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IMPACT OF PACE MONITORING ON ADVANCING DEMOCRATIC INSTITUTIONS IN ARMENIA

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BY

AREVIK ANAPIOSYAN

YEREVAN, ARMENIA

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SIGNATURE PAGE

Faculty Advisor

Dean

American University of Armenia

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ABSTRACT

The paper analyses the impact of Resolutions 1609 and 1620 adopted by the Parliamentary Assembly of the Council of Europe in regard to the Republic of Armenia and tries to understand to what extent the resolutions helped advancing legislation and practice of institutions that are essential for democratic development.

After the presidential elections of February 2008, the clash between the opposition and the police forces attracted the attention of most of the international organizations interested in the region and pursuing democratization and human rights. The Parliamentary Assembly of the Council of Europe, during April 2008 part-session, adopted Resolution 1609 which posed certain requirements to Armenia regarding opposition rights in parliament, electoral code, judiciary, and human rights in terms of freedom of assembly. Armenian authorities made endeavors towards the fulfillment of the resolutions' requirements, as the contrary would mean suspension of the voting right of the Armenian delegation in PACE. During June 2008 part-session PACE adopted Resolution 1620, which mostly welcomed the progress achieved by the Armenian authorities in addressing the demands of Resolution 1609, but also reiterated the need for pluralistic media, raised the issue of detained persons, and called on other requirements of Resolution 1609 to be sufficiently fulfilled by the opening of PACE January 2009 part-session. The paper also analysis all the major legislative developments in Armenia after the adoption of Resolutions 1609 and 1620

The paper provides a thorough understanding of the current political situation and analyses patterns of advancing democracy in Armenia. Further, it proposes recommendations which could be practical and working.

Introduction

The purpose of this Policy Internship Project is to analyze the impact of Parliamentary Assembly of Council of Europe (PACE) monitoring on the advancement of democracy in Armenia, and particularly study the impact of Resolutions 1609 and 1620 adopted by PACE on the Republic of Armenia and to understand to what extent the Resolutions helped advancing legislation and practice of institutions that are essential for democratic development.

Background

Council of Europe is a regional organization established in 1949 and its mission has been developing common and democratic principles throughout Europe based on the European Convention on Human Rights and other documents protecting individuals (About the Council of Europe 2008). The organization aims to protect human rights, promote democracy and the rule of law, find common solutions to the challenges facing European society, and to consolidate democratic stability in Europe by backing political, legislative and constitutional reforms (About the Council of Europe 2008). Republic of Armenia (RA) has been a member of Council of Europe since January 25, 2001, and since than the Council of Europe has been performing monitoring on Armenia with the help of the Committee of Ministers, which is monitoring respect of commitments by member states, and Armenia has also been subject to a Parliamentary Assembly monitoring procedure. Committee of Ministers performs monitoring on Armenia with the help of the AGO group, which releases reports per year, and Parliamentary Assembly performs constant monitoring and adopts resolutions which are often *politically* binding for the member states.

By becoming a member of the Council of Europe, the RA honored number of obligations and commitments before the organization, the fulfillment of which will result in an advanced

democracy with established and functioning institutions. According to a number of PACE resolutions (PACE: Resolutions 1304(2002), 1361(2004), 1374(2004), 1405(2004), 1458(2005), 1532(2007)), since its accession to the Council of Europe Armenia has been rather successful in honoring its obligations and commitments. However, the post-electoral developments in February 2008 resulted in the adoption of Resolutions 1609 on "The functioning of democratic institutions in Armenia" and then 1620 on "The Implementation by Armenia of Assembly Resolution 1609 (2008)" by PACE which, in fact, seriously questioned the honoring of obligations and commitments before the Council of Europe by the RA. The two Resolutions have pinpointed the major and specific derelictions of the RA concerning the functioning of democratic institutions.

The bottom point of the Resolutions is that if Armenia fails to address the Assembly demands by January 2009 part-session, the possibility of suspending the voting right of the Armenian delegation to PACE will be considered. Thus, the problem under consideration is very timely, as it is purely at the interest of the Armenian authorities to ensure that Armenia continues to enjoy the support of the European countries in the organization, stays the vanguard of championing democracy and rule of law in the region (South Caucasus), and pursues its foreign policy of European integration without creating obstacles.

In the light of the problem raised in this Policy Internship Project, the purpose of this project is to reveal the major achievements of the RA in the field of democratization after being admitted to the Council of Europe, analyze the impact of Resolutions 1609 and 1620 adopted by PACE on the RA, understand the extent to which the Resolutions helped advancing legislation and practice of institutions that are essential for democratic development, and, finally, come up with practical and implementable recommendations.

Research Questions

The research questions raised for the policy analysis are as follows:

RQ1. How successful is Armenia in honoring of obligations and commitments before the Council of Europe?

RQ2. What are the requirements of Resolutions 1609 and 1620: which are their similarities and differences?

RQ3. What legislative developments have been envisaged by the Armenian government after the adoption of Resolutions 1609 and then 1620 by PACE?

RQ4. Which are the main problems identified in the ad-hoc reports of the Council of Europe Commissioner for Human Rights and the Human Rights Defender of the Republic of Armenia regarding the situation in the aftermath of February 2008 Presidential elections?

RQ5. To what extent the reports have impacted on further improvement of human rights situation in the Republic of Armenia?

RQ6. What has been undertaken to foster a successful dialogue between the government and the opposition: which are the main obstacles (if any) for the dialogue?

Literature Review

The main literature which has been reviewed for the purpose of this policy internship paper consists of the Council of Europe (CoE) publications and adopted texts which are the guiding documents for the emerging democracies to reform their democratic institutions in line with CoE standards. The reason for referring to the mentioned texts is based on the fact that the democratic institutions in Armenia in this paper are being considered under the aegis of the CoE.

As Lawrence Pratchett and Vivien Lowndes (2004) have noticed in their book "Developing Democracy in Europe- *an analytical summary of the Council of Europe's acquis,*" the CoE is implicitly involved in designing democratic institutions and explicitly involved in seeking to make them work (Pratchett and Lowndes). The CoE offers a complex array of documents which contribute to its *acquis* in the field of democratic institutions: some of these have full legal status and directly shape the functioning of democracy in member states; others are more discursive in their nature and have only an informal influence on democratic practices (Pratchett and Lowndes). According to CoE various documents and publications, in an analytical context the term institution refers to the rules of the game which politics observes in a particular context. Some of those rules are formal, such as constitutions, directives or organizational structures; others are informal norms and conventions and have developed because that is the way politics operates in a particular country (Schmitter and Trechsel). The rules of the game do not determine outcomes, but they do provide the framework within which actors select and pursue their strategies (Pratchett and Lowndes). The CoE provides such a framework for its member countries by providing guidelines for the reconstruction of all the institutions which are essential for democratic development.

A number of institutions are discussed in this policy internship paper including constitution as a framework for the institutional developments and reforms, parliament, legislature regarding electoral system, freedom of assembly, media pluralism, as well as human rights protection.

The importance of constitution as a founding document for the advancement of democracy is constantly underpinned by the CoE. According to Pratchett and Lowndes (2004), constitutions provide the framework for democratic institutions to work. Robert Eligie and Jan

Zeilonka (2001) have identified at least 3 basic functions that constitutions perform. Firstly, they provide the country with a charter for government by spelling out who their officials are, how they are chosen, their terms in office, how authority is divided among them, etc. Secondly, constitutions provide countries with charters of fundamental rights. And, finally, they provide counties with the symbolic opportunity to express popular aspirations for free, democratic, and sovereign statehood (Elgie and Zielonka).

In various adopted texts CoE has underlined that one of the key democratic institutions is parliament. The CoE often equates representative democracy with an emphasis upon parliamentary democracy (Pratchett and Lowndes). Parliamentary democracy is one of the values that is the basis of, and reason for, the Council of Europe's work towards greater European unity (PACE: Resolution 1353(2003). As Pratchett and Lowndes (2004) have highlighted, the CoE remains committed to the formal structures of democracy that enforce a separation of powers and a range of means through which opinions can be formulated and articulated. The existence of elected assemblies, in the form of parliaments, remain fundamental to this institutional structure. In this context the role of opposition is very essential.

The importance of institutionlizing opposition has been underlined by Ian Shapiro in his book "Democratic Justice" (1999). Accoring to Shapiro, opposition institutions perform the functional role of "providing sites for potential alternative leaderships to rogamize themselves, making possible periodic turnovers of power – nessesary for democratic governance" (Shapiro 1999, 39). He also mentions, those opposition institutions serve the public interest by ensuring that there are groups and individuals who have motivation to pose awkward questions, shed light in "dark corners, and expose abuses of power" (Shapiro 1999, 40). For the opposition to be functional, in 2008 PACE has developed a document – Resolution 1601: Procedural guidelines

on the rights and responsibilities of the opposition in a democratic parliament - which provides the basis for institutionalizing opposition.

Citizens of established democracies use democratic institutions in a routinized way without asking for their legitimization (Beyme). However, some institutions, according to Beyme, should be protected by state measures, and this is true for electoral system, for instance. Most scholars highlight that elections are not an element of the democratic process that can be considered in isolation. The effective functioning of electoral systems is linked to political-party systems, constitutional development, the provisions governing legislative bodies, and other institutional framework issues (Soudriette and Ellis). In the absence of the above mentioned institutions, elections turn the system into electoral democracy, which is typical for the "third wave" of democratization (Welzel and Inglehart). Thus, the Council of Europe's attempts towards reforming domestic electoral systems aim to reform the institutional framework as well.

The Code of Good Practice in Electoral Matters, developed by the Venice Commission, provides thorough guidelines for reforming electoral systems, and it includes definition of standards and the monitoring of procedures (European Commission for Democracy through Law). These guidelines are very important and practical, as they do not provide cookie cut solutions for all the member states, but also consider the socio-political heritage of member countries, and provide general solutions accordingly.

As already mentioned, effective functioning of electoral system is linked to other institutional framework issues, one of which is access to media as a precondition for democratic elections. Using the media for propaganda purposes is a type of abuse that is vigorously used not only in despotic regimes, but also in established and emerging democracies (Zellweger and Serdult). This is the reason that some of the long-standing democracies amend their legislation in

order to guarantee pluralism, impartiality, transparency of media not only during the pre-election and election periods, but also during the time in-between (Thorgeirsdottir). The Venice Commission provides a number of recommendations in regard to the reform of the domestic legislation in accordance with the CoE criteria.

Freedom of assembly is another fundamental issue within the institutional framework. Without freedom democracy can hardly be guaranteed (Vinolas). OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly provide certain criteria to amend national legislation so that to meet European standards.

For the study and analysis of democratic institutions in Armenia, a number of international and domestic law documents have been reviewed, including Statute of the Council of Europe, European Convention of Human Rights, Constitution of the Republic of Armenia, etc. In order to provide comparative analysis, for each and every institution discussed in this paper, not only domestic laws covering the respective field have been studied, but also all the CoE documents were considered for benchmarking. The Venice Commission opinions on various domestic laws served as basis for several recommendations. For the analysis of human rights situation in Armenia, the Ad-Hoc Report served as a basis for discussion questions. Finally, as no scholarly work is written on the impact of PACE on the advancement of democratic institutions in Armenia, the main sources for measuring the impact are PACE resolutions.

Methodology

The methodology applied in this Policy Internship Project is based on the content analysis and in-depth interviews. Content analysis included analyses of domestic (RA) legal acts and documents; the Council of Europe resolutions, recommendations; domestic and the Council of Europe reports and press releases, news, as well as print media.

5 in-depth interviews have been conducted with Mr. Avet Adonts, Chairman of the NA Standing Committee on European Integration and member of the Armenian delegation to PACE; with Mr. Davit Harutyunyan, Chairperson of the Armenian delegation to PACE and Chairman of the NA Standing Committee on State and Legal Affairs; with Mr. Georgy Kutoyan, chief legal advisor to the Human Rights Defender of the RA; with Ms. Anahit Bakhshyan, member of the opposition faction (Heritage party) of the NA; and with Ms. Estera Mkrtumyan, Chief Specialist to the External Relations Department, PACE.

Findings and Analysis

Research Question 1: How successful is Armenia in honoring of obligations and commitments before the Council of Europe?

On the 7th of March, 1996, the RA applied to join the CoE. Since 1996 Armenia has been taking part in various activities of the CoE through the intergovernmental co-operation and assistance programs, and in the work of the Parliamentary Assembly and its committees through its special guest delegation. On the 25th of January, 2001, the RA became a member of the CoE. In its Opinion No. 221 (2000), the Assembly considered that Armenia was moving towards a democratic, pluralist society, in which human rights and the rule of law were respected, and, in accordance with Article 4 of the Statute of the CoE, was able and willing to pursue the democratic reforms initiated in order to bring its entire legislation and practice into conformity with the principles and standards of the CoE.

By becoming a member of the CoE, besides statutory obligations, Armenia undertook to honor number of commitments regarding conventions, the conflict in Nagorno-Karabakh, domestic law, human rights, and monitoring commitments (PACE: Opinion No. 221, (2000)).

As already mentioned, Armenia has been subject to the CoE monitoring via Committee of Ministers and the Parliamentary Assembly. The latter undertakes monitoring with the help of the Committee on the Honoring of Obligations and Commitments by Member States of the CoE (hereafter - Monitoring Committee).

As to Armenia's membership commitments, up to year 2008, the Monitoring Committee has prepared six reports which the Assembly has adopted as resolutions on Honoring of obligations and commitments by Armenia. In year 2002, Armenia has already committed its obligations regarding the adoption of a new electoral code, the law on political parties, the law on NGO's and the law on the civil service (PACE: Resolution 1304, (2000)). In 2002, the Assembly also welcomed the transfer of the prisons and detention center from the Ministry of Interior to the Ministry of Justice, which was also one of the membership requirements.

By January 2004 Armenia had honored all of its commitments with regard to conventions. A significant step forward was the ratification of the Protocol No. 6 to the European Convention on Human Rights which resulted in the adoption of a new Criminal Code of the RA, which no longer included the death penalty.

Since the adoption of Resolution 1361 in January 2004, in accordance with the recommendation made by the Assembly at the time, Armenia has ratified the Civil Law Convention on Corruption, on 7 January 2005, and the Criminal Law Convention on Corruption and its additional protocol, on 9 January 2006. Given the fact that corruption is a serious problem in Armenia, the ratification of these two instruments was characterized by the CoE as a very positive move (PACE: Resolution 1532(2007)).

Regarding the obligations in reforming the domestic legislation, by 2004 Armenia had adopted the Law on the Ombudsman, the Law on Alternative Service, the Law on Media and the

Law on radio and Television Broadcasting (PACE: Resolution 1361 (2004)). After the Constitutional reform the Law on the Ombudsman was amended, and the procedure of the appointment of the Human Rights Defender varied from the initial one, that is appointment by the President of the republic. As to the Law on Alternative Service, the length of the period of alternative civilian service was set 42 months, however, the Assembly urged to reduce it to 36 months, (PACE: Resolution 1361 (2004)) which has not been considered by the Armenian authorities so far. It should also be noted that, as repeatedly requested by the Assembly (PACE: Resolution 1304 (2002)), Jehovah's Witnesses were registered as a religious organization in Armenia on 8 October 2004 (Monitoring Committee 2006).

The revision of the Constitution was of utmost importance, as it was a pre-condition for the fulfillment of some of the most important commitments that Armenia had undertaken upon its accession to the CoE. Those commitments included the reform of the judicial system, the reform of local self-government, the introduction of an independent ombudsman, the establishment of independent regulatory authorities for broadcasting and the modification of the powers of the Constitutional Court and the means of accessing it. Thus, the constitutional reform itself and the accompanying legislative reforms have paved the way for the fulfillment of many of Armenia’s commitments before the CoE. The constitutional referendum, which took place on 27 November 2005, allowed the adoption of the constitutional reform.

The constitutional amendments have improved the separation of, and balance between, the legislative, executive and judicial powers. The revised constitution is consistent with the European standards and principles of democracy and the rule of law. The amended constitution has granted a right of access to the Constitutional Court to ordinary citizens, the Human Rights Defender (Ombudsperson), members of the National Assembly (NA), subject to the requirement

that at least one-fifth of all of its members support an application, local authorities and the courts (Constitution of the RA). Armenia has thus been able to honor its commitment on the subject. Thanks to the constitutional reform, the institution of the Human Rights Defender (Ombudsperson), the election by parliament and the principle that the person in office cannot be dismissed have found their place in the constitution, enabling the Human Rights Defender to play an increasingly active role in the protection of Armenians' human rights.

Very important attention has been paid to the electoral reform. In Resolution 1361, adopted in January 2004, the Assembly expressed its profound disappointment at the conduct of both the presidential elections in February and March 2003 and the parliamentary elections in May 2003. Armenia Authorities have been consequently invited to conduct a thorough investigation into the electoral fraud and put an end to the judicial impunity of those responsible for it by the end of 2004, and to revise the Electoral Code in close co-operation with the CoE (in particular the Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), especially the provisions concerning the composition of electoral commissions, the role and status of observers and the transparency of vote counting and the totaling of results. The latest amendment to the Electoral Code of the RA was made on the 18th December, 2007, and most of the Venice Commission and OSCE/ODHIR recommendations have been taken into account (NA: Electoral Code of the RA, 1999). However, according to the Joint Opinion on the 26 February 2007 amendments to the Electoral Code of the RA by the Venice Commission and the OSCE/ODIHR, the problem lies not in the Code itself, but in the good faith of the implementation of electoral legislation (European Commission for Democracy through Law: CDL-AD(2007)023).

Reform of local self-government is one of the commitments by Armenia upon acceding to the CoE. Currently the only remaining issue is the Law on the City of Yerevan, the adoption of which will conclude Armenia's commitment in regard to reform of local self-government.

As to Armenia's commitment regarding the conflict of Nagorno-Karabakh, the Assembly notes that no substantial improvement has been recorded in the resolution of the conflict. The Assembly notes that the Nagorno-Karabakh conflict is the greatest obstacle to peace and stability in this part of the Caucasus.

To sum up, according to the Mr. Avet Adonts, Chairman of the Standing Committee on European Integration of the NA, all the requirements of the Assembly posed to Armenia have mostly been fulfilled. All the other Assembly requirements that Armenia has to fulfill are listed in Resolutions 1609 and 1620, which are discussed in the 2nd research question.

Research Question 2: What are the requirements of Resolutions 1609 and 1620: Which are their similarities and differences?

Post-electoral developments in the RA, 10 day unwarranted rallies and demonstrations conducted by the opposition, the clash between the police and opposition on the 1st of March, as well as the imposition of the state of emergency from the 1st of to the 20th March in Yerevan became a matter of concern for the CoE, a member of which the RA is.

On the 17th of April Parliamentary Assembly of the Council of Europe (PACE) during its April 2008 part-session adopted Resolution 1609 on "The functioning of democratic institutions in Armenia" prepared by the Monitoring Committee. The Monitoring Committee considered that the underlying causes of the crisis were deeply rooted in the failure of the key institutions of the state, including the parliament and courts, to perform their functions in full compliance with

democratic standards and the principles of the rule of law and also the protection of human rights (PACE: Doc. 11579 (2008)).

During its June 2008 part-session PACE adopted another resolution in the debate under urgent procedure on the implementation by Armenia of Assembly Resolution 1609 (2008). The bottom point in the two Resolutions is that if Armenia fails to address the Assembly demands, the possibility of suspending the voting right of the Armenian delegation to PACE would be considered. At first, Resolution 1609 set the timeframe for the implementation of the Resolution requirements up to the June 2008 part-session, then the Monitoring Committee acknowledged that the time given to the Armenian authorities was short and, therefore, proposed to the Assembly to review at its January 2009 part-session the extent of Armenia's compliance with the requirements made in Resolution 1609 (PACE: Doc. 11656 (2008)).

Resolution 1609 put forward 4 key requirements for the resolution of the political crisis ensued after the Presidential elections in Armenia. First of all, Armenian authorities were encouraged to immediately initiate an independent, transparent and credible inquiry into the events on 1 March 2008 and the circumstances that led to them (PACE: Resolution 1609(2008)). Secondly, revoking of the amendments to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations, made on the 17th of March was highly recommended. The amendments were made during the state of emergency and the draft was not sent to the Venice Commission for opinion as it would usually be done. Another matter of concern for the Assembly was the release of persons on seemingly artificial and politically motivated charges who did not personally commit any violent acts or serious offences (PACE: Resolution 1609(2008)). And finally, the Assembly urged Armenian authorities to initiate an open dialogue between all political forces with regard to the reforms in the political system, where proper place and rights

will be granted to the opposition, electoral process, freedom and pluralism of media, freedom of assembly, independence of judiciary, and police behavior (PACE: Resolution 1609(2008)).

In Resolution 1620 on "The Implementation by Armenia of Assembly Resolution 1609 (2008)" the Assembly welcomed publicly expressed political will and intention of the Armenian authorities to comply with the PACE requirements. The Resolution welcomed the constitution of an ad hoc committee within the NA of the RA which has been entitled to conduct an inquiry into the events of 1 and 2 March 2008 as well as the causes that lead to them. The criteria for the independence, transparency and credibility of the inquiry committee were as follows: working method should be based on consensual decision making process; the committee should have the right of investigating the circumstances leading to the 1st of March, and the events in its immediate aftermath; and the Human Rights Defender should be invited ex officio to participate in the works of the committee (PACE: Resolution 1620(2008)). The Resolution 1620 also welcomed the achievements of the Armenian authorities with regard to the adoption of the Law on Amending and Supplementing the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations and considered the requirement of the Assembly in this respect to be fully met. The Assembly also noticed that freedom of assembly was being guaranteed in practice, and pointed the opposition rally of June the 20th, the first warranted one after the tragic events.

A huge matter of concern remained the issue regarding the detained persons. The Assembly welcomed the developments with regard to the release of detained persons who had not personally committed any violent acts or serious offences. However, it considered the progress on this issue not to be sufficient enough to ensure the Assembly requirements. First of all, right to fair trial within a reasonable time should be guaranteed. Secondly, cases under Articles 300(Usurping state power) and 225(Mass disorder) of the Criminal Code should be

dropped unless there is strong evidence of the accused being personally involved in acts of violence, or order either assistance to commit such acts (PACE: Resolution 1620(2008); NA: Criminal Code of the RA (2003). Moreover, no verdict should be acceptable which is based solely on a single police testimony without corroborating evidence. Finally, the NA was urged to consider the negative opinion of the Venice Commission on the proposed amendments to Articles 225, 225^1, 301 and 301^1 of the Criminal Code (PACE: Resolution 1620(2008)). Here, it should mention, that Mr. Davit Harutyunyan during my interview noticed that the NA Standing Committee on State and Legal Affairs had already given negative opinion of the draft, and as it is usually the case, if the authorized Standing Committee gives negative opinion on the draft, that draft, generally, does not become a law (Interview with Mr. Harutyunyan, 28.10.2008).

In Resolution1609 Armenian authorities are urged to undertake several reforms without further delay. First of all, parliamentary opposition should enjoy proper place and rights. Secondly, electoral process should be reformed and address particularly election administration, vote count and tabulation process, as well as complaints and appeals process. In Resolution 1620 the Assembly welcomes the creation of the NA Working Group on the Reform of the Election Code and highlights that the modus operandi of that group could be an example for the dialogue on other reforms.

Another requirement of the Resolution 1609 referred to the opposition, which was urging all opposition forces to recognize the decision of the Constitutional Court confirming the elections as announced by the Central Electoral Commission. In Resolution 1620, however, the Assembly regrets that not all the opposition forces recognized the Constitutional Court's decision and that that part of the opposition boycotts the dialogue with the authorities. Moreover, the importance of an open and constructive dialogue between the parliamentary and extra-

parliamentary forces is highlighted in both Resolution 1609 and Resolution 1620. In Resolution 1620 the series of initiative of the authorities to initiate a dialogue is noticed and welcomed.

Research Question 3: What legislative developments have been envisaged by the Armenian government after the adoption of 1609 and 1620 resolutions by the Parliamentary Assembly of the Council of Europe?

Separation of powers and the role of the opposition in Parliament

In its Resolution 1609 (2008) on the functioning of democratic institutions in Armenia, adopted on 17 April 2008, the Assembly urged the Armenian authorities to reform the political system in order to ensure a proper role and appropriate rights to the opposition. Particularly, the NA of the RA, which should be a forum for political debate between different political forces, has not been very successful in performing its role. Parliamentary opposition has a major function to offer a reliable political alternative to the majority in power by providing other policy options for public consideration. However, no such function can be achieved if opposition does not enjoy certain set of rights in parliament. The democratic quality of a parliament is measured by the means available to the opposition for accomplishing its tasks. In 2008 PACE has adopted Resolution 1601 on 'procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament,' and the RA, as a member state, has been consistently advised to ensure rights to the parliamentary opposition in light with Resolution 1601 (PACE: Doc. 11628 (2008), 11).

Resolution 1601 identifies 27 rights that opposition should enjoy in democratic parliament. The Law of the RA on the Rules of Procedure of the NA provides most of the rights to the opposition members based on their being a parliamentarian. This implies that each and

every deputy of the NA exercising his/her mandate independently, has freedom of expression and freedom of opinion, has the right to ask written and oral questions, as well as right to interpellation, has the right to participate in the legislative procedures, etc. Still, set of the rights that the opposition should be guaranteed in the NA are not envisaged by the Rules of Procedure partly because of the absence of legal status of the parliamentary opposition. Thus, the NA of the RA has drafted and sent to the Venice Commission for opinion the Law of the RA on amending and supplementing the law on the rules of procedure of the NA (NA of the RA: Announcement 003, (2008)). The Law has been adopted by NA on the 23rd of October, 2008, by 3rd reading. The law, for first, identifies what parliamentary opposition is, and formulates that faction should announce of its being an opposition before the program of the RA government is approved by the NA, and no opposition member can be involved in the composition of the government.

The amendments of the law provide for, *inter alia*, the distribution of the leadership positions on the Standing Committees of the NA on the basis of d'Hondt system (NA of the RA: Draft 274, Article 2, 7. (2008)). In the core of this system lie mathematical calculations via the formula provided by professor Victor d'Hondt. This method is largely used in the parliaments of numerous countries including Argentina, Austria, Belgium, Croatia, Denmark, Check Republic, Finland, Italy, Israel, Poland, Japan, Spain, etc. The system provides the opposition which comprises a minority in the NA to hold representatives in the committees in face of head or, at least, deputy head. The articles regarding the distribution of the leadership positions will come into force on the first session of the next convocation of the NA.

According to the amendment of the law, the opposition receives the right to table an issue for the debate during one of the sittings of each four-day regular sessions (NA of the RA: Draft 274, Article 4, 5, 8. 2008). This amendment provides the opposition an opportunity and an

important possibility to include and discuss issues in the agenda of the NA in the extraordinary manner. The importance of this amendment lies in the current regulation which allows to table issues in the extraordinary manner only if 1/3rd of the total number of the deputies votes for it, while for the opposition, which is a minority, it becomes a serious obstacle.

Another opportunity that the amendments envisage is the possibility to introduce the minority position in the reports of the Standing Committees that are sent for debate in plenary session (NA of the RA: Draft 274, Article 3, 6. 2008). This amendment creates a possibility for the opposition members to enjoy longer time for presenting their position (20 minutes for the adjacent report, and 7 minutes for the speeches) and an opportunity for Q&A, which is a new phenomenon, as currently the presenter has no such right.

Finally, according to the amendments, the opposition has a priority to table question to the government.

Thus, after the amendment, out of 27 rights that the opposition should enjoy according to Resolution 1601, 25 opposition rights are included in the Rules of Procedure of the NA of the RA. The other two consider the right of the opposition member to apply to the Constitutional Court for requesting a constitutional review of adopted laws and the right of requesting examination of constitutionality of draft laws (PACE: Resolution 1601, 2008). These two rights contradict the constitutional, as according to the Constitution of the RA the right to apply to the Constitutional Court is granted to the NA and to at least 1/5th of the total number of the deputies (Constitution of the RA, Article 101. 2005).

Electoral Process

In its Resolution 1609 (2008) on the functioning of democratic institutions in Armenia, the Assembly urged the Armenian authorities to carry out the electoral reform with a view to

ensuring in particular an impartial election administration that is free from control by any political force; a fully transparent election administration of the election process especially with regard to the vote count and tabulation processes; 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 (PACE: Doc. 11579, (2008)).

On the 6th of May, by the order of the President of the NA working group was set up for submitting proposals to the NA for the Electoral reform (NA of the RA; Working Group has been created in the National Assembly). The working group was headed by the Chairman of the RA NA Standing Committee on State and Legal Affairs Mr. Davit Harutyunyan, and the group included one deputy from each of the NA factions, one representative from each - Central Electoral Commission, staff of the NA, political and specialized organizations. Members of the working group had the right to cast a consultative vote. PACE monitoring committee has welcomed the establishment of the working group and has also underlined the importance of composition of the group, which included both parliamentary and extra-parliamentary political forces, including NGOs (PACE: Doc. 11656, 2008).

In June, the working group of the NA on electoral matters submitted a complete paper of proposals for the electoral reform. This paper envisages significant changes in electoral code towards the fulfillment of PACE requirements. Mr. Davit Harutyunyan, the chairman of the group, considers the achievement of the group to be a step forward, as for the very first time the representatives of the opposition and authorities agreed on key issues on a basis of consensus (Interview with Mr. Harutyunyan, 2008).

The "Code of Good Practice in Electoral Matters", adopted by the Venice Commission at its 52nd session (October 2002), has developed certain benchmarks for emerging democracies regarding their election legislation. At first, it identifies certain mechanisms the adoption of which can guarantee the impartiality of election administration.

Independence of electoral commissions is of utmost importance, and one of the keys to independence is their permanent nature (European Commission for Democracy through Law: CDL-AD (2002)023rev). The Central Electoral Commission, which is the administrative authority in Armenia, as well as Territorial Electoral Commissions are on a permanent basis (European Commission for Democracy through Law: CDL (2008)083). The electoral law also provides a three-tier commission structure in Armenia: Central Electoral Commission, Territorial Electoral Commission, and Precinct Electoral Commission. According to the Code of Good Practice in Electoral Matters three-tier structures of election administration seem to be appropriate for effectively administering elections and referendums. However, the most important factor is the composition of electoral commissions: mostly these commissions are being under the pressure of governments. Therefore, there are several possible solutions the adoption of which may help to avoid that risk. First of all, it is important that not all commission members are appointed by the same institution, and secondly, it is regarded as helpful if at least some of the commission members are appointed by non-political institutions that are perceived as being neutral. The judiciary, for instance, are regarded to be suitable for that task. The Electoral Code of the RA has adopted these guarantees: each faction of the NA appoints one member to the CEC, one member is appointed by the president of the RA, and judicial servants are nominated by the Council of Chairman of the RA Courts. The proposals of the working group suggest the Chairman of the CEC be appointed by the President of the Republic, and 2

major opposition and governmental parties appoint 1 member to the CEC each. Though, a CEC member should be a nonpartisan. Moreover, after two and a half years, other major opposition and government parties, who have not appointed a member to the CEC, appoint 1 member each for 5 year term. The third possible solution that the Code of Good Practice in Electoral Matters suggests it that there should be adequate balance between the representatives of pro-government and opposition parties.

Another requirement that the Code of Good Practice in Electoral Matters poses to emerging democracies and the PACE resolutions reiterate with regard to Armenia, is a clear and transparent procedure of nomination and appointment of electoral commissioners. According to the electoral legislation of the RA, each CEC member nominates one member to each TEC, who in turn nominate one member to each PEC. Each commission has a Chair, Deputy Chair and Secretary. The proposal also provides a very important amendment from the opposition point of view, which runs that half of the TEC chairmen should be the representatives of the parliamentary opposition, and if the elections within the commission do not reveal this result, the CEC will cast a ballot, identifying the exact TECs, where parliamentary opposition representatives will be the Chairs (NA of the RA: Draft 297, (2008), Article 11).

The process of vote count and tabulation seems to be the most problematic issue in the election process of the emerging democracies. First of all, according to the Code of Good Practice in Electoral matters, the votes should preferably be counted at the polling station immediately after poll close, rather than in special counting centers (European Commission for Democracy through Law: CDL-AD (2002)023rev). This has the advantage of providing quick results for the polling station. Further, counting away from the polling station may raise security problems, since the transport of ballot boxes and accompanying documents is always a security

risk. Vote count in Armenia starts at the PEC level, and according to the draft law, xerox of the signed protocol made after the PEC session should be pasted on the wall of that PEC on the visible place.

Provisions related to complaints and appeals are of particular concern. Article 40 of the Electoral Code provides that decisions of PECs can be appealed to the TEC; decisions of the TEC to the courts of first instance; and decisions of the CEC to the Court of Appeals (except decisions on election results). It is important that appeal procedures are clear, transparent and easily understandable to ensure the integrity of elections. However, the draft Law does not envisage any changes towards these issues, except for the prolongation of the time from 14:00 to 19:00 for requesting a recount of the voting results in a Precinct Electoral Commission on the day after the voting day.

Certain steps have been taken for providing equal playing field for all political forces. Firstly, the CEC has gained an overseeing function for the media coverage of the pre-election campaign, and even if one member notices any inconsistencies of the campaign coverage with the established rules, he or she alone may file a case (NA of the RA: Draft 297, (2008), Article 5). Secondly, if the nominee of the Presidential election is a state official, than s/he shall go to the required vocation with full salary compensation. These officials may return to their post only in case of emergency situation, martial law, or any other force major situation (RA NA: Draft 297, (2008), Article 7). The underlying logic of this amendment is to avoid any inequalities in media coverage, which state officials may enjoy because of the coverage of their daily activities steaming from their duties.

The draft law also includes provision regarding the inking of voter's fingers. However, it should be mentioned, that this method of avoiding election fraud is uncommon in Western

Europe, while it is widely used in other regions of the world and repeatedly recommended for emerging and new democracies. It should also be mentioned, that Venice Commission and OSCE/ODIHR experts have consistently recommended Armenia to practice the inking of voters' fingers, and all the drafts have included such a provision, however, amendments never included such a provision, as not all standardized methods can be cookie cut best solutions for all the countries.

Overall, the Electoral Code of the RA and the new draft law are in line with the CoE standards, and the practical part hinges on the good faith of the implementation of the Code.

TV and Radio Broadcasting

The issue of media pluralism in Armenia has been a long-standing concern of the Parliamentary Assembly and its Monitoring Committee. In Resolution 1609 the Assembly has stated that print media is pluralistic and independent, however, 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 (PACE: Doc. 11628, 2008, Article 165). The identified main problem was seen in the way of composition of the Public Television and Radio Council and the National Television and Radio Commission. Currently, all members of the Public Television and Radio Council are appointed by the President of the RA, while the members of the National Television and Radio Commission are for one half appointed by the President and for one half by the NA (Law of the RA on Television and radio Broadcasting, 2000).

After the adoption of the Resolution 1609, the Standing Committee of the NA on Science, Education, Culture, Youth and Sport organized a public hearing in which representatives of the government authorities, civil society and extra-parliamentary opposition

were invited to participate (NA of the RA: "Law On Television and Radio Needs To Be Revised" 2008). Based on this haring, a legislative package has been prepared and sent to the CoE for opinion. The package includes a draft law on Amending and Supplementing the Law of the RA on "Television and Radio Broadcasting," on "the Rules of Procedure of the NA," "Regulations of the National Commission of the Television and Radio," and a draft law on Amending and Supplementing the Law of the RA on State Duties.

The draft on Amending and Supplementing the Law of the RA on Television and Radio Broadcasting envisages certain amendments which can serve as a basis for raising the public trust towards media environment. First of all, the draft mentions that the public television company is created by the state, although, it is an independent body. Currently, in case of a vacant place in the Council, which is the supreme body of management, the President appoints a new member, while, according to the draft, the President creates a competition board consisting of 7 members. Naturally, there are numerous criteria on who can be a board member, and that board nominates the new member to the commission based on tests and interviews. Finally, the nominee is appointed to the position by the presidential decree (NA of the RA: Draft 288, (2008), Article 4).

As to the financial independence, each year the state has to provide allocations for the Public Television Company in the state budget, regardless of the Council (NA of the RA: Draft 288, (2008), Article 7). The importance of this amendment is that state receives a duty and discretion to financially support the Company and should also ensure the instrumentalism parallel to the state budget increase.

The members of the Commission, according to the draft, should be appointed by the President and the NA, as it is in the current law, but on a competitive basis. The Commission has

a very important function, which is licensing, and it is one of the problematic issues that Armenia has to properly address. The Licensing procedure is (mostly) in line with the recommendations of the Committee of Ministers of the CoE, however, there is a need for more transparency.

The draft law mostly addresses the issues of the composition of the Council and the Commission aiming to raise their financial independence, independence from authorities, and freedom in terms of their program policy. Still, the appointment of the Council members by the President raises concerns and it should be considered as well.

Freedom of Assembly

One of the most strictly put requirements of the Resolution 1609 concerned the amendments made on the 17th of March, 2008, to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations. The most important amendments significantly extended the grounds for imposing limitations on, or prohibiting public events upon the discretion of the authorities. As a theoretical basis for the amendments served Article 11 of the European Convention of Human Rights (ECHR), which can be interpreted that state law can put certain restrictions on freedom of Assembly in case of threat to the national security or public safety (ECHR: Article 11). However, in reality, the amendments were not in line with the European standards. Thus, the Venice Commission and the OSCE/ODIHR out lauded that the proposed amendments were not acceptable, to the extent that they restricted further the right of assembly in a significant fashion (European Commission for Democracy through Law: CDL (2008)037).

After the adoption of Resolution 1609 by the Assembly, on the 25th of April drafted amendments to the Law on Amending and Supplementing the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations was sent by the Speaker of the NA to the Venice Commission for opinion. The latter welcomed the new definition of a spontaneous event, which

was “a peaceful public event, which has not been announced before and has the need to respond immediately to a specific phenomenon or event,” and the importance of this definition is that only spontaneous assemblies that grew from no mass events were recognized as legitimate acts without authorization (European Commission for Democracy through Law: CDL (2008)051). The Venice Commission expressed that the extension to a general recognition of the legitimacy of peaceful spontaneous assemblies was to be applauded as it was generally accepted that on occasions assemblies would need to be held at short notice in response to a pressing social need. However, the Commission also noted that in the revised law the right to organize a spontaneous assembly was not unlimited, and organizing a ‘spontaneous assembly’ could not to be considered as a mean to bypass the requirement of providing notification of assemblies to the authorities (European Commission for Democracy through Law: CDL (2008)050). According to the draft, after six hours of spontaneous public assembly, the police had the right to terminate the event, however, the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly say that as long as assemblies remain peaceful, they should not be dispersed by law enforcement officials, and if dispersal is deemed necessary, the assembly organizer and participants should be clearly and audibly informed prior to any police intervention (OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, Article 137; 140). The Venice Commission concluded that the draft amendments to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations largely address the concerns that were raised by them and the OSCE/ODIHR in relation to the amendments introduced on 17th of March. Still, it expressed its concern about the time-limit for prior notification of an event, which has been extended as a result of the previous amendments (European Commission for Democracy through Law: CDL (2008)050).

Further amendments were sent for Venice Commission on the 9th of June. The Commission on the same day issued an opinion on the amendments, which were mainly aimed at further clarification of several uncertainties like 'spontaneous public event,' term of 'other crimes' in Article 2 (real threat to life and health of persons, real threat to cause a substantial material harm to the state, community, physical or legal persons), etc. The draft law was adopted by the NA on the 11th of June and entered into force on the 17th of the same month, after being promulgated by the President of the RA (European Commission for Democracy through Law: CDL(2008)078; CDL(2008)079).

In the opinion of the Venice Commission, the amendments to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations are fully in line with the CoE standards, and even constitute an improvement over the original law.

On the 19th of June 2008, Mr. Styopa Safaryan from parliamentary opposition, drafted new amendments to the law in discussion, and he suggested to revoke paragraph 4(3) of Article 9, which says that if there is a credible data that the conduct of the event creates imminent danger of violence or real threat to the national security, the public order, … or is aimed at forcibly overthrowing the constitutional order, …assemblies may be prohibited. Mr. Safaryan also proposed to make several other amendments, however, the Government of the RA made a conclusion that suggested the draft to be a backward step from already reached achievements in the Law (Prime Minister of the RA: Doc. No 02/10.4/1596-08).

Freedom of assembly has also been guaranteed in practice, the evidence of which are the demonstrations and rallies that the opposition occasionally organizes. Thus, one of the requirements of Resolution 1609 has been totally fulfilled.

Judiciary

After the adoption of Resolution 1609, according to the order of the President of the RA Mr. Serzh Sargsyan on the 22nd of May, a committee was created-responsible for ensuring the independence of Judiciary in legislation. The committee, headed by the Justice Minister, stands for drafting amendments to the Judicial Code, Criminal Code, and to other legal acts. Since the beginning of the work, the committee has suggested number of drafts that are aimed at ensuring practical guarantees for the independence of the judiciary (See drafts 248; 258). Still, the amendments suggested by the NA of the RA draft 253 were found to be overbroad and at variance with the principle of legality by the Venice Commission. So, the Commission gave a conclusion that the amendments should not be adopted (European Commission for Democracy through Law: CDL-AD(2008)017).

The field of judiciary is one of the most important aspects for the advancement of democracy, however, it is extremely complex, and the Armenian authorities still need to undertake number of improvements in order to bring the system totally in line with the CoE standards.

Research Question 4: Which are the main problems identified in the ad-hoc reports of the Council of Europe Commissioner for Human Rights and the Human Rights Defender of the RA regarding the situation in the aftermath of February 2008 Presidential elections?

From the 12th to the 15th of March of 2008, Mr. Thomas Hammarberg, Council of Europe Commissioner for Human Rights, visited the RA for monitoring the overall human rights situation and the impact of the State of Emergency, which was declared on the 1st of March for 20 day period. As we already know, since the 20th of February, the following day of the Presidential elections, Mr. Levon Ter-Petrosyan being the leading contestant among the

opposition candidates (21% of votes), headed illegal demonstrations on the Freedom square, which lasted for 9 days and resulted in the tragic events of the 1st of March (Human Rights Defender of the RA 2008).

The primary concern of the Commissioner was the outcome of the police operation on the Opera square, which, according to the Head of Police, was intended to move the demonstrators to another location in the city in order to avoid problems of public transport and sanitation. The Problem that the Commissioner identified was the extensive use of force mostly by the police and the security forces during the clashes with demonstrators (Hammarberg, CommDH(2008)11REV). The Head of Police told to Mr. Hammarberg, that before the 1st of March the police had received information that the demonstrators were arming themselves with weapons and ammunition. He also noted that the clashed occurred between the police and security forces on one side and the demonstrators on the other side as the latter resisted the search operation carried by the state servants. In this regard, the Government of the RA commented that the police took down the tents and dispersed the protesters as they started to resist with use of truncheons, sticks, metal bars, and Molotov cocktails (Government of the Republic of Armenia). However, the adequacy of use of force was seriously questioned by the Commissioner.

With regard to the March 1 event, the Human Rights Defender of the RA provided a more comprehensive approach and analyzed the situation in terms of the lawfulness of the 10-day-long sit-in on Freedom Square, legitimacy of the March 1 operation from the perspective of Criminal Procedure, and in terms of the police authority and the proportionality of the police actions (Human Rights Defender of the RA 2008).

First of all, the Defender stresses the fact that the members of the Election Campaign Headquarters of Mr. Ter-Petrosyan have tried to frame the demonstrations as a non-mass event spontaneously grown into a mass public event , which would perfectly fit within the Article 10(1) of the Law on Conducting Meetings, Assemblies, Rallies, and Demonstrations, which provides that "Except for cases when a non-mass public event has spontaneously grown into a mass public event, mass public events may be organized only after giving written notification to the authorized body." However, the Defender also mentions that the intent to make an organized demonstration and to grow it into a mass event was illustrated by the fact that the mass media outlets and websites serving Levon Ter-Petrosyan had regularly encouraged Armenian citizens to participate in those demonstrations. Moreover, a specific place (Freedom Square) and a specific hour (15:00) were decided for organizing daily demonstrations.

Regarding the legitimacy of the March 1 operation from the perspective of Criminal Procedure, the Human Rights Defender raises several questions which should probably be considered. Firstly, he puts forward the inconsistencies in the statements made by the Office of the Prosecutor General of the RA regarding the initial aim of the police operations. Secondly, there is a discrepancy between initially listed arms possessed by the protestors and the final list of objects that demonstrators used. Here the exact list is very important as the existence of certain objects, like Molotov cocktails, would provide additional evidence that the demonstrators had prepared the arms in advance, and that, because of it, the demonstration could not be treated as unarmed assembly (Human Rights Defender of the RA 2008). Finally, the Defender expressed concern about the legal background of the police operations on the Opera square, as because of the scarcity of the information on the exact activities, orders and officials making those orders, it was a little unclear under which provision of which exact law the police operations fit in.

In the ad-hoc report (2008) the Defender accepts that the Police have the authority to compulsorily terminate a demonstration and use force in proportion to an imminent threat. However, he also mentions, that without any warning, the police officers started pouring water on the demonstrators, hitting them with electric shock, and then, hitting with truncheons. In this regard, the Government of the RA has stated that police started to use force as protestants resisted and did not allow the law enforcement officials to perform their duties.

In his report Mr. Hammarberg put forward another problem that several injured civilians were turned away from hospitals and medical clinics on the 1st of March. Be this a reality, it would be rather grave human rights violation, and the Government of the RA insisted on provided a supportive data for this serious accusation, as it is unbelievable in Armenian reality that a hospital would turn down a patient because of his/her political affiliation. First of all, most of the hospitals are privately owned, and secondly, some of the hospitals are owned by opposition supporters. I personally have talked to MDs of several hospitals (Erebuni, Hanrapetakan) and they also confirmed that no one was turned down because of his/her political affiliation.

One of the main concerns of the Commissioner was the death of 7 civilians and 1 police officer as a tragic result of the clashes. The Commissioner urged the need to clarify what actually happened and what provoked the outbreak of violence. For investigation, a working solution could be an independent, impartial and transparent inquiry commission, which could also receive support from international community.

The issue of arrests and detained persons was also raised by the Commissioner. In is report he mentioned that over 400 persons have been apprehended and asked to give testimony of the events on 1 March, over 95 persons had been arrested for having organized or participated

in demonstrations and mass disturbances of public order, and most of the arrested have been charged with disturbing public order, illegal possession of arms, incitement to violent acts, and resisting violently police arrest (Hammarberg, CommDH(2008)11REV). The main concern of the Commissioner here was that the articles under which the persons are charged leave broad room for interpretation and fail to give clear guidance on the dividing line between legitimate expressions of opinion and incitement to violence.

The next set of problems comes with the announcement of State of Emergency. The legal regime of the state of emergency temporary suspended the freedom of movement, freedom of assembly, freedom of expression and access to information. In reality, the European Convention on Human Rights and Freedoms and Protocol 4 of the Convention provide basis for such limitation, however, the problem was that Armenian authorities took extensive use of the Convention provisions and put very strict limitations. Still, starting from the 10th of March, most of the restrictions concerning freedom of movement, access to information, media reporting, etc., were gradually being lifted.

The Human Rights Defender of the RA also expressed his concern about the State of Emergency. Most importantly, in the ad-hoc report he mentioned that the state of emergency was declared only in the City of Yerevan, though, restriction of the freedom of assembly was applied in other towns of Armenia, as well. Another issue that the Defender raises in the report referred to the provision of the Decree on mass media reports on state and domestic political matters only within the limits of official information from state bodies. The coverage of the First Channel of the Public Television of Armenia has been unacceptable, as it not only ignored the relevant provision of the Decree, but also breached Article 28 of the Law on Television and the Radio Broadcasting, which "prohibits the predominance of political views in the programs broadcast by

public television companies." Still, much attention was not paid to the coverage of this channel by the authorities, as it was mainly pro-Governmental.

Research Question 5: To what extent the reports have impacted on further improvement of human rights situation in the RA?

Most of the provision of the report prepared by Mr. Hammarberg was reflected in the PACE Resolutions 1609 and 1620. The problem with limitations on freedom of assembly has been solved by a number of legislative initiatives that the authorities of the RA undertook, and finally amended the law so as to meet the CoE criteria. The main concern of the Commissioner for Human Rights after the events of March the 1st was about the detained persons. The Commissioner had recommended releasing all detainees who have not committed concrete actions of criminal violence and also urged not to initiate charges and judicial procedures against persons only on the basis of their expressed anti-government opinions. In the report resulted from the visit to Yerevan from 13 to 15 July, 2008, the Commissioner stated that the preliminary investigation phase of all the criminal cases relating to the events of 1-2 March has been completed, and most of the cases have been brought to the court: trials concerning 14 detainees are in progress, 39 persons have been sentenced to prison terms, 42 persons have been sentenced to non-custodial measures (probation or fines), and only 7 persons remain in preliminary detention, which is, still, a matter of concern. However, it should also be mentioned that prosecution cases against 19 persons were based solely on police testimony (Hammarberg, CommDH(2008)29).

As to the impartial investigation to the events of 1-2 March, ad-hoc committee has been established in the NA of the RA, which is going to present its findings on the 25th of February, 2009.

Research Question 6: What has been undertaken to foster a successful dialogue between the government and the opposition: which are the main obstacles (if any) for the dialogue?

One of the key requirements of Resolutions 1609 and 1620 has been the initiation of an open and constructive dialogue between the parliamentary and extra-parliamentary political forces of the RA. The need for dialogue has constantly been stressed nearly in all the PACE resolutions concerning Armenia, as even the most complex issues may be solved in a constructive dialogue.

A place for such a dialogue could be a council where representatives of different forces of the society could come together and discuss the intricate questions of the public. Thus, on the 13th of June, 2008, the President of the Republic promulgated a decree on the creation of the Public council, a body whose declared goal is to facilitate dialogue between broad sections of the public and the authorities (Presidential decree: ՆՀ-157-Ա, 2008). A special commission has been created to coordinate the work towards the formulation of the council. The mission of this commission has been the creation of working groups, where the representatives of the authorities and the opposition, civil society, as well as other interested political forces are included. The persons included in the commission are politicians, scholars, intellectuals, as well as prominent representatives of creative arts.

At first, the response to the idea of the council was rather skeptical on behalf of the part of the opposition. The spokesperson of Mr. Levon Ter-Petrosyan, Mr. Arman Musinyan said that "the idea of Public council is not a dialogue, but an imitation of it," as it would not be able to resolve the crisis that the society faced (Ishkhanyan). Critics of the council say that the place for dialogue is the Parliament. However, the Public council will be the structure where all the

segments of the public at large can be represented. Moreover, vast majority of the opposition forces is not represented in the current NA.

On the 2nd of October, in his address to the people of Armenia and NA, Mr. Serzh Sargsyan mentioned that the assigned commission has already concluded the preliminary works and the Public council will soon be established. He also stressed that he will try to make sure that every interested person or organization has an opportunity to influence the process of decision making through that council.

In its resolution 1609, the Assembly has noted that for a successful dialogue to start, an independent, transparent and credible inquiry into the events of 1 March should be carried out. On the 16th of June, 2008, NA Ad-hoc Inquiry Committee into the Events Occurred on 1-2 March in Yerevan was formed (NA Decision: Ъ-086-4, 16 June, 2008).

The Committee included two MPs from each faction (except Heritage party), one member on behalf of the independent members of the Parliament, extra-parliamentary political forces who overcame the 3% threshold at the May 12, 2007 parliamentary elections, presidential candidates representing political force at the February 19, 2008 presidential elections, as well as international experts. Extra-parliamentary forces and the experts have the right of consultative vote (NA: News: Sitting of the NA Ad-hoc Committee, 19 June, 2008).

The Committee conducts sittings if ½ of the committee members having the right to vote are present, and the sittings are conducted at least once a week. The Committee approves the decisions, suggestions and conclusions by the majority vote (NA of the RA: Rules of Procedure of the National Assmbly Ad-hoc Committee, 24 June, 2008). The Human Right Defender is a committee member *ex officio*. As to the Heritage party, Ms. Anahit Bakhshyan explained that they refused to participate in the works of the Ad-hoc committee as their participation will have

no influence because of the decision making system of the committee: two opposition votes will make no difference, though would legitimize the works of the committee (Bakhshyan).

During its work the committee may turn to the state officials, bodies of local self-government, to the Police and other law enforcement bodies, and the latter should provide the information the committee seeks for within a reasonable time limit.

The Inquiry Committee has to finish its works up to the 26th of February, 2009 (NA of the RA: Decision, ՆՍ-105-4 (2008)).

The critic over the composition of the Inquiry committee has been too much, and it was mainly because of its composition: opposition refused to participate in the works of the committee. Thus, to ensure the independent inquiry into the facets that resulted in the political crisis in the country, on the On October 23, President Serzh Sargsyan signed the order on the creation of the Fact-finding group of experts and on the regulation of its activities (RA President: News: 23 October, 2008). The Fact-Finding Group of Experts is engaged in revealing the reasons and finding facts about the events in Yerevan on March 1-2. The activity of the group is targeted at assisting the Ad Hoc Commission of the NA of the RA in accomplishing the tasks posed to it.

This Fact-Finding group is comprised of two representatives from the ruling coalition, one representative from the "Heritage" faction, one representative of the political force ruled by Mr. Levon Ter-Petrosyan and one member nominated by the Human Rights Defender. Members of the group cannot be Members of Parliament, be a party member or affiliate. Moreover, the group's activity is not subject to media coverage during the whole period of its activity.

To sum up, for a dialogue to be successful, not only should authorities show political will, but also opposition forces, as it should not be a debate about the distribution of state offices,

but a constructive dialogue aimed at solving the problematic issue of our society and country at large.

Recommendations and conclusion

The end goal of this Policy Internship Project is to provide recommendations which can be workable and practical. To each and every issue discussed in this paper recommendation could be suggested. However, some of the most crucial recommendations are selected for the practicality of them.

First of all, *the authorities of the Republic of Armenia should show political will that they are ready to admit PACE recommendations* regarding the democratization of the country, as there suggestions are in line with the internal policy of the country. Moreover, I do believe, that negligence towards CoE demands will harm the kind reputation of the RA, which would, at the end of the day, do harm to the European integration of the country.

Regarding legislation, there are several recommendations for the electoral reform. First of all *a Law should be drafted on amending the Electoral Code of the RA, based on the final document of the NA Working Group*. Besides the recommendations included in the document, several other points may be added: a. *equitable representation in the management positions on TECs and PECs must be guaranteed*, as it will raise credibility of the general public towards election results; b. *equal conditions for election campaign must be guaranteed*: state officials should take a formal leave of absence; c. considering the experience of new democracies in Central and Eastern Europe, *the responsibility for deciding on election complaints and appeals should be shared between independent electoral commissions and ordinary courts*: for that purpose the electoral law should clearly regulate the respective powers and responsibilities so that a conflict of jurisdiction can be avoided.

Regarding the freedom of media, *undertaking practical steps for ensuring freedom and pluralism of media on a day-to-day basis* is of utmost importance. To me a very welcoming development is that H1, the Public TV station of Armenia, invites representative of the opposition to a talk show (25 minutes), where various ideas are out lauded, including those not in favor of the authorities.

Regarding the judiciary, the impartiality of the judges comes first, which, I believe, can be guaranteed by *increasing the salary of Judges*, meaning *ensure their financial independence*.

The Human Rights Defender has posed number of issues in his ad-hoc report, and *the government should pay attention to the questions raised in the report of the Ombudsperson*, as clarifying those issues will: a. shed light on most of the unclear facts that led to the events on the 1st of March; b. clarify and crystallize the derelictions existing in the legal framework regulating the activities and duties of the law enforcement bodies; c. raise the public confidence towards the election outcome.

The *availability of all the information and documents regarding the events of the 1st of March should be in practice guaranteed to the NA Ad-hoc Inquiry Committee as well as to the Fact-finding group*.

As to the opposition, the should play a constructive role in the solution of the political crisis by participating in the works initiated by the authorities and make changes with the help of the state system moving towards a democratic one.

The most problematic issue is about the detained persons. Articles of the Criminal Code of the RA under which charges are presented, are vague. Some persons are detained on politically motivated charges, thus, *authorities should show political will to drop the charges*

that are anyhow based on political motivation. It is important to mention, that on the 18th of December, 2008, the Monitoring Committee has drafted a resolution for the debate on the 29th of January, 2009, which considers the suspension of the voting right of the Armenian delegation to PACE (PACE: Monitoring Committee: 18 December, 2008).

To sum up, it is very important to mention, that democracy building is a very though job for a country with Soviet legacy and unresolved conflict in the region. However, with the help of established democracies and their experience, Armenia has accomplished tremendous results. Championing Council of Europe recommendations is one of the best ways towards the advancement of democracy. Thus, the implementation of the Assembly resolutions is an important step towards the democratic future of the RA.

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