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The implementation by Armenia of Assembly Resolutions 1609 (2008) and 1620 (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 relation to the implementation by Armenia of Assembly Resolutions 1609 (2008) and 1620 (2008), the committee welcomed the establishment, by Presidential decree, of an expert fact-finding group to inquire into the events of 1 and 2 March 2008 and the circumstances that led to them. The establishment of this group, in which both opposition and authorities have nominated experts, was considered an important step regarding the Assembly demand that an impartial and transparent investigation into these events be established, but the committee cautioned that, in the end, it will be the manner in which this group will conduct its work that will determine its credibility in the eyes of the Armenian public.

However, the committee was seriously concerned about the limited progress achieved with regard to the demands of the Assembly concerning the persons deprived of their liberty in relation to the events of 1 and 2 March 2008, especially concerning those charged under Articles 225 and 300 of the Criminal Code of Armenia, and prosecution cases based solely on police testimony without substantial corroborating evidence. In addition, the committee regretted that the authorities had not availed themselves of the opportunity to resolve this issue through all legal means available to them, such as amnesty, pardons and the dropping of charges, as suggested by the Assembly. The committee therefore considered that there are strong indications that the charges against, and convictions of, a significant number of these persons are politically motivated, which it finds unacceptable.

Therefore, notwithstanding developments in some areas, the committee recommended that the Assembly withdraw the voting rights of the members of the Armenian delegation, it being understood that the co-rapporteurs would visit Armenia in January 2009, with a view to reporting back to the committee on the first day of the January 2009 part-session on any progress with respect to the release of persons deprived of their liberty in relation to the events of 1 and 2 March 2008.

A. Draft resolution

1. In its Resolution 1620 (2008) on the implementation by Armenia of Assembly Resolution 1609 (2008), adopted on 25 June 2008, the Parliamentary Assembly considered that progress had been insufficient, despite the political will expressed by the Armenian authorities to address the requirements set up in Resolution 1609 (2008), adopted on 17 April 2008, following the crisis that ensued after the presidential election of February 2008. The Assembly therefore addressed a series of concrete demands to the Armenian authorities and resolved to consider the possibility of suspending the voting rights of the members of the Armenian parliamentary delegation to the Assembly at its January 2009 part-session, if the requirements set up in Resolutions 1609 and 1620 were not met by then.

2. With regard to the requirement to ensure an independent, impartial and credible investigation into the events of 1 and 2 March 2008, the Assembly welcomes the establishment by the President of Armenia, on 23 October 2008, of a "fact-finding group of experts to inquire into the events of 1-2 March 2008", following a proposal by the Commissioner for Human Rights of the Council of Europe. It equally welcomes the decision of the opposition to fully participate in the work of this group.

3. The Assembly stresses, however, that it is the manner in which this group will conduct its work, as well as the access it will have to information by the relevant state institutions at all levels, that will ultimately determine its credibility in the eyes of the Armenian public. The Assembly therefore:

3.1. calls upon all political forces to refrain from politicising, or interfering in, the work of this fact-finding group;

3.2. calls upon the Armenian authorities to ensure that the fact-finding group will be given the fullest possible co-operation by, and full access to information from, all state bodies and officials, without exception, including those officials that have left office or have been replaced since the events on 1 and 2 March 2008; the fact-finding group should be allowed to obtain any clarification needed with regard to the arrest, prosecution and conviction of persons related to the events on 1 and 2 March 2008.

4. The Assembly regrets that limited progress has been made by the Armenian authorities with regard to its earlier demands, as expressed in Resolutions 1609 (2008) and 1620 (2008), concerning the release of persons deprived of their liberty in relation to the events of 1 and 2 March 2008. It notes in particular that, contrary to Assembly demands:

4.1. a significant number of prosecution cases and convictions was based solely on police testimony, without substantial corroborating evidence;

4.2. a very limited number of charges under Articles 225 and 300 of the Criminal Code of Armenia has been dropped.

5. The Assembly notes that doubts have been voiced regarding the nature of the charges brought under Articles 225 and 300 of the Criminal Code, as well as with regard to the legal proceedings against those convicted in relation to the events of 1 and 2 March 2008, including by the Council of Europe Commissioner for Human Rights. The Assembly therefore considers that there are strong indications that the charges against a significant number of persons, especially those charged under Articles 225-3 and 300 of the Criminal Code and those based solely on police evidence, have been politically motivated. It follows that persons convicted on these charges can be considered political prisoners.

6. The Assembly regrets that the authorities have not so far availed themselves of the possibility to use all legal means available to them, such as amnesty, pardons or the dropping of charges, to release those who were deprived of their liberty in relation to the events of 1 and 2 March 2008 and did not personally commit acts of violence or intentionally order, abet or assist the committing of such acts. It therefore urges the authorities to consider favourably further opportunities to this end.

7. In these circumstances, the Assembly will continue assessing the political will of the Armenian authorities to resolve the issue of persons detained in relation to the events on 1 and 2 March 2008, in line with earlier Assembly demands.

8. The Assembly expresses its satisfaction with respect to the efforts made by the Armenian authorities to initiate reforms in several other areas, as demanded by the Assembly, in particular in the fields of media, electoral legislation and the judiciary, and calls upon the authorities to pursue the co-operation developed

with the relevant Council of Europe bodies in these fields. With respect in particular to media pluralism and freedom, the Assembly:

8.1. welcomes the proposals made with a view to ensuring the independence of the media regulatory bodies in Armenia and calls upon the authorities to fully implement the forthcoming recommendations of the Council of Europe experts in this regard;

8.2. takes note of the adoption of amendments to the Law on Television and Radio that cancels all tenders for broadcasting frequencies until 2010, when the introduction of digital broadcasting in Armenia will have been completed. Without pre-empting the merits of this decision, the Assembly underlines that the technical requirements for the introduction of digital broadcasting should not be used by the authorities to unduly delay the holding of an open, fair and transparent tender for broadcasting licences, as demanded by the Assembly.

9. Notwithstanding positive developments in some areas, the Assembly finds it unacceptable that persons have been charged and deprived of their liberty for political motivations and that political prisoners exist in Armenia. Therefore, despite the positive steps taken towards the establishment of an independent, transparent and credible inquiry, the Assembly decides to suspend the voting rights of the members of the Armenian parliamentary delegation to the Assembly, under Rule 9, paragraphs 3 and 4.c, of the Rules of Procedure, until the Armenian authorities have clearly demonstrated their political will to resolve the issue of persons deprived of their liberty in relation to the events of 1 and 2 March 2008, in line with its demands, as expressed in Resolutions 1609 (2008) and 1620 (2008).

B. Explanatory memorandum by Mr Colombier and Mr Prescott, co-rapporteurs

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I. Introduction

1. On 17 April 2008, the Parliamentary 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. The Armenian authorities were asked 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;
- initiate immediately an independent, transparent and credible inquiry into the events of 1 March 2008 and the circumstances that led to them;
- release all persons detained on seemingly artificial and politically motivated charges who did not personally commit any violent acts or serious offences;
- 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. On 25 June 2008, the Assembly adopted Resolution 1620 (2008) on the implementation by Armenia of Assembly Resolution 1609 (2008). In this resolution, the Assembly considered that, despite the political will expressed by the authorities to address the demands expressed in Resolution 1609 (2008), progress was insufficient to meet the requirements outlined in this resolution. The Assembly therefore resolved to consider the possibility of suspending the voting rights of the Armenian delegation to the Assembly at its January 2009 part-session if the requirements of Resolution 1609, as well as those outlined in Resolution 1620, would not be met by then.

4. In relation to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations, the Assembly welcomed the changes made to it in line with recommendations of the Venice Commission, as demanded in Resolution 1609 (2008). However, it considered that freedom of assembly should also be guaranteed in practice in Armenia. Therefore, the Assembly insisted in Resolution 1620 (2008) that the Armenian authorities should ensure that no undue restrictions, especially with regard to the requested venues, be placed upon rallies organised by the opposition in compliance with the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations.

5. With regard to the independent, impartial and credible investigation into the events of 1 and 2 March 2008, the Assembly considered that, due to the late establishment of a parliamentary Inquiry Committee to that effect, it was not in a position, at that time, to evaluate if the criteria of independence, impartiality and credibility were met. However, it noted that the format and composition of this committee, which was dominated by members of the ruling coalition and effectively boycotted by the opposition, did not per se guarantee its independence and therefore credibility in the eyes of the Armenian public. The Assembly therefore asked that, as a minimum, the committee should, as a rule, aim at a consensual decision-making process and that voting should be used only as a last resort. Moreover, the Assembly insisted that the terms of reference of the committee should clearly state that it has the right to investigate the circumstances that led to the events on 1 and 2 March 2008, as well as their immediate aftermath. In addition, it asked that the Human Rights Defender of Armenia should be invited to participate ex officio in the work of the committee.

6. With regard to the release of persons deprived of their liberty in relation to the events of 1 and 2 March 2008, the Assembly expressed concern that progress on this issue had been too limited to conclude that the Assembly's demands were fully met. In Resolution 1620 (2008), the Assembly therefore demanded that all cases still under investigation be closed or promptly brought before the courts, in order to ensure the right to a fair trial within a reasonable time in compliance with the case law of the European Court of Human Rights. Moreover, it insisted that cases under articles 300 and 225 of the Criminal Code of Armenia should be dropped unless there was strong evidence that the accused had personally committed serious violent crimes. Furthermore, the Assembly considered that verdicts based solely on police testimony without corroborating evidence were unacceptable to the Assembly. In relation to this issue, the Assembly also took note of the proposed amendments to articles 225, 225¹, 301 and 301¹ of the Criminal Code and urged the National Assembly of Armenia to take into account the negative advice given on them by the Venice Commission.

7. Recalling the need for a pluralistic media environment in Armenia and taking into account the decision of the European Court of Human Rights concerning the denial of a broadcasting license to the A1+ television channel, the Assembly, in Resolution 1620 (2008), called upon the Armenian authorities to now ensure an open, fair and transparent licensing procedure.

8. In the opinion of the Assembly, the continued detention of opposition supporters in relation to the events of 1 and 2 March 2008 was a point of contention that continued to strain the relations between the opposition and authorities and hinder the start of a constructive dialogue on the reforms needed for Armenia. Therefore, also to foster the reconciliation process between the authorities and opposition, the Assembly, in Resolution 1620 (2008), urged the Armenian authorities to consider all legal means available to them, including amnesty, pardons and dismissal of charges, to release all persons detained in relation to the events on 1 and 2 March 2008, with the exception of those persons that had personally committed, abetted or organised grave violent crimes.

9. While the Assembly gave the Armenian authorities until the January 2009 part-session to comply fully with its demands, we were of the view that tangible results should already be achieved before that date, especially with regard to the release of persons deprived of their liberty in relation to the events of 1 and 2 March 2008, as well as the independent, transparent and impartial inquiry into these events. Therefore, on our suggestion, the Assembly decided, in Resolution 1620 (2008), to invite the Commissioner for Human Rights of the Council of Europe to visit Armenia and to report to the Monitoring Committee, at its meeting in September 2008, on the progress achieved by the Armenian authorities with regard to these two issues.

10. The Commissioner for Human Rights visited Yerevan from 13 to 15 July 2008. During his visit, he proposed, inter alia, a set of concrete recommendations to resolve the impasse between the authorities and opposition with regard to the Inquiry Committee set up by the National Assembly to investigate the events of 1 and 2 March 2008, as well as the circumstances that led to them.¹

11. The visit of the Commissioner for Human Rights was followed by an official visit of the President of the Parliamentary Assembly, on 23-24 July 2008. During his visit, the President encouraged the Armenian authorities to fully implement Resolutions 1609 and 1620 and urged them promptly to take concrete and tangible measures with regard to the parliamentary Inquiry Committee and the release of persons deprived of their liberty in relation to the events on 1 and 2 March 2008. During his visit, the President fully supported the proposals made by the Commissioner for Human Rights to resolve the impasse with regard to the Inquiry Committee. Furthermore, he stressed that the detention of persons in relation to the events of 1 and 2 March 2008, other than those who had personally committed grave violent crimes, was unacceptable to the

¹ See also below, section II. i.

Assembly, and therefore urged the authorities to use every means available to them to release those persons without delay.

12. The Commissioner for Human Rights informed the Monitoring Committee about the findings of his July visit at its meeting on 11 September 2008. Following the presentation of his written report in October 2008, the Monitoring Committee issued a public statement stressing that it was extremely alarmed about the Commissioner's findings and conclusions which showed that only limited progress had been achieved regarding key demands of the Assembly. While noting the positive steps made regarding establishment of an independent and credible inquiry, the Monitoring Committee remained extremely concerned regarding persons deprived of their liberty in relation to the events on 1 and 2 March 2008 and regretted that the Armenian authorities did not consider the possibility of amnesty, pardons, or any other legal means available to them, to resolve their situation. The Monitoring Committee therefore asked the Commissioner for Human Rights to make a follow-up visit to Yerevan and to inform the committee at its meeting on 17 December 2008 about the progress made by the Armenian authorities regarding the need for an independent inquiry and the release of persons deprived of their liberty in relation to the events of 1 and 2 March 2008.

13. The Commissioner visited Yerevan from 20 to 22 November 2008. We held a working meeting with him a week later, on 1 December 2008, in Paris, when he shared his findings and conclusions, which we have taken into account for the preparation of the present report.

II. Implementation of Assembly requirements

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

14. On 16 June 2008, the National Assembly of Armenia adopted a resolution in which it established a parliamentary Ad Hoc Committee "to conduct an inquiry into the events of 1 and 2 March 2008, as well as the causes that led to them". This Inquiry Committee is composed of two members of each of the five factions in the current parliament as well as one member on behalf of the independent members of parliament. Furthermore, the resolution establishing the Inquiry Committee allowed for the participation of representatives of extra-parliamentary forces in the work of the committee, albeit only with a consultative vote. The fact that four of the five factions in the parliament belong to the ruling coalition raised questions with regard to the possibility of the committee to conduct its inquiry independently and impartially. While noting that, due to the recent constitution of the Inquiry Committee at that time, it was not in a position to evaluate if the criteria of independence, transparency and credibility had been met, the Assembly considered, in Resolution 1620 (2008), that the format and composition of the Inquiry Committee did not per se guarantee its independence and impartiality and, therefore, its credibility in the eyes of the Armenian public.

15. Following his July 2008 visit to Armenia, the Commissioner for Human Rights concluded that the parliamentary Inquiry Committee would not have the required impartiality and credibility demanded by the Assembly as a result of its domination by the parties belonging to the ruling coalition and, as a result, its boycott by the main opposition forces loyal to Levon Ter-Petrossian. In order to resolve the impasse and ensure an independent and credible inquiry, the Commissioner therefore proposed that a separate small group of independent experts should be set up to establish the facts with regard to the events on 1 and 2 March 2008 and the circumstances that led to them. This group should be composed on the basis of parity between opposition and ruling coalition and mutual consensus on its members. The parliamentary Inquiry Committee would then be tasked with drawing the political conclusions based on the findings of the expert group.

16. During his visit, the President of the Assembly fully supported the proposals of the Commissioner and noticed with satisfaction that both the authorities, as well the opposition supporting Mr Levon Ter-Petrossian, indicated that, in principle, they supported the compromise proposal formulated by the Commissioner.

17. The Commissioner also proposed an expert to provide advice to the Armenian authorities on the methodology of setting up such an expert group, as well as on its terms or reference and operational modalities. Specific areas of attention included the need to enhance the independence of the expert group and of its individual members, as well as the transparency of its work and publication of its findings.

18. On 23 October 2008, the President of Armenia issued the order setting up the "fact-finding group of experts to inquire into the events of 1-2 March 2008 and its statute"². According to this order, the fact-finding

² The comments on this order are based on its unofficial translation into English.

group will be tasked with establishing the causes of the events of 1 and 2 March 2008, assessing the lawfulness and proportionality of the activities of police officers and officials in relation to these events and establishing the circumstances that led to the death of 10 persons during the events. The expert group will be composed of five members, two nominated by the governing coalition, one by the Heritage party, one by the political movement headed by Mr Levon Ter-Petrossian and one member nominated by the Human Rights Defender of Armenia.

19. The establishment of this fact-finding group was welcomed by the international community, including by us. While welcoming the establishment of this fact-finding group as an important step towards meeting the Assembly's demands, we also stressed that the manner in which this group will conduct its work, as well as the access it will have to the relevant state institutions at all levels, will ultimately determine whether or not the inquiry could be seen as being credible in the eyes of the Armenian public.

20. The presidential order gives the fact-finding group significant powers to conduct its work. It has the right to demand and obtain information from "any state or local self-government body or official"; it can demand the competent state bodies to conduct investigations or prepare expert opinions and can invite international experts to participate in its work. The fact-finding group can also request information and clarifications from individuals and organisations, but only with their consent. It does not have the right to question judges. Taking into account that some of the persons involved in the events that took place on 1 and 2 March have completed their term of office or have been replaced by the authorities, it is important that the authorities make clear that the obligation for state bodies and officials to provide information to the expert group also includes former officials who were in function or held office at the time of the events on 1 and 2 March 2008. Moreover, the restriction on seeking clarifications from judges should clearly not be interpreted as preventing the expert group from obtaining all necessary information and clarification with regard to the arrest, prosecution and conviction of persons related to the events on 1 and 2 March 2008.

21. Questions have been raised whether the expert group has the constitutional authority to question the current and previous Presidents of Armenia. Given the important role that these persons played in the events on, and after, 1 and 2 March 2008, we sincerely hope that they will be willing to testify before the expert group, if so invited, and that no legal obstacles will be raised in order to prevent them from doing so.

22. The expert group will present its report to the parliamentary Inquiry Committee. Individual members have the right to attach minority opinions to the report if they so wish. To ensure the transparency of the fact-finding group - an important requirement for its credibility - the report will be made public, in the manner and to the extent decided by the expert group, at the moment of its presentation to the parliamentary Inquiry Committee. In order to avoid the possibility that the work of the members of the expert group will be influenced by political considerations and media reports on their work, it was decided that the proceedings of the expert group would remain confidential until the publication of the report. Some opposition members have questioned the need for the expert group's proceedings to be confidential. However, since the report will be made public at the moment of its presentation and individual members can attach minority opinions, we do not consider that the confidentiality of the group's work would necessarily run counter to the Assembly's demand that the inquiry into the events of 1 and 2 March 2008 and its circumstances, be transparent.

23. Despite some reservations with regard to the rights and powers of the fact-finding group, the Heritage Party and the Armenian National Congress (HAK) - the coalition of opposition parties supporting Mr Levon Ter-Petrossian which was formally founded on 1 August 2008 - eventually decided to participate in the expert fact-finding group. The members appointed on behalf of the governing coalition in the expert group are Mr Gevorg Tovmasyan, a former high-level official in the General Prosecutor's Office and Mr Robert Avagyan, former law professor and former member of the Justice Council. The Armenian National Congress nominated Mr Andranik Kocharian, former Deputy Minister of the Interior and of Defence during Mr Levon Ter-Petrossian's presidency, and the Heritage Party nominated Ms Seda Safarian, a well-known trial lawyer, who represented several of the opposition supporters detained after the events of 1 and 2 March 2008. The Armenian Human Rights Defender nominated Mr Vahe Stepanyan, his Chief of Staff and a former Minister of Justice, as his representative in the expert group. The expert group, which will meet on a daily basis, elected Mr Stepanyan as its Chair during its first meeting, on 11 November 2008.

24. Some opposition parties have raised questions about the constitutionality of the presidential order setting up the expert fact-finding group and the Heritage Party has indicated that it may challenge the constitutionality of the order in the Constitutional Court. Without wishing to pre-empt the merits of these claims, we would urge the opposition parties to participate constructively, and in good faith, in the work of the expert fact-finding group and not to undermine its work on the basis of strictly procedural grounds.

25. The establishment of the expert fact-finding group is an important step towards meeting the demands of the Assembly. The work of this group is crucial in order to bring clarity to the events on 1 and 2 March 2008. It can play an important role in establishing the basis for the necessary reconciliation between opposition and the authorities which, alone, will enable Armenia to address the challenges it faces as a result of the political crisis. However, we would stress that the group's establishment is only a first step, albeit a crucial one, towards meeting the Assembly's demand. It is the result of the work of this expert group that will count, and the manner in which this group will conduct its inquiry which will be decisive for its credibility in the eyes of the Armenian public. We therefore call upon the authorities not to interfere in the work of the fact-finding group and to ensure that it will be given the fullest co-operation possible by all state bodies and officials, including those that have left office or have been replaced since the events of 1 and 2 March 2008.

ii. Release of persons deprived of their liberty in relation to the events of 1 and 2 March 2008

26. We welcome the fact that the proposed amendments to Articles 225, 225¹, 301 and 301¹ of the Criminal Code of Armenia were not adopted by the National Assembly following the negative advice of the State and Legal Affairs Committee of the National Assembly of Armenia, on the basis of the negative opinion by the Venice Commission of the Council of Europe on these amendments.

27. Regrettably, very little progress has been made with respect to the Assembly's demands regarding the release of persons deprived of their liberty in relation to the events of 1 and 2 March 2008.

28. As was the case when preparing our previous report, the information we have received regarding the number of cases and persons deprived of their liberty has been at times confusing and contradictory. According to the latest data we have at our disposal, of the persons charged in relation to the events of 1 and 2 March 2008, 87 persons have been found guilty by the courts, of which 45 have received firm prison sentences and 42 conditional sentences. In 20 cases, the charges were dropped and in 5 other cases the persons accused were acquitted by the courts. In addition, 13 persons are still detained while their cases are pending before a court; 7 persons are in detention on remand without their cases having been brought before a court at all. This latter category includes the three parliamentarians whose immunity was lifted by the National Assembly of Armenia.

29. With regard to these 7 cases that have not yet been brought before a court, the investigation by the Prosecutor General was completed early in October – nearly 7 months after the persons in question were arrested – and their files were transferred to the defence for examination before formal indictment before a court, in line with Armenian legislation. On 14 November 2008, the court extended the deadline for the defence to study the charges until 1 December 2008. On 1 December 2008, the formal indictment was made before the court and published by the Prosecutor General's Office.

30. We would like to highlight that among the seven cases that are only now brought before the court are those of three parliamentarians whose parliamentary immunity was lifted by the National Assembly on the basis of evidence provided by the Prosecutor General that would indicate that these persons had committed serious crimes. However, it took the prosecution seven more months to collect evidence and finalise the indictment. It would thus appear that the National Assembly had taken its decision to lift the parliamentary immunity of 3 of its members on very summary evidence at best, which could indicate that political motivations played a role in this decision.

31. Section 11 of the Criminal Code of Armenia deals with crimes against the state power. Article 300 of the Criminal Code makes the usurpation of state power, i.e. the seizure of state power in violation of the Constitution of Armenia, or actions aimed at overthrowing the Constitutional order, punishable with a prison term of 10 to 15 years.

32. Article 225 of the Criminal Code of Armenia (in the Chapter "Crimes against public security") deals with mass disorder. According to Article 225-1, the organisation of mass disorder, accompanied by violence, pogroms, arson, destruction of property, use of firearms, explosives or explosive devices, or armed resistance against a representative of the authorities, is punishable with a prison term of 4 to 10 years. Participation in such actions of mass disorder is punishable with a prison term of 3 to 8 years (article 225-2). However, Article 225-3 considers that, in the aggravated case that the organisation of, or participation in, such actions of mass disorder is accompanied by murder, the crime is punishable with a prison term of 6 to 12 years.

33. According to our information, 79 persons have been charged under Article 225, 19 of whom with aggravated circumstances under the third paragraph of Article 225. In addition, a total of 28 persons have been charged under Article 300. In all but one case the persons charged under Article 300 have also been

charged under Article 225. In the 7 cases for which the formal charges were brought on 1 December 2008, all persons have been charged under Articles 300 and 225-3.

34. In our previous reports, we already mentioned that Articles 225 and 300 of the Criminal Code of Armenia 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 Resolution 1620 (2008), the Assembly therefore considered that “the cases under Articles 300 and 225 of the Criminal Code should be dropped unless there is strong evidence that the accused have personally ordered, abetted or assisted the committing of such acts”.

35. In addition to the problematic nature of Article 300, until now, we have not received any credible evidence from the Armenian authorities that would indicate that the events of 1 and 2 March 2008 were aimed at the usurpation of state power within the meaning of Article 300.

36. Despite the lengthy investigation into the causes of the 10 deaths during the events on 1 and 2 March 2008, no charges have as yet been brought against any person, including police officers, for the killing of these persons. This is despite conclusive evidence that at least 3 persons died from projectiles fired from police weapons. We are seriously concerned that, to date, no one has been charged for the killing of these persons.

37. Article 225-3 explicitly refers to the aggravated condition of murder. However, taking into account the lack of clarity about the exact responsibility for the 10 deaths on 1 and 2 March 2008, and, as a result, the fact that no person has been charged for these deaths, let alone for murder, we find it difficult to understand how charges under the aggravated clause of murder in Article 225-3 can be justified.

38. On the basis of our observations regarding articles 225-3 and 300, we can only conclude that the charges brought under these articles were politically motivated and, unless the Armenian authorities can provide us with detailed and conclusive evidence to the contrary for each individual case, that persons convicted on these charges should be considered political prisoners.

39. We are seriously concerned about a letter of the Head of the Special Investigation Service, sent on 5 March 2008 to the Regional Prosecutor in Vayots Dzor (in Southern Armenia), in which the Regional Prosecutor was instructed, inter alia, to question opposition supporters about their participation in the protest rallies and find out details regarding their whereabouts, contacts, family members, as well as their ownership of property. In addition, the Regional Prosecutor was to locate taxi and bus drivers who transported opposition supporters to Yerevan and find out who accompanied them and who paid for the transport. Court permission to obtain wire-taps on telephone conversations of campaign managers of Mr Levon Ter-Petrossian were also to be obtained. The authorities confirmed the authenticity of this letter. Similar instructions were reportedly also sent to other regional prosecutors and law enforcement agencies, including the National Security Service. This letter seems to give credence to the assertion that persons were targeted because of their political beliefs, or association with opposition supporters, in the aftermath of the events of 1 and 2 March 2008.

40. In Resolution 1620 (2008), the Assembly considered that verdicts based solely on police testimony without corroborating evidence, were unacceptable. In his report to the Monitoring Committee on 11 September, the Commissioner for Human Rights noted that at least 19 prosecution cases were based solely on police testimony, despite the Assembly’s concerns in this regard. This, in our opinion, is another indication that the charges brought against and convictions of these persons may have been politically motivated.

41. We recall that, in Resolution 1620 (2008), the Assembly considered that the continued detention of opposition supporters in relation to the events of 1 and 2 March 2008 was a point of contention that continued to strain the relations between the opposition and authorities and hinder the start of a constructive dialogue on the reforms demanded by the Assembly. Therefore, the Assembly urged the Armenian authorities to consider all legal means available to them, including amnesty, pardons and dismissal of charges, to release all persons detained in relation to the events on 1 and 2 March 2008, with the exception of those persons that personally committed, abetted or organised grave violent crimes.

42. We regret that, at the time of drafting this report, the Armenian authorities have not made use of the legal means suggested by the Assembly to release those persons deprived of their liberty in relation to the events of 1 and 2 March 2008.

43. Given the fact that persons have been charged and convicted for their political beliefs, given the lack of any progress with regard to the Assembly's demands related to the person charged under Articles 300 and 225 or solely on the basis of police evidence and given the absence of any act of amnesty, pardon or dismissal of charges, we can only but conclude that the Armenian authorities do not have the requisite political will to resolve the question of persons detained in relation to the events on 1 and 2 March 2008.

iii. Media reform and pluralist media environment

44. In Resolution 1609 (2008), the Assembly considered that 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 the Armenian society.

45. In addition, in Resolution 1620 (2008), the Assembly recalled that there is a need for a pluralistic media environment in Armenia and, referring to the Strasbourg Court judgment concerning the denial of a broadcasting licence to the A1+ channel, called upon the authorities to now ensure an open, fair and transparent licensing procedure, in line with the Guidelines adopted by the Committee of Ministers of the Council of Europe, on 26 March 2008, and with the case law of the Court.

46. As mentioned in our previous report (Doc. 11656 (2008)), a public hearing was organised by the National Assembly of Armenia on the issue of media reform, with the participation of representatives of the authorities, NGOs and opposition. This public hearing resulted in a legislative package that was sent to the Council of Europe for opinion, as well as to the establishment of a parliamentary working group on the reform of the Law on Television and Radio.

47. Part of the legislative package concerns the implementation of an open and transparent tender procedure for the composition of the National Television and Radio Council and for the composition of the Public Television and Radio Commission. This tender procedure aims at ensuring the independence of the members and, as a result, the work of these two bodies. The preliminary opinion of the Council of Europe experts with regard to this new tender process is generally positive. As noted in previous reports, the lack of independence of these two main regulatory bodies for the media raises concerns about possible government influence over the media that are regulated by them. We therefore welcome the efforts of the authorities in this respect. However, we note that the proposed amendments do not explicitly stipulate that the two regulatory bodies should be representative and reflect a broad cross-section of the Armenian society. We would therefore recommend that further amendments are made to the Law on TV in this respect.

48. On 9 September 2008, the National Assembly adopted an amendment to the Law on Television and Radio that cancels all tenders for broadcasting frequencies until 2010, when the introduction of digital broadcasting in Armenia will have been completed. The amendment extends the validity of all current licenses until January 2010. While the government argues that the adoption of this amendments was needed to address the technical requirements related to the introduction of digital broadcasting, the opposition has decried these amendments as an attempt to avoid the organisation of an open, fair and transparent licensing procedure, as demanded by the Assembly, so as to keep A1+ off the air.

49. We take note of the ongoing discussions between the authorities, the National Assembly, and Council of Europe experts with regard to the proposed legislative reform package, as well as the already adopted amendments to the Law on Television and Radio that cancel tenders for broadcasting licenses until 2010. We understand that the Council of Europe will provide an expert opinion on the revised amendments to the Law on Television and Radio and is ready to provide a "spectrum expert" to analyse the technical implications of the introduction of digital broadcasting. In addition, the amendments to the Law on Television and Radio with regard to the cancellation of tenders for broadcasting licences was also discussed by the Committee of Ministers in December 2008, in the context of the discussion on the execution by Armenia of the above-mentioned judgment of the Court in the case of A1+.

50. We do not wish to pre-empt the ongoing co-operation and discussions on these issues between the Armenian authorities and the relevant Council of Europe departments. We therefore intend to analyse *in extenso* the media reform and its implications on the pluralism of the media environment in our next report on Armenia in the framework of the regular ongoing monitoring procedure of the Assembly. However, we would like to stress that the technical implications of the introduction of digital broadcasting should not be used as a pretext to delay unduly the holding of an open, fair and transparent licensing tender, as requested by the Assembly.

iv. Freedom of assembly

51. In Resolution 1620 (2008), the Assembly welcomed the adoption of amendments to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations in line with the recommendations of the Venice Commission and Assembly demands. However, it also urged the Armenian authorities to guarantee freedom of assembly in practice and therefore to ensure that no undue restrictions, especially with regard to the venues requested, be placed upon rallies organised by the opposition in compliance with the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations.

52. We welcome the fact that opposition demonstrations generally have taken place unimpeded in Yerevan since the adoption of the last resolution. However, we note that, initially, this was based on last minute agreements between the organisers and the police and not on an explicit authorisation to hold the rally by the Yerevan city administration. Subsequent demonstrations were duly authorised in advance. We nonetheless note that a number of spontaneous demonstrations were broken up by the police. We therefore urge the authorities to pursue their efforts and take all necessary measures to ensure that the fundamental freedom of assembly is fully respected in Armenia.

53. At a rally of the Armenian National Congress, on 17 October 2008, Mr Levon Ter-Petrosian announced that he would temporarily halt his campaign of anti-government protests in the light of the recent developments in the relations between Armenia and Turkey, as well as with regard to the issue of the settlement of the Nagorno Karabakh conflict. He announced that this decision was taken in order not to undermine the position of President Sargsyan in these important developments for Armenia.

v. Other reforms needed to address the underlying causes of the political crisis

54. In Resolution 1609 (2008), the Assembly called upon all political forces to initiate an open and serious dialogue on a number of reforms which it considered crucial in order to address the underlying causes of the crisis that ensued after the presidential election in February 2008. These reforms related to the political system and electoral process, freedom and pluralism of the media, freedom of assembly, independence of the judiciary and police.

55. In our report on the "Implementation by Armenia of Assembly Resolution 1609 (2008)" (Doc. 11656 (2008)), we welcomed and highlighted the series of initiatives taken by the authorities with regard to initiating the reforms demanded by the Assembly. We welcome that, since the adoption of Resolution 1620 (2008), the Armenian authorities have pursued their efforts in bringing forward these reforms. In addition to the developments in the field of the media described above, we note in particular the ongoing efforts to reform the electoral system, as well as the close co-operation between the Armenian authorities and the relevant Council of Europe departments on the reform of the judiciary, with a view to strengthening its independence.

56. That said, in the period since the adoption of Resolution 1620 (2008) we have focused our efforts and attention on the two key demands of the Assembly, notably the start of an independent, transparent and credible inquiry into the events on 1 and 2 March and the issue of persons deprived of their liberty in the context of these events. The satisfactory resolution of these two major issues is, in our opinion, indispensable for the successful implementation of any other reform to comply with the Assembly's demands. At this stage, we are not therefore in a position to make an in-depth analysis of the progress on these other reforms demanded by the Assembly. We intend to come back to these issues in an addendum to this report on the basis of a possible visit to the Armenia in January 2009, should such a visit be helpful to achieve tangible progress with regard to the outstanding question of the release of persons deprived of their liberty in relation to the events of 1 and 2 March 2008.

III. Conclusions

57. We welcome the setting-up of the independent fact-finding group to investigate the events on 1 and 2 March 2008 and the circumstances that led to them, as well as the decision of the opposition to fully participate in its work. This is an important step in ensuring that an independent, transparent and credible inquiry into the events of 1 and 2 March will be held as demanded by the Assembly.

58. In this respect, we would like to pay tribute to the significant contribution to the setting up of this group made by the Commissioner for Human Rights of the Council of Europe.

59. That said, we underline that it is the result of the work of this expert group that counts, and the manner in which this group will conduct its inquiry which will ultimately be decisive for its credibility in the eyes of the Armenian public. We therefore call upon all political forces to refrain from politicising, or interfering in, the

work of this fact-finding group. In addition, we call upon the Armenian authorities to ensure that the group will be given the fullest possible co-operation by, and full access to information from, all state bodies and officials, without exception, including those officials that have left office or changed functions since the events on 1 and 2 March 2008.

60. We deeply regret that no such similar progress has been made with regard to the release of persons have been deprived of their liberty in relation to the events on 1 and 2 March 2008.

61. We note with satisfaction that the cases of the 7 opposition members have finally been brought before the courts. However, we regret the nature of the charges that have been brought against them under Articles 225-3 and 300 of the Criminal Code of Armenia and question the strength of the evidence purportedly warranting their prolonged pre-trial detention, as well as the lifting of the immunity of 3 of them who are members of the National Assembly.

62. No tangible progress has been made in relation to the key Assembly demands that no convictions should take place solely on the basis of police testimony, without substantial corroborating evidence, and that the charges under Articles 225 and 300 of the Criminal Code of Armenia should be dropped unless there is strong evidence that the persons concerned personally committed acts of violence or intentionally ordered, abetted or assisted the committing of such acts. In this respect, we also note the concerns raised by the Commissioner for Human Rights in his report regarding the legal proceedings against many of those convicted in relation to the events of 1 and 2 March 2008.

63. We regret to conclude that there are strong indications that the charges against a significant number of persons, especially those charged under Articles 225-3 and 300 of the Criminal Code and those based solely on police evidence, have been politically motivated. It follows that the persons convicted on these charges can be considered political prisoners.

64. We further regret that the authorities have not so far availed themselves of the possibility to use all legal means available to them, such as amnesty, pardons or the dropping of charges, to release those who were deprived of their liberty in relation to the events of 1 and 2 March 2008 and who did not personally commit acts of violence or intentionally order, abet or assist the committing of such acts.

65. We therefore can only but conclude that the Armenian authorities lack the necessary political will to resolve the question of persons detained in relation to the events on 1 and 2 March 2008

66. We welcome the efforts made by the Armenian authorities to initiate reforms in other areas demanded by the Assembly, in particular in the fields of media, electoral legislation and the judiciary. We call upon the authorities to continue the co-operation developed with the relevant Council of Europe bodies in these fields. In the field of media pluralism and freedom, we welcome the proposals made with a view to ensuring the independence of the media regulatory bodies in Armenia, and call upon the authorities to fully implement the forthcoming recommendations of the Council of Europe experts in this regard. In relation to the postponement of tenders for broadcasting frequencies until 2010, and without wishing to pre-empt the merits of the arguments advanced to justify this decision, we stress that the technical requirements for the introduction of digital broadcasting should not be used to unduly delay the holding of an open, fair and transparent tender for broadcasting licences, as demanded by the Assembly.

67. Notwithstanding positive developments in some areas, it is unacceptable that persons have been charged and deprived of their liberty for political motivations and that political prisoners exist in Armenia. Therefore, despite the positive steps taken towards the establishment of an independent, transparent and credible inquiry, we recommend that the Assembly suspends the voting rights of the members of the Armenian Parliamentary delegation to the Assembly, under Rule 9, paragraphs 3 and 4.c, of the Rules of Procedure, until the Armenian authorities have clearly demonstrated their political will to resolve the issue of persons deprived of their liberty in relation to the events of 1 and 2 March 2008, in line with Assembly demands, as expressed in Resolutions 1609 (2008) and 1620 (2008).

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

Reference to committee: Resolution No. 1115 (1997)

Draft resolution unanimously adopted by the committee on 17 December 2008

Members of the committee: Mr Serhiy **Holovaty** (chairperson), Mr György **Frun**da (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 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**, Mrs Olha Herasym'yuk, Mr Andres **Herkel**, Mr Raffi **Hovannisian**, Mr Kastriot **Islami**, Mr Michael Aastrup Jensen, Mr Miloš Jevtić, Mrs Evguenia Jivkova, Mr Hakki Keskin, Mrs Katerina Konečná, Mr Andros Kyprianou, Mr Jaakko **Laakso**, Mrs Sabine Leutheusser-Schnarrenberger, Mr Göran **Lindblad**, Mr René **van der Linden**, Mr Eduard Lintner, Mr Younal Loutfi, Mr Pietro Marcenaro, Mr Mikhail Margelov, Mr Bernard Marquet, Mr Dick Marty, Mr Miloš Melčák, Mrs Nursuna **Memecan**, Mr João Bosco Mota Amaral, Mr Theodoros Pangalos, Ms Maria Postoico, Mr Christos Pourgourides, Mr John **Prescott**, Mr Andrea **Rigoni**, Mr Armen **Rustamyan**, Mr Indrek Saar, Mr Oliver Sambevski, Mr Kimmo **Sasi**, Mr Andreas Schieder, Mr Samad Seyidov, Mrs Aldona Staponkienė, Mr Christoph Strässer, Mrs Chiora **Taktakishvili**, Mr Mihai Tudose, Mr Egidijus Vareikis, Mr Miltiadis Varvitsiotis, Mr José Vera Jardim, Mrs Birutė 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



Doc. 11786 Addendum

26 January 2009

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

Addendum to the report

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

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

1. On the request of the Monitoring Committee, we visited Armenia for meetings with the authorities on 15 January 2009. The aim of our visit was to assess if any progress had been made with regard to resolving the issue of persons deprived of their liberty in relation to the events on 1 and 2 March 2008 and to urge the authorities to take concrete steps with regard to this issue in order to avoid the application of sanctions in respect of the Armenian Delegation to the Parliamentary Assembly, as proposed by the Monitoring Committee at its meeting of 17 December 2008.

2. During our visit to Yerevan, we held meetings with, *inter alia*, the President of Armenia, the Speaker of the National Assembly of Armenia, the General Prosecutor, the Chairman of the Constitutional Court, the Chairman and members of the Armenian Delegation to the Parliamentary Assembly, the Secretary of the Security Council, the Human Rights Defender of Armenia, the Chairman of the parliamentary Ad-Hoc Inquiry Committee into the events which occurred on 1-2 March 2008, the fact-finding group of experts to inquire into the events of 1-2 March 2008 (which was set up by Presidential decree on the basis of recommendations by the Commissioner for Human Rights of the Council of Europe), as well as representatives of the international community in Yerevan. We would like to express our gratitude to the National Assembly of Armenia for the excellent programme and for the logistical support provided for our visit. In addition, we would like to thank the Special Representative of the Secretary General of the Council of Europe in Yerevan and her staff for the support extended to our delegation.

3. The proceedings with respect to the seven persons whose cases have been recently brought before the court and who are considered by the authorities to be the "ring-leaders" of the events of 1 and 2 March 2008 have been opened, but have constantly been adjourned since the outset as a result of actions by the seven defendants that are considered to be in "contempt of the court". While the refusal to stand up when a judge enters the court room at the beginning of the trial, as required by Armenian legislation, could probably be best sanctioned by a fine, other actions by the defendants are clearly not conducive to the pursuit of the court proceedings.

4. In our meetings with the authorities and especially with the General Prosecutor, we underlined the concerns of the Monitoring Committee with regard to charges brought under Article 300 (usurpation of power) and Article 225 (mass disorder) of the Criminal Code of Armenia. In relation to Article 300, we stressed that we have not received compelling information, including from the reference materials provided by the General Prosecutor's Office, that would indicate that the events of 1 and 2 March 2008 were aimed at the usurpation of

the state power or the violent overthrow of the constitutional order of Armenia. We have not received evidence that the seven opposition leaders organised violent actions with premeditation with the aim to usurp the state power, for which they have been charged under Article 300. In relation to Article 225, we expressed our concern about the aggravated clause of mass disorder accompanied by murder (Article 225-3), while no one has been charged for the 10 deaths that occurred during the events on 1 and 2 March 2008.

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

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

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

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

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

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

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

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

13. As the decree of the Speaker of the National Assembly could have a significantly favourable impact on the situation of the persons charged, as well as of those convicted, in relation to the events on 1 and 2 March,

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

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

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

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

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

Proposed amendments to the draft resolution

Amendment A

In the first sentence in paragraph 4 of the draft resolution, replace the words “limited progress has been made” with the following words:

“, until the last moment, only limited progress was made”.

Amendment B

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

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

Amendment C

After paragraph 5, add two new paragraphs as follows:

“The Assembly welcomes the decision of the Speaker of the National Assembly of Armenia, of 22 January 2009, to establish a Working Group within the National Assembly, within a one-month period, to draft, in co-operation with the relevant bodies of the Council of Europe (notably the Venice Commission and the Commissioner for Human Rights) amendments to Articles 225 and 300 of the Criminal Code of Armenia, in order to address the legal shortcomings in these articles as noted, inter alia, by the Assembly and the

Commissioner for Human Rights of the Council of Europe, and to bring them in line with Council of Europe standards. The Assembly also notes the assurances given by the Speaker of the National Assembly that these amendments will be adopted and sent to the President for promulgation within approximately one month after the Working Group has finalised its work. The Assembly notes that, under the Constitution of Armenia, any positive changes to the law would be retroactive with respect to the charges brought against the persons deprived of their liberty in relation to the events on 1 and 2 March 2008.

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

Amendment D

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

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

Amendment E

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

Amendment F

Replace current paragraph 9 with the following text:

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

APPENDIX



ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ ԱԶԳԱՅԻՆ ԺՈՂՈՎԻ ՆԱԽԱԳԱՀ
 PRESIDENT OF THE NATIONAL ASSEMBLY OF THE REPUBLIC OF ARMENIA

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Yerevan, 22 January 2009

Dear Mr. Prescott, Dear Mr. Colombier,

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

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

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

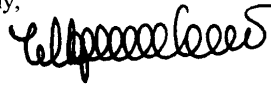
Mr. John PRESCOTT
 Mr. Georges COLOMBIER
 Co-Rapporteurs
 CC: Bas KLEIN, Co-secretary
 Committee on the Honouring of Obligations and Commitments by
 Member States of the Council of Europe (Monitoring Committee)
 Parliamentary Assembly of the Council of Europe
 Strasbourg

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

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

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

Yours sincerely,



Hovik ABRAHAMYAN

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

Reference to committee: Resolution No. 1115 (1997)

Draft resolution unanimously adopted by the committee on 26 January 2009

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

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