

Armenia's reformers struggle on

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After last year's war, hopes that the 2018 revolution will fulfil its promise are fading - but it's not too late for change

"A stellar performance in one year is no guarantee of future success," declared The Economist after Armenia held free and fair elections three years ago. The qualified praise was not without cause.

It was always likely that Armenia's attempts at democratic consolidation would be difficult, particularly because of the need for some unpopular reforms. Prior to the December 2018 parliamentary elections, observers [noted](#) that civic demobilisation – the influx of non-profit sector professionals to the government and their ensuing unwillingness to criticise it – could potentially undermine political pluralism, enable re-emergent authoritarianism, or foster the rise of right-wing populism.

Shortly after the elections, it was again [suggested](#) that the ability of civil society to advocate and hold government to account might diminish.

A few weeks later, in February 2019, it was [noted](#) that the government's policies for the implementation of transitional justice, or on issues such as the environment, had already resulted in considerable discontent among civil society activists. They refrained from being overly critical of the new government and waited for it to settle down, but at the same time demanded that it must be accountable and open to criticism.

Subsequent events, however, resulted in further disappointment and alienation from the government's policies. Civil society actors increasingly felt neglected and became openly critical of the government. Their warnings that slowing down the reforms would endanger the revolution's outcomes were dismissed. Some officials appeared to be offended by such criticism and ascribed the ownership of the revolution to themselves, disappointing their supporters.

Despite enjoying a two-thirds parliamentary majority and the overwhelming support of voters, Prime Minister Nikol Pashinyan's cabinet failed to fulfil its promises on transitional justice, the vetting of judges and judicial reform in general. It also postponed amending the constitution, changing the election code and a number of other reforms.

Even when attempting some reforms, the government acted inconsistently. The half-hearted reform of Armenia's constitutional court, completed just days before the beginning of the war in Nagorno-Karabakh in September 2020, is probably the most significant example.

The constitutional court controversy

In late June 2020, the National Assembly of Armenia, the country's parliament, adopted an amendment of Article 213 of the constitution, designed to end the control of the constitutional court by loyalists to the former regime. The three longest-serving members of the court would be sent into retirement, while the chair, Hrayr Tovmasyan, would become an ordinary member.

Tovmasyan was the principal author of the constitution [adopted in 2015](#), which would have allowed President Serzh Sargsyan to retain power after his second term by making him prime minister with extended powers. Ultimately, Sargsyan was ousted by a campaign of civil disobedience in April 2018, just six days after being appointed prime minister. However, Tovmasyan – a former top-level member of Sargsyan’s Republican Party of Armenia – planned to remain on the court until 2035. Indeed, transitional provisions allowed the seven court members appointed before April 2018 to serve until they reached the age of 65.

Initial attempts to remove Tovmasyan and others included a National Assembly petition in October 2019 in support of voluntary resignation, and a new draft law guaranteeing large pensions to court members who retired. As that was rejected, the National Assembly set 5 April 2020 as the date of a referendum on the transitional provisions. But this was postponed indefinitely due to the COVID-19 pandemic.

In June, the National Assembly opted to amend some articles of the constitution by a two-third parliamentary majority. This prompted fierce opposition from supporters of two former old-regime presidents, Robert Kocharyan and Sargsyan, who sought to prevent parliament from adopting the amendment.

This included attempts to mobilise the support of the Venice Commission (the Council of Europe’s advisory body on constitutional matters) and other international institutions. Piotr Świtalski, former head of the EU delegation to Armenia, notes in his recent [book](#) that some international bodies, who were sceptical about the transitional provisions, allowed themselves to be “manipulated”, demonstrating “puzzling political ignorance”.

The nomination of candidates for the constitutional court caused further controversies and disappointment among reform supporters. First, the government nominated Vahram Avetisyan, head of the civil law faculty at Yerevan State University. The nomination was apparently secured by the justice minister, Rustam Badasyan, a former student of Avetisyan.

Several civil society organisations and former political prisoners protested, warning of a possible conflict of interest because Avetisyan had not been vetted. Avetisyan’s father, David – the former chairman of the Criminal Chamber of the Court of Cassation – had previously convicted a number of opposition activists who protested against the fraudulent presidential election in 2008.

In the end, Vahram Avetisyan withdrew his candidacy. The government’s proposed replacement, Edgar Shatiryan, also disappointed some activists. Shatiryan had previously been a member of the commission for officials’ ethical behaviour since 2015, monitoring possible conflicts of interest. Yet although many people believed Armenia’s previous government to be corrupt, Shatiryan had not spoken out about any significant transgressions.

The second nomination also caused controversy. After Article 213 was amended following President Sargsyan’s departure, his successor Armen Sargsyan (no relation) expressed a wish to have more powers, including the authority to directly appoint members of the constitutional court. Parliament rejected an attempt by the new president to place a judge, Arthur Vagharshyan, who he had already unsuccessfully put forward for another role in 2019, onto the court.

The third and final nomination - this time by the General Assembly of Judges - looked like a display of contempt for supporters of the 2018 revolution, including Nikol Pashinyan himself. The nominee, Yervand Khundkaryan, had been the chairman of the civil chamber of the court of cassation since 2010. [Thirteen of his verdicts were overturned](#) by the European Court of Human Rights (ECHR), and Armenia had been forced to pay €312,000 in compensation as a result.

In May 2019, when Pashinyan announced that all judges should be vetted, one of his explicit demands was that any judge whose verdicts had violated defendants' rights, and were ultimately overturned by the ECHR, would have to resign voluntarily or be sacked. No voluntary resignations followed, and by 2020, Armenia's Ministry of Justice abandoned the idea of vetting judges.

The parliamentary majority voted in favour of all three candidates on 15 September 2020, practically without debate. Just two or three members of the My Step fraction voted against each of the candidates; one of them, who had previously worked in the NGO sector, eventually [resigned](#) from her post.

This inconsistency with the government's pre-election promises, as well as Pashinyan's own explicit demand, intensified doubts about the political will to implement reforms. Several officials, including the justice minister, became embroiled in disputes with civil society representatives, former political prisoners, and other critics.

While these arguments rumbled on, the unreformed judiciary overturned the pre-trial detention of a number of former and acting officials suspected of felonies. In one obvious conflict of interest, the judiciary appointed judge Armenuhi Badiryan, the wife of former President Kocharyan's defence attorney, to examine a [lawsuit brought against the government by Kocharyan himself](#).

The post-war situation

Since the disastrous war with Azerbaijan last autumn, and the resulting political instability at home, Armenian civil society has found itself in an even more difficult situation.

For supporters of the revolution, disappointment has deepened. The government initially refused to consider snap elections as a means to solve the current post-war political crisis. In mid-March, the government relented, agreeing to hold elections in June, but without amending the current problematic electoral code, apparently after a deal with two smaller parliamentary alliances.

Some reformers [have been asking](#) for the country's mixed proportional system to be changed to a simple proportional system, due to [concerns](#) that the current way of holding elections favours parties currently in parliament, as well as those who cultivate the support of oligarchs and local clans. On 1 April, the My Step alliance made yet another u-turn and voted to amend the electoral code.

Other new policies potentially threaten freedom of speech. Under pressure from nationalists who took to the streets after Armenia's defeat in the war, the government proposed a law [criminalising](#) the defamation of state officials. In the end, parliament [adopted](#) an amendment tripling the fines for defamation and public insults.

The government's newly radicalised opponents – who are mostly supporters of the previous regime – are hardly an acceptable alternative, since they also make verbal and physical attacks on civil society organisations that advocate reform.

Snap elections may help defuse the current tensions but they are not necessarily a long-term solution for Armenia's underdeveloped political culture. As was [observed](#) following the Yerevan city council elections in September 2018, the tendency to choose "personality over policy" is strong. In the December 2018 parliamentary elections, Pashinyan's personal popularity helped deliver a two-thirds majority for his My Step alliance. The size of the My Step bloc is such that it includes people who are virtually inexperienced in politics and depend on the leader for their careers.

In this context, an [observation](#) by the Georgian political scientists Kornely Kakachia and Bidzina

Lebanidze feels apt: unlike western democracies, where political parties are independent organisations with strong internal democracy, parties in developing states tend to be “owned” by charismatic leaders and do not connect citizens to the process of governing.

Without further reform, demagoguery and populism – now reinforced by the trauma of the recent war – may result in yet another unaccountable government that lacks a positive vision for the future of Armenia.

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