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***ARMENIA: INTEGRATION TO THE COUNCIL OF EUROPE
AND ITS POLITICAL IMPLICATIONS***

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List of Abbreviations

RA	-	the Republic of Armenia
NA	-	the National Assembly
MFA	-	the Ministry of Foreign Affairs
PACE	-	the Parliamentary Assembly of the Council of Europe
CoE	-	the Council of Europe

Abstract

This study is a result of the Internship Policy Project conducted with the Department of International Relations of the National Assembly of the Republic of Armenia (RA). The purpose of this project was to study the integration of the RA to the Council of Europe, which is viewed as a two-fold process. Accordingly, the significance of the integration was treated as a dynamic process entailing substantial internal institutional transformations at the level of the domestic legislation. On the other hand, the integration of Armenia to such an influential organization as the Council of Europe has important political implications as a foreign policy achievement and enables Armenia to be represented in Europe on an equal footing with other states.

The methodology included archival research, historical research as well as comparative analysis of the legal documents. The study has the exploratory objective with the major emphasis placed on the development of political cooperation between the NA the RA and PACE in the light of the balanced policy promoted by the CoE with the respect to entire Transcaucasian region. The policy effected in the institution of the trilateral interparliamentary cooperation of the Transcaucasian states under the auspices of the organization.

Next, the study is focused on the domestic legal reform based on the requirements set forth by the CoE which provide the background for the important institutional transformations in Armenia and define the scope of the domestic policies to be implemented for meeting the requirements of the organization. It has been pointed to the need for the large-scale legal reform in order to correct the deficiencies of the domestic law and apparent inconsistencies identified between the latter and the legal treaties of the CoE. The major policies involve the improvement of laws that are currently in operation and the adoption of entirely new codes in the human rights field and judiciary, provided these are in compliance with the international norms and standards.

I. Introduction

After the collapse of the Soviet Union, Armenia gained opportunity to formulate and pursue its own foreign policy. Thus, the independence imposed both great burden and political responsibility on the Government to correctly determine the priorities of the foreign policy of the RA. While placing a strong emphasis on the strengthening of the relations within the CIS, the Government has increasingly come to understand more about the significance of the political unification taking strength in Europe and the need to have greater involvement within the Council of Europe as the basis of that unification. This has become one of the priorities of the foreign policy of our country and one of the important activities undertaken by the Armenian Parliament in putting the policy into practice.

The Council of Europe (CoE) was potentially the most important venture in the early post-war period, with the general objective of promoting unity in various fields and of protecting human rights. Actually, it is recognized as the parent body within the framework of the European human rights system, "causing the law of several countries to be amended, helping to bring the different legal systems of Western Europe into some harmony with each other, and generally increasing awareness of many issues involved in human rights questions" (Armstrong et al, 1996, 270). For example, the European Convention on Human Rights and fundamental freedoms in an unprecedented degree defines the rights and fundamental freedoms individuals are entitled to in the democratic states. (Appendix A gives brief description of the structure of the CoE and its Statute bodies).

The role of the CoE as a regional intergovernmental political organization is hence straightforward. Over the years of existence, the organization created a strong framework for comprehensive cooperation and political debate among the states in Europe. In many ways, the

organization has become more efficient and coherent, more transparent and cooperative, which set the good basis for further enlargement. During the Summit of Heads of State and Government, held in Strasbourg in 1997, main objectives of the European family in the 21st century have been prioritized where the Council of Europe is supposed to forge "a freer, more tolerant and more just European society founded upon common values such as freedom of expression and information, cultural diversity and the equal dignity of all human beings" (Tarschys 1997, 5) Through its dynamic policy of enlargement and achievement made in the field of democracy, rule of law and human rights, the organization assumed a unique role of furthering the democratic security in Europe, the concept of democratic security being launched by the member states of the Council of Europe at Vienna Summit in 1993 (ibid.).¹

Armenia as well as other former communist states is therefore presented with an opportunity of participating in the construction of an integrated Europe on an equal footing with other states. Thus, in several years the membership to the organization has increased from 23 to 41 member states. Four countries – Armenia, Georgia, Azerbaijan and Bosnia-Herzegovina have been viewed as potential future members, all enjoying the special guest status within the Parliamentary Assembly. Through this enlargement and due to their cooperation within the Council of Europe, states in transition strengthened their prospects in terms of the development of democracy, civil society and the rule of law.

It is clear that the member states have various backgrounds and different levels of economic and political development. For these reasons, the accession is a long process and has to do with the strict commitments undertaken by the new members to encourage democratic reform in their states.

¹ The author emphasizes newly emerging economic, political and cultural implications of the concept of democratic security, which previously had mainly military basis.

In this context, Armenia have expressed the desire be involved into the Council on the grounds that it would correct the deficiencies in the country's legislation and improve law enforcement practice bringing them in accordance with the European standards. This is a comprehensive policy that assumes a full-scale cooperation between all the branches of government based on assistance from the CoE. While the integration of Armenia into such an influential organization as the Council of Europe is to contribute to the development of democracy in Armenia and establishment of peace in the region, the fulfillment of certain obligations based on the requirements of the organization is an important part of the admission process.

II. Research Design

Purpose The purpose of this project is to study this integration proceeding from two perspectives: the development of institutional interparliamentary cooperation that is underway between the NA and PACE and from the perspective of the domestic institutional transformations that are to take place during the accession of Armenia to the organization.

Research Questions

The following issues have been at the attention while doing this project.

- 1) Has there been developed a real political cooperation between the National Assembly of the RA and PACE and what areas this cooperation emphasizes?
- 2) What are the major issues prioritized for Armenia by PACE?
- 3) Are there inconsistencies in the legislation of RA with the requirements of PACE?
- 4) What are the expected benefits of membership?
- 5) Is there a trade-off between the underlying costs and the expected benefits?

Methodology

The project had an exploratory objective. The inter-parliamentary cooperation was studied from the historical perspective framework starting from 1996 up to now. The methodology included also the extensive archival research and the comparative analysis of the legal documents. The comparative analysis was employed with the purpose to reveal the inconsistencies between the domestic legislation and the legal documents and requirements set forth by the CoE.

III. Literature Review

In the 20th century the role of international organizations in shaping world politics has been straightforward. In many controversial areas such as security, peace or human rights, international organizations have been created by states to regulate everyday international activity (Armstrong et al., 1996). David Armstrong furthermore comes up with several generalizations about the influence of international organization in world politics: “(1) international organizations affect the habitual conduct of states, which help to prompt states to seek cooperative or multilateral solutions to their problems” (p4). International organizations (2) assumed an important role of legitimating states’ policies and lastly (3), the UN as well as other actors have a key role in establishing the normative basis underpinning international relations.

In the light of the integration processes taking place in Europe, the role of the Council of Europe in the world politics is growing. “After functioning as little more than an ineffectual debating society for several years, the Council gradually began to acquire a significant role in regard to the protection of human rights and development of democratic values in Europe” thus becoming the parent body of the European system of human rights (ibid., p.142). Thomas

Buergental (1995) in this regard notes that provisions of the European Convention are enforced both on the national and international levels. In a significant number of states, the Convention enjoys wide jurisdiction and the status of the domestic law.

It is thus apparent that the role and significance of the organization ceased to remain regional only, as it created an effective human rights protection system with the global influence becoming “the single most important legal and political common denominator of the states of Europe in the widest geographical sense” (Ryssdall 1996, 18). It has been argued that “this unification of Europe presents us with great opportunities, which the Council of Europe is in an excellent position to seize. It should do so in cooperation with the other international institutions and organizations on the basis of comparative advantages, efficient use of resources and pursuit of optimal synergy“ (Tarschys 1997, 6). Tarschys further continues that the accession of three members of the CIS (Moldova, Ukraine and Russia) to be soon followed by another four (Armenia, Azerbaijan, Belarus² and Georgia has significantly expanded the borders of the Council of Europe. “The integration of these states into the organizations structures is an important political act, confirming our governments’ determination to avoid new rifts in the continent and to build a common European civilization of democratic nations” (ibid., p.7).

IV. Interparliamentary Cooperation

The present section of the paper examines the political interparliamentary cooperation between the National Assembly (NA) of the Republic of Armenia (RA) and the Parliamentary Assembly of the Council of Europe (PACE) emphasizing the key role of the NA in implementing the integration policy in practice. The Council of Europe gained a new lease of life

² The CoE suspended the special guest status from Belarus due to the political tensions with the Government of Belarus.

after the collapse of communism when it significantly expanded its size and the number of member-states. Faced with the growing challenge for membership stemming from the former communist regimes, in 1989 PACE formed a special guest status. As a result, three of the Transcaucasian republics that enjoyed the special guest status with PACE have lately been granted full membership. As far as the former communist regimes are concerned, the Council of Europe actively encourages political and legislative reform aimed at bringing the legislature of these states into conformity with the European democratic principles and helps to facilitate the transition of these states toward democracy.

On October 4, 1994 PACE decided about the further enlargement of the organization. Part 8 of the Resolution 1247 (1994) concerned the accession to the organization of the three Transcaucasian republics taking into account their close cultural ties with Europe and their determination to be recognized as part of the European family. The relationship between the Armenian National Assembly and PACE began developing in 1991 after Armenia have officially applied for membership in the Council of Europe on December 22 and received the special guest status on January 26, 1996 (NA Doc. 2000).

Political cooperation between the NA and PACE has been studied from two interrelated perspectives assuming the *twofold character* of the political cooperation. On the one hand, Armenia is viewed as part of the Transcaucasian region, which revealed that regional factor is very important for Armenia's accession to the Council.

Trilateral Cooperation

Resulting from the existing controversies between these republics and the overall complexity of the region, PACE tacitly implements a balanced and impartial policy toward all the three

Transcaucasian states. The idea underlying this coordinated approach is that none of the republics should be given preponderance over the others in terms of the full membership. The integration of the Transcaucasian republics into the European structures pointed to the existence of problems that are common in nature and to the need for the joint efforts for their solution.

The balanced policy of the Council resulted in the institution of the trilateral interparliamentary cooperation of the Transcaucasian states under the auspices of the organization. What are its main objectives? First of all, the mutual integration of the legislations of Armenia, Georgia and Azerbaijan, particularly in the field of human rights prior to their admission to the organization; the development of transfrontier cooperation and the solution of the issue of the prisoners of war resulting from the conflict between Armenia and Azerbaijan. The regional cooperation consists particularly of meetings between the Parliamentary Speakers and parliamentary seminars that are to take place successively in the capitals of the three republics (Memorandum 2000). There are also working groups on prisoners of war and on the implementation of human rights legislation, which prepare and define the agenda of the upcoming parliamentary seminars and meetings. The Speakers of the three national parliaments stressed the role of the national legislatures in furthering the regional cooperation.³ “We therefore decided to establish a dialogue at parliamentary level to discuss issues of common interest such as harmonization of legislation, protection of human rights, the rights of national minorities, situation of refugees and displaced persons... as well as other questions chosen by mutual agreement”(ibid., p.3). Particularly, following the conclusions of the meetings of the working group on prisoners of war, the Parliaments of Armenia and Azerbaijan have already

³ The Speakers of the three National Parliaments came up with the Joint Declaration on March 15 1999 on the institution of an Interparliamentary Cooperation between the legislatures of their states and admitted the exceptional role of Parliaments in facilitating the transition toward democracy and contributing to the establishment of peace and stability in the region.

adopted Declarations acknowledging that the exchange of prisoners of war is a purely humanitarian and, therefore, nonpolitical matter. The states also should provide all available information about prisoners and the unrestricted access to them of the parties concerned and other local NGOs.

The development of the trilateral cooperation is at the formative stage and hence little judgement can be made on its progress so far. While its promotion is to the apparent benefit of all the republics, the future of the cooperation may be conditioned by the following interrelated set of factors:

1. The ability of the Council of Europe to play the role of the political mediator to the effect of countering/lessening the influence of other international organizations and regional powers and the existence of the conflicts and tensions of the bilateral nature. The region is marked by interstate and intrastate conflicts of ethnic background, not only in Armenia and Azerbaijan but also in Georgia. It also carries a special geopolitical importance and is thus vulnerable to external influences of such states as Russia, USA, Turkey etc., each of which trying to male the region the sphere of its exclusive domination.
2. The goals each of these states pursues may diverge from the interests of others and may really prevent the trilateral cooperation from becoming consistent and long-term. It is often argued that there are too many dividing lines between the South Caucasian republics, which are reinforced by the influence of external powers in the region.
3. The will of the states to fulfill the commitments they have entered into. In this case, the monitoring mechanisms are important factor for the states to ensure the mutual fulfillment of their obligations. On the other hand, the working groups themselves lack the necessary

monitoring functions in order to observe and check the implementation of the commitments by the states.

Thus, the first perspective focused on the intergovernmental cooperation between the three Transcaucasian republics trying to understand whether the regional factor may have impact on Armenia's accession to the organization. While doing the study, the question, which came around implicitly, was whether there exists a trade-off between the principles of the organization and the politics. In other words, how much the political context matters while considering one or another state as candidate for membership in the organization. Indeed, it can be inferred that the issue has important political background. The three Transcaucasian republics have been equal candidates for membership to the CoE, yet it has been tacitly stated that for Armenia political developments in Azerbaijan, namely the past November parliamentary elections, might have immediate influence. However, to complete the accession, PACE accepted these elections as legitimate despite the numerous violations, which were identified, posing an additional requirement on Azeri Government to take measures for remedying these breaches through the legal action.

NA-PACE:Direct Cooperation

The second perspective dwells on the development of direct political cooperation between the Parliament of Armenia and PACE. Since 1996, Armenia is an active participant in various activities of PACE by establishing a comprehensive interparliamentary/intergovernmental cooperation and through various assistance programs. The most important institutional environment where political cooperation develops is the relationship National Assembly – PACE, namely the participation of the NA delegation in the plenary sessions and the work

performed at the level of PACE Committees.⁴ During sessions there is a variety of issues for discussion at the agenda of the Parliamentary Assembly.

The special guest status allowed the NA delegation only participation in debates and exchange of opinions without the right to vote giving the option to choose from among the majority of issues those ones, which may benefit policies of the Government. On the other hand, the special guest status deprived the NA delegation from the right of vote as well as from the opportunity to introduce issues for debate.

The work of the NA delegation with the Parliamentary Assembly has been studied from 1996 up until now with the purpose to follow the dynamics of the cooperation and the priority areas where the activities of the NA delegation have been focused on. The overall analysis showed that there is a substantial amount of coordination between Ministry of Foreign Affairs as the primary agency, which formulates and implements the foreign policy of the Republic, and the NA. The policy, which the NA conducts with PACE, is thus carried out in conjunction with the general foreign policy objectives pursued by the MFA. The delegation is to introduce the major political developments that are underway in Armenia and to support or to counter the country reports presented by the monitoring and mission groups. Another important realm of activities concerns the establishment of direct relations with other member-states under the framework of PACE. In this regard, the NA delegation was very successful in developing bi-lateral relationships with their partners both from the CIS and with the Western member-states.

⁴ As it has been mentioned the delegation from any country should adequately reflect the political spectrum of the Parliament. Proceeding from this requirement, the NA delegation represents all major political forces of the Assembly. Thus, the members of the NA delegation are the following Deputies: H. Hovhannisyan (Head of the delegation, Kayunutyun Group), F. Kharatyan (Communist Faction), A. Rustamyan (Dashnaktsutyun Faction), H. Hovhannisyan (Unity Faction).

The Council may be considered as a vehicle for promoting the interests of Armenia at the international level, which is of utmost importance.⁵ In this context, the delegation took an active participation when the situation with ethnic cleavages in Transcaucasia was brought to the floor. As a matter of fact, one of the important conditions for both Armenia and Azerbaijan in terms of membership in the CoE is the peaceful settlement of Nagorno-Karabakh problem. The Armenian delegation was strict in presenting the position of Armenia on the issue and once more confirming its commitment to resort to peaceful and long-term resolution of a conflict (NA Doc. 2000). In this respect, a significant amount of work is also being done at the level of PACE Committees while examining problems directly or indirectly related to Armenia and entire region. Legal Issues and Human Rights Committee, Political Affairs Committee and the Committee on Migration and Refugees are hence ranked first in importance since they deal with problems that reflect the current political strategies of the Government. Thus, Political Affairs Committee set up a round table discussion of Nagorno Karabakh conflict inviting the parties to the conflict including also the representatives from Nagorno Karabakh and enabling both Armenia and Azerbaijan to start a political dialogue.

Prior to admission, the political cooperation proceeded on a dynamic and progressive scale. It is therefore apparent that the NA delegation activities with PACE should entail gradual broadening of debate and involvement with the wider range of issues, particularly after having the accession completed. The enlargement policy undertaken by the CoE enabled to many of the states with the former communist regime to seek membership in the organization. It is also clear that Armenia faces problems that are endemic to most of these states. With some of them

⁵ The policy that the NA delegation pursues contributes to create awareness about Armenia and its cultural heritage. During the 1998 April session, the NA delegation issued a declaration “to commemorate the anniversary of what has been called the first genocide of the 20th century...” The written statement was signed by 51 parliamentarians and presented at the subsequent sitting.

Armenia shares common historical past, while others such as Bosnia-Herzegovina had experienced the upsurge of ethnic conflict. While the developments in many of these states produce a direct impact on Armenia as well, debate around such problems as for example 1998 economic crisis in Russia might be helpful in terms of finding solutions to domestic problems.

Because many of the member-states and new applicants have common political background, an appropriate institutional setting was necessary to deal with the problems the states in transition are generally facing. The European Commission for Democracy through Law (Venice Commission) where Armenia enjoys the status of an associate member was established in 1990 exactly for these purposes (MFA Report on Legal Reform 1998). Its main objectives are to assist the countries of Eastern and Central Europe in setting up and fostering new institutions based on the democratic standards and integrating the legal systems of these states into the European system (Tarschys 1997). The cooperation with Armenia involves assistance in reforms being made in judicial system, particularly concerning the functioning of the Constitutional Court. The protection of minority rights is also within the scope of Venice Commission, since “history has shown that the peace, stability and security in Europe is inextricably linked to the protection of and promotion of the rights of minorities” (Minority Rights Group Report 1996, 4). To this end, programs have been developed and financed by the CoE to help reform the institutional and legislative systems of the states in transition.

In fact, there is a wide range of intergovernmental programs of activities bringing together a large network of experts in various fields of policy and administration that are targeted toward the development and consolidation of democratic reforms. For instance, the main objectives of the Council’s activities in Bosnia-Herzegovina are to further the protection of Human Rights; to build a viable civil society (*ibid.*). Similarly, there are many member-states where democratic

institutions are at the formative stage manifested by adverse political and economic developments. However, cooperation with the organization is expected to lead to tangible results provided that the substantial reforms have been carried out and training programs and exchanges have been organized with expert advice being given on draft laws “from the drawing up of a new constitution to the very basic requirement of a functioning legal democracy” (Tarschys 1997, 6).

V. Monitoring - Analysis of Internal Situation

The core values of the CoE are normative and define the common ideals on which the organization hinges. On the other hand, the actual behavior of both citizens and governments may therefore diverge from them. Thus, a state joining the organization seriously commits itself to promoting and defending the core principles both at home and in the continent as a whole (Tarschys 1997). As one of the major consequences, monitoring has become one of the key functions of the CoE, which concerns all member states, old as well as new, and is closely connected to various support activities and expert assistance. Therefore, the important role in the admission process belongs to the Parliamentary Assembly, which starts the actual investigation process on whether the state is in line with the requirements of the organization. As a result, two rapporteurs, from the Committee of Political Affairs and the Committee of Legal Affairs and Human Rights respectively, have been assigned to carry out the investigation and fact-finding missions in order to study the political situation of Armenia from the prospects of the compliance of the domestic legislation with the international one, the internal political stability, the rule of law and human rights situation. The reports are based on the detailed analysis of the political and legal system of the state and are aimed at finding whether the state in question commits to bring its legal system in conformity with the European norms and standards, to ensure the proper

functioning of institutions, to guarantee minority rights and respect inviolability of borders. Several major issues were highlighted as vital for Armenia's accession to the Council of Europe.

Political Issues

Commitment to democratic ideals and promotion of free and fair election has always been important condition for any country to become a full member in the Council of Europe. From the very inception, the concepts continuously emphasized by the organization were the importance of democratic pluralism, the rule of law and the protection of human rights. In this respect, one of the major areas of concern for PACE mission groups coming to Armenia is the widespread manipulation during elections. The analysis of the past parliamentary and presidential elections⁶ disclosed serious violations of electoral law during the aggregation of results, the cases of illegal voting and the whole verification process "causing concern for the overall integrity of election process" (Woltjer 1998, 3). The breaches indicated that Armenia fails to secure correspondence to international standards and to fulfil the obligations it assumes while claiming to be a democratic state. PACE insisted on the adoption of the new electoral code, in line with the requirements of the organization, as the precondition for the membership of Armenia in the organization. In this regard, numerous violations during elections cause serious concerns of the PACE rapporteurs in terms of the commitment of Armenia to proceed with the democratic reform. At the same time, it has been pointed to the progress, which made by Armenia during 1999 parliamentary elections in comparison with the past (1995) ones. In particular, the new electoral legislation under which the new elections were held had produced a positive difference.

⁶ 1995 parliamentary and 1996 presidential elections are referred to here.

Furthermore, there was noted the wider representation of local observers in elections and freer access for the mass media to illuminate the election campaign and the overall voting process. In the opinion of Mr. Woltjer (1998), “free and fair elections on the basis of a functioning electoral law would seem an essential precondition for the Armenia’s membership to the Council of Europe...” (p.9).

The violations mentioned above put under doubt the election results thus undermining their legitimacy and citizens’ confidence in a possibility of democratic elections in Armenia. They return the Parliament where the most popular political forces of the society remain underrepresented. Indeed, the rapporteurs from the Political Affairs Committee in their assessment of the internal political situation noted that political climate in the Armenian Parliament is confrontational with little evidence of cooperation between the ruling and the opposition party (Woltjer 1998).⁷ They have been constantly stressing the importance of the political balance between the opposition and the government and the development of political dialogue between the main forces represented in the National Assembly. However, the member parties of the Armenian Parliament are nevertheless unanimous in their desire to complete the accession to the Council of Europe and promote the democratic reform (Magnusson 1999).

Nagorno Karabakh

The issue, which dominates both the political debate in Armenia and is emphasized by all the international organizations, relates to the dispute with Azerbaijan over Nagorno Karabakh. Similarly this continues to be in the focus of the political dialogue between Armenia and the

⁷ On 26 September 1996, violence between the members of the majority and the opposition took place in Parliament, which in effect brought about the split in Parliament and the refusal of the National Democratic Union to participate in the activities of the NA. Also, the banning of the opposition Dashnaksutyun Party indicated about the internal political crisis of the country.

Council of Europe. The Resolution (96:27) adopted by the Committee of Ministers regarding the Armenia's request for accession states that "a closer relationship with Transcaucasian countries would demand not only the implementation of democratic reforms but also their commitment to resolve conflicts by peaceful means" (Woltjer 1998, 5).

To carry out the detailed investigation on an issue the Rapportuers on Armenia and Azerbaijan undertook a joint visit to the two republics as well as Nagorno-Karabakh. The visit resulted in a comprehensive report outlining the position of the parties to the conflict, of the Council of Europe and the current position taken by the OSCE for settling the issue. While Nagorno-Karabakh issue appears to be very important factor for both countries' membership to the organization, this section will be focused on the position of the Council of Europe with respect to the issue. Thus, according to the Resolution 1119 (1997) of PACE, the latter endorses the political and peaceful resolution of the conflict as the best outcome possible. It should draw on the principles of international law such as inviolability of borders and self-determination of nations outlined in the 1975 Helsinki Final Act and 1990 Paris Charter providing wide autonomy status for Nagorno Karabakh (MFA Doc. 1998). The solution should respect human rights and guarantee the security of the displaced population stemming from their right to return to their places of origin. As far as refugees are concerned, the reports analyzed the situation in both countries stating that the policy undertaken by the Governments aiming at integration of the refugees with the rest of the population failed to produce the desired outcome (Woltjer and Baumel 1998). Statistical data presents that there are about 300,000 to 350,000 ethnic Armenian refugees from Azerbaijan some 80% of whom are currently unemployed and most of whom had to flee from Armenia to Russia or other countries due to harsh socioeconomic conditions (ibid.).

However, the Council of Europe is not offering any independent suggestions for resolving the conflict. Rather it considers that the initiatives of the OSCE Minsk Group are the best possible framework for negotiation emphasizing the latter should be resumed as soon as possible. The organization also assumed the mediating role between Armenia and Azerbaijan serving an important platform to start a bi-lateral political dialogue. As it has been already discussed, the problem of Nagorno Karabakh was numerously debated during PACE sessions as well as at the Committee levels. Under the umbrella of the organization, the NA delegation held meetings with their Azeri counterparts laying the basis for the intergovernmental cooperation between the three Transcaucasian republics.

Human rights

Protection of human rights and fundamental freedoms is one of the biggest challenges for any state, which is member or seeks membership in the Council. The monitoring groups carefully examine all the problems that emerge in terms of human rights and provision of fundamental freedoms. In Armenia, the freedom of the press, association, religion and etc. were studied. For instance, attaching great importance to religious pluralism, PACE required Armenia to ensure the freedom of religion, which is supposed to provide freedom for all churches and religious communities, particularly those referred to as non-traditional, to practice their convictions without discrimination.

They examined the refugee problem in Armenia and the rights of minorities who constitute about 3% of the entire Armenian population. Although the representatives of the minority communities expressed no particular doubts, they stressed the necessity of the creation of an institutional framework to deal with the rights of minorities. The situation is worse with refugees.

This problem has become the topic of heated debate in the Council of Europe at various levels and the long sought resolution of the Nagorno-Karabakh is to alleviate the situation with refugees (ibid.).

Compared to other Transcaucasian republics, the situation in Armenia appears to be better as far the human rights protection is concerned, with the major problem relating to the right to a fair trial. There are numerous cases of violation of fair trial standards in Armenia especially in connection with political trials (Woltjer 1998). Human rights organizations, particularly Amnesty International, continuously report that law enforcement officials subject people to torture and ill treatment for obtaining confessions and testimony or for intimidation and extortion (AI 2000). PACE is concerned at the lack of a functioning civilian alternative to compulsory military service, which result that conscientious objectors risk imprisonment for exercising their fundamental rights. Within three years of accession to the Council of Europe, Armenia is to adopt a law on an alternative to military service in compliance with European standards and with any conscientious objectors currently imprisoned being released. Meanwhile, Amnesty International reported to PACE about numerous cases of forcible drafting and imprisonment of people for conscientious refusal to perform their compulsory military service. Currently, these people are sentenced to imprisonment in accordance with Article 257 (evading military service) of the Armenian Criminal Code. Most of them have been reported to be subjected to ill-treatment while being imprisoned (ibid).

In the view of all aforementioned it is clear that there are serious shortcomings in Armenia in terms of efficient law enforcement mechanisms. Mr. Woltjer (1998, 9), the Rapporteur from the Political Affairs Committee notes that “to some extent the situation can be remedied by the adoption of major new codes and legislation” taking account the expert advice of the Council of

Europe and in cooperation with other human rights organization and local NGOs. Thus, experts from the CoE including Venice Commission continuously render substantial assistance on the reform of Armenian legislation. Seminars covering a large scope of issues and policy objectives are prompting towards new approaches for the development of the functioning legal institutions. Many important draft laws are worked out based on the consideration and the expert advice of CoE (MFA Report on Legal Reform 1999).

VI. Implications for Legal Transformations

The section aims at revealing the legal implications of Armenia's accession to the CoE in more detail. The arguments and analysis made by the experts from PACE provide the background for the important institutional transformations in Armenia and define the domestic policies to be implemented for meeting the requirements of the organization.

This implies:

- 1) accession to the CoE basic treaties and conventions, that is their signature and ratification as well as policies for their implementation*
- 2) large scale reform of the domestic legislation in the areas underlined above: respect for human rights and fundamental freedoms, adoption of new codes in the legal and judicial system*

The aforementioned steps necessitate the adoption of interrelated set of policies and laws. First of all, the accession to the CoE documentation is of utmost importance. The full membership implies that Armenia has to sign and ratify the European Convention of Human Rights with a number of its Protocols and a series of other documents constituting the inalienable part of the European and international law. According to the Article 6 of the Constitution of RA,

the international treaties that have been ratified become an integral part of the Republic's legal system. Thus, the provisions specified in the international documents enjoy preponderance over the domestic legislation. Most of the CoE documents operate in the human rights field and alongside with the domestic legislation they are to constitute the foundation upon which the legal instruments for the protection of human rights should build.⁸ This is supposed to be an arduous process implying the creation of workable mechanisms aimed at eliminating the inconsistencies of the domestic law with the requirements of the CoE. It is hence clear that the demands put forward by the organization require substantial changes in the domestic laws - improvement of laws that are currently in operation and the adoption of entirely new legal instruments. As part of this policy, the RA ratified the Framework Convention of the Rights of Minorities, the Cultural Convention and within one year of accession to the organization it is supposed to join the European Convention on Human Rights. These landmark treaties together with other principal international human rights documents and the Constitution will define the scope of human rights and fundamental freedoms which people in Armenia are entitled to.⁹

As it has been mentioned large-scale changes are to be made at the domestic level in order to correct the drawbacks of the RA legislation. The adoption of the new Criminal Code generally pursues the de jure abolition of the death penalty as well as the decriminalization of consensual homosexual relations between adults (Opinion 221, 2000). While according to the Convention the respect for life belongs to the fundamental human rights, the Protocol #6 provides for its legal abolition in peacetime. Thus, the ratification of the Convention and the Protocol #6

⁸ Together with the RA Constitution, the following laws constitute the domestic sources of human and civil rights: (a) Civil Code and Procedure Code of January 1999; (b) Criminal Code of 1961 with regard to the right of life; (c) Criminal Procedure Code of 1999; (d) the Law on the Freedom of Conscience and Religious Organizations (1991) with its 1997 amendments (Hovhannisian 2000).

⁹ The RA is party to the number of other international human rights treaties: UN Charter, International Covenant on Civil and Political Rights and others.

necessitates the adoption of the relevant mechanisms at the domestic level (Hovhannisian 2000). Currently, there is a moratorium imposed on the execution of the death penalty in Armenia pending its de jure abolition (AI Report 2000). The adoption of other laws, such as the new Law on Ombudsman, the new Law on the Media, on the Political Parties and NGOs and etc. is confined to the strict time constraints. Many of these draft laws are currently at elaboration within the NA Committee structures.

Consequently, the accession to the Council of Europe is connected to the implementation of the substantial democratic reform in Armenia. In this regard, PACE welcomed the adoption of the Constitution in 1995, which, despite its shortcomings, provides a necessary basis for the needed legal and judicial reform. State Commission for legal reform established by the President of the Republic defined the schedule for the adoption of basic texts, which should be prepared in close cooperation with PACE experts (Woltjer 1998). The special importance is attached to the strengthening of law enforcement mechanisms entailing a wide scope of judicial laws. The reform of the judicial system will be extensive and will provide for its independence from other branches of the government. It has also direct relevance to the obligations assumed by the RA in the human rights field. In this context, the reform is supposed to guarantee the enforcement of criminal procedures in accordance with the international standards (such as immediate access to defense lawyer in criminal cases, the defense of the rights of prisoners).

The Framework Convention (1995) provides clear political explanations of why it is essential to protect and promote the rights of minorities. In terms of Armenia, it has two important essentials. First, there are almost 20 national minorities in Armenia who make up a significant portion of the entire population. Second, the high number of Armenian communities living abroad should constitute a firm ground for the transformation of this issue into an internal and

foreign policy objectives. The Constitution stipulates that ethnic minorities of Armenia are entitled to the preservation of their ethnic and cultural identities. The Framework Convention comes to guarantee the collective rights to the fullest possible extent, but there is a lack of functioning domestic mechanisms that will ensure the enforcement of these rights.

The list of the obligation mentions above is not exhaustive; rather the most urgent issues are discussed. The domestic legislation was analyzed from the perspectives of its compatibility with the requirements set forth by PACE. The Constitution as the parent document in Armenia which guarantees the basic entitlements of individuals was studied in terms of its correspondence to the European Convention of Human Rights that is to be ratified within one year of accession to the CoE. Indeed, some aspects of the domestic legislation proved to be contradictory to the provisions of the Convention in several cases. According to the latter, the exercise of certain basic rights is fundamental. That's why the important point worth emphasizing concerns the provisions permitting a state to derogate from its commitments as stated by the Convention. The latter provides very strict cases under which the state may withdraw from its obligations.¹⁰ On the other hand, the Article 44 of the RA Constitution is very vague in allowing the state to impose limitations on the exercise of basic human rights and freedoms by individuals in a variety of cases if the latter "is necessary for the protection of state and public security, public order, public health and morality, and the rights, freedoms, honor and reputation of others" (Constitution Article 44, 16). Similarly, the enjoyment of other basic entitlements such as the freedom of movement is restricted by the Constitution to citizens only, thus conflicting with the provisions of the Convention. For instance, the Articles 26 of the Constitution and 11 of the

¹⁰Article 15 of the Convention generally permits derogation "to the extent strictly required by the exigencies of the situation..." The Convention does not permit derogation from the basic human rights such as the right of life etc. (Convention Article 15, 78).

Covenant seem to be contravening as well, since according to the former the Constitution prohibits the freedom of peaceful assemblies to non-citizens. If one takes into account the huge number of ethnic Armenian refugees most of whom have no citizenship, it would mean that a significant layer of Armenian population constituting its most vulnerable group among many other rights is deprived from the right to publicly communicate its will. The provisions like the above-mentioned ones carry discriminatory character and contribute to the sense of inferiority and vulnerability of this group.

The discrepancies have been identified within the domestic legislation, that is the Constitution versus acting laws, particularly as related to the freedom of conscience and religion. In this respect, both the Constitution and the Convention allow no discrimination based on religious grounds. However, the evidence suggests that Armenian Apostolic Church enjoys monopoly over all other religious communities functioning in Armenia. The Law on Religious Organizations originally adopted in 1991 precludes proselytizing by religions other than the official Armenian Church. In many ways, the role of the national church is upgraded, which puts limitations on other religious communities (Hovhannisian 2000). The discrimination is observed in imposing the registration and membership requirements, which is only with regard to the nontraditional religions (ibid.). Indeed, the Armenian Apostolic Church enjoys many privileges. Thus, the Memorandum of Intentions signed between the Government of the RA and the Armenian Apostolic Church granted tax privileges to the latter and furthered its activities in many secular areas, such as education, social protection, and other aspects of the public life. In addition, it promotes the activities of the Apostolic Church in military forces (the religious military service) (ibid.). The religious military service if it will be compulsory for everyone would contravene both the Law on Religious Organization and the Constitution.

The law on the Freedom of Conscience and Religious Organizations provides for a Committee on Religious Affairs with broad and vague powers to register religious organizations. A September 1997 amendment to the law further tightened restrictions by prohibiting financing for religions with spiritual centers outside the country (AI Report 1999). It must be nevertheless argued that many of these non-traditional organizations are unpopular. The refusal of the authorities to register for example the Jehovah's Witness organization is supported by the local NGOs and the ordinary citizens (ibid.). The issue of the religious intolerance in Armenia and limitations on the freedom of religion remains among the ones constantly emphasizing by CoE.

Among the conditions for membership set forth by PACE, the requirement to adopt the law on alternative military service is perhaps one of the most arguable ones. Particularly, Armenia is required to adopt the new Criminal Code eliminating the Article 257, according to which people conscientiously objecting to serve in Army are sentenced from 3 to 7 years of imprisonment. The adoption of the Law on Alternative Service would set free the objectors from prison granting them the opportunity of alternative non-military service. This issue is closely connected to the problem with the nontraditional religious communities, since the Jehovah's Witness organization is currently refused registration on grounds that its adherents evade compulsory military service. As long as Armenia remains in the state of conflict with the neighboring country the Government continues to object to this requirement of CoE. So far the national defense and strengthening of Army is among the priority policies while the adoption of the law might substantially increase the number of objectors. The new Criminal Code shall pursue two other objectives. It will eliminate the Articles 99 abolishing de jure the death penalty and Article 116 decriminalizing the consensual homosexual relations between adults. The latter is considered as violating the rights

of individuals. The death penalty should be abolished by all the states that are member to the CoE and Armenia is to assume the obligations thus required.

The further analysis of the commitments made by the Armenian Government suggests that presumably some very important amendments are to be made to the Constitution of the RA. According to the PACE experts, the power of the Constitutional Court in accepting appeals are severely limited. Article 101 stipulates that only representatives of executive and legislative branches may have recourse to the Constitutional Court. PACE requested that individuals should have the right to bring cases, particularly those concerning human right guaranteed by the Constitution, to the consideration of the Constitutional Court. On the other hand, the elimination of certain Articles from the Constitution is possible only via referendum.

Thus, the transformation of human rights standards into Armenian legislation means bringing the domestic legislation into conformity with appropriate international instruments which demand not only significant legal reforms but also need for expert advice and extensive material and financial resources. Although the NA has adopted a series of domestic laws aimed at the implementation of these mechanisms, there is much to be done in terms of enhancing the efficiency of domestic legal instruments and eliminating the apparent inconsistencies that exist between the domestic legislation and the international legal documents.

VII. Conclusion

The accession to the Council of Europe that has been underway since 1996 is completed and presently all the three Transcaucasian republics are full members of the organization with strict obligations assumed in order to be qualified for membership. What the integration to the European structures would entail for Armenia, in particular? Above all, the integration to the

Council is accompanied with the process of transforming the domestic legislation in accordance with the accepted international standards. Analysis showed that the reform would bring about significant qualitative changes within the domestic law. For example, the reform undertaken in the judicial system and the package of legislative initiatives proposed for adoption is aimed at guaranteeing its independence from other governmental bodies and impartial operation. In effect, it would raise the quality of the domestic legislation, as a result of which individuals will gain access both to the Constitutional Court and to the European instruments of human rights protection: European Court of Human Rights. The enforcement of the international human rights principles at the domestic level will be possible due to the broadening of the functions of the Constitutional Court pending the adoption of the relevant Constitutional amendment. The Constitutional Court is thus to become the parent body for the protection of human rights at the domestic level making the European Court “both as the last instance court at the domestic system and a system vested with the powers to exercise control over the latter” (Hovhannisian 2000, 15). However, the impact of these legal reforms will be minimal unless certain conditions are met:

- The implementation of the reforms should be provided to the fullest possible extent, i.e. all requirements must be met within the specified time frame and in accordance with the European practices.
- Efficient enforcement and control mechanisms must be created in order to lessen cases of corruption and bring the current trial standards to the appropriate level, also via the effective Bar system as well as NGO network.
- New approaches to the personnel recruitment policy must be worked out based on merit, transparency, professionalism and competence of people.

- Expert assistance of the CoE/Venice Commission in improving the legislation and drafting the basic laws, providing professional training to judges, lawyers, and local NGOs. Full support should be given to establishing an open and strong mechanism for monitoring the observance of CoE documents and requirements.
- Development of a vibrant civil society through the network of NGOs operating in the field of democracy and human rights and furthering the freedom of the mass media. A strong civil society “not only advances the participation of citizens in their own society...[and] breaks down the monopoly of the central state but also exposes politicians to a critical review of their actions and renders them accountable to the opinion of the public” (Minority Rights Group Report 2000, 21). The civil society provides for the diversity of opinions within the society in the whole and facilitates the democratic consolidation of the state.

The integration to the CoE had to do with both foreign and internal policy of the state. In addition to causing important transformations of the domestic law, the accession to the Council is a substantial political achievement in itself. It integrates RA to the advanced political forum of Europe and opens it to the opportunities the CoE offers to its members. The accession of all the Transcaucasian republics to the Council will contribute to the establishment of peace and stability in the region in the whole and will strengthen the prospects for democratic development in these states.

Appendix A

The Council of Europe: Structure and the Statute Bodies

Council of Europe was established on May 5, 1949 by 10 member states (Belgium, France, Luxembourg, Netherlands, United Kingdom, Denmark, Norway, Sweden, Ireland, Italy), which originally signed the Treaty of London. Now, the organization comprises 41 member states. It is the first European intergovernmental political organization based on the will of the member states "to safeguard and promote their common ideals and principles and encourage social and economic progress" (Article 1 of the Statute of the Council of Europe). The multiple aims of the organization include protection of human rights and fundamental freedoms, building of pluralist democracy and the rule of law. The Council of Europe covers all major issues facing European society other than defence including the following fields of activity such as human rights, media, legal co-operation, social and economic questions, health, education, culture, local democracy and regional planning and many other issues of the day. Thus, the Council of Europe aims at fostering the European integration and finding solutions to many problems of the contemporary European society.

The idea was to create a new type of the organization where the executive body should have its counterpart - Parliamentary Assembly. *The Council of Europe has the following equally important statute bodies: Committee of Ministers, Parliamentary Assembly, Congress of the Regional and Local Authorities.*

The main decision-making body of the Council of Europe is the **Committee of Ministers** composed of the Ministers of Foreign Affairs (or their permanent representatives) of the member-states. Committee is responsible for ensuring that all member states fulfill their commitments as stated by the Statute. The ministers should meet at least twice a year, but the

work of the permanent representatives and various rapporteur groups as well as conferences of specialized ministries contribute to provide an in-depth assessment of the issues before the final decisions are taken. The decisions of the Committee of Ministers are in the form of the recommendations to the member states or may become part of the Conventions or Treaties and have *legally binding character*. When serious violations of the provisions and principles of the Council are underway, the Committee may suspend the right of representation or compel a state to withdraw from the organization (Statute).

Parliamentary Assembly is the deliberative body of the organization and is the oldest international Parliamentary Assembly, 291 members and their 291 substitutes of which are elected or appointed by the national Parliaments on condition that they should adequately reflect main political forces of their legislatures. The Assembly elects its president among its members, the Secretary General of the Assembly and of the Council of Europe and judges of the European Court of Human Rights. The Assembly is free to choose its own agenda while discussing various problems of international politics and society. It issues recommendations, deliberations that serve an important guide in the activities and decisions both of the Committee of Ministers and of the Governments of the member-states. The agenda of the Assembly is defined by the work of numerous special committees that cover: political affairs, legal issues and human rights, social affairs, culture and education, environmental protection and regional planning. The most important ones are Committee of Political Affairs and Committee of Legal Affairs and Human Rights. The Assembly drafted many important international Conventions and treaties that constitute the basis of the European legislative system. Many of them are open for signature for the non-member states as well.

The Congress of Regional and Local Authorities is the Council of Europe's consultative organ and represents regional and local authorities. Its aim is to strengthen local democracy and to coordinate the activities of local and regional authorities in terms of finding solutions to many regional issues. For the states in transition, the Congress helps to promote greater self-government and decentralization for the local authorities in managing their own affairs. The Congress also helps to deal with the issues that are endemic to most of the big cities and regions of the member-states, namely regional planning and urban development, strengthening of cultural ties between cities, environmental protection, and social issues. The objective of the Congress is also to involve the local governments into the process of European unity.

The Council's human rights protection system derives its legal source from several treaties, the most important of which are: the **European Convention on Human Rights** and **European Social Charter**. The Convention establishes basic political and civil rights; the Charter defines social and economic rights. According to the Convention Article 19, the European Commission of Human Rights and the European Court of Human Rights are the bodies to ensure the observance by states of their obligations. Similarly, the European Court of Human Rights has wide jurisdiction to consider the cases of human rights violations and its jurisdiction is compulsory for all the member states.

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