

The Accession of the Republic of Armenia to the Council of Europe and the Implementation of Its Commitments to the Organisation

The Republic of Armenia joined the Council of Europe on 25 January 2001. The accession of Armenia to this Organisation is recognition of the fact that this State shares the common European values for which the Council of Europe stands and that the country is moving towards a strong democracy.

A. General Overview of the Council of Europe

The Council of Europe is an intergovernmental pan-European organisation set up in 1949 with currently 45 Member States. The Council of Europe's headquarters is in Strasbourg (France).

The aim of the Council of Europe is:

- to promote human rights, pluralist democracy and the rule of law;
- to help consolidate democratic stability in Europe by backing political, legislative and constitutional reform;
- to promote awareness and encourage the development of Europe's cultural identity and diversity;
- to seek solutions to problems facing the European society such as discrimination against minorities, xenophobia, intolerance, environmental protection, human cloning, AIDS, drugs, organised crime, terrorism, migration, etc.

The Council of Europe covers all major issues facing the European society other than defence. Its work programme includes the following fields of activity: human rights - identifying new threats to human rights and human dignity, promoting human rights awareness, education and professional training, promoting equality between women and men, combating racism and intolerance, media, legal co-operation, social cohesion, health, education, culture, heritage, sport, youth, local democracy and trans-frontier co-operation, and protection of environment.

- The Committee of Ministers is the Council of Europe's decision-making body, and is composed of the foreign affairs ministers of all Member States;
- The Parliamentary Assembly is the Organisation's deliberative body, the members of which are appointed by national parliaments;
- The Congress of Local and Regional Authorities of Europe is a consultative body representing local and regional authorities;
- The European Court of Human Rights is the judicial institution competent to deal with complaints filed by States and individuals regarding alleged violations of the European Convention on Human Rights (hereinafter ECHR) by parties to it. The individual complaints might concern issues like torture and ill-treatment, arbitrary loss of liberty, lack of fair trial within reasonable time, deportation and

extradition, freedom of the press, interference with property rights, dissolution of political parties etc.

The Secretary General of the Organisation is Walter Schwimmer from Austria.

B. The Procedure of Accession of New Member States to the Council of Europe

Any European State can become a member of the Council of Europe provided it accepts and implements the principle of the rule of law and guarantees human rights and fundamental freedoms to everyone under its jurisdiction. When joining the Organisation, the new Member State commits itself to respect and apply these principles, to collaborate sincerely and effectively to achieve greater unity, and to facilitate their economic and social progress. Each Member State is responsible for honouring these commitments, the Committee of Ministers and the Parliamentary Assembly ensuring that they do so.

Following the political events of 1989 in Eastern Europe, the Parliamentary Assembly decided to intensify its relations with States from Central and Eastern Europe with the view of contributing to their accession to the Council of Europe - a "special guest status" for the national legislative assemblies of these countries was created. This status is granted to the parliaments of those European States willing to join the Organisation and able to apply the principles and standards which the Council of Europe promotes. When a European State applies for membership to the Council of Europe, the Committee of Ministers invites the Parliamentary Assembly to draw up an opinion to that request. This is the starting point of the accession procedure.

The Armenian Parliament obtained Special Guest status to the Parliamentary Assembly on 26 January 1996. The Republic of Armenia applied to join the Council of Europe on 7 March 1996, and subsequently the Committee of Ministers invited the Parliamentary Assembly to draw up an opinion to the application.

As part of the accession procedure, the Assembly appoints two rapporteurs: one from the Political Affairs Committee and another from the Committee on Legal Affairs and Human Rights. The rapporteurs follow the process of democratic reforms in the country and identify the areas where additional efforts are needed in order to ensure that the domestic legislation and practice are in accordance with the standards of the Council of Europe.

The reports of the rapporteurs are supplemented by the report of the "eminent lawyers"-judges at the European Court of Human Rights on the conformity of the applicant's legal system with the standards of the Council of Europe.

Thus, in 1997, two "eminent lawyers" established a report, identifying the pieces of legislation and domestic practice that Armenia had to reform in order to put them into conformity with the requirements of the ECHR.

A delegation of the Parliamentary Assembly observed the presidential elections in March 1998 and the general elections in July 1995 and May 1999, as free and fair elections are the *conditio sine qua non* for the functioning of a democratic political system.

The rapporteurs from the Political Affairs Committee and the Committee on Legal Affairs and Human Rights visited Armenia several times.

Following the visits of its rapporteur, in June 2000 the Political Affairs Committee concluded that “Since the beginning of the accession procedure, Armenia has made considerable progress, whether in setting up a pluralistic political system, establishing the rule of law, or observance of human rights and fundamental freedoms...However, there remains room for further improvement in all these spheres. The legislative and judicial reforms need putting to the test of everyday application. Even more is needed to be done to prevent abuses and arbitrary decisions by State bodies, in particular the executive. Certain reforms which have been embarked upon, need to be completed...”.

Subsequent to the visits of the rapporteur of the Committee on Legal Affairs and Human Rights, in June 2000 the latter concluded that “...in the field of legal affairs and human rights, Armenia has reached the minimum standard required for membership of the Council of Europe, though reforms have to be continued. The Committee thus favours Armenia’s accession to the Council of Europe, on the condition that Armenia enters into commitments and obligations...”

On the basis of the opinions of the two Committees, on 28 June 2000, the Parliamentary Assembly adopted Opinion N° 221 (2000), recommending the Committee of Ministers to invite the Republic of Armenia to become a member of the Council of Europe. The same Opinion defined the commitments this State had to undertake as regards the reform of the domestic legislation and practice in order to put it in accordance with the standards of the Council of Europe. The list of commitments was established in consultation with the Armenian authorities.

C. The Monitoring Mechanisms of the Parliamentary Assembly and the Committee of Ministers over the Commitments of Member States to the Organisation

The Republic of Armenia acceded to the Council of Europe on 25 January 2001. Armenia is represented in the Parliamentary Assembly by a delegation of 8 members from the National Assembly, made up in a way to ensure a fair representation of political parties or groups (such parliamentary delegation already existed before the accession, when Armenia was enjoying the special guest status). The Armenian delegation is entitled to participate in the Parliamentary Assembly’s debates and in the meetings of its various standing committees.

The Government of the Republic of Armenia is represented in the Committee of Ministers by its Minister of Foreign Affairs or by the Permanent Representative of the State to this organ.

After Armenia joined the Organisation, a monitoring procedure of the Assembly was instituted over Armenia in regard to its fulfillment of the commitments¹. Within its procedure of monitoring, the Parliamentary Assembly is entitled to bring new requirements to Member States in order to ensure that all parts of their legislation and practice are reformed in accordance with the standards of the Council of Europe. In the case of Armenia, in September 2002, the Assembly adopted Resolution 1304 assessing the pace and content of reforms as well as identifying new areas of reforms. On 27 January 2004, PACE adopted Resolution 1361 on honouring of obligations and commitments by Armenia in which the implementation is assessed and the commitments “updated”.

As already mentioned above, the Committee of Ministers is also monitoring the compliance of its Member States with the standards of the Organisation and in particular the fulfillment of their commitments. In the case of Armenia and Azerbaijan, a group of Ambassadors to the Council of Europe, currently headed by Ambassador Ago (Italy) is monitoring the process of implementation by these two countries of their obligations. The Ago group regularly sends questionnaires to the authorities of these two countries on the process of implementation of their commitments. The group also visits both countries to discuss these issues with the public sector and the civil society. The Group reports to the Committee of Ministers on the implementation by Armenia and Azerbaijan of their obligations to the Council of Europe.

The Group is currently in the region.

¹ According to Resolution 1115 of the Parliamentary Assembly on its monitoring mechanism, the Assembly may sanction persistent failure to honour obligations and commitments accepted, and/or lack of cooperation in its monitoring process, by adopting a resolution and/or recommendation or by the non-ratification of the credentials of a national parliamentary delegation...Should the member State continue not to respect the commitments, the Assembly may address a recommendation to the Committee of Ministers requesting it to take the appropriate action provided for in Article 8 and 9 of the Statute of the Council of Europe.

Article 3 of the Statute: “Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council”

Article 8 of the Statute: “Any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw...If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine.

Article 9 of the Statute: “The Committee of Ministers may suspend the right of representation on the Committee and on the Consultative Assembly (the Parliamentary Assembly) of a member which has failed to fulfil its financial obligation during such period as the obligation remains unfulfilled.

D. The Implementation by Armenia of Its Commitments between September 2002 and January 2004.

As mentioned, the Parliamentary Assembly of the Council of Europe adopted on 27 January 2004 its report and its Resolution 1361 which assess the compliance of Armenian legislation and practice with the requirements of the Organisation and identify new areas of reforms to be carried out.

The Assembly has considered that 2003 has been a busy electoral year for Armenia and as a result no further progress has been made in the reforms. Nevertheless, since September 2003, Armenia's undeniable efforts show that it is once more committed to making progress towards honouring its obligations and commitments.

In my view, the assessment of the commitments and their implementation can be divided into 4 parts:

- as regards the ratification of Council of Europe Conventions;
- as regards the reform of the Constitution;
- as regards the reform of domestic legislation and its implementation;
- as regards the settlement of the conflict in Nagorno-Karabakh

I. As Regards the Ratification of Council of Europe Conventions

The Assembly has noted that Armenia has honoured all of its commitments with regard to conventions and has namely underlined that the ratification of Protocol N° 6 to the European Convention on Human Rights "is a positive, strong and symbolic signal".

II. As Regards the Reform of the Constitution

The Assembly has noted that a number of legislative commitments – increased local self-government, introduction of an independent Ombudsman, establishment of independent regulatory authorities for broadcasting, modification of the powers and access to the Constitutional Court, reform of the Judicial Council etc. – are still subject to a revision of the Armenian Constitution. The Assembly has expressed the view that these commitments must not be deferred any longer and has invited the authorities to speed up the revision of the Constitution. According to the Parliamentary body, the authorities should rapidly prepare draft amendments to the Constitution and present them to the Council of Europe for expertise by the end of April 2004. The Assembly underlines that the referendum has to be held as soon as possible and in any case not later than June 2005.

III. As Regards the Reform of Domestic Legislation

The Assembly has welcomed the adoption of a new Criminal Code, the law on the Ombudsman, the law on alternative military service, the law on the media and the law on radio and television broadcasting, while in September 2002, the delay in adoption of these pieces of legislation was strongly criticised by the same body. However, concerns remained for the Parliamentary Assembly on some of the provisions of these pieces of legislation (see below).

1. Criminal and Criminal Procedural Legislation and Implementation

a. The Assembly has welcomed the adoption in April 2003 of a new Criminal Code that no longer includes death penalty; it has taken note of the Armenian authorities' assurances that the law concerning the implementation of the Criminal Code, which was adopted at the same time and maintained the death penalty for a number of serious crimes, has become obsolete following the entry into force of Protocol 6.

b. The Resolution underlines that the Criminal Code no longer includes the death penalty. The Assembly has noted that on 1 August 2003 the death sentences of 42 persons were commuted into life imprisonment by Presidential decree. However, the Parliamentary body has expressed the view that this issue should be dealt with on a case-by-case basis and urged the authorities to reexamine as soon as possible the cases of those who have asked for a change of sentence or a retrial. Depending on the seriousness of the crime that the inmate has committed, the sentence already served and his conduct in prison (after a given length defined by law has been served), they have the right to have their sentence revised in order to get an early release.

c. The Assembly has been alarmed at the fact that the National Assembly has adopted amendments to the Criminal Code excluding persons serving life sentences from amnesty or conditional release which are in contradiction with Recommendation Rec (2003) 22 of the Committee of Ministers This Council of Europe document defines some of the European standards as regards the necessity of conditional release and the procedure thereto. Conditional release is required by the fact that the financial cost of imprisonment places a severe burden on society, and that research has shown that detention often has adverse effects and fails to rehabilitate offenders. Therefore, the authorities are urged by the Assembly to repeal these provisions without delay.

d. The Resolution requires from the authorities to start the revision of articles 135, 136 and 318 of the Criminal Code by March 2004 in order to remove any possibility of making insult and defamation subject to prison sentence.

e. The Assembly has urged Armenia to undertake the revision of the Code of Criminal Procedure without delay, in cooperation with the Council of Europe experts and with due regard for the recommendations.

2. Conditions of Detention

The Assembly has expressed expectation that the Armenian authorities would make further efforts to improve conditions of detention including speedy implementation of the recommendations of the Committee for the Prevention of Torture.

3. Fight against Misconduct by Law Enforcement Forces

The Assembly has asked the Armenian authorities to take resolute and more active steps to remedy misconduct by law enforcement officials, especially as regards acts of violence, ill-treatment, corruption and bribery which remain commonplace. This requirement was already put forward in Resolution 1304.

4. Reform of the Law on Police

The Assembly has also expressed expectations that the law on police is to be revised by March 2004 in compliance with the Council of Europe recommendations as it was already required by Resolution 1304.

5. Law on the Ombudsman

Now that the law on the Ombudsman has been adopted, the Assembly has urged the authorities to set up a transparent and credible interim procedure enabling the Armenian National Assembly, including the opposition parties, to examine and give their opinion on candidatures, while officially preserving the President's right to appoint the successful candidate.

6. Right to Free and Fair Elections

The Assembly has expressed its profound disappointment at the conduct of elections which led the international observers to conclude that the electoral process as a whole did not comply with international standards. Therefore, the authorities have been invited to revise the Electoral Code in cooperation with the Council of Europe and the OSCE/ODIHR, especially the provisions concerning the composition of electoral commissions, the role and status of observers and the transparency of the vote counting and totaling of the results.

The authorities have also been 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.

7. Functioning of the Judicial System

The Assembly has expressed alarm that the fundamental reforms concerning the judicial system and the independence of the judiciary have still not been completed. Therefore, the authorities are urged to adopt the law on the status of judges, the law on the Judicial Council and the law on the judiciary by the end of 2004, in accordance with the Council of Europe expert opinions.

This requirement is the follow up of the one found in Resolution 1304 of September 2002, in which the Assembly urged the authorities to fully guarantee the independence of the judges in keeping with Council of Europe standards.

8. Use of Administrative Detention

The Assembly has been shocked by the scandalous use that continues to be made of arbitrary procedures concerning administrative detentions provided for in the Administrative Code, which is totally incompatible with its strongly worded statement in Resolution 1304. In the same document, the Assembly has firmly condemned the arrest and conviction of over 270 people between the two rounds of the presidential elections and at the end of the second one. It expects that this legislation will be revised in cooperation with the Council of Europe.

The Assembly has asked the authorities to proceed with the adoption of a law on demonstrations and public meetings in compliance with the Council of Europe standards.

9. Freedom of Expression and Media Pluralism

The Assembly has expressed its concern over developments in audiovisual media and its serious doubts as to the pluralism in the electronic media, regretting in particular about the vagueness of the law in force that has resulted in the NTRC being given outright discretionary powers in the award of broadcasting licenses, specifically concerning A1+ channel. Nevertheless, the Assembly has acknowledged the adoption in December 2003 of both the Law on the Mass Media and a law amending the Law on Radio and Television Broadcasting.

10. Local Self-Government

The Parliamentary body has expressed expectations that the authorities would adopt a law on the status of Yerevan, a law on the territorial administration of the state, a law on municipal staff and a law amending the law on local self-government. In Resolution 1304 requirements in that respect were already existent.

11. Fight against Corruption

The Assembly has welcomed Armenia's accession to GRECO and the adoption by the Government of the national anti-corruption strategy and the action plan. The Assembly has raised the expectation to draw up a modern and comprehensive law on the fight against corruption and to ratify the Criminal Law Convention on Corruption and sign and ratify the Civil law Convention on Corruption. Resolution 1304 contained already requirements in that respect.

12. Right to Conscientious Objection to Military Service

a. The Assembly has welcomed the adoption of the law on alternative military and civilian service broadly consistent with European standards on exercise of the right to conscientious objection to military service. However, the Assembly has considered the length of the alternative civilian service unacceptable and excessive, which brings a punitive character to it, and has asked its reduction to 36 months instead of 42 as it is now.

b. The Assembly has expressed its indignation at the fact that 20 or so young people, who refuse to perform military service, are still in prison, despite the commitment that Armenia undertook when joining the Organisation as to their release. This requirement was reiterated by the Assembly in Resolution 1304.

13. Freedom of Religion

The Assembly has asked the registration of the Jehovah's Witnesses as a religious organisation, after their statute is brought in conformity with the legislation in force. The Resolution 1304 has already put requirements in this respect.

The Assembly has also asked the authorities to set up a truly independent body representing all religious organisations and communities of Armenia.

14. The Assembly has called on the authorities to fight against trafficking of women and children.

IV. Settlement of the Conflict in Nagorno-Karabakh

Armenia and Azerbaijan joined the Council of Europe on the same day (25 January 2001) as the Parliamentary Assembly believed that the accession of both countries could help to establish the climate of trust necessary for a solution of the conflict in Nagorno-Karabakh. At that time, the Assembly recommended Armenia to pursue efforts to settle this conflict by peaceful means only.

In September 2002, the Assembly recalled that it can envisage closing the monitoring procedure only if the state concerned has honoured all its main commitments, which in the case of Azerbaijan and Armenia, include an agreement on the peaceful settlement of the Nagorno-Karabakh conflict – including the question of the occupied territories and other issues dealt with by the Minsk Group.

In its latest Resolution, the Assembly has noted that there has not been any progress in the negotiations on the settlement of the conflict over Nagorno-Karabakh.

In conclusion, the Parliamentary Assembly recognises that Armenia has recently made considerable efforts to honour the obligations and commitments entered into. However, given the obligations and commitments that remain to be honoured, particularly those concerning pluralist democracy, the Assembly decides not to end the current monitoring procedure until Armenia has made further substantial progress on the outstanding commitments and notably has proved that it is able to organise the next presidential and parliamentary elections in compliance with international democratic standards.

E. Council of Europe Programmes of Cooperation with Armenia

In order to contribute to the reform of legislation and its implementation as required by its monitoring bodies, the Council of Europe has developed cooperation with the Armenian authorities. Assessment of pieces of legislation, working meetings, training programmes for civil servants on human rights and related issues that we develop are part of our strive to have the European democratic values respected in your country.

Finally, the Council of Europe is anxious to contribute to the reinforcement of the civil society in Armenia through capacity building of the NGOs.