CONSTITUTIONAL REFORMS - PIECING THE FACTS TOGETHER

Posted on November 16, 2015 by Keghart

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Category: Opinions

A. Adamyan, Toronto, 16 November 2015

In Moscow, on Sept. 3, 2013, President Serzh Sargsyan, after meeting President Vladimir Putin suddenly announced that Armenia intended to join the Customs Union of Russia, Belarus and Kazakhstan. The announcement came after four years of extensive negotiations with the European Union (EU) to become an associated member state of EU. President Sargsyan explained his decision by saying that Armenia cannot pursue economic integration with the EU while it had integrated with Russia in the security sphere.

The following day, immediately after returning from Moscow, Sargsyan signed a decree to form a Commission on Constitutional Reforms. Many speculated that the commission would suggest adopting a parliamentary system that would allow Sargsyan to remain in power as prime minister. However, Sargsyan announced he would pursue neither the post of PM nor president under the new legislation. Furthermore, members of the Constitutional Commission dismissed opposition concerns that Sargsyan might continue to remain in power by assuming the post of the Speaker of Parliament. They said Sargsyan had assured them that he had no such intention.

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While there are many examples of Sargsyan making promises and later changing his mind, many in the opposition think he might manage to remain in power as leader of the ruling Republican Party.

As expected, the commission suggested a parliamentary system with a powerful government and prime minister and a president elected by parliament and having significantly less power than a

president elected by the electorate under the current constitution. President Sargsyan signed a decree to conduct a referendum on Dec. 6, 2015 for the constitutional reforms.

The ruling Republican Party of Armenia, and the ARF support the reform. The latter has always stated the need to adopt a Parliamentary system in Armenia. Among the supporters are the Prosperous Armenia Party and a number of other smaller parties. The Armenian National Congress (ANC) and a few other opposition parties, some of which in the past had expressed a willingness to see a parliamentary system, are against the reforms. Both sides have their rationale; thus there's a great deal of confusion among voters as to how to vote on the issue.

To understand the motives for the changes we have to look at how the drive for change started. First of all, neither the Republican Party in its 2012 parliamentary elections nor Sargsyan in his 2013 presidential election campaign mentioned plans for a parliamentary system or even to form a commission for constitutional reform. Constitutional reform, especially about changing the form of governance in a country, is such a bold move that it must have been planned well before its announcement in September 2013. In other words, such a plan existed during the above-mentioned election campaigns but was kept well hidden from the voters. On the other hand, is it just a coincidence that the presidential decree to form a commission on constitutional reform came immediately after announcing that Armenia would chose joining the Customs Union formed around Russia rather than integrating with the EU? Is it just a coincidence that Russian media was either silent or negative about the suggested constitutional reforms in Armenia while the West was generally quite welcoming them? The West provided substantial advice throughout the process of working out the reforms through the European Commission for Democracy through Law, better known as the Venice Commission. Finally, is it coincidental that Armenia made a move towards the parliamentary system even though the three members (Russia, Belarus, and Kazakhstan) of the then Customs Union it had decided to join have presidential systems? In addition, all three have powerful presidents who have been in power for many years and are expected to be in power for the foreseeable future.

A logical answer to these questions is that Sargsyan had planned the constitutional reforms of the parliamentary system as a concession to the West in case Armenia joined the Customs Union instead of integrating with the EU. The EU might worry that the next sudden move of Sargsyan could lead even to closer ties with Russia which under a parliamentary system would not be easy to promote. Moreover, even Sargsyan himself may have such a concern depending on the level of pressure he had faced from Russia to join the Customs Union instead of integrating with the EU. But the "brilliance" of the move for Sargsyan is that through these reforms he gets rid of the next powerful president under current constitution of Armenia.

If Sargsyan wanted to remain in power without moving to the parliamentary system he would have had two choices. He could have changed the constitution to remove the ban that presidents can't hold their post for more than two consecutive terms. However, this would further irritate the West

already unhappy with Sargsyan's decision to join the Customs Union. Alternatively, he could have left the constitution as is and become a prime minister with a strong Republican Party majority in parliament. But this option would have worked for him only if the president were loyal to him -- preferably a member from his Republican Party. Such a scheme was successfully tested in Russia when Putin became the prime minister and Dmitri Medvedev president. But unlike the Putin-Medvedev tandem, that had no strong opposition, this option does not work for Sargsyan since he does not have anyone reliable to suggest as president who could defeat Robert Kocharyan in an election. This is crucial because former President Kocharyan has continuously criticized the government and never renounced plans to return to power. On the other hand, Kocharyan and Sargsyan would avoid direct confrontation because they are tied by a joint responsibility for the March 1, 2008 "events". Consequently, if Kocharyan participated in the 2018 presidential elections, support of his candidacy by Sargsyan, however undesirable for Sargsyan, would be guaranteed. As a consequence, we would see a strong president and possibly opposing him the Republican Party with its parliamentary majority and its prime minister. A political crisis under this scenario would be quite probable.

Currently, most of the political parties in Armenia are busy discussing the suggested changes and most of them are either advocating for or against the changes. The Armenian National Congress (ANC) in order to ensure the reliability of the referendum outcome, demands that finger-inking be used and a list of those who participate in the referendum be available to the public. The latter demands this because, according to them, the number of people (2.55 million) who are eligible to vote is highly inflated when officially Armenia's population is just over 3 million. The matter becomes alarming when one takes into account that in 1995 the number of eligible voters was 2,189, 804 in a population of 3,753,500! (Source: Civilnet)

The Republican Party, which holds majority in parliament, dismisses these suggestions explaining that finger-inking is for Third World countries as it conveniently ignores that Georgia successfully implemented it in the last two elections. As far as publishing a list of participants in the referendum, the Republican Party refuses to do so explaining the importance of referendum confidentiality even though ANC only demands the list of participants and not how they participated. On the other hand, the fact of participation by a voter with cameras and people in voting stations can not be made confidential for obvious reasons. If motives of the Republican Party really are to improve governance then it remains a mystery as to why would they refuse to adopt even some non-European measures to increase the credibility of the referendum at a time when Armenian society nurses much mistrust towards the authorities. Since a lack of trust towards the authorities in general and official election results in particular are so serious problems in Armenia, it is sad to realize that the upcoming referendum is going to be no different in its quality. Reports that schools are collecting passport data of voters among student family members so as to use the data to inflate the number of votes in favor of the authorities come only to add pessimism on the quality of the upcoming referendum.

There are other players who choose to ignore the referendum and consider it an artificial agenda implanted in the Armenian political arena. And there are also those who oppose the suggested changes without even examining the referendum's content. The most noticeable in this group is the Founding Parliament (FP) which, after repeatedly failing to get any meaningful support from the citizenry for their initiatives, considers the constitutional changes an excellent opportunity to once again campaign for “let's get rid of the regime of Serzh Sargsyan”. And to disconnect their failures--by joining a few individuals also opposing the changes--they try create the imitation of a united opposition under a re-branded “New Armenia” National Salvation Front paranoid name. However, if the past is any indication of the future, the outcome of their actions will be no different from what we have seen so far. In fact, with their weak, unrealistic or extremist proposals they have only promoted the popularity of the authorities among the middle class. Needless to say, there are by far fewer people taking the streets now than were in 2008 and even then the promised regime change never materialized.

Are the suggested changes good or bad? There are many analyses which answer the question from different perspectives. I agree with those who find the changes are a step forward towards a more balanced power distribution, more independent judicial system and better human rights conditions. But most of these improvements are only theoretical since for the changes to have a positive effect the upcoming parliamentary elections must be fair. Everyone will agree that the existing semi-presidential system, coupled with fair elections, is undoubtedly better than the suggested parliamentary system with a parliament elected through questionable means. So for many the key for improvements in the county is fair elections and not a change of governance system.

What if elections are questionable in both cases, the current and upcoming parliamentary system? A better system, even currently only on a paper, still seems to be preferable. First, there is still hope that one day Armenia will be able to hold free elections. Second, a parliamentary system, with no single power axis, still gives Armenia more flexibility against foreign pressure even with the current poor quality of elections. Finally, the Republican Party has so much deviated from its core values and is so leader-dependent that in the future it will hardly be able to dominate and sustain its existence as is without Serzh Sargsyan. Leader-dependency is a major problem for most of the Armenian parties and perhaps the Parliamentary system may commit to emergence of real political parties based on strong ideology and teamwork.