



Strasbourg, 27 November 2000

<cdl\doc\2000\cdl\93-E>

CDL (2000) 93
Or. fr.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

ARMENIA

MEMORANDUM

OFFICIAL VISIT

**BY THE VENICE COMMISSION DELEGATION TO YEREVAN,
15-18 November 2000**

A delegation from the European Commission for Democracy through Law (Venice Commission), made up of:

Mr G. Batliner, Vice-President of the Commission;

Mr A. Endzins, member;

Mr K. Tuori, member;

Mr B. Moreira, member;

Mr B. Owen, Commission expert;

and Mr Giakoumopoulos and Ms C. Martin from the Commission Secretariat, visited Yerevan from 15 to 18 November 2000.

Aims of the visit

The aims of the visit were, firstly, to continue work on the revision of the Constitution of the Republic of Armenia in co-operation with the Working Party on the Revision of the Constitution, chaired by Mr G. Harutyunyan, President of the Constitutional Court, and, secondly, to establish contacts and draw up a programme of co-operation with the Armenian authorities, further to the Committee of Ministers' decision to invite the Venice Commission to assist the Armenian authorities in reforming the judicial system and the law on the media and remedying the loopholes in the electoral law, in accordance with Council of Europe standards.

Meetings

The delegation met the President of the Republic, Mr Robert Kocharian, the President of the National Assembly, Mr Armen Khachatrian, and the Minister for Foreign Affairs, Mr Vartan Oskanian.

In addition, in connection with the working sessions on the revision of the Constitution, the delegation was able to discuss the co-operation programme with the Vice-President of the National Assembly, Mr Tigran Torossian, the Minister for Justice, Mr David Harutyunyan, and the President of the Constitutional Court, Mr Gaguk Harutyunyan.

Some members of the delegation met Mr Victor Dallakian, Chair of the Legal and Government Affairs Committee of the National Assembly, Mr Artak Sahradyan, Chair of the Central Electoral Commission, and the head of the OSCE mission in Armenia, Ambassador Roy Reeve, along with members of the mission.

All the Armenians to whom the delegation spoke were particularly optimistic about the prospect of close co-operation with the Venice Commission, which they welcomed.

The President of the Republic began by stressing the importance of the work carried out over the past few months by the Venice Commission in co-operation with the Presidency, the Parliament, the Government and the Constitutional Court on the reform of the Constitution. This reform, which he described as being of prime importance to the democratic future of Armenia, reflected one of the political undertakings he had given when he was elected. While aware that the revision would probably weaken some of the powers of the President of

the Republic, he said that he supported and had every confidence in the Venice Commission's work.

The President also referred to the Committee of Ministers' decision, stating that Armenia's forthcoming accession to the Council of Europe was raising many expectations in Armenia. He pointed out in this connection that there was no need to stress the necessity for co-operation: the Armenian authorities were aware of the problems that still existed in certain areas of Armenian law. For his part, he would like all legislative activity in Armenia to be carefully studied with the assistance of the Council of Europe. In fact, he said, Armenia wanted to co-operate and was hoping that the Council of Europe would meet its expectations.

The President of the National Assembly received the delegation in the company of the two Vice-Presidents and the Chairs of the Standing Committees. He welcomed the Committee of Ministers' decision and said he was prepared to co-operate fully with the Venice Commission in the three fields mentioned in the decision. He added that the Assembly was working extremely hard and that this work needed to be co-ordinated with that concerning the revision of the Constitution. Mr Tigran Torossian, Vice-President, would be responsible for the Assembly's co-ordinating role.

The Minister for Foreign Affairs pointed out that he himself had initiated co-operation with the Venice Commission by attending its plenary meeting in 1996. He expressed his thanks for the work already done and said he was prepared to help in any way so as to ensure that co-operation was as fruitful as possible in the future. The minister stressed the need for the Armenian authorities to have consultations with the Commission fairly early on in the legal drafting process; this would make co-operation more effective. He confirmed that the President of the Constitutional Court would direct the programme of co-operation with the Venice Commission.

The Venice Commission delegation welcomed the Committee of Ministers' decision. It stressed that co-operation with the Armenian authorities over constitutional reform had so far been exemplary. As far as the other areas of the Commission's terms of reference were concerned, it was important to have a co-operation programme in the near future and to keep to it as faithfully as possible.

The Chair of the Central Electoral Commission clarified certain points in the electoral legislation that had been criticised by the Parliamentary Assembly of the Council of Europe.

Lastly, the Head of the OSCE mission stressed the need to co-operate in several areas, particularly where elections were concerned. He hoped for close co-operation with the Council of Europe.

It was agreed that Mr Torossian and Mr Harutyunyan would submit a detailed co-operation programme, prepared by the Armenian authorities, at the forthcoming plenary meeting of the Venice Commission, scheduled for 15 and 16 December 2000. The Commission could examine it and, if appropriate, approve it and report back to the Committee of Ministers in January 2001.

Content of the co-operation programme

The co-operation programme is primarily concerned with the areas identified in the Committee of Ministers' decision: the electoral code, the reform of the judicial system and the law on the media. However, the programme also concerns the revision of the Constitution, a vast operation that began in April 2000 at the request of the Armenian authorities.

- Revision of the Constitution

Although the revision of the Constitution primarily concerns the separation of powers and, in this connection, the definition of certain presidential powers, other sections of the Constitution are also affected. Many of the laws already in force or in the process of being passed will therefore necessarily be affected and it is essential to take account of the approach reflected in the revision of the Constitution when other laws are drafted.

The draft revised version of the Constitution is expected to be finalised towards the end of February 2001 and to be submitted to the plenary meeting of the Venice Commission scheduled for 9 and 10 March 2001. It will then be submitted for public debate in Armenia before being put to a referendum in June 2001. The President of the Republic expressly stated that he wanted to keep to this timetable.

- Electoral legislation

It is clear that a procedure for the revision of the Electoral Act will soon be launched. The President of the Republic made it clear that he had no reason to be "proud" of the Electoral Act and that he was keenly in favour of co-operation that could lead to an improvement in electoral legislation and practice.

An important and highly political electoral issue is the percentage of seats in the National Assembly that are filled by proportional representation as opposed to those filled by majority voting. There is a fairly clear trend towards increasing the percentage of seats filled by proportional representation. Much will also depend on the number of seats in the National Assembly; account must be taken of proposals to reduce the number of members of parliament in connection with the review of the Constitution.

Moreover, all the Armenians to whom the Venice Commission delegation spoke agreed that the Electoral Act did not present any major problems but that it needed certain adjustments. They all pinpointed the same problems: the membership of electoral commissions, the procedure for updating electoral rolls and voting by conscripts and refugees.

The OSCE stressed the need for a co-ordinated approach. According to Ambassador Reeve, co-ordination did not necessarily involve a joint stand on all points; it was, however, essential that the OSCE and the Venice Commission should keep each other informed and be mutually involved so as to avoid "forum shopping", which was likely to destabilise the revision process.

The Venice Commission will examine the electoral legislation on the basis of a report by Professor B. Owen and the relevant ODIHR reports at its next plenary meeting (14 and 15 December 2000). The OSCE will be holding a colloquy on the matter in Yerevan in December or January and the Commission will be invited to take an active part.

- Legislation on the media

The Radio and Television Act was recently passed without the criticisms levelled at the bill by the Council of Europe experts (DGDH) being taken into consideration. The Armenian authorities, in particular the President of the Republic, seem to regret this, however, and say they are prepared to review certain provisions with the Council of Europe's help. At the same time, the President of the Republic has apparently submitted an application to the Constitutional Court concerning the constitutionality of the act. A Constitutional Court decision declaring one or more provisions of the act unconstitutional could facilitate the launch of the revision procedure. The President of the Constitutional Court should inform the Venice Commission of developments in this respect at its next plenary meeting.

Another general law on the media is being drafted and Parliament has asked the Council of Europe to help with the process. The Armenian authorities will give details of the type of co-operation and the arrangements they would like in this area by the end of the year.

Lastly, the question of the "constitutionalisation" of an independent authority on the media is being studied by the Working Party on the Revision of the Constitution.

- Reform of the judicial system

Several questions concerning judicial reform have still to be answered. The answers will depend on the approach taken when the Constitution is revised. Work on the drafting of the following laws is to be launched in the early months of next year, alongside the revision of the Constitution:

- law on the judicial system;
- law on the Constitutional Court;
- law on the Judicial Service Commission;
- possibly the law on the administrative courts.

The Venice Commission will co-operate with the relevant department of the Directorate General of Legal Affairs on these matters.

- Other areas of co-operation

In the course of its work on the revision of the Constitution, the Commission has been invited to co-operate with the Armenian authorities in the following areas of law:

- Bill on political parties: an expert appraisal by the Venice Commission was included in the draft ADACS programmes for the year 2001.

- Bill on the Ombudsman: the Commission is examining the wording of certain constitutional provisions on the Ombudsman and on relations with the Constitutional Court. Co-ordination with the Directorate General of Human Rights, which is co-operating with the Armenian authorities, and the OSCE in connection with the law on the Ombudsman is necessary.
- Law on local self-government: the Venice Commission is working on the section of the Constitution concerning local authorities in co-operation with the Congress of Local and Regional Authorities of Europe (CLRAE). Indeed, a law on local self-government is being drafted with the co-operation of the competent department of the DGAJ, which has already assessed the draft and is organising a meeting of experts in Yerevan on 20 December 2000. The OSCE has asked for Council of Europe help in this field. Co-ordination of the activities of the Venice Commission, the relevant DGAJ department and the Congress is necessary.
- Law on the civil service: according to information provided by the President of the National Assembly, a bill on public administration has been tabled in parliament. The DGAJ carried out an appraisal of the preliminary draft law on the civil service this year. It is now a question of seeing what repercussions this appraisal has had on the new bill. The Venice Commission should be involved in this operation as the question of sharing out responsibility for public administration between the President and the Government is one of the key issues to be dealt with in the revision of the Constitution.

APPENDIX**PROGRAMME****OFFICIAL VISIT OF THE DELEGATION
OF THE VENICE COMMISSION TO THE REPUBLIC OF ARMENIA****YEREVAN
November 15-18, 2000****THE COMPOSITION OF THE DELEGATION**

BATLINER	- Vice President of the Venice Commission
ENDZINS	- Member of the Venice Commission
TUORI	- Member of the Venice Commission.
MOREIRA	- Member of the Venice Commission.
OWEN	- Expert of the Venice Commission.
GIAKOUMOPOULOS	- Deputy Secretary of the Venice Commission
MARTIN	- Administrative officer

**November 15, 2000
(Wednesday)**

21.30	- Arrival of the delegation in Yerevan, meeting of the delegation in airport "Zvartnotz".
22.00	- Accommodation of the members of the delegation in the hotel "Hrazdan".
22.00	- Supper.

**November 16, 2000
(Thursday)**

09.00	- Breakfast.
10.00-13.30	- Meeting of the Working Group with the experts of the Venice Commission: discussion on constitutional supplements and amendments.
13.30-15.00	- Dinner.

- 15.00-16.30 - Continuation of the discussions.
- 17.00 - Meeting with Mr Kocharian, President of the Republic of Armenia
- 18.00 - Meeting with Mr. D. Harutyunyan, Minister of Justice of the Republic of Armenia.
- Meeting with Mr Oskanian, Minister of Foreign Affairs
- 20.00 - Supper.

**November 17, 2000
(Friday)**

- 09.00 - Breakfast.
- 10.00-13.30 - Continuation of the discussions.
- 13.30-15.00 - Dinner.
- 15.00 - Meeting with the President of the National Assembly of the Republic of Armenia.
- 16.00-17.30 - Meeting of the Working Group with the experts of the Venice Commission, the summary of the discussion results.
- Reception of the delegation of the Venice Commission on behalf of Mr. Gagik Harutyunyan, President of the Constitutional Court of the Republic of Armenia.
- 20.00

**November 18, 2000
(Saturday)**

- 07.30 - Departure of the delegation by Yerevan - Frankfurt flight.