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The Implementation by Armenia of Assembly Resolution 1609 (2008)

Report

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

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Summary

In Resolution 1609 (2008) on the functioning of democratic institutions in Armenia, the Parliamentary Assembly set out four concrete requirements for the resolution of the political crisis that ensued after the presidential election in Armenia and resolved to consider the possibility of suspending the voting rights of the Armenian delegation to the Assembly at the opening of the June 2008 part-session, if no considerable progress on the requirements was made by then.

In the present report, the Monitoring Committee welcomes the progress achieved by the Armenian authorities in addressing the Assembly demands but notes that, despite the political will expressed by the authorities, this progress is at present insufficient to meet the requirements outlined in Resolution 1609.

While regretting the delay in implementing the concrete measures to comply with the Assembly demands, the Monitoring Committee acknowledges that the time given to the Armenian authorities was short. It therefore proposes to the Assembly to review at its January 2009 part-session the extent of Armenia's compliance with the requirements made in Resolution 1609.

If the requirements mentioned in Resolution 1609, as well as those set in the present draft resolution are not met by then, the Monitoring Committee proposes that the Assembly considers the possibility of suspending the voting rights of the Armenian delegation to the Assembly at the opening of its January 2009 part-session.

A. Draft resolution

1. On 17 April 2008, the Parliamentary Assembly adopted Resolution 1609 (2008) on the functioning of democratic institutions in Armenia. In this resolution, the Assembly set out four concrete requirements for the resolution of the political crisis that ensued after the Presidential election in Armenia:

1.1. to revoke, in line with the recommendations of the European Commission for Democracy through Law of the Council of Europe (Venice Commission), the amendments made, on 17 March 2008, to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations;

1.2. to initiate immediately an independent, transparent and credible inquiry into the events on 1 March 2008 and the circumstances that led to them;

1.3. to release all persons detained on seemingly artificial and politically motivated charges who did not personally commit any violent acts or serious offences;

1.4. to initiate an open and serious dialogue between all political forces in Armenia on the reforms demanded by the Assembly in paragraph 8 of the Resolution with regard to the political system, electoral process, freedom and pluralism of the media, freedom of assembly, independence of the judiciary and police behaviour.

2. In Resolution 1609 (2008), the Assembly considered that Armenia's credibility as a member of the Council of Europe was put into doubt as long as these conditions were not met and therefore resolved to consider the possibility of suspending the voting rights of the Armenian delegation to the Assembly at the opening of the June 2008 part-session, if no considerable progress on the requirements was made by then.

3. The Assembly welcomes that, in the immediate aftermath of the adoption of Resolution 1609, several high-level representatives of the authorities, including the President of the Republic and the Speaker of the National Assembly, publicly expressed their political will and intention to comply with the requirements of the Assembly.

4. As regards compliance by the authorities with the demands set out in its Resolution 1609, the Assembly:

4.1. welcomes the adoption of the Law on Amending and Supplementing the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations in line with Council of Europe standards and considers that the requirement of the Assembly in this respect has been met by the authorities;

4.2. reiterates its demand that freedom of assembly should also be guaranteed in practice in Armenia. It therefore insists that the Armenian authorities should now allow rallies to be organised by the opposition without placing undue restrictions on them. In this respect, it welcomes that the opposition rally of 20 June 2008 took place unimpeded;

4.3. welcomes the constitution, albeit at a very late stage, of an ad hoc committee within the National Assembly of Armenia to conduct an inquiry into the events of 1 March 2008 as well as the circumstances that lead to them;

4.4. welcomes the possibility for the inquiry committee to invite national and international experts to participate in its work, which should increase the credibility of its investigations;

4.5. considers that, as a result of the recent constitution of the inquiry committee, the Assembly cannot evaluate, at this moment, whether the criteria of independence, transparency and credibility will be met. It also notes that the format and composition of the inquiry committee do not per se guarantee its independence and impartiality and therefore its credibility in the eyes of the Armenian public. The Assembly therefore considers that the following conditions should be met:

4.5.1. as a rule, the committee should work on the basis of consensus and voting should be avoided, in particular as regards the subjects the committee wishes to investigate and the persons it wishes to hear. The working methods applied by the National Assembly Working Group on the Reform of the Election Code, which as a rule takes its decisions on the basis of a consultative vote, should be seen as an example for the functioning of the inquiry committee;

4.5.2. the terms of reference of the committee should clearly state that it has the right to investigate the circumstances that led to the events of 1 March 2008, as well as the right to investigate the events in its immediate aftermath, especially as regards the detention of opposition activists and the charges that were brought against them;

4.5.3. the Human Rights Defender should be invited *ex officio* to participate in the work of the committee with the right of a consultative vote;

4.5.4. the possibility of extending the right of a consultative vote to national and international experts who participate in the work of the Committee on a permanent basis should be considered.

4.6. calls upon all political forces to participate constructively in the work of the inquiry committee;

4.7. welcomes the recent developments with regard to the release of persons seemingly detained on artificial and politically motivated charges who did not personally commit any violent acts or serious offences. However, it considers that progress on this issue is not sufficient enough to ensure that the requirement of the Assembly is fully met. In addition the Assembly considers that:

4.7.1. the cases still under investigation should be either closed or brought before the courts with immediate effect;

4.7.2. the cases against those principally accused of crimes under Articles 300 and 225 of the Criminal Code should be dropped unless there is strong evidence that these persons have personally committed acts of violence or serious other criminal offences;

4.7.3. a verdict based solely on a single police testimony without corroborating evidence or independent witnesses cannot be acceptable;

4.7.4. the proposed amendments by the authorities to Articles 225 and 300 of the Criminal Code should be rejected by the National Assembly.

4.8. welcomes the series of initiatives taken by the authorities to initiate a dialogue on the reforms demanded by the Assembly;

4.9. regrets that, also as a result of the decision of part of the opposition to boycott the dialogue with the authorities, participation of the opposition in the formulation of these initiatives has been somewhat limited;

4.10. highlights that the modus operandi of the National Assembly Working Group on the Reform of the Election Code could be an example for the dialogue on other reforms demanded by the Assembly;

4.11. urges all political forces to seize the opportunity given by the authorities to enter into an open, constructive and serious dialogue on the reforms demanded by the Assembly.

5. The detention and conviction of persons in relation to the events of 1 March 2008 will be a point of contention that will continue to strain the relations between opposition and authorities and could hinder the conduct of a constructive dialogue on the reforms needed for Armenia. The Assembly therefore recommends that the National Assembly adopts a general amnesty law or that the President of Armenia issues a pardon decree with respect to all persons detained in relation to the events of 1 March 2008, with the exception of those personally involved in the tragic deaths that occurred on that day.

6. The Assembly takes note of the recent judgment of the European Court of Human Rights finding a violation of the European Convention of Human Rights in relation to the refusal of the Armenian authorities to grant a broadcasting licence to A1+ TV station. The authorities should now grant it a broadcasting licence without further delay, in line also with a long-standing demand of the Assembly.

7. The Assembly welcomes the progress achieved by the Armenian authorities in addressing the demands of the Assembly expressed in Resolution 1609. However, despite the political will expressed by the authorities, this progress is at present insufficient to meet the requirements outlined in the resolution.

8. While regretting the delay in implementing the concrete measures to comply with its demands, the Assembly acknowledges that the time given to the Armenian authorities was short. The Assembly therefore decides to review at its January 2009 part-session the extent of Armenia's compliance with the requirements made in Resolution 1609. If the requirements mentioned in Resolution 1609, as well as those set above in paragraphs 4.2, 4.5, 4.7 and 6 are not met by then, the Assembly will consider the possibility of suspending the voting rights of the Armenian delegation to the Assembly at the opening of its January 2009 part-session.

9. The Assembly invites:

9.1. the Secretary General of the Council of Europe to speed up the procedure for the appointment of a new Special Representative of the Secretary General of the Council of Europe (SRSG) in Yerevan and consider the possibility that a member of the SRSG's Office be assigned to monitor the work of the inquiry committee on a permanent basis;

9.2. the Commissioner for Human Rights of the Council of Europe to contribute to the participation of international experts in the work of the inquiry committee of the National Assembly into the events of 1 March 2008 and the circumstances that led to them, should the conditions mentioned in paragraph 4.5 be met.

10. 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 conditions.

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I. Introduction

1. On 17 April 2008, the Assembly adopted Resolution 1609 (2008) on the functioning of democratic institutions in Armenia. This resolution was adopted following a debate under urgent procedure in the wake of the political crisis that broke out after the Presidential election in Armenia, on 19 February 2008.

2. In Resolution 1609, the Assembly set out four concrete requirements to put an end to the crisis:

2.1. to revoke, in line with the recommendations of the Venice Commission of the Council of Europe, the amendments made, on 17 March 2008, to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations;

2.2. to initiate immediately an independent, transparent and credible inquiry into the events on 1 March 2008 and the circumstances that led to them;

2.3. to release all persons detained on seemingly artificial and politically motivated charges who did not personally commit any violent acts or serious offences;

2.4. to start an open and serious dialogue between all political forces in Armenia on the reforms demanded by the Assembly in paragraph 8 of the Resolution with regard to the political system, electoral process, freedom and pluralism of the media, freedom of Assembly, independence of the judiciary and police behaviour.

3. The Assembly considered that Armenia's credibility as a member of the Council of Europe was put into doubt as long as these conditions were not met and therefore resolved to consider the possibility of suspending the voting rights of the Armenian delegation to the Parliamentary Assembly at the opening of the June 2008 part-session, in the absence of considerable progress on meeting the Assembly's demands by then.

4. In the wake of the adoption of Resolution 1609, the authorities took several initiatives that clearly showed that the demands of the Assembly were being taken seriously by them. In addition, high level representatives of the authorities, including the President of the Republic and the Speaker of the National Assembly, publicly expressed their political will and intention to comply with the requirements of the Assembly.

5. For its part, the opposition in Armenia generally welcomed Resolution 1609 as a clear and concrete roadmap to resolve the political crisis that ensued after the Presidential elections. The main protagonist of the opposition, Mr Levon Ter-Petrossian, indicated that he would be willing to enter into a dialogue with the authorities on the requirements set by the Assembly, on the condition, however, that all persons detained in relation to the events of 1 March be first released.

6. By decree of the President of Armenia, a working group was set up to co-ordinate the implementation of Assembly Resolution 1609. This working group is composed of the Chief of Staff of the President, the Deputy Ministers of Foreign Affairs and Justice, the Deputy Prosecutor General and the members of the Armenian Delegation to the Parliamentary Assembly. There was some controversy with regard to the conditions under which the single opposition member in the Armenian delegation to the Assembly, Mr Raffi Hovannisian, Chairman of the Heritage Party - who had indicated his limited availability as a result of previous engagements - could be replaced on the Working Group. Regrettably, as a result of this, the involvement of the opposition in the deliberations of this working group has been minimal.

7. Despite the different initiatives taken by the authorities, very few tangible results have been achieved in the first one-and-a-half months after the adoption of Resolution 1609. The Monitoring Committee, meeting in Kyiv on 27 May, expressed its concern that time was running out for the Armenian authorities to comply with the demands made by the Assembly. As a result, the committee instructed its Chair to ask, on its behalf, for a debate under urgent procedure during the June 2008 part-session of the Assembly if the co-reporteurs, following their planned visit to Armenia, concluded that insufficient progress had been achieved by then.

8. We visited Armenia on 16 and 17 June 2008. During our visit, we met with, inter alia: the President of Armenia and other high-level government officials; the President of the National Assembly and the leadership of the parliamentary committees involved in the implementation of Resolution 1609; the Presidential Working Group for the Co-ordination of the Implementation of Assembly Resolution 1609; representatives of both the ruling and opposition factions in the Parliament; representatives of the extra-

parliamentary opposition; detained opposition leaders and their lawyers, as well as representatives of civil society and the diplomatic community based in Yerevan. We would like to thank the National Assembly of Armenia and the Office of the Special Representative of the Secretary General of the Council of Europe for the excellent programme and logistical support provided during our visit. In addition, we would like to express our gratitude to all persons and entities - both governmental and non-governmental – that provided us promptly and extensively with all information needed for our enquiries.

II. Fulfilment of the Assembly's requirements

9. In the following sections we will give our assessment of the state of implementation of the four conditions set up by the Assembly. This assessment is based on our findings, as well as information received before, during and after our visit.

i. *to revoke, in line with the recommendations of the Venice Commission of the Council of Europe, the amendments made, on 17 March 2008, to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations*

10. On 15 April 2008, the authorities and experts of the Venice Commission of the Council of Europe and the OSCE/ODIHR reached an agreement on the changes needed to bring the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations in line with Council of Europe standards.

11. In line with this agreement, on 25 April 2008, the "Draft Law on Amending and Supplementing the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations"¹ was sent by the Speaker of the National Assembly to the Venice Commission for opinion. The Venice Commission issued a generally favourable draft opinion² on 16 May 2008. The draft law passed in a first reading by the National Assembly of Armenia on 20 May 2008, following which further amendments were introduced to address the concerns and comments of the Venice Commission. These amendments were sent for opinion to the Venice Commission by the Speaker of the National Assembly on 9 June 2008³. An additional draft opinion⁴ on these amendments was issued by the Venice Commission on the same day. The draft law was subsequently adopted in a second reading on 11 June 2008. This law was promulgated by the President of Armenia on 16 June and entered into force the following day.

12. In the opinion of the Venice Commission, the amendments adopted on 11 June bring the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations in line with Council of Europe standards and, in some aspects, constitute an improvement over the original law.

13. The requirement that the 17 March amendments to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations be revoked in line with Venice Commission recommendations has therefore been met by the authorities. However, in article 8.4 of Resolution 1609, the Assembly demanded that freedom of assembly be guaranteed in both law and practice. The implementation of the law and the willingness of the authorities to allow opposition rallies without undue restrictions placed on them are therefore crucial to assessing Armenia's compliance with this requirement of the Assembly.

14. Representatives of Mr Ter-Petrossian's Popular Movement of Armenia informed us that, between 21 March and 14 June 2008, a total of 42 requests for authorisation to hold rallies by his supporters were refused by the authorities. A request by Mr Ter-Petrossian for authorisation to hold a protest rally on 20 June 2008 on Liberty Square – clearly intended to coincide with the start of the June part-session of the Assembly and the possible debate on Armenia's compliance with Resolution 1609 (2008) – was rejected by the authorities. An alternative venue proposed by the authorities, the parking lot of a stadium on the edge of the city centre, was not accepted by Mr Ter-Petrossian. During our fact-finding mission, we visited the venue proposed by the authorities and came to the conclusion that this could not be considered as a reasonable alternative.

15. We therefore called upon the authorities to propose other, reasonable, alternative venues and stressed the importance of allowing this rally without any undue restrictions as a signal that the authorities are serious about respecting the principle of freedom of assembly in practice. Equally, we called upon Mr Ter-Petrossian's camp to ensure that the demonstration would be conducted in a calm and peaceful manner and to refrain from provocations.

¹ CDL(2008) 050

² CDL(2008) 051

³ CDL(2008)078

⁴ CDL(2008)079

16. We welcome the last-minute agreement between the authorities and the opposition to hold the rally near the Matenadaran, one of the venues requested by the opposition. We equally welcome the restraint shown by both police and protesters to avoid clashes and confrontations. However, we regret that this agreement was based on a last-minute agreement between the organisers and the police and not on an explicit authorisation to hold this rally by the Yerevan city administration.

ii. to initiate an independent, transparent and credible inquiry into the events of 1 March 2008 and the circumstances that led to them

17. While the authorities expressed their willingness to initiate an independent inquiry as demanded by the Assembly, the exact format for such an enquiry proved to be controversial and difficult to agree upon. As a result, the decision on the format of an inquiry commission was only taken very late, on 16 June, during our visit to Yerevan. Opposition representatives, both inside and outside the Parliament, complained that little, if any, consultation between the authorities and the opposition had taken place on this issue.

18. The suggestion made in our previous report that this inquiry could be conducted under the aegis of the Human Rights Defender was, regrettably, not acceptable to the authorities. In our opinion, this is related to the Ad Hoc Report on the Presidential Elections and Post-Electoral developments which was published by the Human Rights Defender on 25 April 2008. In this report, he raises questions about the official version of the events of 1 March 2008 and he is highly critical of the response of the authorities towards the protests that ensued after the presidential election.

19. Finally, the format chosen for the conduct of this inquiry is that of an Ad Hoc Inquiry Committee of the National Assembly of Armenia. This committee has been constituted and its terms of reference were adopted on 16 June 2008.

20. The inquiry committee is composed of 2 members from each of the 5 factions in the current parliament, as well as 1 member on behalf of the independent members of parliament. Furthermore, the Resolution establishing the inquiry committee stipulates that a representative of Mr Ter-Petrossian, as well as representatives of other extra-parliamentary forces – on the basis of a list to be decided upon at the first meeting of the committee – shall be invited to participate in the work of the committee. However, these members will only have a consultative vote. At its first meeting, the committee decided to invite to participate in its work, besides Mr Ter-Petrossian, representatives of all extra-parliamentary forces that received at least 3% of the vote in the last parliamentary elections, as well as representatives of all presidential candidates in the last presidential election. In addition, the committee has the right to invite, without the right to vote, national and international experts to participate in its work.

21. The fact that 4 out of the 5 factions represented in parliament belong to the ruling coalition raises questions with regard to the possibility of the committee to conduct its inquiry independently and impartially. Opposition representatives raised concerns that, in practice, votes in the committee would be dominated by the ruling factions. Proposals by the opposition that the committee should be composed on the basis of parity between opposition and pro-government forces or, failing that, that the decisions in the committee should be taken on the basis of consensus, were rejected.

22. Invitations to provide experts to participate in the work of the inquiry committee were sent, *inter alia*, to the Council of Europe, the OSCE/ODIHR and the European Commission. We consider the participation of international experts essential to ensure the credibility of the inquiry. However, it is equally clear that international experts will only be willing to participate if the independence and impartiality of the inquiry committee is guaranteed.

23. Members of the committee, including those with a consultative vote, have the right to present a dissenting opinion with regard to the conclusions of the committee. This dissenting opinion will be published as an integral part of the final report of the committee. In order to guarantee the transparency of the inquiry, all meetings of the committee will take place in public and be open to the press.

24. At its first session, the committee elected a representative of President Sargsyan's Republican Party as chairman of the committee. The post of vice-chairman was offered to the opposition Heritage Party. Opposition members questioned the impartiality of the elected chairman, as he had in the past publicly expressed outspoken opinions on who was to blame for the events of 1 March 2008. The Heritage Party nominated as its representatives on the committee two MPs who are currently detained after their immunity was lifted by parliament. This cannot be considered as a constructive approach to the important work of this committee.

25. The terms of reference of the committee⁵ state that it should submit “recommendations for political and legal solutions with a view of excluding the recurrence of such events [of 1 March 2008]”. However, the terms of reference do not explicitly give the committee the right to investigate the circumstances that led to the events of 1 March 2008, as demanded by the Assembly. This should be clarified. Equally, it should be clarified that an investigation into the events of 1 and 2 March include directly related events that took place in its aftermath, such as the detention of opposition activists and the charges that were brought against them for their role in the protests.

26. We welcome that an official enquiry has now been initiated, as was demanded by the Assembly. However, the Assembly required that this inquiry should be independent, transparent and credible. At this stage, it is not possible for us to assess if these key requirements are met, taking into account that, as a result of its late establishment, the committee has not yet started its investigations and that its format and composition do not *per se* guarantee its independence and impartiality and therefore its credibility in the eyes of the Armenian public. We consider that, in order to ensure the credibility of the inquiry, as a minimum the following conditions should be met:

- as a rule, the committee should work on the basis of consensus and voting should be avoided. This is especially so in relation to the subjects the committee wishes to investigate and the persons it wishes to hear. The working method of the National Assembly Working Group on the Reform of the Election Code, which as a rule takes its decisions on the basis of a consultative vote⁶, should be seen as an example for the functioning of the inquiry committee;
- the terms of reference of the committee should be clarified in line with § 24 of this report;
- the Human Rights Defender should be invited *ex officio* to participate in the work of the committee with the right of a consultative vote;
- the possibility of extending the right of a consultative vote to national and international experts who participate in the work of the Committee on a permanent basis, should be considered.

27. We call upon all political forces to participate constructively in the work of this committee, and, where appropriate, re-evaluate their representatives on it, in order to ensure the maximum credibility of the inquiry.

iii. to release all persons detained on seemingly artificial and politically motivated charges who did not personally commit any violent acts or serious offences

28. The detention of persons on seemingly artificial and politically motivated charges in relation to the events of 1 March 2008 was one of the main concerns of the Assembly when adopting Resolution 1609 (2008) and their release one of the most pressing demands by the Assembly.

29. Initially, very few tangible results were achieved in relation to this requirement and arrests were reported to continue until early June. However, in the last couple of weeks before our visit, the situation seemed to be evolving at a rapid speed. As a result of the intense activity by the authorities in this field, the information we received regarding the persons detained and/or released was repeatedly changing during our stay and was at times confusing and/or seemingly contradictory⁷.

30. Based on the information received by the authorities, 116 persons were detained in relation to the events on 1 March 2008. Of these 116 cases, 28 cases are still under investigation and 88 cases have been brought before the courts. Of the 28 persons still under investigation, 17 remain in detention on remand and 11 have been conditionally released subject to the obligation not to leave the country. Of the cases sent to court, 3 persons were acquitted, 22 received suspended sentences and 14 persons were sentenced to prison terms. In 49 cases, a verdict is still pending. Of these cases, 38 persons remain in detention and 11 have been released subject to the obligation not to leave the country pending trial. However, different sources of information also received from the authorities indicate that 17 persons remain in custody pending investigations, 13 have been released from detention pending investigation, 17 cases have been suspended and the persons released, while 68 cases have been transmitted to the courts.

⁵ We are basing our comments on the terms of reference on a provisional translation of the National Assembly Resolution establishing the inquiry committee. Therefore, the issues we mention here may be clear in the original text. We would like to thank the National Assembly for providing us promptly with a translation of the Resolution.

⁶ In addition, in this working group, a consultative vote is also given to experts and representatives of civil society that participate in its work.

⁷ Another example of the rapidly evolving situation was the fact that we were informed that a number of persons had been released while their defence lawyers we met were not yet aware of this.

31. During a meeting with Mr Ter-Petrosian, we were provided with a list of 63 persons who, according to him, remain in detention. Of these persons, 24 have already been convicted to prison terms⁸. We have provided this list to the authorities with the request to provide us information on each of the cases mentioned in this list. However, due to the short time available, the authorities were not able to provide us with this information, nor was it possible for us to cross-check each of the cases with other information provided to us. It seems that a number of persons on this list have since been released.

32. The authorities informed us that, in total, 65 persons pleaded guilty to the charges brought against them either during investigation or trial. A number of persons who confessed were given suspended sentences under a plea bargaining agreement, while persons who did not admit their guilt on similar charges were convicted to several years in prison. A significant number of persons who confessed may therefore have done so to avoid lengthy prison sentences, especially in an atmosphere of low public confidence in the independence of the courts.

33. It was reported to us that a number of persons were charged and their cases transmitted to the courts on the basis of a single police testimony without corroborating evidence or testimony from independent witnesses. While it was not possible to verify these allegations during our short stay, we are concerned, as they raise questions about the possibility for a fair trial of those arrested in relation to the events of 1 March 2008.

34. A significant number of persons have been charged under Article 300 (usurpation of power) and Article 225 (mass disorder and incitement to mass disorder) of the Criminal Code. As mentioned in our previous report, these articles are problematic as they allow for broad interpretation, leave excessive discretion to the prosecutor and “fail to give clear guidance on the dividing line between legitimate expressions of opinion and incitement to violence”. In general, prosecutors have applied standardised language in the charges that were made under these Articles and judges would appear not to have subjected them to a serious test.

35. We were informed that a significant number of persons who were arrested under these provisions had additional criminal charges brought against them at a later stage. This could indicate an attempt to circumvent the demand of the Assembly to release persons charged with seemingly artificial and politically motivated charges by accusing them of having “personally committed violent acts or serious offences”.

36. We are especially concerned regarding the three detained members of parliament whom we visited in prison. All three were arrested and had their parliamentary immunity lifted for alleged violation of Articles 300 and 225. However, until today, their cases have not been transmitted to court. In addition, under Article 17 of the Constitution of Armenia, members of parliament can only be arrested in *flagrant delict*. However, all three were arrested after the events of 1 March 2008, which would indicate that their constitutional rights were violated during their arrest. Their treatment raises questions about the fairness of the treatment of those who do not benefit from the visibility and immunity linked to a parliamentary status.

37. While we welcome the recent progress in meeting this requirement of the Assembly, we cannot consider that it has so far been satisfactorily met. The cases still under investigation should be either closed or transmitted to the courts with immediate effect. The cases against those principally accused of crimes under Articles 300 and 225 should be dropped unless there is strong evidence that these persons have personally committed acts of violence. In addition, it should be clear that a verdict based solely on a single police testimony, without corroborating evidence or independent witnesses’ testimonies, cannot be acceptable.

38. Taking into account the number of questions raised in this respect, an investigation into the role of the prosecution in the detention of opposition activists, as well as the charges brought against them, should be an integral part of the mandate of the independent inquiry committee.

39. It is clear to us that the detention and conviction of persons in relation to the events of 1 March 2008 will continue to strain the relations between the opposition and the authorities and hinder the chances for a constructive dialogue between them. We would therefore strongly recommend that the National Assembly considers adopting a general amnesty law or that the President of Armenia issues a pardon decree for all persons detained in relation to the events of 1 March 2008, except from those who have been personally involved in the tragic deaths that occurred on that day.

⁸ Mr Ter-Petrosian’s list includes 9 persons arrested in the period between 29 January and 1 March. If deducted, this would bring the number of persons sentenced to firm prison sentences close to that provided by the authorities.

40. The authorities have proposed amendments to Articles 225 and 300⁹ which would make them considerably wider in scope. In the opinion of the Venice Commission¹⁰, the proposed amendments are too broad and open to abuse. They could, in effect, limit freedom of expression and assembly. We therefore welcome the fact that the Legal Affairs Committee of the National Assembly of Armenia has given a negative opinion on these amendments and decided not to propose them for adoption.

iv. to initiate an open and serious dialogue between all political forces in Armenia on the reforms demanded by the Assembly in paragraph 8 of the Resolution with regard to the political system, electoral process, freedom and pluralism of the media, freedom of assembly, independence of the judiciary and police

41. We welcome the series of initiatives taken by the authorities to initiate a dialogue on the reforms demanded by the Assembly.

42. A key requirement of the Assembly was that such a dialogue should be open and serious and carried out among all political forces in Armenia. However, a number of opposition representatives felt that their involvement in the formulation of these initiatives had been limited. We realise that this is also the result of the decision of Mr Ter-Petrossian, as well as of most of the political forces that support him, to boycott a dialogue with the authorities until all political activists detained in the context of the events of 1 March 2008 have been released. We understand that, besides its obvious political motivation, this position also results from the fact that a large part of the leadership of his movement, who would normally represent this movement in the negotiations with the authorities, are still in detention. Nevertheless, we urge all political forces to seize the opening given by the authorities and to enter into an open, constructive and serious dialogue on the reforms demanded by the Assembly.

43. In this respect, we wish to highlight the positive example of the manner in which the dialogue on the reform of the electoral process is being conducted. The working group of the National Assembly, especially set up for this purpose, has extended a consultative vote to all representatives of extra-parliamentary political forces and civil society organisations that participate in its work, and in principle takes its decisions on the basis of a consultative vote. In our opinion, this *modus operandi* should be an example for the dialogue on the other reforms demanded by the Assembly, as well as for the inquiry committee to investigate the events of 1 March 2008 and the circumstances that led to them.

44. An in-depth analysis of the proposed reforms is outside the scope of this report. Their assessment will take place in the framework of the normal monitoring procedure of the Assembly. However, we would like to highlight in sum the different initiatives taken, in addition to those we have already mentioned in previous paragraphs.

45. With regard to the reform of the political system with a view to giving a proper place and rights to the opposition¹¹, amendments were passed on the rules of procedure of the National Assembly. These amendments provide for, *inter alia*, the distribution of all leadership positions on the Standing Committees of the Assembly on the basis of the *d'Hondt* system, which will ensure opposition representation in these leadership functions; the right of the opposition to table an issue for debate during one of the sittings of each four-day regular sessions; the introduction of the presentation of a minority position in the reports of the Standing Committees that are sent for debate in plenary session; and priority for opposition representatives in tabling questions to the government. We welcome these initiatives that will strengthen the role of the opposition in the work of the parliament, but note that some of the provisions will only come into force after the next convocation of the National Assembly. We would suggest that the National Assembly consider implementing them at a much earlier stage. In addition, in order to strengthen the role of the opposition, reforms are also needed outside the framework of the rules of procedure of the National Assembly, most notably in the electoral system and media environment.

46. With regard of the reform of the electoral process¹², we already mentioned the setting up of a special working group of the National Assembly for the reform of the Election Code. Extra-parliamentary political forces and NGOs are participating in the work of this committee, which is formulating a series of amendments to the code. These amendments will be sent to the Venice Commission for opinion. We understand that the opinion of the Venice Commission will be the basis for possible further reforms needed. In relation to this issue, we would like to reiterate the position of the Assembly that the effect of any

⁹ CDL(2008)063

¹⁰ CDL-AD(2008)017

¹¹ Resolution 1609 (2008) § 8.1

¹² Resolution 1609 (2008) § 8.2

amendments to the Election Code on the conduct of democratic elections will squarely depend on their full implementation in good faith.

47. With regard to the media reform¹³, a public hearing was organised by the relevant committee of the National Assembly in which representatives of the governmental authorities, civil society and extra-parliamentary opposition were invited to participate. On the basis of this hearing, a legislative package has been prepared and sent to the competent sectors of the Council of Europe for opinion. The hearing concluded that further dialogue between the authorities and the opposition is needed to overcome a lack of public trust in the current media environment.

48. In this context, we take note of the recent judgment of the European Court of Human Rights, which found a violation of the European Convention of Human Rights in relation to the refusal of the Armenian authorities to grant a broadcasting licence to A1+. The granting of a licence to this independent and popular TV channel has been a long-standing demand of the Assembly. We urge the authorities to grant the broadcasting licence to this channel without further delay.

49. Further to the Assembly's demand to strengthen the independence of the judiciary¹⁴, the President of the Republic signed an order under which a committee is set up under the auspices of the Minister of Justice, which is entrusted with the development of a comprehensive reform plan for the judiciary. It should be noted that judicial reform is also part of the coalition programme on which the current government is formed. We would like to stress the importance of opposition participation in these reforms.

50. As regards arbitrary arrests and the need to reform the police forces¹⁵, the President of the Republic has made significant changes to the police leadership and has dismissed several high police officers, including the National Chief and Deputy-Chief of the Police. In addition, the President has instructed that a strategic reform of the law enforcement bodies be drawn up. In this respect, we would like to stress the need to provide for an effective public control mechanism over the police, as demanded by the Assembly. This important issue was not addressed in the information we received from the authorities during our visit.

III. Conclusions

51. We welcome the progress achieved by the Armenian authorities in addressing the requirements of the Assembly set out in Resolution 1609 (2008). However, despite the political will shown by the authorities to comply with the Assembly demands, this progress has not so far been sufficient enough to effectively meet the requirements set out in this resolution.

52. We regret the delay in implementing the concrete measures demanded by the Assembly, but we also acknowledge that the time given to the Armenian authorities was short.

53. As a result, it is not possible for us to assess whether the initiatives taken by the authorities fully comply with the Assembly requirements, for instance as far as the independent, transparent and credible inquiry into the events of 1 March 2008 is concerned. With respect to other requirements, further and continued progress is still required to ensure full compliance.

54. In this respect, we note that the continued detention of persons arrested in relation to the events of 1 March is a point of contention that will continue to strain the relations between the authorities and the opposition with the potential to undermine the possibilities for dialogue and reform. Further action from the authorities in this field is clearly needed. At the same time, we call upon the political forces that currently boycott the dialogue with the authorities to reconsider their position and seize the opportunity offered by the authorities.

55. In view of the above, we propose to the Assembly to review at the January 2009 part-session of the Assembly the extent of the Armenian authorities' compliance with the requirements set out by the Assembly in Resolution 1609 (2008). In addition, we recommend that a number of additional issues be addressed to ensure that the demands of the Assembly are met both in spirit and in practice. If these requirements are not met by the opening of the January 2009 part-session, we will have no other option than to propose applying the sanctions mentioned in Resolution 1609 (2008).

¹³ Resolution 1609 (2008) § 8.3

¹⁴ Resolution 1609 (2008) § 8.5

¹⁵ Resolution 1609 (2008) § 8.6

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

Reference to committee: Resolution 1115 (1997)

Draft resolution unanimously adopted by the committee on 23 June 2008

Members of the committee: Mr Serhiy **Holovaty** (Chairperson), Mr György **Frunđa** (1st Vice-Chairperson), Mr Konstantin Kosachev (2nd Vice-Chairperson), Mr Leonid **Slutsky** (3rd Vice-Chairperson), Mr Aydin Abbasov, Mr 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, Mrs Mirjana Ferić-Vac, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Marcel Glesener, Mr Charles Goerens, Mr Andreas Gross, Mr Michael Hagberg, Mr Holger Haibach, Ms Gultakin **Hajiyeva**, Mr Michael **Hancock**, Mr Davit **Harutyunyan**, 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 Indrek Saar, 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 Biruté Vėsaitė, 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