

Provisional edition

### The functioning of democratic institutions in Armenia

Resolution 1609 (2008)<sup>1</sup>

---

1. On 19 February 2008, Presidential election took place in Armenia. Although “administered mostly in line with Council of Europe standards”, the Ad hoc committee which observed this election found a number of violations and shortcomings, the most important of which were: unequal campaign conditions for all candidates, lack of transparency of the election administration and a complaints and appeals process that did not give complainants access to an effective legal remedy. In addition, a number of cases of electoral fraud were witnessed.
2. The Parliamentary Assembly regrets that the violations and shortcomings observed did nothing to increase the currently lacking public confidence in the electoral process and raised questions among a part of the Armenian public with regard to the credibility of the outcome of the election. This lack of public confidence was the basis for the peaceful protests, even though without prior official notification, that ensued after the announcement of the preliminary results, which had been tolerated by the authorities for ten days.
3. The Assembly deplores the clashes between the police and the protesters and the escalation of violence on 1 March 2008, which resulted in ten deaths and about two hundred people being injured. The exact circumstances that led to the tragic events of 1 March, as well as the manner in which they were handled by the authorities, including the imposition of the State of Emergency in Yerevan from 1 to 20 March 2008 and the alleged excessive use of force by the police, are issues of considerable controversy and should be the subject of a credible independent investigation.
4. The Assembly condemns the arrest and continuing detention of scores of persons, including more than one hundred opposition supporters and three members of parliament, some of them on seemingly artificial and politically motivated charges. This constitutes a *de facto* crackdown on the opposition by the authorities.
5. In a welcome development, and upon an initiative of the new President, Mr Serzh Sargsyan, four of the five parties in parliament signed, on 21 March 2008, an agreement to form a political coalition aimed at resolving outstanding political issues. However, there is still a necessity to establish a dialogue between the coalition and the Heritage Party, as well as the extra-parliamentary parties, to resolve the current crisis in Armenia.
6. While the outbreak of public resentment, culminating in the tragic events of 1 March 2008, may have been unexpected, the Assembly believes that the underlying causes of the crisis are deeply rooted in the failure of the key institutions of the state to perform their functions in full compliance with democratic standards and the principles of the rule of law and the protection of human rights. More specifically:

6.1. the National Assembly of Armenia has so far failed to play its role as a forum for political debate and compromise between the different political forces. Based on a "winner takes it all" attitude, the current political system excludes the opposition from any effective participation in the decision-making process and governance of the country. As a result of this, inter alia, a part of the political spectrum in Armenia is not represented in the current National Assembly;

6.2. the lack of public trust in the electoral process also generally undermines the credibility of the outcome of the elections in the eyes of a part of the Armenian public. This is further compounded by the lack of impartiality of the election administration, the ineffective handling of election complaints and appeals and the lack of transparency of the vote count and tabulation procedures;

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

6.4. in the absence of adequate judicial control, the arrest and continuing detention of persons on seemingly artificial charges after contesting the fairness of the Presidential election or their participation in the protest after the Presidential election can only point to the political motivation of such acts. This, is unacceptable in a Council of Europe member state and cannot be tolerated by the Assembly;

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

7. A few days before the expiry of the State of Emergency, on 17 March 2008, upon the government's proposal, the National Assembly, in an extraordinary session, adopted a series of amendments to the Law on conducting meetings, assemblies, rallies and demonstrations which considerably limit the right of freedom of assembly and give great discretionary powers to the authorities to prohibit political rallies and demonstrations. They thus run counter to European standards, as enshrined inter alia in Article 11 of the European Convention of Human Rights, and are in breach of Armenia's obligations and commitments as a member state of the Council of Europe. In a joint draft opinion, the European Commission for Democracy through Law of the Council of Europe (Venice Commission) and the OSCE/ODIHR also considered these amendments to be unacceptable. The Assembly welcomes the intention expressed by the newly elected President in his inaugural speech to bring the Law on conducting meetings, assemblies, rallies and demonstrations in full compliance with the European standards and to encourage further co-operation with the Venice Commission on this matter.

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

8.1. the political system should ensure a proper place and proper rights to the opposition;

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

perceived electoral violations; an equal playing field in practice for all political forces both during the official campaign period, but also prior to it, must be guaranteed;

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

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

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

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

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

10. The Assembly believes that the only way to allow the country to move forward with the above-mentioned urgently needed reforms is the initiation of an open and constructive dialogue between the political forces in Armenian society. The Assembly had already pointed out the need for such a dialogue as a requirement to ensure the effective implementation of the constitutional reform when adopting its Resolution 1532 (2007) more than a year ago.

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

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

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

12.2. the persons, detained on seemingly artificial and politically motivated charges or who did not personally commit any violent acts or serious offences in connection with them should be urgently released;

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

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

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

---

<sup>1</sup>. *Assembly debate* on 17 April 2008 (16<sup>th</sup> Sitting) (see [Doc. 11579](#), report of the Committee on the Honouring of Obligations and Commitments by member states of the Council of Europe (Monitoring Committee), corapporteurs: Mr Georges Colombier and Mr John Prescott). *Text adopted by the Assembly* on 17 April 2008 (16<sup>th</sup> Sitting).