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COMMISSIONER FOR HUMAN RIGHTS

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SPECIAL MISSION TO ARMENIA

**By Thomas Hammarberg
Commissioner for Human Rights
of the Council of Europe**

**Yerevan
12-15 March 2008**

¹ Some factual corrections were introduced on 29 April 2008 in the report of 20 March 2008 following comments made by the Armenian government

1. Introduction

The Council of Europe Commissioner for Human Rights was invited on 5 March by the Government of the Republic of Armenia to undertake a special mission following the declaration of State of Emergency by the President on 1 March. The Commissioner was accompanied by Mrs. Ulrika Sundberg and Mr. Alexandre Guessel, members of the office.

The Commissioner would like at the outset to thank the Government of the Republic of Armenia and the national authorities for their generous and full cooperation during his visit. In particular, he would like to express his gratitude to the Ministry for Foreign Affairs and the Permanent Representation of Armenia to the Council of Europe in Strasbourg for facilitating this mission.

The decision to visit Armenia was taken in light of the events which unfolded after the Presidential elections on 19 February. After nine days of peaceful demonstrations on the Opera square, the national police and security forces² tried to disperse the protesters on 1 March. Clashes occurred between the police and security forces³ and the demonstrators in front of Myasnikyan's monument and the French Embassy, which resulted in the death of eight persons. That same night, the President declared State of Emergency in the capital Yerevan.

The purpose of the visit was to monitor the overall human rights situation and the impact of the State of Emergency. The Commissioner paid attention to its effects on freedoms and liberties guaranteed by the European Convention on Human Rights and particularly to the freedom of assembly, freedom of expression and opinion as well as access to information. He also studied the allegations of excessive use of force by police forces and violent acts committed by the protesters during the clashes of 1 March.

During his visit from 12 to 15 March 2008, the Commissioner met with the President Robert Kocharian, Prime Minister and President-elect Serge Sargsyan, the Foreign Minister Vartan Oskanian, the Minister of Justice Gevorg Danielyan, the Head of Police Haik Haroutyunyan and the Prosecutor General Aghvan Hovsepyan. Moreover, he met the President of the National Parliament Tygran Torosyan, representatives of all political groups in the Parliament, including the one in opposition and had a separate meeting with the former President and Presidential candidate, Levon Ter Petrosian.

In addition he had meetings with the National Human Rights Defender (Ombudsman) Armen Harutyunyan, members of the National Bar association, defence lawyers, representatives of the media, non-governmental organizations as well as foreign diplomats and representatives of the international and regional organizations in Yerevan.

Having in mind the events which took place on March 1, the Commissioner visited hospitals and met policemen and civilians who had been injured during the clashes on 1 March before the declaration of State of Emergency. He also visited places of detention and interviewed persons recently arrested. Among those he met were the three detained members of Parliament, Sasun Mikaelian, Miasnik Makhasian, Hakob Hakobian, whose

² Replaces « military forces » in the original version dated 20 March 2008

³ New wording

immunities has been lifted, as well as Aleksandr Arzumanyan, the campaign manager for the Presidential candidate, Ter Petrosian. The Commissioner furthermore assessed whether the non-derogable human rights and safeguards of detained persons as well as the rights of the accused were upheld also during State of Emergency.

2. Political context

The fourth Parliamentary elections since Armenia's independence in 1991 were held in May 2007. The ruling Republican party, led by the Prime Minister Serge Sargsyan, won with almost 33% of the votes. Only two opposition parties the Rule of Law party and the Heritage party passed the threshold and obtained seats in the Parliament. The elections were monitored by Council of Europe's Parliamentary Assembly, OSCE Parliamentary Assembly and ODIHR, who all considered that this round of elections was an improvement compared to previous elections and conducted largely in accordance with international standards.

On 26 October 2007 the former President Levon Ter Petrosian officially announced his candidacy in the Presidential elections in February 2008. A number of opposition parties initially rallied behind him: the Popular Party of Armenia, Armenian Republican Party, Azadakrum and the Heritage party.

Presidential elections were held on 19 February 2008. The Government again invited OSCE Parliamentary Assembly, Council of Europe Parliamentary Assembly European Parliament and ODIHR to monitor them. In a joint statement of preliminary findings and conclusions they stated that:

"The Presidential elections were mostly in line with OSCE and Council of Europe commitments and standards. However further improvements and commensurate political will is required to address remaining challenges such as: the absence of a clear separation between State and party functions, the lack of public confidence in the electoral process and ensuring equal treatment of election contestants. The conduct of the count did not contribute to reducing an existing suspicion amongst election stakeholders."

The ODIHR's monitoring of the media indicated that coverage of Levon Ter Petrosian in various broadcast media contained many critical remarks, while other eight candidates were presented in a generally positive or neutral manner. Almost all broadcast media presented Mr. Sargsyan in more favourable terms than other candidates. The news programmes of nearly all broadcast media almost entirely omitted to air Mr. Ter Petrosian critical remarks regarding the Mr. Sargsyan and the incumbent President. Some of the Commissioner's interlocutors even meant that Levon Ter Petrosian had been demonized by the pro-governmental media.

The election resulted in the current Prime Minister Serge Sargsyan being elected as president with 53% of the votes, thereby making a second round of elections unnecessary. Levon Ter Petrosian received 21% and Arthur Baghdasaryan 16%. The other candidates were Vahan Hovhannisyan, Vazgen Manukian and Tigran Karapetyan.

The vote counting result was challenged and 135 precinct election commissions were instructed to recount. Nineteen complaints were filed during the post-election period to the Central Electoral Commission. During the same period the main broadcast media, including public television and radio, provided extensive coverage of the views of the authorities but rarely aired the views of those who raised concerns regarding the conduct of the 19 February poll.

On 20 February, Mr. Ter Petrosian called on his supporter to begin a peaceful demonstration in the centre of Yerevan. The protest manifestation started on 21 February in the Opera square. On 26 February, the President elect and Prime Minister Serge Sargsyan offered to collaborate with the other presidential candidates. On 29 February, Arthur Baghdasaryan signed a political co-operation agreement with the government. Also Vahan Hovhannisyan announced that cooperation with the Government would be seriously discussed in his party, the Armenian Revolutionary Front. Steps were taken⁴ to form a coalition government consisting of the ruling party: the Republican party, the Rule of Law party, the Armenian Revolutionary Federation, the Prosperous Armenia and the Republican Armenia. Such an agreement was reached on 21 March, leaving one party in opposition: the Heritage party.

On 29 February Mr. Ter Petrosian filed a motion to the Constitutional Court alleging electoral fraud. The Court held hearings from 4 to 7 March and came down with its ruling on 8 March confirming the results of the election.

The inauguration of the president elect Serge Sargsyan is scheduled for 9 April.

3. Events on 1 March

On 1 March, the police decided to carry out a search operation among the demonstrators assembled on the Opera square. The Head of Police explained to the Commissioner that the police had received information that the demonstrators were arming themselves with weapons and ammunition, an allegation that is refuted by the demonstrators themselves. According to the Head of Police, the initial intent was also to move them to another location in the city in order to avoid problems of public transport and sanitation in the city.

The search operation reportedly started early Saturday morning at approximately 6.30, according to several interlocutors. During this operation tents were taken down and people were beaten and injured. Demonstrators started resisting and clashes broke out between the police and security forces⁵ and the demonstrators.

According to the both parties, a tentative agreement seems to have been reached later that same morning to relocate the demonstration and allow it to continue, either in front of the Myasnikyan's monument or close to the main train station. However, this agreement appears never to have been properly communicated to the demonstrators by their leaders, notably Mr. Ter Petrosian, who at that stage was prevented from leaving his residence.

⁴ New wording

⁵ New wording

The demonstrators started to move in the direction of the French and Russian Embassies, apparently thinking that they might be safe to demonstrate there. In the adjacent small streets, heavy clashes broke out and eight people were killed.

According to the information given by the Head of Police and Prosecutor General, the police officer died trying to prevent a hand grenade from going off. Three civilians died from teargas cartridge and four from bullets. The Prosecutor General stated that the ammunitions had penetrated the bodies, which appears to indicate that they must have been fired at a very close range.

Clashes between the police and security forces⁶ and agitated protesters seem to have occurred on at least three occasions during the course of 1 March. The Commissioner was shown several different pictures and videos from the events. From these it seems clear that excessive use of force was used by police and the security forces. This is also confirmed by the sheer number of injured persons and by-passing civilians, registered in the hospitals as well as found in places of detention, having beating marks, concussions and open scars in their skulls. According to representatives of non- governmental organizations, the official number of injured civilians may be underreported, as several of those injured were turned away from hospitals and medical clinics on 1 March.

According to the Head of Police some protesters were armed with wooden sticks, iron sticks and “hedgehogs”. He also stated that the protesters used fire arms - which was contested by the representatives of the opposition whom the Commissioner met.

It seems clear that some of the demonstrators did commit violent acts against the police and security forces, such as throwing stones, using improvised wooden or iron sticks to fence off the police. Some protesters also burnt cars and buses. The majority of the injured police officers and conscripts had scrape wounds from metal pieces on the lower part of their legs. The sources of these wounds were not clear, whether home made bombs, hand grenades or ammunition used for crowd control purposes by the security forces⁷.

There are conflicting and contradictory versions of what in fact happened and how the situation evolved and eventually got out of hand. It is difficult to get a clear picture of the developments over the day.

The lack of trust in the information relayed by the official sources was compounded by the restrictions imposed on the media during the State of Emergency. This has heavily contributed to many rumours, which in turn has added to the already hostile environment and polarization.

4. Necessity of due investigation into the events

In the existing situation, there is a need to clarify what actually happened and what provoked the outbreak of violence. The two sides describe the events very differently

⁶ New wording

⁷ New wording

and it is important, also in a human rights perspective, to establish the basic facts. This can only be done through a comprehensive inquiry which is independent, impartial and transparent and perceived as credible by the whole population.

Such an investigation should also aim at drawing lessons and giving recommendations on how similar situations should be handled in future. A review seems necessary of the current riot control measures used by the police as serious mistakes were made.

During the Commissioner's meeting with the Prosecutor General it appeared that his office would carry out a more general but limited investigation within the context of bringing individual charges against suspects. Such limited investigation seems not adequate to provide the necessary comprehensive picture over the developments of 1 March in order not to establish the facts, but also to draw lessons.

The Prosecutor General mentioned specifically the need for international forensic expertise to determine the cause of death of the eight persons. Furthermore, the authorities have requested technical assistance to analyze existing video footages of the events to determine whether they have been manipulated.

The Commissioner notes that some European countries faced with a similar difficult situation have resorted to setting up commissions of inquiry. In the establishment of such commissions, the national parliament has sometimes played a key role in ensuring the independence and impartiality of the inquiry. These have often been led by persons of a recognized high moral standing, at the national and international level. All involved actors and affected victims have been heard and allowed to make contributions, also non-governmental organizations and national human rights institutions. The actual process have contributed to healing and reconciliation and has ensured a thorough investigation. The final recommendations have often been accepted as binding on the Government.

The Commissioner considers that such a process could be very positive and particularly important for Armenia in the current situation in order to promote reconciliation and assist in defusing the level of tension and mistrust between the people and the Government.

The Commissioner notes that the international community has expressed its willingness to offer participation or other assistance to such a comprehensive investigation into the 1 March events, in order to contribute experience, professionalism and credibility.

In this connection, the Commissioner would like to stress the need for both a clear and targeted request for assistance on the part of the Government, as well as a coordinated response from the international community to such a request.

The Commissioner is well aware of the difficulties connected with the setting up of a commission of inquiry, which is independent, impartial and transparent in the present circumstances. An international contribution could be of great assistance in overcoming the current obstacles.

5. State of Emergency

The President decided in the late evening on 1 March to declare State of Emergency in the capital of Yerevan for a period of twenty days. The National Parliament endorsed the Presidential decree on Declaration of state of emergency the following day, 2 March.

The State of Emergency entered into force immediately. The decree entrusted the President with the supervision of the regulation and implementation of the measures aimed at eliminating the circumstances that served as grounds for declaring state of emergency, and other urgent issues. It entrusted the Police of the Republic of Armenia and the Defence Ministry of the Republic of Armenia with ensuring the legal regime of the state of emergency.

The decree established the following temporary limitations under the State of Emergency:

- It banned meeting, rallies, demonstrations, marches and other mass events;
- It banned strikes and other actions that could stop or suspend the activities of organizations;
- It limited the movement of individuals and the means of transportation and authorized inspections by the law enforcement bodies;
- It stipulates that mass media outlets could provide information on state and internal affairs only within the parameters of official information provided by state bodies;
- It banned political propaganda through leaflets or other means without due permission from relevant state bodies;
- It suspended temporarily the activity of political parties and other public organizations that impede the elimination of the circumstances that served as the grounds for declaring a State of Emergency;
- It authorized the removal from a given area those who violate the legal state of emergency regime and do not reside there, doing so at their own expense, or, in case of absence of means, using state budget resources to be refunded afterwards.

The decree entered into force from its announcement.

The Government of the Republic of Armenia notified the Secretary General of the Council of Europe of its derogation in time of emergency of the European Convention on Human Rights pursuant to its article 15 on 3 March. In the *note verbal*, the Government stated that the right of derogation from or limitation of the following provisions of the Convention: Article 8 paragraph 1, Article 10 paragraph 1, Article 11 paragraph 1 of the European Convention on Human Rights and Freedoms as well as Article 2 paragraph 1 of Protocol 4 of the Convention.

The human rights temporarily suspended are the enjoyment of the freedom of movement, freedom of assembly, freedom of expression and access to information. It may be worth while noting that already Articles 8, 10 and 11 do foresee a margin of appreciation for the State. Restrictions on the exercise of these human rights are acceptable if the limitations are prescribed by law and deemed necessary in a democratic society. The grounds on which these rights the State can exercise its margin

of appreciation are to a large extent also common for these articles, such as in the interest of public safety, territorial integrity, prevention of disorder or crime, protection of public order, protection of health and morals or for the protections of the rights and freedoms of others or maintaining the authority and impartiality of the judiciary.

The President decided on 10 March to lift gradually some of the restrictions, namely those on movement and the possibility of deporting non-residents out of Yerevan. On 13 March, further amendments to the decree as regards restrictions of media, newspapers and website news services were enacted.

The point 4 of the decree was revised as follows:

“Ban publications or disseminations by mass media outlets of obviously false or destabilizing information on state and internal issues, or of calls to participate in unsanctioned (illegal) activities, as well as publication and dissemination of such information and calls by any other means and forms.”

The President and the Prime Minister expressed their wish to have the State of Emergency ended on 21 March. They were however concerned over the possibility of new demonstrations, rallies and riots in the streets. In this context, on 17 March, the Parliament initiated a first reading of proposed amendments to the law on holding meetings, rallies, marches, and demonstrations in an extraordinary session.

The proposal is that future requests for demonstrations can be denied by the office of the city Major, if it has reliable information that the aim of the public action is to overthrow constitutional order, incite racial, national or religious hatred, propagate violence and war, or endangering national security, public order, morality and health of the people, and infringing on constitutional rights and freedoms of other individuals.

Another amendment provides that official findings of the police and National Security Service can be sources of such reliable information. These agencies are proposed to have a right to decide on annulment of such grounds. The amendments put forward also provide that, in cases when mass public actions transform into mass riots, leading to deaths of people, a responsible agency can temporarily ban holding mass public events, until all circumstances and persons involved in the crimes are established. The amendments also stipulate that a responsible agency examine a request for holding a public event for 72 hours. Requests are to be submitted 5 days prior to the date of holding a public event.

If adopted these amendments entails important changes and serious restrictions on the current national regime of freedom of assembly. Previously the municipal authorities only needed to be notified of the intent to hold rallies, demonstrations or manifestations. The amendments full conformity with article 11 paragraph 2 of the European Convention can be questioned.

6. The actual scope and implementation of the State of Emergency

The Commissioner found in his discussions with different interlocutors that a number of restrictions enacted by the State of emergency affected the whole country and they were

not limited to the boundaries of the capital. The restrictions on rallies and demonstrations have been applied also outside of the capital, in other major cities of Armenia.

The representatives of the Government argued forcefully that the State of Emergency was a necessary measure in order to restore law and order in the capital and the country as a whole. However, the Commissioner is of the view that some of the imposed restrictions have not contributed to stabilizing and defusing the tensions in the society post-elections and 1 March event, nor have they strengthened the democratic institutions and processes.

The restrictions on the media have had a nation wide effect in practice. A number of radio and TV stations have ceased to operate either by their own decision or forced to by National Security Service. Web news services have been closed after intervention of the National Security Service. Access to information has been severely affected.

The censorship contributed to rumours and anxiety among the population about what was happening, at a time when measures to rebuild trust should have been promoted. The fact that some pro-government media tended to demonize the opposition while opposition papers were out of circulation did not contribute to a constructive atmosphere.

The President decided on 12 March to gradually amend the provisions regarding media reporting. These amendments seem to the Commissioner to have little practical effect on the information flow and the plurality of sources. The current level of censorship seems to be *de facto* maintained, which is not conducive to rebuilding the much needed trust.

7. Excessive use of force in the operation of the Police and Security forces⁸

When visiting the National military hospital, the Commissioner met a number of the injured police officers, commanders and conscripts from the security forces⁹. In the civilian hospital, the Armenian Medical Centre (the former Republican hospital), the Commissioner met persons which had concussions from the beating by the police in connection with arrest. A number of them claimed to have been persons only passing by the demonstration. One patient had been hit by a bullet which had perforated his jaw and he could not speak. Another civilian could not be visited as he was in severe condition and held in reanimation.

The Commissioner was informed that several civilians who had sought medical assistance following the riots of 1 march had been denied assistance or turned down by the some hospitals. Also the Commissioner was informed that it happened that patients released from the hospitals had been immediately arrested.

⁸ New wording. Replaces: "Interior Ministry forces"

⁹ New wording

8. Arrests

According to article 130 of the Criminal Procedures Code, a person can be held for twenty-four hours without charges. Over 400 persons have been apprehended and asked to give testimony of the events on 1 March.

On 13 March the Prosecutor General informed that over 95 persons had been arrested for having organized or participated in demonstrations and mass disturbances of public order. Information provided by non governmental sources on the 15 March stated that an additional 50 persons had been arrested, mostly outside of Yerevan in major cities of Armenia like Gyumri.

According to the detainees and defence lawyers, most of the arrested have been charged with disturbing public order, illegal possession of arms, incitement to violent acts, and resisting violently police arrest.

Defence lawyers told the Commissioner that a number of arrests had preceded the break up of the 1 March demonstration in the city of Yerevan, but also in the rest of the country. According to the same sources, house searches had been carried out without warrants.

On 6 March the Parliament decided to lift the immunity of four members of parliament: Mr. Sasun Mikaelian, Mr. Miasnik Malkhasian, Mr. Hakob Hakobian and Mr. Khachatur Sukiasian, based on charges presented by the Prosecutor General. They have been charged under article 300 for incitement or attempt to usurp public power or coup d'état.

The Commissioner met the three arrested parliamentarians and former Foreign Minister Aleksandr Arzumanyan in the Temporary holding facility of the National Security Service on an individual basis. They all said that they were treated well. Two of them told that they previously had received prominent recognition for their courageous contribution in military conflicts and they were now very upset about the treason charges against them. They all had defence lawyers and their families were informed of their whereabouts.

Former President Levon Ter Petrosian is currently held in what must be qualified as *de facto* house arrest. He is provided close protection by the authorities in charge of the State of Emergency, notably the National Security Services. According to the Head of Police, he is free to leave his house, however the close protection service will only accompany him to safe places.

9. Ill-treatment by police during the arrests on 1 March

The Commissioner visited a number of detainees in Nubarashen Prison, the Temporary holding facility of the National Security Service and the Holding Centre of Yerevan City Police Department. They claimed that the police had used excessive of force in connection with arrest. There seems to the Commissioner that beating took place in a number of cases at the time of arrest and during transportation of the apprehended to

the different precincts. A few of the detainees stated that they had been subject to abuses during interrogation. Also national and international monitoring bodies which the Commissioner met reported that ill-treatment by the police had increased.

The issue of police brutality was raised by the Commissioner with the Prosecutor General. The Prosecutor General said that he had launched an investigation into whether the police had responded adequately and appropriately and he would personally make a legal assessment of the use of force. He stated that his office had not received any complaint regarding police brutality during March 1 events. The number of injured persons and detainees still after fourteen days showing marks of beating is clearly a matter of grave concern.

Allegations of police brutality should be investigated, irrespective of an individual complaint, *ex officio* by the Prosecutor General or the special investigative unit.

10. The Prosecutor General

The Prosecutor General is in charge of investigating the events of 1 March. He informed the Commissioner that he had instructed a group of prosecutors to steer the investigation carried out by the newly established special investigation unit. The staff working in the special unit are nominated by the Prosecutor General and a major part of the unit's staff is recruited from the Prosecutor General's office and work under his instructions.

According to non-governmental organizations and oppositions spokespersons there had been a great number of house searches and arrests. Official sources confirmed that about 400 persons had been interrogated and the Commissioner was told that 95 persons had so far (14 March) been arrested and 11 persons had been declared suspects and would be brought to justice.

The Commissioner was informed of at least two cases of detention of juveniles of 15 years. One of them suffered from mental disease. The Commissioner wishes to reiterate that detention of juvenile offenders should be the exemption. Juveniles should also be held separately from adults.

11. Safeguards of detained persons

When meeting detainees and also defence lawyers, the Commissioner was informed that there had been delays in the registration of arrests. Access to defence lawyers had in some instances been delayed and family members or relatives had not been informed of the detainee's whereabouts. The Commissioner also received information that persons apprehended had not been promptly informed of the charges against them.

It has also been reported that arrested persons had not been registered upon arrival and in accordance with the law, which is of concern, since the legal time limit of 72 hours can then not be applied properly. Some of the detainees claimed to have been incarcerated since the 1 March and had not been charged until one week later. The Commissioner met a detained person on 14 March, who had still not been brought in front of a judge.

Only from 3 March had the national monitoring groups under the Minister of Justice for penitentiary and police custody as well as the staff of the Human Rights Defender' office been given access to police detention centres and penitentiaries. During his visit, the Commissioner was granted full access to all mandated actors without any limitation.

12. Procedural safeguards of the accused

The prosecutors have consistently brought the same charges irrespective of the persons actual doing and involvement. A few articles in the Criminal Code are regularly invoked:

- Article 225 point 3: inciting mass disorder and organizing mass disturbances which are accompanied by violence, possession or use of firearms or explosives and accompanied with murder;
- Article 316: Violence against a representative of authorities, and
- Article 300 which regulates actions aimed at challenging the integrity of country or to overthrow the constitutional order or to appropriate public power by force.

Some of the criminal provisions are not sufficiently clear nor do they specify which acts are criminalized. The current wording leaves a great degree of discretion to the prosecutor. The legal definition in the Criminal Code of the crime of usurpation of State power allows for a very broad interpretation and fails to give clear guidance on the dividing line between legitimate expressions of opinion and incitement to violence.

The Prosecutors have applied standardized language in the charges against the arrested. The judges seemed not to have entered into a serious test of the charges, the legality of the apprehension and the proportionality of deprivation of liberty *vis-à-vis* the gravity of the crime. The Courts seem to have routinely granted pre-trial detention (so called preventive judgment) of two months to allow the prosecutor to investigate further and prepare the charges and the criminal case. Members of the Bar association informed the Commissioner that they had decided to "boycott" proceedings before one judge, who just "rubberstamped" all requests by the Prosecutor.

Some of these arrested persons had not been informed of their right to a defence lawyer. In some cases the detained had chosen not to retain a lawyer, stating that he was innocent. In one instance, the detainee did not want a lawyer, because they are all corrupt. Some detainees stated reticence retaining a public defence lawyer as it was not clear to them whether they would be loyal to them or pursue the goals of the state authorities.

In one instance, the arrested persons had first been requested to give a witness testimony to the Prosecutor General's Office and had, in this capacity, signed a paper that he did not want legal counsel. However, during the examination the person was charged and turned into a suspect. The Prosecutor had then denied him legal representation referring to his previous signed statement, that he did not want a lawyer. However, this was done in his capacity as witness, not as a suspect.

13. Recommendations

This report is the result of three days of intensive discussions and assessment of facts. The Commissioner was keen to listen to all sides in an impartial manner and made every efforts, within the relatively short time available, to develop a comprehensive understanding of both the human rights situation and the underlying political context. He realizes that some of the descriptions and reflections above will be controversial to some of the political actors and that the report itself cannot be deemed exhaustive. However, the Commissioner wants to be transparent about the information he received and trusts that this will serve as a useful background to his recommendations.

The recommendations are addressed to the Government as responsible for upholding the respect for human rights and being bound by the international treaties. However, the Commissioner also appeals to the political opposition in Armenia to contribute to a broad support for the serious implementation of these recommendations and the dialogues necessary to facilitate such development. Furthermore, the Commissioner recommends representatives of the international community to be available to support the Armenian people during this difficult period and to respond positively to serious requests for *good offices* advice and assistance.

The Commissioner makes the following recommendations:

- (i) That the State of Emergency be lifted in order for the country to return to democratic rule and respect for human rights;
- (ii) That the proposed changes in the legislation with respect to freedom of expression and freedom of assembly be approved only to the extent they are consistent with Armenia's obligations under the European Convention on Human Rights.
- (iii) That all detainees who have not committed concrete actions of criminal violence now be released. That no charges and judicial procedures be initiated against persons only on the basis of their expressed anti-government opinions.
- (iv) That cases of excessive force by the police and security forces¹⁰ be investigated and those responsible be held accountable.
- (v) That cases of ill-treatment of persons arrested be investigated and those responsible be held to account.
- (vi) That further instructions be issued to the law enforcement structures aiming at strict implementation of regulations regarding registration of arrest and giving arrestees the right to contact relatives and have access to lawyers.
- (vii) That a comprehensive inquiry be established into the events of 1 March, including factors which provoked the violent acts and was followed by the

¹⁰ New wording

State of Emergency. This investigation has to be independent, impartial, transparent and perceived as credible by the whole population. It should aim at drawing lessons and giving recommendations on how similar situations should be handled in future.

- (viii) That the Armenian Government determine whether it is seeking substantial contribution from the international community for the conduct of this inquiry and, if so, make a precise and targeted request for such assistance.

Appendix

**Special Mission to Armenia
by Thomas Hammarberg
Commissioner for Human Rights of the Council of Europe**

Comments on report submitted by the Government of Armenia

- **Introduction, 3rd paragraph:**

After nine days of peaceful demonstrations on the Opera square, the national police and military forces tried to disperse the protesters on 1 March. Clashes occurred between the police forces and the demonstrators in front of Myasnikyan's monument and the French Embassy, which resulted in the death of eight persons.

With reference to explanation provided to the Commissioner during his visit:

1. Demonstrations had not been unauthorized, since despite numerous assurances of the Government that such authorization would be granted, the opposition failed to apply in the manner prescribed by law.
2. It is difficult to call demonstrations "peaceful", since there are numerous registered and recorded cases of illegal appeals and claims circulated by the organizers of such demonstrations, including attempts to involve army on their side, calls to organize student strikes. Moreover, the National Security Service and Police had extensive information about existence of fire arms and explosives in hands of organizers and coordinators of the demonstrations. In days preceding the 1st of March, police has confiscated substantial amounts of ammunitions, including machine guns, automatic guns, hand grenades, explosives, etc., the reports of such findings we made fully public.
3. No military force was involved in the operation near Opera square which is explained in this paragraph.
4. Police did not try to 'disperse' protesters, but rather requested a conduct of legal search upon information on procession of fire arms and explosives, which later was proved by facts.

- **Section 2. Political Context, Paragraph 8:**

On 20 February, Mr. Ter Petrosian called on his supporter to begin a peaceful demonstration in the centre of Yerevan.

Prior to the election day itself Levon Ter-Petrossyan had announced that on February 20 his supporters shall gather at the Opera Square to "either celebrate the victory, or protest the rigged elections." This statement in itself demonstrates that the candidate was not ready to accept and acknowledge any outcome of the elections except for his victory. He, therefore, called upon his supporters to gather in the square much earlier than 20 February.

- **Section 2. Political Context, Paragraph 8:**

A coalition government was formed consisting of the ruling party: the Republican party, the Rule of Law party, the Armenian Revolutionary Federation, the Prosperous Armenia and the Republican Armenia, leaving one party in opposition: the Heritage party.

The political coalition was formed in Armenia, **on March 21**, the reference in the report is not accurate. There had been no political coalition agreement at the time of publication of the report.

- **Section 2. Political Context, Paragraph 9:**

On 29 February Mr. Ter Petrosian filed a motion to the Constitutional Court alleging electoral fraud. The Court held hearings from 4 to 7 March and came down with its ruling on 8 March confirming the results of the election.

This paragraph omits a very important information -- 6 out of 9 judges of the Court had been appointed by Levon Ter-Petrossyan. His failure to recognize the judgment of the court is also symptomatic.

- **Section 3. Events on 1 March, Paragraph 1:**

The Head of Police explained to the Commissioner that the police had received information that the demonstrators were arming themselves with weapons and ammunition, an allegation that is refuted by the demonstrators themselves. According to the Head of Police, the initial intent was also to move them to another location in the city in order to avoid problems of public transport and sanitation in the city.

The paragraph fails to mention that prior to March 1 police had succeeded in proving the existence of weapons and explosives in the hands of the organizers of the rallies. Significant amounts of weapons had been confiscated, and some of the organizers of the rallies were already charged with possession of illegal arms.

The last sentence of the paragraph refers to a situation that was unfolding later in the day, in Shahumyan Sq., and therefore is placed in a wrong part of the report.

- **Section 3. Events on 1 March, Paragraph 2:**

During this operation tents were taken down and people were beaten and injured. Demonstrators started resisting and clashes broke out between the police and the demonstrators.

This paragraph is confusing the cause/consequence relations. It was after the demonstrators started to resist (extremely aggressively, with use of truncheons, sticks, metal bars, and Molotov cocktails) that the police took down the tents and dispersed the protesters. It also fails to mention that more riot police servicemen were injured in those clashes, than protesters.

- **Section 3. Events on 1 March, Paragraph 3 and in Section 8. Arrests, paragraph 7:**

However, this agreement appears never to have been properly communicated to the demonstrators by their leaders, notably Mr. Ter Petrosian, who at that stage was prevented from leaving his residence.

Former President Levon Ter Petrosian is currently held in what must be qualified as de facto house arrest. He is provided close protection by the authorities in charge of the State of Emergency, notably the National Security Services. According to the Head of Police, he is free to leave his house, however the close protection service will only accompany him to safe places.

1. National Security Service is not in charge of the state of emergency. According to the Presidential Order, the Army and Police, but not NSS are the bodies dealing with implementation of the state of emergency.

2. Levon Ter-Petrosyan on that day, as well as before and till now is accompanied by the Service of Protection, which is part of the NSS, responsible for protection of the highest officials of the state.
3. Ter-Petrosyan was free on March 1, as he is now to go anywhere he wishes. However, the officers of the NSS cannot accompany him to should he wish to participate in an illegal rally, where the police could have to use riot-dispersing tools. Moreover, it was not secure in that particular day, when violence against law-enforcement officers was already taking place at the Shahumyan Sq.
4. While Levon Ter-Petrosyan was offered to sign a waiver to the Service of Protection, he rejected to do so, finding a legitimate excuse to stay home.

- **Section 3. Events on 1 March, Paragraph 4:**

The demonstrators started to move in the direction of the French and Russian Embassies, apparently thinking that they might be safe to demonstrate there. In the adjacent small streets, heavy clashes broke out and eight people were killed.

This paragraph is misleading, as it leaves an impression that clashes broke out while people were trying to reach the square between French and Russian Embassies, and that eight people were killed at that time. As is evident from facts, video materials and maps provided to HR Commissioner, the clashes with police were taking place later in the day (after 8 pm), not in 'adjacent small streets', but at a main avenue, at a distance of 500 meters to 1 kilometer from where the rally was taking place. 8 people were killed later that day, when rioters started to loot shops, used extensive violence against police servicemen, including explosives and firearms, and when there were 8 wounded police servicemen, one of them killed by a grenade.

- **Section 3. Events on 1 March, Paragraph 5:**

The Commissioner was shown several different pictures and videos from the events. From these it seems clear that excessive use of force was used by police and the security forces. This is also confirmed by the sheer number of injured persons and by-passing civilians, registered in the hospitals as well as found in places of detention, having beating marks, concussions and open scars in their skulls. According to representatives of non- governmental organizations, the official number of injured civilians may be underreported, as several of those injured were turned away from hospitals and medical clinics on 1 March.

1. The Commissioner was told that the only video showing a use of firearms by police against rioters is a montage, and that the office of the Prosecutor General had already asked the UN representative to Armenia to organize for an international expertise of that video widely circulated by the representatives of the opposition.
2. The Commissioner fails to mention that he was demonstrated videos, showing how crowds of 50 to 60 rioters in organized matter trace, capture, and violently beat police servicemen as early as mid noon of March 1.
3. It is absolutely impossible to imagine that a hospital (most of which are private in Armenia, and some of them owned by strong and outspoken supporters of the opposition) would turn down a patient because of his political affiliation. Since it is unbelievable in Armenian reality, we insist that the data proving such facts is presented or the statement be eliminated from the report.

- **Section 3. Events on 1 March, Paragraphs 6& 7:**

According to the Head of Police some protesters were armed with wooden sticks, iron sticks and "hedgehogs". He also stated that the protesters used fire arms -

which was contested by the representatives of the opposition whom the Commissioner met.

It seems clear that some of the demonstrators did commit violent acts against the police and security forces, such as throwing stones, using improvised wooden or iron sticks to fence off the police. Some protesters also burnt cars and buses. The majority of the injured police officers and conscripts had scrape wounds from metal pieces on the lower part of their legs. The sources of these wounds were not clear, whether home made bombs, hand grenades or ammunition used for crowd control purposes by the police.

1. How does it matter that opposition contests the use of firearms against police, when Commissioner himself has visited the Police hospital, where there are about 30 police servicemen still treated of wounds caused by firearms and explosives. The total number of such injuries among police equaled 43, which was duly reported and registered.
2. It is not clear why the Commissioner uses the wording "It seems clear", when it is obvious that there was violence against police, and he was demonstrated videos, proving that and leaving no room for doubts.
3. It is unacceptable that the last sentence of paragraph 7 offers, that wounds in police servicemen could be caused by the ammunition used for crowd control purposes by the police. There is full evidence of use of firearms and explosive by the rioters, which was presented to the Commissioner and will be brought to the court of justice later.

- **Section 4. Necessity of due investigation into the events, Paragraph 1:**

The two sides describe the events very differently and it is important, also in a human rights perspective, to establish the basic facts. This can only be done through a comprehensive inquiry which is independent, impartial and transparent and perceived as credible by the whole population.

One of the main differences between a democratic and authoritarian state is that in the former one nothing can be perceived credible by the whole population. There is always a party that contests findings of any enquiry and any process. The main aim of the enquiry that is being currently held by the investigation bodies of the Republic of Armenia, and might be held in the future by any political arrangement will be to assure due process, which is the obligation of the Government under the Constitution and international obligations of the Republic of Armenia.

- **Section 4. Necessity of due investigation into the events, Paragraph 3:**

During the Commissioner's meeting with the Prosecutor General it appeared that his office would carry out a more general but limited investigation within the context of bringing individual charges against suspects. Such limited investigation seems not adequate to provide the necessary comprehensive picture over the developments of 1 March in order not to establish the facts, but also to draw lessons.

Any individual charges can be brought only in the light of a wider context of events as they unfolded. The Special Investigative Unit, which is investigating the events, is particularly looking into re-modeling the whole day as it was unfolding. This has been duly communicated to the HR Commissioner during his visit.

- **Section 5. State of Emergency, Paragraph 3, point 6:**

It suspended temporarily the activity of political parties and other public organizations that impede the elimination of the circumstances that served as the grounds for declaring a State of Emergency;

This is a factual mistake, since the Presidential order on the State of Emergency did not suspend activities of political parties. It provided for a right to do so if there is a need, but that clause has never been used, and has been lifted by the Presidential Decree on March 10.

- **Section 7. Excessive use of force in the operation of the Police Forces and Interior Ministry forces:**

There is no Interior Ministry in the Republic of Armenia.

- **Section 7. Excessive use of force in the operation of the Police Forces and Interior Ministry forces, Paragraph 2:**

The Commissioner was informed that several civilians who had sought medical assistance following the riots of 1 March had been denied assistance or turned down by the some hospitals. Also the Commissioner was informed that it happened that patients released from the hospitals had been immediately arrested.

1. This is the second time the same unchecked information is included in the report. Authorities of the Republic of Armenia fully exclude a possibility of a wounded person being turned down by a hospital because of his political views. To prove the opposite a precise data shall be provided on particular cases of the kind.
2. It is possible that law enforcement bodies, showing humanity and respect for human rights, did not arrest suspects who were undergoing medical treatment in the hospitals, but nothing should have prevented them from doing it after the treatment was over. It actually shows humanity of law enforcement bodies, not vice versa.

- **Section 8. Arrests, Paragraph 2:**

On 13 March the Prosecutor General informed that over 95 persons had been arrested for having organized or participated in demonstrations and mass disturbances of public order. Information provided by non governmental sources on the 15 March stated that an additional 50 persons had been arrested, mostly outside of Yerevan in major cities of Armenia like Gyumri.

The office of the Prosecutor General is covering the whole country. Any information provided to the HR Commissioner is exhaustive and all-inclusive. Arrests, wherever made, are made by the same central bodies of the state, and it is impossible to imagine that there are more arrested in the regions, than those, included in the lists officially disseminated by the office of the Prosecutor General.

- **Section 8. Arrests, Paragraph 4:**

Defence lawyers told the Commissioner that a number of arrests had preceded the break up of the 1 March demonstration in the city of Yerevan, but also in the rest of the country. According to the same sources, house searches had been carried out without warrants.

1. Indeed there had been arrests before March 1, most of which were related to illegal procession of firearms. All of them were duly reported by the Office of the Prosecutor General, and operative materials were widely circulated in media. It is, particularly, the kind of information that supported operative information about procession and

dissemination of fire arms and explosives in Opera Square on the night of February 29.

2. There have been many searches conducted before and after March 1 by law enforcement agencies of Armenia, all with due warrants issued by the courts. Any information to contrary has to be supported by particular cases. There has been no single complaint of that kind filed by any theoretical victim of such an illegal search.
- **Section 9. Ill-treatment by police during the arrests on 1 March, Paragraph 1:**
There seems to the Commissioner that beating took place in a number of cases at the time of arrest and during transportation of the apprehended to the different precincts. A few of the detainees stated that they had been subject to abuses during interrogation. Also national and international monitoring bodies which the Commissioner met reported that ill-treatment by the police had increased.

Such information, if proved, would constitute a serious breach of the procedural norms of the Republic of Armenia. To be able to check and confirm or reject those, the Armenian authorities would need particular cases brought to its attention.

- **Section 10. The Prosecutor General, Paragraph 1:**

The Prosecutor General is in charge of investigating the events of 1 March. He informed the Commissioner that he had instructed a group of prosecutors to conduct the investigation carried out by the newly established special investigation unit.

This is a factual mistake. As it has been many times mentioned to the HR Commissioner the Prosecutor General 'oversees', and does not 'conduct' the investigation carried out by the newly established special investigation unit. The paragraph fully omits the information that Unit is fully independent, and the PG has no power to influence people in the unit.

- **Section 10. The Prosecutor General, Paragraph 3:**

The Commissioner was informed of at least two cases of detention of juveniles of 15 years. One of them suffered from mental disease. The Commissioner wishes to reiterate that detention of juvenile offenders should be the exemption. Juveniles should also be held separately from adults.

This is a factual mistake. As it has been officially communicated to the HR Commissioner there are no juveniles and/or women among those arrested or detained. Since, despite the communicated objection, the HR Commissioner has chosen to re-confirm the same statement in his report, it will be essential to receive particular data (name, last name, place of detention) of the said juveniles in order check that information. Authorities of Armenia once again re-confirm that there are no women or minors among those detained or arrested.

- **Section 11. Safeguards of detained persons, Paragraphs 1&2:**

When meeting detainees and also defence lawyers, the Commissioner was informed that there had been delays in the registration of arrests. Access to defence lawyers had in some instances been delayed and family members or relatives had not been informed of the detainee's whereabouts. The Commissioner also received information that persons apprehended had not been promptly informed of the charges against them.

It has also been reported that arrested persons had not been registered upon arrival and in accordance with the law, which is of concern, since the legal time

limit of 72 hours can then not be applied properly. Some of the detainees claimed to have been incarcerated since the 1 March and had not been charged until one week later. The Commissioner met a detained person on 14 March, who had still not been brought in front of a judge.

1. Information in these two paragraphs has to be supported by particular facts. Otherwise authorities of the Republic of Armenia would be unable to prove or reject such accusations. Authorities of the Republic of Armenia stand ready to bring most severe charges against any servicemen of the law enforcement agency who has possibly committed such violations. However, no such information or accusation has been brought to the attention of the office of the Prosecutor General.
2. With regards to the last sentence of the 2nd paragraph, it is not clear, when the person was detained. The statement is based on perception that all those arrested were detained on March 2, which is not true. It is quite possible that the person whom the HR Commissioner has met was detained on March 12 or 13. With more details of the particular case the authorities of the Republic of Armenia will be ready to confirm or reject that information on a more factual basis.

- **Section 11. Safeguards of detained persons, Paragraph 3:**

Only from 3 March had the national monitoring groups under the Minister of Justice for penitentiary and police custody as well as the staff of the Human Rights Defender' office been given access to police detention centres and penitentiaries.

Since arrests related to the events started on March 2, it is obvious that granting access on March 3 cannot be labelled with the word 'only,' since they was done within 24 hours, which is a normal time-limit in such circumstances.

- **Section 12. Procedural Safeguards of the Accuse:**

It is clear that people arrested within the same criminal case are usually charged with the same or close articles of the Criminal Code. All the accusations listed in the Section need to be proved by facts. Otherwise Armenian authorities would be unable to prove or reject the charges.