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Regime Formation and Development in Armenia

Founding Semipresidentialism: The Context and First Steps

Semipresidential regimes as a political phenomenon were quite a rare experience some fifteen–twenty years ago. Most scholars agreed that they existed in the Weimar Republic, Fifth French Republic, Finland, Sri Lanka, and Portugal; added to the list of Austria, Iceland, and Ireland.¹

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Editor’s note: The chapter was written in 2005, and the information contained here has not necessarily been updated. The Armenian Constitution was finally amended in November 2005.

1 For the account of semipresidential regimes see, for example: Robert Elgie, ed., *Semipresidentialism in Europe* (Oxford: Oxford University Press, 1999); Maurice Duverger, “A New Political System Model: Semi-Presidential Government,” *European Journal of Political Research* 8 (1980), pp. 165–187; Gianfranco Pasquino, “Semi-Presidentialism: A Political Model at Work,” *European Journal of Political Research* 31 (1997) pp. 128–137; Steven D. Roper, “Are All Semipresidential Regimes the Same? A Comparison of Premier-Presidential Regimes,” *Comparative Politics* 34, no. 3 (2002), pp. 253–272; Rafael Martinez, “Semi-Presidentialism: A Comparative Study” (Paper presented at ECPR Joint Sessions, Workshop 13 “Designing institutions,” Mannheim, Germany, March 26–31, 1999).

From the late 1980s to the early 90s, when former socialist countries started the democratization process, the number of nations which adopted semipresidential features within their constitutions grew and at first glance included such countries as Armenia, Lithuania, Russia, Ukraine, Poland, Romania, Bulgaria, Macedonia, Croatia, etc. Robert Elgie observed over forty semipresidential regimes all over the world, including those seventeen in the former-USSR and Central and Eastern Europe.²

In the course of the present study we will examine semipresidential regime formation and development in Armenia, which had evolved through various stages, presenting constitutional alternatives put forward within the discussion that occurred in Armenia from 1993 to 1995 and will conclude with the constitution amendment process that has been going on in the country since 1998.

The issue of adopting a certain regime type, defining the manner of political institutions to be created and defining the mode of executive-legislative relations was on the agenda and defined the political discourse of all the post-socialist nations, especially in the early 1990s. Within some of them discussion is not over yet, some amended their constitutions, adapting to new realities, and some like Armenia are still going through this process. While discussing the issue of regime type, three alternatives are focused on: presidential, parliamentary or a kind of semipresidential government.³ Presidentialism supposes general election of the head of state for a fixed term in office. He or she is simultaneously chief executive, who appoints the government that is not subject

2 Robert Elgie, "The Politics of Semi-Presidentialism," in Elgie, *Semi-Presidentialism in Europe*, p. 14.

3 Detailed discussion could be found in Giovanni Sartori, *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes* (New York: New York University Press, 1994); Juan Linz, "Presidential or Parliamentary Democracy: Does It Make a Difference?" in Juan J. Linz and Arturo Valenzuela, eds., *The Failure of Presidential Democracy*, vol. 1, *Comparative Perspectives* (Baltimore: Johns Hopkins University Press, 1994); Arend Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (New Haven: Yale University Press, 1984); Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (New Haven: Yale University Press, 1999); Matthew Soberg Shugart and John M. Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (Cambridge: Cambridge University Press, 1992).

to the legislature's vote of (non)confidence as well as the president. Parliamentary government briefly could be presented as a "form of constitutional democracy in which executive authority emerges from, and is responsible to, legislative authority."⁴ And the third option is a semi-presidential government which in Duverger's terms might be described as one, where constitution "combines three elements: (1) the president of the republic is elected by universal suffrage; (2) he possesses quite considerable powers; (3) he has opposite him, however, a prime minister and ministers who possess executive and governmental power and can stay in office only if the parliament does not show its opposition to them."⁵

Each regime type has certain advantages and disadvantages. It is usually said that presidentialism has such advantages as stability of the executive and more democratic government that coexists with such disadvantages as possible deadlock within the executive-legislative relations, time rigidity and a government that is formed by a "winner-takes-all" formula. On the contrary, regarding the parliamentary form of government it is usually mentioned that it has more flexible executive-legislative relations because of a possible vote of non-confidence to the executive that could be introduced by the legislature. In addition, the possibility of coalition formation, but simultaneously executive instability is usually given as the major disadvantage for parliamentary government. Semipresidentialism combines the advantages and disadvantages of those already mentioned but it is also claimed that this system "would develop a pattern of alternation between presidential and parliamentary phases,"⁶ but it allows one of the major disadvantages of presidentialism—the possibility of deadlock in the executive-legislative relations to be overcome.⁷

4 Lijphart, *Democracies*, p. 68.

5 Maurice Duverger, "A New Political System Model: Semi-Presidential Government," *European Journal of Political Research* 8, no. 2 (1980), p. 166.

6 Lijphart, *Patterns of Democracy*, p. 122.

7 More detailed discussion on the advantages and disadvantages could be found in Arend Lijphart, ed., *Parliamentary versus Presidential Government* (Oxford: Oxford University Press, 1994) (especially J. Linz's articles: "The Perils of Presidentialism," pp. 118–127, and "The Virtues of Parliamentary Democracy," pp. 212–216). See also Linz and Valenzuela, *The Failure of Presidential Democracy*, vol. 1.

Duverger's semipresidential concept definition was subject to various critiques,⁸ within which we would like to put forward the following definition of semipresidentialism. It could be viewed as a form of republican government, where a fixed-term popularly elected head of state has authorities within the appointment of the government headed by the prime minister and possesses authorities (including veto powers) within the law-making process. The cabinet is also subject to the legislative (non)confidence vote, while legislature can be dissolved by the president. This definition allows the construction of two basic models for potential presidential-parliamentary relations development. Within the two basic models parliamentary support toward the president is the most important factor. Having the assembly's support the president is free to form a government supporting his politics and policies, and in Duverger's terms becomes "absolute monarch," while upon meeting parliamentary resistance he or she has to take into consideration the composition of the legislature, when appointing the government. Those basic models might be elaborated on further, supplemented by such additional variables as the nature of parliamentary majority (within a continuum ranging from single party majority to oversized coalition) and the nature of the party system, making the game of politics within the frames of semipresidential constitution more and more complex.

In Armenia the issue of adopting a new constitution was put forward months after the Declaration of the Independence of Armenia was adopted by the Supreme Soviet on August 23, 1990. On November 5, 1990 the parliament established a Constitutional Commission to draft the new constitution, comprised of twenty politicians, members of the parliament and professional lawyers. The Commission was headed by the Chairman of the Supreme Soviet Levon Ter-Petrosyan. But before the first meeting of the Commission, held almost two years after its creation on October 15, 1992, the Armenian political system had already undergone considerable changes.

Based on the Declaration, which also declared separation of the executive, legislative and judicial branches, of June 25, 1991, the Supreme Soviet took a decision to establish Presidency in Armenia and to sched-

8 See Elgie, *Semi-Presidentialism in Europe*, pp. 4-12.

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ule presidential elections for October 16 of 1991.⁹ There was no doubt such an institution was necessary, but the controversy was related not so much to the need for the institution, but to the question of authorities of the President. Two main camps—one supporting a strong president and the other a weaker version of presidency as in a parliamentary regime had been formed in the summer of 1991. Supporters of the parliamentary regime were stressing that it was more democratic and allowed a means of avoiding power centralization within the hands of one person. In addition, they had been emphasizing that there was already an existing tradition of parliamentarism in Armenia, established in the First Armenian Republic of 1918–1920 and even in Soviet times. Another point was that parliamentarism with a PR electoral formula will positively influence the creation of political parties and their institutionalization in Armenia, while strong presidentialism will discourage that process. On the other hand supporters of a strong presidency brought their own arguments in favor of their position. They stressed that within non-professional parliament and weak political parties, the political system might end in anarchy where there is just one step toward dictatorship. They also stressed that the Soviet system was rather a fiction and real authority was concentrated within the hands of the party and its sole first secretary, so providing a base and tradition not for a collective decision-making body, but rather for one-person rule—in this new situation—the president. No less important was the contextual situation, within which debates regarding institutional changes were taking place—a situation involving political transition, economic transformation from planned economy towards the market and finally the issue of state and nation-building. In Armenia all that was overburdened by the external (Karakakh) conflict and economic blockade, so supporters of a strong presidency viewed it as a more effective way of dealing with the problems

9 On September 26, 1991 the Central Electoral Commission registered 6 candidates for the president's and vice president' offices: P. Hayrikyan and A. Arshakyan, R. Kazaryan and S. Zolyan, A. Navasardyan and G. Khachatryan, S. Sargsyan and V. Hovhannisyan, L. Ter-Petrosyan and G. Haroutyunyan, Z. Balayan and A. Marzpanyan. The results of the elections show the strong support for L. Ter-Petrosyan then. He got 83 percent of votes or 58 percent of votes of all the citizens. The next two candidates P. Hayrikyan and S. Sargsyan got 7.2 percent and 4.3 percent, respectively, and all other less than 1 percent.

compared with the non-professional, multiparty and multi-voice legislature, which was unable to make sharp decisions in the rapidly changing situation.

By the end of the year the Supreme Soviet adopted two laws—"On the President of the Republic of Armenia" (August 1, 1991) and "On the Supreme Soviet of the Republic of Armenia" (November 19, 1991), which established the first steps toward the creation of a strong presidency in Armenia. Within the debates that took place in the parliament over the laws two major camps—one advocating the "governmental" draft, and another advocating the opponents' draft, were formed in the Supreme Soviet. The latter stated that the governmental draft is in sharp contradiction to the principle of the balance of powers and provides the president with dictatorial authorities. The contradictions between the two camps continued later, when the Supreme Soviet started to discuss the draft law on its own status. The main controversial issues addressed such problems as limitations of presidential authorities and the possibility of control over presidential actions as well as the issue of appointment of the officials. Primary distinctions were related to the authorities of parliament and mutual executive-legislative control. Opponents of a strong president also had been stressing the role of the parliament not just as legislative authority, but also as a political body with wide controlling authorities over other branches. The debate started in the early 90s and has continued throughout the entire history of the independent Armenia, establishing two camps: one usually those in power, advocating rather strong presidential powers; and another camp, those usually in opposition, with a focus on the primacy of the parliament.

After the introduction of the presidential institution in Armenia and adoption of the laws on Presidential power and Supreme Soviet the balance within the executive-legislative relations changed and moved towards the dominance of the president. Before the adoption of those laws, Armenia could be considered a parliamentary republic with the head of executive, Chair of the Council of Ministers and the government being appointed by the parliament and subject to its confidence. The Supreme Soviet could vote them out of office by two-thirds qualified majority of all the members of parliament. In general the parliament was the highest institution of state authority and it was the most powerful institution,

which was solely responsible for lawmaking, including the authority to amend the Constitution. It was responsible for filling principal political offices and had wide controlling powers.

That phenomenon of power transfer toward presidential institutions is not unique to Armenia—most of the post-soviet states adopted a system of government with strong presidency. Advocates explained the need for an effective executive, enabling competent and prompt decisions to be made within the situation of a permanent crisis in politics and economic transformation. Those who advocated strong presidency also usually were the politicians sure that they would be elected for the presidents office.

According to the legal norms set by the newly adopted laws, the president was appointed for five years by popular election as the head of the executive branch. He was responsible for appointing and dismissing the prime minister and by his suggestion members of the government. Both the chairman of the government and the members were also subject to parliamentary confidence. Significant changes took place within the decision-making process. If previously the parliament had been solely responsible for law-making, after the initiation of the presidential institution the president gained veto powers. The Supreme Soviet could vote for the bill by a simple majority of all deputies—131 votes, but some of the bills required a qualified majority of two thirds; such as constitutional amendments, the vote of non-confidence, recall of the chairman of parliament, first deputy chair, deputy chairman and the secretary of the parliament. The bills passed by the parliament had to be signed by the president within two weeks or returned to the legislature with suggestions and objections, requiring new debate and revoting. The Supreme Soviet could accept presidential suggestions by a simple majority of votes of the deputies with accepted authorities but with no less than one third of all the deputies or it could insist on its own version of the bill that required two thirds of the votes of the deputies with recognized authorities. In the latter case the president had to sign the bill within five days. If the president did not sign or did not return the bill within two weeks or did not sign it within five days after the second voting the bill had to be published with the signature of the Chairman of the Supreme Soviet.

Crafting the New Armenian Constitution

After basic norms regulating executive-legislative relations were established, the Constitutional Commission started to perform its duties more actively and from October 15, 1992 till May 11, 1995 held 109 meetings.¹⁰ On June 24, 1993 the Constitutional Commission presented its first draft of the constitution for nation-wide discussion. The draft constitution comprised eight chapters: Chapter 1—General Statements; Chapter 2—Basic Rights and Duties of the Citizens; Chapter 3—National Council (Parliament); Chapter 4—President of the republic; Chapter 5—The Government; Chapter 6—The Judiciary; Chapter 7—Territorial Government and Local self-government; Chapter 8—Order of acceptance and amendments of the Constitution. The draft declared the Republic of Armenia a sovereign, democratic state with the rule of law. State authority was based on the principles of the separation of power between the executive, legislative and judicial branches. The legislative body—National Council—had to become a permanently acting representative body with 100 members elected for five years. The dissolution of parliament could be reached only by decision of the legislature or by presidential decree. The President was the highest official who had to secure the constitutional balance. The executive belonged to the government, headed by the prime minister, who was the subject of both parliamentary and presidential confidence. The proposed draft could be characterized as one that continued the existing logic within presidential/executive-legislative relations, proposing strong presidential authorities comparable with those of the President of France and even exceeding them, because the President of Armenia got the right both to appoint and dismiss the prime minister. Formally the draft could be assessed as a semipresidential constitution, but in the case the president had a parliamentary majority his powers were almost unlimited. In that case parliament would become a body just to ratify bills presented by the president and the government, who had bill initiation authorities.

In addition to the official draft some alternatives were developed by

¹⁰ Genrik Khachatryan, *Peroiaa Konstitutsiia Respubliki Armeniia* (Yerevan: Nzhar, 2001), p. 21.

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individuals or parties. The first alternative constitutional draft was elaborated by Henrikh Khachatryan and was submitted to the President's Administration in December of 1992. In 1992 the Ministry of Justice, the Parliamentary Standing Commission on Founding Independent Statehood and State Politics presented their constitutional draft as well, only to be criticized and not get any further development. Another draft was presented by the Christian-Democratic Union of Armenia. The draft declared the Republic of Armenia a federal state with a presidential government. But analyzing the draft one can come to the conclusion that the political practice under that constitution would be more semipresidential as the prime minister proposed by the president had to be confirmed in office by the parliament and he or she was the subject of both presidential and parliamentary confidence. Parliament also had to confirm appointments of ministers and the structure of government.

Two more alternative drafts were prepared by Dashnaksutyun and Ramkavar-Azatakan Parties. They were presented in party media—correspondingly *Erkir* (June 3, 1993) and *Azg* (August 5, 1993) newspapers.¹¹ Presidential authorities still caused major controversies. Dashnaksutyun draft opted for indirect elections of the President by the members of the parliament, government and the Constitutional Court. One was elected receiving two thirds of the votes. The executive authorities had to belong to the government, headed by the prime minister to be elected by the parliament. Functions of the president had to be shared with the parliament or the government. A more balanced proposal was elaborated by Ramkavars. Within their draft, the president, being the highest official, had to be elected by universal suffrage for a four-year period. He had the authority to present prime ministers' candidacy for parliamentary approval. He had also the authority to appoint ministers after being presented by the prime minister and receiving parliamentary approval. The president had the right to dissolve parliament but compared with the so-called "official draft," that right was reserved only within specific circumstances; for example, parliament could be dissolved if it had disapproved of the program of the government's activities three times. The prime minister could put forward parliament's dis-

11 In-depth analysis of those two drafts is presented in Armen Harutiunian, *Institut Prezidenta Respubliki Armeniia: Sravnitel'no-pravovoi analiz* (Yerevan: Mkhitar Gosh, 1996).

solution motion to the president if the assembly put forward a government non-confidence vote, but if, within 30 days, parliament had elected a new prime minister that motion could be annulled. The process of appointing a prime minister was shared between president and parliament—National Assembly. Upon election the president put forward a prime minister's candidacy for parliamentary approval. If he or she was not approved, parliament had the authority to elect a prime minister within 15 days. If not elected, the president could dissolve parliament and appoint the prime minister.

In 1993–1994 the opposition to the official draft of the constitution was growing within the parties opposing the president Ter-Petrosyan and six parties (with the exception of two major opposition actors—the Communist Party and the Union of National Self-determination) formed an alliance and developed their own draft of the constitution, known as “the Draft of six”: Dashnaktsutyun, Ramkavar-Azatakan, Democratic, Republican and Agrarian Parties as well as the Union of Constitutional Self-government. This elaborated draft had the one developed by Ramkavar-Azatakan Party as its basis. Accordingly, the president—the head of the state—had to be elected by a special body, comprised of the members of parliament—National Assembly or Council and equal numbers of the representatives of the local self-government bodies. The president was allowed to dissolve parliament in specific cases. The president could dissolve the assembly if the latter presented a nonconfidence vote to the government, but was unable to appoint a new government within fifteen days. The government was authorized to request a confidence vote regarding its activities or any other draft law. In the case the National Assembly voted against it and within twenty-one days was unable to appoint a new prime minister, the president, by proposal of the prime minister, was authorized to dissolve parliament. The president was also authorized to put forward for parliamentary confirmation the candidacy of the prime minister. The rest of the cabinet was presented to the parliament by the head of government. If parliament would not approve the candidacy of the prime minister put forward by the president, the latter could appoint a caretaker head of government, and parliament within twenty one days had to elect the prime minister. If it was unable to do so, the president was authorized to dissolve the

legislature.

Besides the discussion over the content of the constitution, debate took place on how it had to be adopted. Three possibilities existed: one being to adopt a constitution by parliamentary vote. Then the acting constitution and the law "On the Supreme Soviet of the Republic of Armenia" granted the right solely to the parliament.¹² A second option was drafting and adopting a constitution by the Constitutional Convention—the representative body with legislative authority, elected by the citizens solely for the purpose of elaboration and adoption of the constitution. Finally a constitution could be adopted by referendum. President Ter-Petrosyan presented his views on those options during the meetings of the Constitutional Commission on March 2 and 27, 1993 and later in his speeches at the parliament. He stated that the draft must be elaborated by the Constitutional Commission and the draft approved by the commission had to be presented for parliamentary consideration and debate, but the final word had to belong to the citizens, who had to ratify the draft by referendum and the parliament had to make necessary legal provisions, allowing presentation of the draft constitution for referendum. The president did not exclude that two drafts could be proposed for the referendum—one advocating strong presidency and another one advocating parliamentary government. The president found it inappropriate to convoke the Constitutional Convention, because the members of the parliament were competent enough to come up with the draft constitution. The president's position was supported by the Armenian National Movement (ANM) faction of the parliament, which formed a majority in the legislature after the 1990 parliamentary elections.

Other political actors like Dashnaksutyun, National Democratic Union, Democratic and Republican Parties were advocating the idea of Constitutional Convention, presenting their own *pro* arguments. According to them the Constitutional Commission's staff, as well as a non-professional parliament were not competent enough to elaborate a draft constitution. Elected in 1990 the Supreme Soviet by the mid-1990s

12 Vladimir Nazaryan—one of the authors of the Draft of six, who was supporting the idea of Constitutional Convention, stated that the acting constitution made provision for presenting to referendum the most important issues of the state, but not the constitution or draft laws.

lacked popular confidence, and in contrast a convention will have the clear mandate of the citizens. The final argument for the elections of the Constitutional Convention was that the body that had to elaborate and adopt the draft constitution, had to be not only politically neutral but also independent from the existing power institutions. The commission was headed by the president—chief executive, and the deputy of the commission—the Minister of Justice—was appointed directly by the president. Having such a composition, in the opposition’s opinion, the commission was not politically neutral and would adopt a draft favorable to the executive and the president. Consequently the opposition decided to boycott the work of the Constitutional Commission, stating that it was acting under the direct pressure of the president and would adopt the draft designed for the president. The opposition actors were advocating the election of the Constituent Assembly, that would not have its own political interests and would be able to choose and propose for the referendum a draft meeting the interests and values of the state and the nation, but not the interests of one person or one of the branches of government.¹³ For a while the president, while advocating the idea of the referendum, was proposing the following: the parliament will vote for one of the drafts—the draft of the Constitutional Commission or the “Draft of six.” The one receiving a qualified majority will be proposed for the referendum without parliamentary debate. If no draft gets a qualified majority both of them will be proposed for the referendum. In the case of the “Draft of six” being accepted, the president and the government will resign and in case the Constitutional Commission’s draft gets the majority, new presidential and parliamentary elections will take place. Still the issue was not settled till March 27, 1995 when the decision was made to have the draft constitution ratified by two thirds parliamentary majority, having to put forward for nation-wide referendum the sole parliamentary adopted version.

On April 20, 1994 the Constitutional Commission presented its new draft to the Supreme Soviet, which on June 1, 1994 had taken a decision to expand commission membership, to be supplemented by one repre-

13 In March 1993 parliament held an extraordinary session to discuss the issue of calling elections for the Constituent Assembly. 91 MPs—which was not enough—voted for holding Constitutional assembly.

sentative from each socio-political organization represented in the parliament, as well as one representative from each group, which had developed alternative constitutional drafts. This commission, which was comprised of 32 members, held 56 meetings till April 13, 1995 and was headed by then Chairman of the Supreme Soviet Babken Ararktsian, elected by the parliament to chair the commission as well.¹⁴ On July 23, 1994 the Constitutional Commission finally decided which draft would become the basis for further elaboration. It satisfied the demand of V. Nazaryan, R. Hakobyan and A. Navasardyan—authors of the “Draft of six” not to vote on their draft and voted to elaborate draft and later have it modified by the commission as a basis for further work, and finally to be presented to the Supreme Soviet. The legislature started the discussion of the presented draft on May 2, 1995. On May 12, 1995 it adopted the resolution “On the draft of the Constitution of the Republic of Armenia”, deciding to accept the draft developed by the commission and present it for referendum to be called on July 5, 1995. The draft had to be adopted, if more than half of the citizens who participated in the referendum voted for it, but no less than one third of the electorate had to participate.¹⁵ The official data on the referendum presented by the authorities, but accused by the opposition of fraud, offered the following figures: out of 2,189,804 citizens 1,217,531 participated in the referendum and 823,370—about 68 percent of participants or 37.6 percent of all eligible voters voted for the proposed draft.

The 1995 Constitution in Action: Semipresidentialism within Armenian Reality

The adoption of the Constitution underlines the next major step within the process of regime development of the Republic of Armenia. *Formally* it could be presented as a semipresidential constitution, but *political practice* had shown more signs of presidential dominance rather than signs of

¹⁴ Khachatryan, *Pervoia Konstitutsiia*, pp. 21–23.

¹⁵ At the referendum, the citizens of Armenia had to answer the following question: “Do you agree to accept the Constitution of the Republic of Armenia approved by the Supreme Soviet?”

balance in executive-legislative relations. The President of the Republic is elected by general election for five years and is not allowed to hold the office for more than two subsequent terms. The president appoints and dismisses the prime minister and the latter submits the list of government members. Within twenty days after its formation the government must present the program of its activities to the National Assembly (NA) for approval. The National Assembly—a unicameral 131-member parliament,¹⁶ within 24 hours can initiate a nonconfidence vote by one third of its members. If no action takes place or the vote is not supported, the program is approved. If a nonconfidence vote¹⁷ is passed, the prime minister presents to the president the government's resignation and the president within 20 days accepts it, while forming a new government. The government executes executive authority in the republic. The meetings of the government are chaired by the president or *per procurationem* by the prime minister, who leads the daily activities of the government and coordinates the work of the ministries.

The president signs and makes public the laws adopted by the parliament. The National Assembly adopts bills by simple majority if more than half of the MPs participate in the voting. Some decisions require a qualified majority of more than half of all the members of the NA—such as the decision on the resignation of the president or the nonconfidence vote. In case of objections and suggestions the president can return the bill for new debate within twenty-one days. The parliament can vote for the same version by a qualified majority. In that case the president has to sign and publish the law within five days. As a last measure after the consultations with the prime minister and the chairman of the NA, the president can dissolve the parliament and call for new elections. Two exemptions exist—within the first year after the elections of the NA and the last six months of the president's term in office.

The president makes major civil appointments. By the proposal of the prime minister he appoints and dismisses the Prosecutor General, four

16 The first National Assembly elected on July 5, 1995, the same day the constitutional referendum took place, had 190 members.

17 The nonconfidence vote could be initiated by the parliament also during the parliamentary session by no less than one-third of MPs or by the members of the parliament in way of initiation of the law.

out of nine members of the Constitutional Court. If the parliament does not appoint the chairman of the Constitutional Court within 30 days after its formation, the president appoints him as well. The President represents the country within the foreign relations, leads and heads foreign policy, concludes international treaties, and signs treaties ratified by the NA. He or she appoints and recalls diplomatic representatives. The president is also the Commander in Chief of the military forces and makes the appointments for high ranking military positions. By the proposal of the president the parliament makes the decision to declare war and the president makes the decision on the use of military force. Theoretically the parliament could impeach the president for high treason or other crimes. By a majority of votes it could apply to hear the opinion of the Constitutional Court. And if the parliament gets a positive opinion supported by two thirds of the members of the Constitutional Court, it can impeach the president. The president can also resign as was the case in 1998 with the first president L. Ter-Petrosyan, who held a second term in office in 1996 after elections with disputed results.

The Constitution proclaims the principle of power separation, but in fact it provides little if any means for real checks and balances. Neither does it guarantee the independent function of the branches of government. It could be viewed as a triangular structure that includes legislative, executive and judicial branches that are overshadowed by the presidential institution. The semipresidential regime founded in 1991 got its continuation in the 1995 Constitution that could be blamed for the existence and presence of pseudo-democratic political practice, especially within the period of 1995 to 1997. Within the constitutional framework two possible development trajectories could be outlined. The first one, with the president supported by one-party parliamentary majority, gave him practically unlimited power execution within almost all spheres of state politics and policy. Actually that was Armenia's political reality from 1995 to 1997, when the regime could be best described in terms of superpresidentialism with the legislative, executive and judicial branches totally subordinate to the president and political process and practice in Armenia at that period could be best described as pseudo-democratic, functioning under the guise of semipresidential constitution.

A second development path allowed certain dualism within the lead-

ership and more balanced executive-legislative relations in case a parliamentary majority did not support the presidential policy or the majority, while support for the president was rather coalition-based. The semipresidential constitution allowed a relatively smooth shift of power such as the one that occurred in Armenia at the beginning of 1998. President Ter-Petrosyan lost the support of the parliamentary majority, when about forty deputies defected from the then ruling *Hanrapetutyun* (Republic) coalition mostly towards the Yerkrpah deputy group.¹⁸ Before taking the decision to resign he had two other possibilities. The first one – dissolution of the parliament and a call for new elections, but there were no guarantees for the president that the newly elected parliament would support his policies. The second possibility supposed the coexistence or *cohabitation* of the president with the opposing prime minister supported by a parliamentary majority.

However, the first elected president Levon Ter-Petrosyan decided to resign. His resignation was mostly influenced by the contradictions that divided the governing elite over the Karabakh conflict settlement issue. On November 1, 1997 Armenian mass media published the president's article "War or Peace—the moment of earnest," presenting two major approaches toward conflict settlement—the so-called "stage-by-stage" and "package" approaches. While the president was opting for the former solution, as became clear during the Security Council meeting held on January 7 and 8, 1998, Prime Minister R. Kocharyan, Defense minister V. Manukyan, and Interior and National Security minister S. Sargsyan, were against that. On January 14, Prime Minister Kocharyan, during a meeting with journalists, accepted that there were considerable contradictions within the highest power echelons. A few days later the Karabakh president, A. Ghukasyan, also denied the appropriateness of the stage-by-stage approach, getting an implicit response from Ter-Petrosyan

18 According to the existing constitutional norms, in case of presidential resignation he is followed in that position by the Chairman of National Assembly and if that is impossible by the prime minister. After Ter-Petrosyan's resignation parliament's chairman—Babken Ararktsyan—a close ally to the president resigned from his position as well, so the prime minister—R. Kocharyan became acting president. Amendments developed in 2001 had added the Chairman of the Constitutional Court as the third person in the chain of command for presidency, after taking into account the events of October 27, 1999, when both the Chairman of the National Assembly and Prime Minister were assassinated.

via his press secretary, mentioning that the Karabakh leadership should not interfere in Armenian internal affairs. But Armenian *siloviki* (top security and military officials) had already defined their position and the only ally to the president at that time, Yerevan mayor V. Siradeghyan, resigned on February 2. The same day, the ruling parliamentary coalition “Republic” block, formed in 1995, dissolved and a majority joined the “Yerkrapah” deputies group formed in the autumn of 1997. Having nobody and nothing to cling to power with, Ter-Petrosyan resigned on February 3 and the next day the leader of the “Yerkrapah” deputies group, A. Bazeyan, already spoke on behalf of a new parliamentary majority. On February 4, 1998 the National Assembly accepted the resignation of Ter-Petrosyan and in accordance with the Constitution, new elections took place within forty days. Robert Kocharyan won on the second round of elections, which put him face-to-face with the former first secretary of the Communist party of Armenia—Karen Demirchyan, silent within Armenian politics since 1988, when he was sacked and replaced by Suren Harutyunyan within the party hierarchy. Officially, neither of the two were party affiliated, but it was generally recognized that Kocharyan had the support of Yerkrapah and a few other rather small parties and groups, while Demirchyan had the support of a newly formed protoparty called the People’s Party. With 59.49 percent of the votes Robert Kocharyan was elected the second President of the Republic of Armenia.

The Call for Constitution Redesign

Being incumbent Robert Kocharyan put the issue of constitutional reform as one of the cornerstones of his electoral platform, considering amendments as absolutely necessary. As stated by a Constitutional Court member, F. Tokhyan, there were three major fields within the process of constitutional re-design; human rights issues, interrelations between branches of government and assurance of a real checks and balances system and the redesign of the existing system of local self government. Being elected in 1998 as president R. Kocharyan on May 19, 1998 signed a Decree forming the Constitutional Reform Preparation

Committee under the President of the Republic of Armenia. That first committee under the newly elected president, staffed by 32 members, existed till July 1999. Having been formed on the principle of fair representation, it consisted of half professional lawyers, especially experts on constitutional law; the other 50 percent being representatives from different political parties present at the National Assembly of Armenia. The committee was headed by Paruir Hayrikyan—a Soviet-era human rights activist and dissident and later prominent figure on the Armenian political scene. Major issues within the committee’s activities were executed by the task group, which was comprised of seven members of the commission. Later on, when the committee continued its work in 1999, the composition changed and it was formed solely on professional grounds with sixteen members.

The committee was working closely with the European Commission for Democracy through Law (Venice Commission). Their joint meetings, aiming for the improvement of the existing constitution and liquidation of the existing gaps and controversies, started in April 2000 in Strasbourg and later continued in Yerevan and again in Strasbourg in December 2000 to January 2001. As a result of those meetings the proposals and amendments elaborated by the Constitutional Reform Preparation Committee got an expert assessment and the proposed changes were reviewed. Later concrete amendments and their justification were presented for each revised part of the Constitution. The nature of the proposed amendments, as mentioned by F. Tokhyan, allows the draft to be named a completely “new version” of the existing Constitution. It is even hard to call those changes just amendments.¹⁹ In addition to the draft elaborated by the Constitutional Committee, alternatives were presented by the Armenian Communist Party and by Shavarsh Kocharyan, then Chairman of the Standing Commission of the National Assembly for Science and Education, advocating parliamentary government. The package with proposed constitutional amendments was presented to the National Assembly in July 2001. Parliamentary debates started during the fall session, and lasted till spring of 2003 when the amendments package was proposed for referendum (in May), but failed

19 About half of the currently existing 117 articles were changed or were proposed under the new edition and about twenty new articles were introduced.

to gain the necessary majority of popular votes.

The first principal arena of the constitutional re-design had to do with human rights issues. The intended changes were based “upon the principle of the prevalence of law and constitution with a prevalent role of intrinsic human rights.” Some other related parts of the Constitution also had to be improved within the Armenian membership of the Council of Europe. Among the long list of obligations that country has to fulfill within the human rights field in order to become a CoE member, Armenia faces obligations to cancel the death penalty, adopt a law on the commissioner on human rights, i.e., to introduce the Ombudsman institution, adopt new laws on mass media, political parties, non-governmental organizations, alternative military service, accomplish judicial reform, make guarantees for a completely independent judiciary and guarantee citizens the right to appeal to the Constitutional Court.

One of the articles changed dramatically was related to the citizenship issue. While the existing Constitution does not allow Armenian citizens to be a citizen of another country, a proposed draft alternatively contained no limitations for dual citizenship. The Constitution also introduced changes related to capital punishment—not allowing it to be used in future with the exception of the cases of war.

The second major issue addressed within the amendment process was to ensure power separation and clarification of the president’s authorities, meanwhile assuring the independence of the judiciary, as well as more independence for cabinet activities, including the prime minister’s, and parliamentary activities, forging the institutionalization of the Armenian parliament and strengthening its independence. The purpose was to assure a smooth system transformation and assurance of the power separation principle as a basis for sustainable democratic development in future. Within the Armenian context the issue could be re-phrased as follows: the executive-legislative relations and relations between the president and other branches of government must become balanced and ensure checks and balance. This was to be done without altering the semipresidential framework of the Constitution, as a general agreement between the Constitutional Committee and the Venice Commission was achieved not to discuss the possibility of changes to the existing structure, as mentioned in the report after the meeting in Stras-

bourg on April 25–26, 2000. The existing institutional macro-settings are viewed by current authorities as pretty reliable, allowing major political crises to be overcome, such as those of 1998 when president L. Ter-Petrosyan resigned or in 1999 when terrorists attacked the Armenian parliament building and killed the speaker of the National Assembly, Karen Demirchyan, the prime minister Vazgen Sargsyan, both vice speakers and some other high ranking officials and members of parliament. Especially, what causes most problems are the articles that concern discrete authorities of the National Assembly, possible limits that could be set on presidential powers, the sphere of his authorities and the process of decision-making by the head of state.

In addition to those issues, another crucial set of problems concerns the process of appointing the prime minister and government as well as the judges—the issue which is also related to the problem of limiting presidential powers and creation of a more effective checks and balances system in Armenia. Some amendments were aimed at the decreasing of presidential authorities; for example, the president would no longer be able to veto all decisions of government and he or she would also lose in part the right to dismiss the majority of judges, but mostly amendments aim at strengthening branches of government, introducing more balances and checks into the system, clarifying the role of the president as head of state as well as clarifying some controversial or unclear points within the existing Constitution. Within the part of the Constitution related to the president, the following major amendments were noticeable. The draft changed the process of decision-making regarding the adoption of laws. According to the existing norms, the parliament adopted the law and the president could sign it within a twenty-one day period or he had a right to return it to the National Assembly within that period of time with his suggestions and objections and requesting new discussion. Parliament could override the veto by a majority of 50 percent plus one vote and in that case the president signed the law within five days. The proposed draft introduced the following option. The bill adopted by the National Assembly the second time is to be signed by president within five days or he could submit it to the Constitutional Court to get a conclusion if the law corresponds to the Constitution of Armenia.

Among the major constitutional amendments proposed by the Con-

stitutional Committee was the process of the appointment of the prime minister. The draft proposed by the Constitutional Committee has a completely new article that introduces changes into that process. In the case that the prime minister was not appointed by the president within twenty days or a governmental program (in the proposal “an outline of the program”) did not receive a vote of confidence, the National Assembly, after the end of that period and within two weeks, appoints the prime minister and by his proposal also appoints the government. The procedure requires an absolute majority of votes within the parliament (50 percent plus one vote). In the case of the National Assembly not appointing the government in that way, the president again has a right to appoint the prime minister and members of government. If the latter do not receive a confidence vote from the parliament, the president dissolves the parliament and calls new parliamentary elections no earlier than 30 days and no later than forty days after the dissolution of the National Assembly. Those amendments provide at least some institutional and constitutionally guaranteed mechanisms to overcome a possible crisis that could arise in different cases: for example, when a new parliamentary majority was formed as a result of the elections and its goals and policy do not correspond to those of the president. Within previous settings it depended only on the (good) will of the president to propose to the parliament the candidacy that will get a majority of parliamentary votes—as was the case after the 1999 parliamentary elections, when Vazgen Sargsyan was appointed prime minister and was backed by a solid parliamentary majority. But the system provides little incentive for the president to share power with the prime minister or parliament and that could lead to a constant deadlock that in political science is considered mostly to be a feature of a presidential system rather than of semi-presidentialism. In case of major and constant controversy between the president and parliament there are no institutional mechanisms allowing the parliament to appoint the government it will support.

Amendments proposed in 2001 granted the National Assembly an authority not just to reject or approve the nominee of the president (a kind of passive position) but prescribe a more active role in the process of forming the government and in cases when the parliamentary majority has priorities different from those of the president the proposed

amendments allow the legislature to swear into office the government of its own choice. In addition, what made the government more independent within the presented amendments was a proposed change in Article 86 that no longer requires the signature of the president for all governmental decisions.²⁰ Another provision that aimed at strengthening parliament's role was amending Article 85. According to the current Constitution the structure of the government is decided by presidential decree, but the proposed amendments made the governmental structure the subject of the law, so it could be changed by an ordinary legislative act and in case the president disagrees the existing parliamentary majority of 50 percent plus one (that supports the government) could override the veto.

Another major issue that caused constant controversy within the constitutional amendment process was and still is the issue of parliamentary dissolution by the president. Within the currently existing Constitution, the head of state is allowed to dissolve the legislature after consultations with the prime minister and parliament speaker, with two time-bound exemptions not allowing dissolution—during the president's last six months in office and the first year after parliamentary elections. Though amendments proposed in 2001 lack those two provisions they tried to clarify the dissolution process to the greatest extent possible. According to the draft, the president, after consultation with the chairman of parliament and prime minister, can dissolve parliament and call for new elections only in cases supposed by the Constitution and a way prescribed by it. That meant that in addition to the case already discussed above, the president will have constitutional rights to dissolve the parliament in the following four cases: If the government appointed by the legislature did not fulfill the budget and the program approved by the parliament. If the parliament did not deliberate within two months on a draft presented as immediate by the government. If during the regular session the parliamentary meetings are interrupted for more than two months, and finally if during the regular session the parliament is unable to deliberate and make any decision for more than two months. Those provisions would allow the president to dissolve parliament mostly in

20 The same article stated that the President may suspend a governmental decision and apply to the Constitutional Court to study its conformity with the Constitution.

the cases when there is a danger of the malfunction of the governmental system and introduce more stability for parliamentarians, making the dissolution of parliament not a process of presidential personal desire but a process that fits certain logic and arguably could prevent system malfunction.

That draft was really very positive in the sense of fostering further democratization within institutional settings, but it failed to get the needed approval. Such an outcome in a certain sense was predetermined, as neither party, pro-governmental nor the opposition, was satisfied with the draft presented for the referendum by the end of parliamentary debates. Those supporting the president were dissatisfied with the decreasing authority of the head of state, while the opposition was insisting on more substantial changes and more authority to be given to the parliament. Neither of the parties was prepared to advocate the draft at the referendum, being concerned more with the outcomes of simultaneously held parliamentary elections, rather than supporting the amended constitution draft. In addition, certain political leaders—from both camps—having ambitions for the next presidential elections (R. Kocharyan by the time of constitutional debates in the parliament already had secured his second and last allowed term as president), would prefer potentially more authority with the office of president, rather than that of prime minister or the parliament, within given conditions of underdeveloped parties and party system. By the end, after brief campaigning, the draft did not survive the referendum. Among the reasons one can mention briefly, the almost non-existent nature of the campaign, low awareness among the populus, uninterested elites that included the outgoing president and his dissatisfied supporters as well as the opposition, which carried out negative propaganda during the campaign period. The draft constitution did not survive the referendum cum parliamentary elections, under conditions, when actually no political actors in Armenia had been really interested in having it accepted.

Instead of Conclusion: The Coalition to Hoist Constitutional Amendments Flag

In the aftermath of the failed constitutional referendum and simultaneously held May 2003 parliamentary elections, three winning parties—the Republican Party, Orinats Erkir and Dashnaksutyun—that supported Kocharyan in the 2003 presidential elections and got his support at parliamentary elections, formed a governing coalition, which continued the constitutional amendment process. Coalition member-parties had signed the memorandum, which had declared that one of its major aims was to implement constitutional amendments. The memorandum also fixed portfolio distribution between coalition member parties. The parliament chairman was elected from the Orinats Erkir party—A. Baghdasaryan, and two deputy chairmen represented the remaining coalition members—V. Hovhannisyanyan was elected from Dashnaksutyun and T. Torosyan was from the Republican Party. In addition, coalition members divided chairmanship positions within the standing committees of parliament and ministerial portfolios. Dashnaksutyun got chairmanship in the NA Standing Committee on Foreign Affairs as well as being responsible for proposing three ministers for health, agriculture, and social security. The Republicans got leadership in three standing committees: one for financial, budgetary and economic issues; the second for science, education, culture and youth affairs; and third, the judicial committee. The prime minister also came from their party. Actually Kocharyan instituted a tradition, appointing the prime minister from the party that had a majority in the parliament, in 1999 to 2000 appointing as prime minister the leader of the party having a majority of seats within the parliament. Later, after V. Manukyan was assassinated on October 27, 1999 he was followed by his brother and then in May of 2000 by A. Manukyan—again the leader of the Republican Party, which had a relative majority within the National Assembly. He stayed as prime minister also after the 2003 parliamentary elections as the leader of the party that got a relative majority. In addition to the prime minister's position, Republicans were also requested to propose candidates for the positions of government chief of staff, ministers of trade and economic development,

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environment, energy, transportation and communication, finance and economy, territorial governance. Orinats Erkir got two standing committees (for social, health and environment issues; defense, national security and internal affairs), as well as three ministry portfolios (urban building; education and science; culture, youth affairs and sport). Three remaining ministry portfolios – (defense, justice and foreign affairs) had to be determined and appointed by the President.

The new stage within the constitutional amendment process was carried out mostly through the newly formed temporary parliamentary committee on European integration. It also had to address the issues related to the obligations Armenia had been assigned within its membership of the Council of Europe. The committee was headed by the deputy chairman of the parliament, T. Torosyan, and the commission involved one representative from each party represented in the parliament.²¹ Within one year of parliamentary elections, coalition parties had developed their draft of constitutional amendments and presented it to the parliament in August 2004. In addition, two more drafts were developed. First, by one of the opposition leaders A. Sadoyan, while the second came from the parliamentary party, the United Labor Party (ULP), headed by G. Arsenyan. The former of those two drafts, following tradition set by the opposition in the early 90s, advocated a significant increase in parliamentary authority and made the republic president almost a figurehead, while the latter draft presented by the ULP, according to the Venice Commission, ensured “a better balance of powers by strengthening the government and the National Assembly’s position.”²²

21 Representatives of the opposition parties/parliamentary factions boycotted the activities of the temporary commission as well as the activities of the National Assembly as a whole, requesting implementation of the Constitutional Court decision related to holding a referendum of confidence. After the disputed presidential elections, in April 2003 the Constitutional Court adopted a decision, according to which the decision of the Central Electoral Commission that announced Kocharyan elected president was valid, but in another part of the decision, the Court recommended the president and parliament to consider the possibility of having a referendum of confidence within a one-year period.

22 European Commission for Democracy through Law (Venice Commission), *Interim Opinion on Constitutional Reforms in the Republic of Armenia*, Strasbourg, December 6, 2004, Opinion no. 313/2004. The opinion was adopted by the Venice Commission at its 61st Plenary Session, Venice, December 3–4, 2004, on the basis of comments by: Mr. Aivars Endziņš (Member, Latvia), Mr. Kaarlo Tuori (Member, Finland), Mr. Owen Masters (Expert,

In spring of 2005 the National Assembly started debates over the draft proposals of amendments to the Constitution of Armenia with a decision taken on May 11, 2005 to approve, upon first reading, the draft proposed by the coalition and to make it a basis for further deliberation. Two other drafts became part of Armenian political history: Sadoyan's draft, receiving 13 votes for, with 36 abstentions and no votes against, and a ULP draft getting 19 pro votes with 29 abstentions and again none against.²³ Meanwhile, following the National Assembly's decision, the Venice Commission issued a press release, supported by the opposition parties in Armenia, where the members of the commission's Working Group on Constitutional Reform in Armenia expressed "their deep dissatisfaction" with the text adopted upon first reading, stressing that the commission's suggestions presented within the interim report did not get their place in the draft, "notably those concerning the balance of powers between the President and the Parliament—which implies a stronger role of the National Assembly—, the independence of the judiciary and the elections of the Mayor of Yerevan (instead of his appointment by the President)." It was suggested the amendments be "drastically revised, before they undergo the second reading" by the commission member from Finland, Kaarlo Tuori.²⁴ That means that the battle for the constitution (that was believed to be put forward for the referendum in autumn of 2005) will still go on. The coalition has to take into consideration the Venice Commission's position, while it simply ignores opposition requests, which have no influence within parliamentary decision-making process. On the other hand, its position might be advocated via the Venice Commission activities, as the opposition points and those of the Commission do overlap, stressing a more accountable presidency, more autonomy for the branches of government and local government. Meanwhile, the commission's suggestions are less radical, more realistic, and acceptable for the coalition, providing a basis for negotiations over the existing

United Kingdom), and Mr. Bruno Nascimbene (Expert, Italy). CDL-AD(2004)044 [[http://www.venice.coe.int/docs/2004/CDL-AD\(2004\)044-e.asp](http://www.venice.coe.int/docs/2004/CDL-AD(2004)044-e.asp) (valid as of January 29, 2007)].

²³ RFE/RL *Newsline*, May 12, 2005.

²⁴ Venice Commission, *The Draft Armenian Constitution Needs Drastic Changes*, Press Release, Strasbourg, May 27, 2005.

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draft and its improvement, and further parliamentary deliberation.

Summing up the semipresidentialism genesis in Armenia, the table below represents some major steps within its development. The president, be it Ter-Petrosyan or Kocharyan, for the majority of his time in office enjoyed some type of majority within the parliament, but its nature varied from an absolute majority enjoyed by the first president till February of 1998 to a coalitional majority, formed in the aftermath of the 2003 parliamentary elections. Current constitutional amendments proposed and supported by the coalitional majority within parliament obviously will not introduce changes in the semipresidential regime in Armenia, but the issue on the agenda is whether either of those amendments will allow the creation of a more unbiased governance system, with more effective checks and balances and a more independent parliament and judiciary, or if those changes will become a guise for the system with a strong president, and another outbreak of delegative democracy.

Table 12.1.

	1991 - 1995	1995 - Feb. 1998	Feb. 1998	Feb. 1998 - May 1999	May 1999 - May 2000	May 2000 - May 2003	May 2003 - up to now
Presidential majority in the parliament	Yes, ANM	Yes, majority within "Republic" quasi-coalition block		Yes, relative		Yes, relative	Coalition of three parties
			No, newly formed Yerkrpah majority in the National Assembly		No, Unity block. An alliance between Republican Party and the People's Party of Armenia		