



EPDE Policy Alert # 4

Armenia Explores Alternative to Referendum on Constitutional Court

Armenia was supposed to hold a referendum on April 5, 2020, on whether to replace 7 of its 9 Constitutional Court judges. The referendum was postponed due to the COVID-19 pandemic and is now seen as too great a risk to public health to go ahead. An alternative approach has been sent to the Venice Commission for an official Opinion.

Why was the referendum called in the first place?

The Pashinyan government has been at loggerheads with the Constitutional Court (CC) for over a year. The rift first became public in May 2019 when the Prime Minister called on citizens to protest a decision to free former-President Robert Kocharyan from pre-trial detention (the case was regarding his involvement in the March 1, 2008 military crackdown against protesters) by blocking the entrances to the country's courts. Those demonstrations were followed by a proposal to vet the conduct and assets of judges, which was blocked by the CC.

Much of the Armenian public has a negative perception of the judicial system, which they see as having been systematically complicit in enabling corruption under the previous government or even directly involved in it. An October 2019 public survey by the International Republic Institute (IRI) found that 48% reported judicial reform as being "top priority".¹

In October 2019, the Armenian Parliament voted in favor of requesting that the CC remove Constitutional Court Chair Hrayr Tovmasyan from the court, a step that the other judges refused to take. Tovmasyan was involved in drafting the 2015 Armenian Constitution when he was an MP with former-President Serzh Sargsyan's Republican Party of Armenia. His reforms would have allowed Sargsyan to stay in power beyond his two presidential term limit. They also reduced the term length for CC judges to 12 years, whereas they previously served until age 65. The reforms also included a grandfather clause (Article 213), which stipulates that judges appointed before the reforms come into force get to keep their previous term lengths. Just prior to the reforms coming into force in the spring of 2018, the previous CC Chair resigned a few weeks before the scheduled expiry of his term. Pashinyan alleges that the resignation was fraudulently backdated to allow Tovmasyan to be appointed under the grandfathered rules and remain CC Chair for 17 years.² Under the new rules, a CC judge can only become Chair for a single six-year term out of their total 12 years on the Constitutional Court. Although those rules were accepted in a 2015 referendum (which was itself [challenged due to irregularities](#)), the grandfather provision and the appointment of Tovmasyan in 2018 mean they would not actually be used until 2035.

¹ See: https://www.iri.org/sites/default/files/wysiwyg/iri_poll_armenia_september-october_2019.pdf#Page=35.

² See: <https://www.primeminister.am/en/statements-and-messages/item/2020/02/06/Nikol-Pashinyan-Speech/>



A referendum is no longer prudent

A referendum had been called for April 5, 2020 to lift the Article 213 grandfather clause and end the terms of the seven (out of nine) CC judges to which the clause applied. On March 16, however, a State of Emergency was declared due to the Covid-19 pandemic. Under the Armenian Electoral Code, no elections or referendums can be held under a State of Emergency, which has been extended twice and now has an end date of June 13. When it does expire, unless new measures are passed, the referendum will be rescheduled for two months after the expiry date. However, it is now understood that holding the vote at all could bring undesirable health risks.

On May 13, Minister of Justice Rustam Badasyan [formally requested](#) an Opinion from the Venice Commission on a potential new course of action. In a [response](#) to *The Armenian Times* newspaper, the ministry clarified their new preferred approach, for which they are seeking support. Instead of terminating the seven CC judges to which the Article 213 grandfather clause applies, they would instead impose on them the same 12-year term limit that applies to all new CC judges. Three CC judges have already served for longer than twelve years and would enter retirement. Hrayr Tovmasyan is not one of them, having been appointed in 2018. Upon having filled the three vacancies, a new vote for Chair would be held by the 9 total CC judges and the successful candidate would serve the new six-year term. Tovmasyan would be free to stand as a candidate to be re-instated into his existing role as Chair but would be limited to a six-year term even if he is successful (whereas he is currently slated to stay in the role for 15 more years).

The Armenian Constitution does not require a referendum to amend Article 213 (though some other articles do require one). It can be changed with a two-thirds majority in the National Assembly. The ruling My Step faction holds exactly two-thirds of the seats.

If no action is taken, the referendum will proceed 50-65 days after the State of Emergency expires (currently set for June 13 but likely to continue to be extended). To pass, the Yes votes would not only have to outnumber the No votes but also exceed 25% of all registered voters, which may be difficult if Covid-19 fears dampen turnout.

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