. Most protesters were released, without being charged, several hours later. The detention of opposition activists for their participation in the protest before and on 1 March continues unabated, undermining the possibilities for a constructive dialogue between the authorities and the opposition.

20. In a welcome development, four of the five parties in Parliament signed, on 21 March 2008, an agreement to form a coalition government. However, the fact that the Heritage Party, as well as the extra-parliamentary parties which supported the candidature of Mr Levon Ter-Petrosyan during the elections, did not join the coalition reduces the chances that the latter could lead to an end of the current crisis in Armenia.

21. While the events following the Presidential election may have come unexpected, the underlying causes for the current crisis in Armenia have been long-standing concerns of the Assembly and were all raised in previous reports by the Monitoring Committee. They include: the total lack of public trust in the electoral process and its outcome, the polarised political environment and the lack of political dialogue between the authorities and the opposition, as well as the absence of freedom of the media and an increasing control of the ruling forces over the society.

## II. Electoral process

22. Until 2007, none of the elections organised in Armenia were considered to be in line with Council of Europe standards for democratic elections. In its Resolution 1361 (2004), adopted in January 2004, the Assembly urged the Armenian authorities to reform its Election Code and to make clear steps to end the impunity for electoral fraud and election related offences. In line with this recommendation, the authorities amended the Election Code in 2005. Further amendments were adopted in 2006, following the constitutional reform which modified the electoral system in Armenia. The Election Code was further amended in 2007, in the run-up to the Parliamentary Elections that were scheduled for 12 May 2007.

23. In its joint opinion on the amended Election Code<sup>3</sup>, the Venice Commission and the OSCE/ODIHR concluded that the Election Code provides an adequate basis for the conduct of democratic elections, if the electoral stakeholders exercise the necessary political will and if the Election Code is implemented in good faith.

24. The joint opinion also raises a number of important issues that remain to be addressed and which are of concern to the Assembly, such as, *inter alia*, the limitations of passive voting rights for Armenians holding dual citizenship<sup>4</sup>, the provisions regulating election complaints and appeals, as well as the decision not to introduce the inking of voters' fingers as a mechanism to prevent multiple voting by the same person.

<sup>3</sup> CDL-AD(2007)013 and CDL-AD(2007)023.

<sup>4</sup> Armenian Citizens holding dual citizenship are prohibited from standing in legislative and Presidential elections. As noted in the opinion of the Venice Commissions (CDL-AD(2007)023), these restrictions on the principle of universal suffrage run counter to Council of Europe standards for democratic elections.

25. On 12 May 2007, Parliamentary elections took place in Armenia, which showed a welcome improvement in the conduct of the electoral process. The IEOM for these elections, of which the Assembly was part, unanimously concluded that these elections *“demonstrated improvement and were conducted largely in accordance with Council of Europe and OSCE commitments and other international standards for democratic elections. The Armenian authorities and other actors in the electoral process took steps to address previous shortcomings, but were unable to fully deliver a performance consistent with their stated intention that the elections would meet international standards and some issues remained unaddressed”*. However, in its report to the Assembly, the Ad Hoc Committee that observed these elections also noted that *“shortcomings and irregularities, some of which were serious, observed during the crucial vote count and tabulation processes stain the positive[...] assessment<sup>5</sup>”*.

26. In the run-up to the Presidential election, the authorities frequently stated their clear intention to consolidate the improvements in the electoral process noted during the 2007 Parliamentary elections and to hold a Presidential election that would be fully in line with international standards. The legal framework for the elections was subsequently further amended in November and December 2007. Although the Venice Commission was not in a position to deliver an opinion on the latest changes to the Election Code, most amendments seemed to address previous recommendations made by the Venice Commission, as well as by the Assembly.

27. As mentioned, a key requirement for the translation of the improvements in the Election Code into a more democratic conduct of elections, is the implementation of its provisions in good faith by all electoral stakeholders. Regrettably, as noted in the report of the Ad Hoc Committee that observed the Presidential election, while the authorities made improvements to the legal framework, they did not demonstrate commensurate political will to ensure its full implementation. This was especially true with regard to three aspects that had a significant impact on the public confidence in the electoral process: the election administration, the handling of election complaints and appeals and the transparency of the vote count and tabulation procedures.

28. As mentioned in the opinion of the Venice Commission, the Election Code is highly detailed. As a result of this, as well as of the several cycles of amendments to the Code, several inconsistencies and incoherencies exist that can lead to varying interpretations which, in turn, can be used by different stakeholders for their political purposes.

29. The Election Code stipulates that all election commissions are composed in a manner that, in theory, guarantees a politically balanced election administration. However, during the Presidential election, the leadership positions on commissions at all levels were, by a very large majority, filled by representatives from the parties that supported the candidature of the Prime Minister, or by representatives of the President, who also openly supported his candidature. A similar imbalance in the composition of the leadership of the election commissions was also noted during the 2007 Parliamentary elections. This raises serious concerns about the control over the election commissions by one political force, and seriously undermined the confidence of the public and election contestants in the impartiality of the election administration.

30. During the Presidential election, the Central Election Commission (CEC) held few formal sessions, instead opting for informal working sessions. It is allowed to do so by law, but this undermined the transparency of the election administration.

31. Complaints against decisions, actions or inactions of subordinate election commissions can be filed with the CEC. However, the Election Code does not specify that the CEC must make a formal decision on complaints received. As a result, the CEC did not consider most of the complaints filed with it in a formal session. Moreover, decisions were often made without giving due attention to the merits of the complaints and often in the absence of the complainants. The manner in which the election administration handled the complaints and appeals process did not give complainants access to an effective legal remedy and, again, undermined public confidence in the impartiality of the election administration.

32. Reports of the Ad Hoc Committees that observed the Parliamentary elections in 2007 and Presidential election in 2008, noted that, despite welcome efforts by the election administration, shortcomings still exist with regard to the transparency of the counting and tabulation processes. In the absence of such transparency, allegations of electoral fraud can neither be confirmed nor dismissed by the public itself. Given the lack of trust in the authorities, the public will therefore be bound to attach more value to allegations and rumours than to any official account by the authorities.

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<sup>5</sup> Doc. 11312 (2007).

33. In this respect, the apparent lack of trust in the independence of the judiciary as impartial arbiters in election disputes is a further aggravating factor which explains the relatively few formal complaints filed with the courts. Equally disturbing is the fact that the report of the Ad Hoc Committee<sup>6</sup> notes that a number of different interlocutors mentioned that the lack of formal complaints may also have been caused by a fear of reprisal from the authorities.

34. The Election Code provides for equal campaign conditions and media access for all election contestants during the official campaign period. However, the official campaign period is very short in comparison to what can be considered as the de facto campaign period. While the reports on both Parliamentary and Presidential elections showed that unequal campaign conditions in favour of the ruling faction already existed during the official campaign period, these unequal conditions were exacerbated before this period. An equal playing field for all political parties clearly does not exist in Armenia, neither during, nor outside, the official campaign period. The remarks by the President-elect that he would favour further shortening the official campaign period are especially worrying in this respect.

### III. Political System

35. In 2005, the Constitution of Armenia was amended with close support from the Council of Europe, most notably by its Venice Commission. This constitutional reform improved the separation and balance of powers and made the system of government more consistent with European standards for democracy and the rule of law.

36. However, the report on the Honouring of obligations and commitments by Armenia, that was debated at the January 2007 part-session of the Assembly, stressed that *“effective implementation of the new system of government requires an improvement in the political climate and the institution of dialogue between the ruling coalition and the opposition”*<sup>7</sup>.

37. Regrettably, very little progress in this regard has been achieved in Armenia since this report was issued, which is one of the underlying reasons for the current political crisis.

38. The political climate in Armenia is highly polarised and based on the notion of “the winner takes it all”, where the ruling coalition sets and implements its political agenda without any consultation with, or regard for, the minority view of the opposition. As a result, the opposition is ostracised and has no role in, or responsibility for, the decision-making process and governance of the country. This bypasses the rightful role of the National Assembly as a forum for political debate and compromise and leaves the opposition very few other options than to take their case to the streets.

39. Regrettably, this is a self-perpetuating system. The exclusion of the opposition; the unequal playing field between opposition and ruling faction; an election system that is controlled by the ruling majority; as well as often ill-conceived and obstructionist strategies by the opposition – such as the boycott of the Constitutional referendum – have resulted in a fragmented opposition, which, in turn, has reduced its representation in Parliament.

40. It is clear that the current political system in Armenia does not foster dialogue between the ruling faction and parliamentary opposition. Moreover, as a result of this system, a significant part of the political spectrum in Armenia is not represented in Parliament. Any constructive dialogue to resolve the current political crisis should therefore include both parliamentary and extra-parliamentary political forces.

### IV. Media pluralism and freedom of expression

41. Media pluralism and the freedom of the media in Armenia have long been a concern of the Assembly. In their report to the Assembly, in January 2007, the co-rapporteurs noted that the existence of pluralist media is one of the cornerstones for a genuinely democratic election process. Regrettably, the concerns in this respect voiced by the rapporteurs at that occasion continue to be valid.

42. The OSCE representative on Freedom of the Media noted that *“limited pluralism in broadcasting remains a major problem”* and the Secretary General of the Council of Europe mentioned, in December 2007, that despite improvements in the legislation *“the current situation of Armenian media in general does not meet the standards of the Council of Europe”*.

<sup>6</sup> Doc. 11564 (2008) § 14.

<sup>7</sup> Doc. 11117 (2007) § 41.

43. The main regulatory body for the media is the National Television and Radio Council, while public TV and Radio are overseen by the Public Television and Radio Commission. The independence of these two bodies is a main point of concern. All members of the Council are appointed by the President, while the members of the Commission are for one half appointed by the President and for one half by the National Assembly. Given the already described dynamics in the Assembly, *de facto* this means that all members on these two bodies are representatives of the ruling political faction. In addition, these members can be dismissed at will by the President or National Assembly, which makes them vulnerable to political pressure.

44. As noted in the last report of the co-rapporteurs to the Assembly, this lack of independence of the main regulatory body for the media raises concerns about possible government influence over the media that are regulated by it. The fact that two independent broadcasters, A1+ and Noyan Tapan TV, have had their licences revoked seems to confirm this.

45. In addition, the Statement of Preliminary Findings and Conclusions of the IEOM that observed the Presidential election, on 19 February, noted that the campaign of the Prime Minister was consistently shown in a positive fashion and with similar footage by all private media outlets, which gave the impression that specific editorial policies were applied and which raised questions about the editorial independence of the broadcasters.

46. The composition of the Public Television and Radio Commission and its lack of political independence hinder the pluralism of public service news broadcasts, as was evident from the manner in which the public broadcasters covered the post-election period. During this period, Public media gave extensive coverage of the views of the authorities but ignored those who raised concerns about the conduct of the 19 February elections.

47. Of specific concern is the harassment by the tax authorities of media outlets that do not adhere to the policy line of the authorities. Gala TV was subject to a tax inspection and fined 25 million DRAM (approx € 58.000) after it aired footage of a rally by Levon Ter-Petrosyan in September 2007 in which he attacked the government record. In addition, tax inspections were reportedly launched against four opposition dailies (Chorrord Ishkhanutyun, Zhamanak-Yerevan, Haykakan Zhamanak, Aravot).

48. The print media in Armenia are more diverse and independent, but, due to low circulation, only reach a limited number of people. Moreover, the above-mentioned tax inspections against four opposition dailies raise questions about how long pluralistic print media will be tolerated by the authorities.

49. The absence of a pluralistic media environment had a strong impact on the political atmosphere in the aftermath of the elections. With the public having little or no trust in the official version of the events, disproportional credit is given to rumours on the street which, in return, undermines any attempt to restore trust in the authorities and the political system.

## **V. State of Emergency and mass arrests**

50. On 1 March 2008, arguing that the protests were deteriorating and affecting the stability of the country, President Kocharyan declared the State of Emergency in Yerevan. The decree entered into force immediately after its announcement. In line with constitutional provisions, the Declaration of the State of Emergency was confirmed by the National Assembly during a special session on 2 March 2008.

51. The decree on the State of Emergency laid down the following temporary limitations in the territory that is subject to it:

- i. *prohibition of meeting, rallies, demonstrations, marches and other mass actions and events;*
- ii. *prohibition of strikes and other events or actions that would hinder or stop the activities of organisations;*
- iii. *limitation of the movement of individuals and allowing the searching of means of transportation by law enforcement bodies in case this is necessary;*
- iv. *limitation of reporting and news coverage concerning the State and internal political issues by the mass media exclusively to official press releases of the state bodies;*
- v. *prohibition of the dissemination of news flyers and other types of political propaganda without the permission of the corresponding state bodies;*

vi. *temporary cessation of the activities of parties and other public organisations that are hindering the elimination of circumstances that gave ground for the declaration of the State of Emergency;*

vii. *expulsion of individuals that have breached the legal regime of the special rule and do not reside in the given territory, on account of their own means, and in the case of the absence of such means, on the account of the means of the state budget of the Republic of Armenia, on condition of later reimbursement of such expenses.*

52. On 3 March 2008, pursuant to its obligations under the European Convention on Human Rights (ECHR) and in accordance with Article 15, the Armenian authorities informed the Secretary General of the Council of Europe of the derogation from, or limitation of, Article 8 paragraph 1, Article 10 paragraph 1, Article 11 paragraph 1, as well as Article 2 paragraph 1 of Protocol 4 to the ECHR during the State of Emergency.

53. Although the State of Emergency was formally only declared in Yerevan, a large number of provisions, especially those related to the media and the activities of political parties and NGOs, had a nation-wide application. A number of broadcasters stopped operating, either by their own decision, or forced by the National Security Service. In addition a number of news websites were taken off-line after intervention by the National Security Service. Restrictions on rallies and demonstrations were not limited to Yerevan alone, but also applied to other major cities in Armenia.

54. On 10 March 2008, the President of Armenia lifted the restrictions on the freedom of movement, the restrictions on activities of parties and public organisations, as well as the possibility of deportation of non-Yerevan residents.

55. On 13 March, the President partially lifted the restrictions on the Media by changing them to *“prohibit publications or disseminations by mass media outlets of obviously false or destabilizing information on state and internal issues, or of calls to participate in unsanctioned (illegal) activities, as well as publication and dissemination of such information and calls by any other means and forms”*.

56. However, the report of the Commissioner for Human Rights of the Council of Europe, who visited Armenia from 12 to 15 March 2008, noted that the changed media provisions had very little practical effect on the news reporting and that the previous level of censorship was *de facto* maintained<sup>8</sup>.

57. The decree establishing the State of Emergency expired on 20 March 2008 and its provisions were lifted<sup>9</sup>.

58. Following the Declaration of the State of Emergency, scores of people were arrested for their participation in the protest on and prior to 1 March 2008. On 17 March 2008, the Helsinki Association of Armenia published a detailed list of 61 persons who were detained since the Presidential election on 19 February, including 14 persons who were detained in the period between 20 and 29 February 2008. The Prosecutor General announced that as of the end of March 106 persons had been arrested in connection with the events of 1 March 2008, including 3 of the 4 MPs whose immunity was lifted by Parliament after they were charged with incitement or attempt to usurp public power or coup d'état under article 300 of the Criminal Code. In addition, according to official figures, 14 persons were arrested between 20 and 29 March and 21 persons since the lifting of the State of Emergency. Reports by several non-governmental organisations estimate the number of arrested persons considerably higher than the official figures. Moreover, the detention of opposition figures for their participation in the protest has continued unabated up to the moment of writing this explanatory memorandum.

59. The report of the Commissioner for Human Rights of the Council of Europe notes with concern allegations of possible ill-treatment and use of excessive force by the police in connection with these arrests<sup>10</sup>.

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<sup>8</sup> CommDH(2008)11 Section 6.

<sup>9</sup> However, on 17 March 2008, the Parliament, adopted a series of amendments to the law on conducting meetings, assemblies, rallies and demonstrations, which not only left in practice the relevant provisions in the decree establishing the State of Emergency in force, but extended the scope of their application to cover the whole territory of Armenia. These amendments are discussed in more detail later in this report.

<sup>10</sup> CommDH(2008)11 Section 9.

60. Most persons arrested are charged with inciting mass disorder (article 225-3 of the Criminal Code), violence against a representative of the authorities (article 316 of the Criminal Code) and usurpation of power (article 300 of the Criminal Code). As also noted in the report of the Commissioner, the wording of these provisions leaves a great deal of discretion to the Prosecutor and especially the definition of usurpation of power “allows for a very broad interpretation and fails to give clear guidance on the dividing line between legitimate expressions of opinion and incitement to violence”<sup>11</sup>.

61. The courts generally grant the prosecutors' requests for a two-month detention on remand without properly weighting whether such detention is justified (see Article 5 § 3 ECHR). This fact raises questions about the independence of the judiciary and the effectiveness of the courts' role as a “check and balance” vis-à-vis the powers of the prosecutors.

62. The arrest of persons solely for their participation in the protest after the Presidential election – without proof that they committed violent crimes themselves – or on seemingly artificial charges after voicing their opinion that the Presidential election was fraudulent, can only be construed as a crackdown by the authorities on the opposition. This crackdown is undermining the possibilities for a constructive dialogue between all political forces in Armenia. In addition, the co-rapporteurs are seriously concerned about the existence in Armenia of what are alleged political prisoners as a result of the continued recourse to politically motivated detentions.

## **VI. Amendments to the Law on conducting meetings, assemblies, rallies and demonstrations**

63. On 17 March 2008, in an extraordinary session, the National Assembly of Armenia, upon the government's proposal, adopted, in first and second reading on the same day, the “Law on amending and supplementing the Republic of Armenia law on conducting meetings, assemblies, rallies and demonstrations”. This law was promulgated by the President of the Republic and entered into force on 19 March 2008. On 21 March 2008, the Speaker of the National Assembly, Mr Tigran Torossyan, requested the opinion of the Venice Commission on these amendments.

64. On 28 March 2008, the Venice Commission of the Council of Europe and the OSCE/ODIHR issued a draft joint opinion on the amendments<sup>12</sup>, which was transmitted to the Speaker of the National Assembly. In this opinion the Venice Commission and OSCE/ODIHR concluded that they do “not consider the proposed amendments to be acceptable, to the extent that they restrict further the right of assembly in a significant fashion”.

65. The most important amendments significantly extend the grounds for imposing limitations upon, or prohibiting public events.

66. According to the original version of Article 6, paragraph 4 iii of the law, public events could be prohibited “if such events are aimed to overthrow forcibly the constitutional order, instigate national, racial or religious hatred, campaign for violence or war”. The amended text of this provision currently prohibits public events “If, according to credible data, they are aimed at forcibly overthrowing the constitutional order, or inflaming ethnic, racial, or religious hatred, or preaching violence or war, or may lead to mass disorder and crime, or to undermining the national security, the public order, and the health and morality of society, or to encroachments on the constitutional rights and freedoms of others. Such data may be considered credible, if the Police or the National Security Service adjunct to the Government of the Republic of Armenia has issued an official opinion on the data. In the same manner, the aforementioned bodies issue an opinion on the discontinuance of such grounds. Such an opinion is also issued in the event of Paragraph 6 of this Article.”

67. In addition, a new paragraph 6 was added to Article 9 that added another ground for prohibiting mass public events: “In cases when mass public events have turned into mass disorder that has led to human casualties, then, in order to prevent new crimes, if other means of prevention have been exhausted, the authorised body may temporarily prohibit the conducting of mass public events until discovering the crime circumstances and the persons that committed crimes”.

68. While Article 11 § 2 of the ECHR allows for restrictions on the right to freedom of assembly, the interpretation of the grounds for such restrictions needs to be rigorous and consistent and a very high threshold needs to be overcome before prohibiting a public event. As mentioned in the Venice Commission – OSCE/ODIHR opinion, the touchstone for restricting or banning a public assembly should be the imminent

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<sup>11</sup> CommDH(2008)11 Section 12.

<sup>12</sup> CDL (2008)037.

threat of violence. Merely prohibiting an Assembly on the grounds that it promotes views which are unconstitutional or objectionable would border on content-based restrictions and would amount to an unjustifiable incursion on the freedom of assembly.

69. In addition, the notion of credible data and what would amount to such credible data is of concern. The provision that an official opinion by the police or national security service would be sufficient to prohibit a public event would give significant discretionary powers to these services and is excessive. Moreover, the wording of this article seems to imply that such an opinion would not have to be justified by the police or national security service and would be final. This would foreclose any review by an independent tribunal or court and therefore the right of effective remedy for a significant limitation on the fundamental right of freedom of assembly.

70. The new paragraph that allows the authorities to prohibit mass public events “*where mass events have turned into mass disorder and has led to human casualties*” creates the potential for arbitrary restrictions and blanket prohibitions of unrelated mass events. It should be noted that the original law already provided adequate powers to terminate an assembly which resulted in loss of life. Moreover, violence by a minority of participants should not automatically result in the dispersal of the entire event itself. The new provision would also potentially allow the police to disperse a public event where loss of life was the result of the excessive use of force by the authorities themselves.

71. An amendment to Article 10 of the law removes the reference to non-mass public events that grow spontaneously into mass public events. This amendment *de facto* prohibits assemblies of a spontaneous nature, despite the fact that such assemblies fall within the scope of the guarantees of Article 11 of the ECHR. In addition, the implication of the amendment would appear to be that the police could disperse an event merely because more than 100 people<sup>13</sup> are present in the place of the event. Moreover, a person may be charged with taking part in an unlawful assembly, even if he or she was not aware of the unlawful nature of this assembly.

72. Other amendments extend the minimum time of notice that organisers of a mass event need to give to the authorities from 3 to 5 working days, allow the authorities 3 working days before they need to start considering such a request -instead of 12:00 the next day under the original text of the law - and remove the time-limit before a decision needs to be reached. The combined effect of these amendments would appear to give the authorities the discretion to limit the right of freedom of assembly by avoiding a decision on a request for the organisation of a public event.

## VII. Conclusions and recommendations

73. While the outbreak of public resentment, culminating in the tragic events of 1 March 2008, may have been unexpected, the co-rapporteurs believe that the underlying causes of the crisis are deeply rooted in the failure of the key institutions of the state to perform their functions in full compliance with democratic standards and the principles of the rule of law and the protection of human rights. These causes have been long-standing concerns of the Assembly and were raised in previous reports by the Monitoring Committee.

74. More specifically, the National Assembly has so far failed to play its role as a forum for political debate and compromise between the different political forces in Armenia. The current political system is based on a “winner takes it all” attitude, whereby the opposition is ostracised and excluded from any participation in the decision-making process and governance of the country. Therefore, political reform needs to be initiated with a view to giving a proper place and proper rights to the opposition in the political system in Armenia.

75. There is little public trust in the electoral process in Armenia, which in turn undermines the legitimacy of its outcome in the eyes of the Armenian public. While the authorities made improvements to the legal framework in the run-up to the Presidential election, they did not demonstrate commensurate political will to ensure its full implementation. This was especially true with regard to three aspects that had a significant impact on the public confidence in the electoral process: the impartiality of the election administration, the handling of election complaints and appeals and the transparency of the vote count and tabulation procedures.

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<sup>13</sup> The law defines a mass public event as an event in which more than 100 people participate.

76. Therefore, the electoral process needs to be thoroughly reformed with a view to ensuring: an impartial election administration that is free from control by one particular political force; a fully transparent administration of the election process especially with regard to the vote count and tabulation process and a complaints and appeals process that gives electoral stakeholders the fullest possible access to legal remedy in the event of, perceived, electoral violations.

77. Despite legislative reforms, the courts still lack the necessary independence to inspire the public's trust as impartial arbiters including in the context of the electoral process; this explains the low number of electoral-related complaints filed with them. The same lack of judicial independence is also reflected in the fact that the courts do not appear to question the necessity of keeping in detention persons pending trial and generally grant relevant requests by the prosecutors without properly weighing the grounds given for this, as required by Article 5, paragraph 3, of the European Convention of Human Rights.

78. Furthermore, the charges should be dropped against all opposition supporters arrested after the Presidential election who did not personally commit any grave violent acts and the persons in question should be freed at once. The existence of what are alleged political prisoners in a member state of the Council of Europe is unacceptable and cannot be tolerated.

79. The existence of free and pluralistic media is a cornerstone for the consolidation of democracy in Armenia. The current level of control by the authorities of the media and their regulatory bodies, as well as the absence of a truly independent and pluralist Public Broadcaster, further exacerbate the lack of public trust in the political system. The *de facto* independence from any political interest of both the National Television and Radio Commission and the Public Television and Radio Commission needs to be guaranteed. In addition, the composition of these bodies should be revised in order to ensure that they are truly representative of Armenian society. Also, the harassment of opposition electronic and printed media outlets should be stopped.

80. The amendments to the Law on conducting meetings, assemblies, rallies and demonstrations run counter to European standards and would appear to be to all intents and purposes in breach of the European Convention of Human Rights and Armenia's obligations and commitments vis-à-vis the Council of Europe. These amendments should be revoked by the National Assembly with immediate effect. The co-rapporteurs welcome in this respect the intention expressed in the inaugural speech of the new President to revisit these amendments.

81. For their part, all opposition forces should recognise the authority of the Constitutional Court's decision with regard to the outcome of the Presidential election. This should not be interpreted as the obligation to accept the merits of this decision. All electoral contestants have the right to challenge the court's decision by the legal means available to them, including the European Court of Human Rights in Strasbourg.

82. The co-rapporteurs welcome the steps by the President-elect to establish a government of National Unity. However, the non-inclusion of supporters of Levon Ter-Petrosyan in this political agreement will seriously undermine the effectiveness of this initiative as a mechanism to rebuild the public trust in the authorities.

83. In the co-rapporteurs' view, the only way to put an end to the current institutional crisis and allow Armenia to move forward with the above-mentioned urgently needed reforms is the start of an open and constructive dialogue between all political forces in Armenian society. Our Assembly had already pointed out the need for such a dialogue as a requirement to ensure the effective implementation of the constitutional reform in its Resolution 1532 (2007) on the honouring of obligations and commitments by Armenia more than a year ago.

84. Taking into account that a considerable part of the political spectrum in Armenia is not represented in the current National Assembly, such a dialogue should include both parliamentary and extra-parliamentary political forces.

85. The Assembly could both mediate between the different political forces in Armenia and ensure the full involvement of the expert bodies of the Council of Europe in this process, most notably that of the European Commission for Democracy through Law (Venice Commission).

86. However, the co-rapporteurs believe that for any dialogue to start and be successful, a number of prerequisites need to be in place:

- an independent, transparent and credible inquiry into the events of 1 March and the circumstances that led to them, including the alleged excessive use of force by the police, should be carried out immediately. The international community should be ready to monitor and assist such an inquiry;
- the charges against all opposition supporters and members of parliament arrested after the Presidential election who did not personally commit any violent acts should be dropped and the detained persons - who are alleged political prisoners - should be freed at once;
- the amendments recently adopted to the Law on conducting meetings, assemblies, rallies and demonstrations should be revoked with immediate effect.

87. Unless these conditions are met and an open dialogue on the reforms mentioned in paragraph 8 above is seriously engaged between the political forces in Armenia, the credibility of Armenia as a member of the Council of Europe is put into doubt. The Assembly should therefore consider the possibility of suspending the voting rights of the Armenian delegation to the Assembly at the opening of its June 2008 part-session, if no considerable progress has been made on these requirements by then.

88. The co-rapporteurs will continue to follow closely the situation in Armenia and will report back to the Monitoring Committee at its meeting in May, in particular as regards progress in the fulfilment of the above-mentioned conditions.

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

*Reference to committee:* No. 3415 of 14 April 2008

*Draft resolution* unanimously adopted by the committee on 15 April 2008

*Members of the committee:* Mr Serhiy **Holovaty** (Chairperson), Mr György Frunda (1<sup>st</sup> Vice-Chairperson), Mr Konstantin **Kosachev** (2<sup>nd</sup> Vice-Chairperson), Mr Leonid **Slutsky** (3<sup>rd</sup> Vice-Chairperson), Mr Aydin Abbasov, Mr Avet **Adonts**, Mr Pedro **Agramunt**, Mr Miloš **Aligrudić**, Mrs Meritxell **Batet Lamaña**, Mr Ryszard **Bender**, Mr József **Berényi**, Mr Aleksandër **Biberaj**, Mr Luc **Van den Brande**, Mr Jean-Guy **Branger**, Mr Mevlüt Çavuşoğlu, Mr Sergej Chelemendik, Ms Lise **Christoffersen**, Mr Boriss **Cilevičs**, Mr Georges **Colombier**, Mr Telmo Correia, Mr Valeriu **Cosarciuc**, Mrs Herta Däubler-Gmelin, Mr Joseph Debono Grech, Mr Juris Dobelis, Mrs Josette **Durrieu**, Mr Mátyás **Eörsi**, Mr Jean-Charles Gardetto, Mr József Gedei, Mr Marcel Glesener, Mr Charles Goerens, Mr Andreas Gross, Mr Michael **Hagberg**, Mr Holger Haibach, Ms Gultakin **Hajiyeva**, Mr Michael **Hancock**, Mr Davit **Harutyunyan**, Mr Andres **Herkel**, Mr Raffi **Hovannisian**, Mr Kastriot Islami, Mr Miloš Jevtić, Mrs Evguenia **Jivkova**, Mr Hakki Keskin, Mr Ali Rashid Khalil, Mr Andros Kyprianou, Mr Jaakko Laakso, Mrs Sabine **Leutheusser-Schnarrenberger**, Mr Göran Lindblad, Mr René van der Linden, Mr Eduard **Lintner**, Mr Younal **Loutfi**, Mr Pietro Marcenaro, Mr Mikhail Margelov, Mr Bernard **Marquet**, Mr Dick **Marty**, Mr Miloš **Melčák**, Mrs Assunta Meloni, Mrs Nursuna **Memecan**, Mr João Bosco Mota Amaral, Mr Theodoros **Pangalos**, Ms Maria **Postoico**, Mr Christos Pourgourides, Mr John **Prescott**, Mr Andrea Rigoni, Mr Dario Rivolta, Mr Armen **Rustamyan**, Mr Oliver Sambevski, Mr Kimmo **Sasi**, Mr Andreas Schieder, Mr Samad **Seyidov**, Mrs Aldona Staponkienė, Mr Christoph Strässer, Mrs Elene **Tevdoradze**, Mr Mihai Tudose, Mr Egidijus **Vareikis**, Mr Miltiadis **Varvitsiotis**, Mr José Vera Jardim, Mrs Birutė Vésaitė, Mr Piotr **Wach**, Mr Robert Walter, Mr David **Wilshire**, Mrs Renate **Wohlwend**, Mrs Karin S. Woldseth, Mr Boris Zala, Mr Andrej Zernovski.

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

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