



POLICY BRIEF

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ELECTORAL REFORMS IN ARMENIA AND CIVIL SOCIETY ENGAGEMENT

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Executive Summary

The legislation regulating electoral processes in the Republic of Armenia changed regularly in the past 30 years. In 1999, the first comprehensive Electoral Code came to replace the separate election laws used in the 90s'. The Code was replaced with two others in 2011 and 2016, with each of them being amended numerous times throughout their use.

All electoral codes used in Armenia and arguably throughout the region have two things in common: they want to have the right answers to all possible questions and their starting point is the presumption of criminal intent. Any regulation in the legislation derives from the presumption of violation: integrity for the sake of it does not seem to be plausible.

The issue is that these two combined continuously cause overregulation that eventually becomes underregulation. Thus, the process of reforming the electoral legislation becomes an endless spiral making the electoral legislation evolve, while not necessarily making it better. At the same time, electoral legislation becomes a clear indicator of where the country stands, the level of its maturity and the aspirations it has.

Since 2019, civil society organizations in Armenia worked extensively with the working group of the National Assembly toward yet another comprehensive reform of the electoral legislation. In 2021, the process was forced into an abrupt culmination because of the snap parliamentary elections.

Introduction: Electoral Reform-not a One-time Event

Armenia held its first presidential elections in October 1991. Since then, there have been several presidential, parliamentary, and local elections and referenda held in Armenia. The latest snap parliamentary elections were held in June 2021.

Armenia has had the following laws regulating its electoral processes.

- RA Law on the Elections of the President, 1991-1996
- RA Law on the Elections of the Members to the National Assembly, 1995-1999
- RA Law on the Elections of the President of the Republic, 1996-1999
- RA Law on Local Self-government Elections, 1996-1999
- RA Electoral Code, 1999 -2011
- RA Electoral Code, 2011-2016
- RA Electoral Code, 2016-

International organizations and particularly international election observation missions have had a significant role in pushing positive electoral reforms while the interests and preferences of the ruling party continuously pushed down the expectations for dramatic reforms. The implementation of international recommendations is assessed in two reports by Helsinki Citizens' Assembly – Vanadzor published in 2015 and 2016 (linked in the references).

This policy brief is an attempt of a critical look at the continuation of the reform process of the most recent Electoral Code and the steps needed to make the changes relevant and timely.

Electoral Code 2016 and Civil Society Engagement in the Electoral Reforms

Following the adoption of Constitutional Amendments, a new electoral code was adopted in May 2016. While the previous electoral laws had changed numerous times, none of them had received the attention and engagement that the 2016 Electoral Code had since its draft was published online.

The Republic of Armenia moved from a semi-presidential to a parliamentary system of governance in accordance with Constitutional amendments adopted by the referendum held on December 6 2015 (proportional system with a minimum of 101 MPs). The numerous concerns regarding the contents of the Constitutional Amendments and the Constitutional Referendum¹ were largely ignored.

The ruling party found a unique way of interpreting the proportional system by introducing regional lists (13 electoral regions/districts) that allowed it to ensure that the votes received by any candidate are effectively accumulated by the party, ensuring that the popularity or authority of individual candidates

¹ HCA Vanadzor report on Adoption Process of Imposed Constitutional Amendments, January 2016, <http://hcav.am/publications/21-01-2016-555879/>

contributes to regaining majority in the 2017 National Assembly elections.

The Code introduced innovative methods of election administration. Voter registration at the polling station is conducted through Voter Authentication Devices, which contain the list of all voters of the precinct with data from all identification documents the voter may have. Thus, a person can turn out to vote with an identification card. Biometric passport, regular passport or in certain cases a temporary document. Video recording is conducted from around 2/3 of polling stations

The draft of the Electoral Code was prepared in secrecy and became available first time on the website of the Venice Commission where it was posted along with the preliminary opinion by the Commission. Within a few days the draft was published by the government in Armenian.

To ensure that the recommendation of conducting broad consultations is implemented the ruling party agreed to discussing the draft with the format of 4 ruling party + 4 opposition + 4 civil society representatives,

Before and during the development of the new electoral code, the oppositional parties and civil society representatives involved in the electoral processes advocated for the publication of signed voters lists to rule out voter impersonation. The initial negative attitude of international organizations towards this demand changed later for the purpose of increasing public trust towards electoral processes. This became one of the main conditions for civil society and opposition to accept other changes in the legislation. While the agreement was reached and the amended Electoral Code stipulated publication of voter lists, civil society representatives refused to sign a joint statement about the amendments because other oversight measures were not accepted.

The 2017 National Assembly Elections manifested all the campaign period violations observed in the recent elections, while on the Election Day, ballot stuffing and multiple voting was replaced with controlled voting and voter intimidation.

The Spring 2018 Velvet Revolution opened an unprecedented window of opportunity for meaningful reforms and for civil society participation. Electoral reform became a top priority on the revolutionary agenda and in June 2018 a working group was formed under the auspices of the Prime Minister to develop the draft amendments before the snap elections to be held within a year. The Working Group included election experts, civil society representatives, election administration and government representatives and was chaired by the First Deputy Prime Minister. Parallel consultations were held in the Parliament, where the representatives of the ruling Republican party were able to sabotage both the process of discussions and vote for the amendments. The 2018 Snap National Assembly Elections were held according to the unamended Electoral Code while some criminal sanctions on electoral violations were adopted earlier before the snap elections of the Yerevan City Council.

While the 2018 Snap elections showed that the political will for free and fair elections was more important than an improved legislation, it was clear that the distrust towards election management bodies, the public discontent with the overcomplicated electoral system would not allow for the amendments to be simply dropped. The post-revolution euphoria would end and the habitual violations would re-emerge.

In 2019, a working group consisting of NA factions was formed in the National Assembly. The working group developed the packages of amendments to the RA Law on Parties, the Electoral Code and the related legislation in a participatory and inclusive process.

However, in December 2019, the Ministry of Territorial Administration and Infrastructures posted a draft package of amendments concerning local self-government on the official online platform of legislative drafts. The draft was not presented or discussed with the NA working group. The proposed amendments were incomplete and would contradict changes in other parts of the Code or other legislation. The draft was taken down for further development in consultation with the working group and in June 2020, the amendments to the Code on Local Self-Government Bodies were adopted by a ratio of 99 for, 0 abstentions and 0 against. On December 29, 2020, the amendments to the RA Law on Parties were adopted with 99 votes in favor, 1 abstention and 0 against.

In March 2021, the ruling "My Step" faction circulated a large package of amendments to the Code, sending it in parallel to the Council of Europe Advisory Body, the Venice Commission.

Following the announcement of a political agreement on holding snap elections, the fate of the amendments to the Code became unclear. Although most political parties were in favor of changing the electoral system, some argued that the international best practices require that electoral legislation be predictable.

Numerous civil society organizations issued statements urging for amendments to the Code be adopted before the snap elections, in particular, they demanded the adoption of a simple proportional electoral system without territorial lists, a ban on the misuse of administrative resources, and amendments to the Criminal Code of the Republic of Armenia. Given the extensive multistakeholder discussions, the organizations argued that these amendments to the Code should be considered predictable, as they simplify the electoral system, enjoy the support of almost all political forces and stakeholders and stepping back from the commitment to change the legislation would have a negative impact on public trust in the legitimacy of the electoral process. The ruling "My Step" faction of the National Assembly decided to adopt the amendments to the Code only regarding the proportional electoral system. The separate draft amendments to the Code were adopted on a 24-hour basis in 2021. April 1: 82 for, 0 against, 0 abstentions. Only the ruling "My Step" faction, the independent deputies co-author of the bill, voted for the changes. Welcoming the adoption of this change, civil society organizations called for the adoption of other changes guaranteeing free and fair elections.

2021 on April 17, the President of the Republic of Armenia issued a statement referring to the principle of observing the one-year term, stating that he would not sign the amendments and at the same time would not apply to the Constitutional Court to determine the constitutionality of the amendments. As a result, after the expiration of the 21-day term defined by the Constitution, the Speaker of the National Assembly in 2021 on April 22, he signed the law on amendments.

On the same day, the Venice Commission issued its opinion on the amendments to the Code. The opinion of the Venice Commission on the changes was exceptionally positive, including in terms of accepting the exceptions of non-compliance.

2021 On April 27, the National Assembly adopted the amendments to the Criminal Code on Administrative Offenses, which were signed by the President of the Republic of Armenia on May 6. These provisions came into force the day after their publication, becoming applicable during the snap elections.

The complete package of the Code was adopted by the National Assembly on May 7. The RA President signed this package on May 27. The changes adopted by this package come into force gradually without any provisions applying to the snap elections.

Considering that the last amendments would not be applicable for the snap elections, it was unclear why the package needed to be adopted within one day, with last minute changes that significantly weaken the impact the provisions would have on future electoral processes, such as proper regulation of administrative abuse and campaign financing, including prescription of criminal and administrative liability.

The recent snap elections were expected to be a manifestation of all possible violations and a test for the fragile democracy in Armenia. While the elections were overall a win for democracy, civil society representatives involved in the reform process continuously identified incidents that were left unregulated because of these last-minute amendments.

Conclusion and recommendations

The recent process of amending the electoral legislation seem to be ticking all the boxes for meaningful engagement and participation, broad and open consultations. Yet, the end-result was curtailed in a way that make further amendments inevitable. The last-minute changes to the bill have left the participating civil society representatives disappointed.

At the same time, the question remains whether a perfect legislation would be possible, whether adoption of all proposed regulations would not be mutually exclusive, and whether overregulation would not constantly create situations where a provision on the exact circumstances is expected instead

of analogy or underlying principles, and finally, whether predictability and stability of the legislation should be a priority in a country that is still struggling to sustain its fragile democracy.

In this light the recommendation to the Armenian Government and to the National Assembly is.

- To study and analyze the reports by international and domestic observation missions to identify patterns that should be addressed in the legislation
- To establish permanent working groups electoral legislation and to address the recommendations after each election
- To gradually adopt and incorporate digital oversight tools
- To incorporate election integrity principles in the legislation

Recommendations to the International organizations would be

- To follow up on the implementation of recommendations by international and domestic observation missions
- To assist the Corruption Prevention Commission in taking over the oversight of political finances
- To continuously train election management bodies
- To support digitalization of registration and oversight processes related to the elections

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