

"ARMENIA NEEDS A NEW CONSTITUTION": PASHINYAN

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Karen Mkrtchyan, Yerevan, 7 July 2020

In his congratulatory message to the nation on the occasion of Constitution Day on July 5, Armenia's Prime Minister Nikol Pashinyan remarked, once again, that the country needs a new constitution. He expressed hope that its draft will be put for a vote in next year's referendum. "Thrice in the history of the Third Republic of Armenia the people have, through a referendum, adopted a constitution or constitutional amendments. However, the results of none of these referendums were considered trustworthy by society," wrote Pashinyan. Armenia's constitution was amended in 1995, 2005 and 2015. On all occasions, the opposition parties accused the government of vote-rigging raising questions on the legality of the amendments. It's noteworthy that former President Robert Kocharyan attempted to implement constitutional reforms through a referendum in 2003 but failed to get sufficient public support. The one passed in 2005 was his second attempt.

Pashinyan made a similar remark on the necessity of a new constitution, on June 15, at a meeting with the commission on constitutional changes. In his address to the commission, Pashinyan did not mince words. "...I must also say, especially during this period, I have come to the conclusion that we not only need to implement constitutional amendments, but we need to adopt a *de jure* new constitution." A closer examination of the political developments in Armenia gives us a clue as to what Pashinyan meant with the term "especially during this period."

With new cases of the virus keeping the government under the constant scanner of critics, Pashinyan's challenges have multiplied.

Having voted to cancel the referendum scheduled to resolve "the crisis" in the Constitutional Court of Armenia, the Armenian National Assembly (NA) approved, on June 23, a bill tabled by some members of the ruling My Step Alliance. It aimed at resolving the much-disputed issue of removing the sitting judges of the Constitutional Court. It passed with a majority (89 for and none against) votes. The opposition parties--Prosperous Armenia and Bright Armenia--did not participate in the debates and voting.

The bill rendered powerless the provisions of the 2005 amendment and brought all judges under the ambit of Article 166 of Chapter 7 of the constitution. Accordingly, all judges, regardless of their date of appointment, shall not be allowed to serve longer than 12 years, or over the age of 70, whichever comes first.

As a result, three judges, Almira Gyulumyan, Hrant Nazaryan and Felix Tokhyan, ceased to be members of the Constitutional Court. The vacancies will be filled by new judges. Since President of the Constitutional Court Hrayr Tovmasyan has not completed his 12-year term, he will continue to serve as a member of the Constitutional Court. However, his powers as president will cease until new elections are held from among the judges. He is still eligible for re-election. The fact that Tovmasyan is not among the judges being shown the door raised suspicions among the people, especially since he was seen as the main person responsible for keeping the judiciary out of the

influence of the Velvet Revolution.

Five judges form a majority in the nine-member Constitutional Court. Should the four remaining judges (other than Vahe Grigoryan) support Tovmasyan and re-elect him as president, with a majority of five votes, would this lengthy exercise have been worth it? By retiring three judges but allowing Tovmasyan to continue, the government has compromised its objective of getting rid of him. It remains to be seen how "new" the new appointees will be, especially since there already is speculation the government is considering to appoint some "old faces" in the vacant seats.

Meanwhile, the three judges have declared their disagreement with the decision and have vowed to challenge its legality. Thus, Pashinyan's battle with the Constitutional Court is long from over. With the judges refusing to accept the decision of the National Assembly and insisting on turning up for work, the "crisis" in the Constitutional Court may have acquired a new meaning.

In another interesting development, the National Assembly approved changes in the NA Regulation constitutional law which envisages not sending the constitutional amendments for the president's approval. Instead, the National Assembly chairman has been granted the right to publicize them immediately after the parliament's approval and declare them adopted. President Armen Sargsyan signed the bills into law, stripping himself of powers granted to his office by the Constitution. This was seen as a bizarre move by commentators, accusing Sargsyan of being Pashinyan's puppet.

What the president refused to sign into law, however, was a second amendment to the constitution, which would change the order of appointing judges to the Supreme Court. It allows the government to be the first to appoint new judges to the Constitutional Court, before the president and the National Assembly. The bill also cancelled the referendum of April 5 due to COVID 19. The president's refusal to sign the amendment will have no implications as the bill will still become law if he does not sign it within 21 days or send it to the Constitutional Court for an opinion.

The proposed amendments *vis-à-vis* the Constitutional Court came as a face-savior for Pashinyan who is perceived as having weakened his position. Two days prior to the decision of the National Assembly, Pashinyan's rhetoric had suffered two major blows in the courts. On the 20th of June, former President Kocharyan, who was charged with "Overthrowing the Constitutional Order," was released on bail set at an unprecedented \$4,130,000. Barely had critics begun their attacks on Pashinyan for "blowing dust in peoples' eyes" regarding the penalizing corrupt officials, when the courts dealt Pashinyan another blow: it refused to jail Gagik Tsarukyan, the oligarch and president of Prosperous Armenia Party. On June 16, the Parliament had stripped him of his diplomatic immunity after the prosecutor general assured, on the floor of the house, that his office had collected enough evidence to prove Tsarukyan had organized the distribution of bribes during the 2017 Parliamentary elections. He was accused of "buying" at least 17,000 votes.

Commenting on the Prosecutor General's failure to secure an arrest order against Tsarukyan, Pashinyan declared in parliament, that it was common knowledge Prosperous Armenia Party had

distributed electoral bribes and that the accusations against Tsarukyan were not "a revelation to anyone". This begs the question: if Pashinyan was aware that Tsarukyan allegedly distributed bribes and was involved in vote buying, why did he hurry to sign a memorandum with Tsarukyan after the "revolution"? What does it say about Pashinyan's ethics when he cooperated with the remnants of the former political order to serve his needs but brings up their murky past when they try to step on his foot? Is it any wonder, then, that some people see political motivation in Pashinyan's charges? One can't change political beliefs so quickly and regularly and expect to be taken seriously in the long run.

To add to Pashinyan's woes, the two factions in the National Assembly (Prosperous Armenia and Bright Armenia) have applied to form an enquiry commission to look into the Government's mishandling of the Corona virus Crisis. The commission, unless stalled by the ruling My Step Alliance, convenes in September. Meantime, these factions will challenge the law that removed the judges of the Constitutional Court. If challenged in court by the judges and by opposition factions, Pashinyan's long-awaited plan to take the fight to Tovmasyan may suffer another blow.

With the Government decision to remove the teaching of Armenian Church history as a separate subject at school, fresh round of clashes between the church and the government are expected to break out, adding to Pashinyan's worries.

Pashinyan's last resort to implement concrete change remains a total constitutional amendment. In October of last year, the government had announced plans to amend the Constitution. Although viewed as something that should have been done on a priority basis soon after the revolution, no tangible results can be observed yet.

With his problems increasing by the day, Pashinyan has once again remembered that Armenia needs a new Constitution. If he is to stand any chance of keeping his support base intact, he should make good on his promise. Further delay will place him at a great disadvantage.

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*The above article was submitted a day before the Court of Appeals refused to place Tsarukyan under preventive arrest today. The bench sent the case back to the sessions court. **Ed.***

There are no comments yet.