



Yerevan, 28 April 2021

## EPDE Policy Alert #8

### European Institutions “Broadly Welcome” Armenia’s Proposed Electoral Reform

*On April 21, 2020, the Venice Commission of the Council of Europe and OSCE/ODIHR published their [Draft Joint Urgent Opinion](#) on an electoral reform legislative package that is expected to pass ahead of the announced early parliamentary election.*

It has been a busy [three years](#) in Armenia regarding electoral reform. The National Assembly has been able to pass changes to [municipal elections](#), [political party regulation](#), and eliminated the remnants of [district seats](#). Local EPDE affiliates Transparency International Anticorruption Center (TIAC) and Helsinki Citizens’ Assembly – Vanadzor (HCAV) have played pivotal roles in advancing the reforms.

April 21, 2021 marked another major milestone, as the Venice Commission (VC) of the Council of Europe and OSCE/ODIHR published a Draft Joint Urgent Opinion, providing their assessment and further recommendations concerning the most ambitious changes to date. [Bill C-894](#) makes wide changes to the Electoral Code, as well as to associated sections of the Criminal Code, Code on Administrative Offenses, the Labour Code, and the Law on Public Service.

The review is a voluntary process, which the Armenian government [officially requested](#) on March 4, 2021, in order to engage international expertise. Many of the changes derive from past recommendations made by VC/ODIHR, reflecting international best practices that had been left out of previous iterations of the law.

#### Understanding the Urgency of Eliminating District Seats

While it is best practice for election regulations to not be changed within the year immediately before an election, the Joint Urgent Opinion comments on the fact that district seats were removed in a bill that passed on April 1, 2021, noting that it followed many years of consultation on the issue and that the change “does not seem to have a major impact either on the capacity of the electoral administration to organize such elections, or on the understanding of the procedures by the voters.” Though the President refused to sign the law, he did not question its constitutionality. After a 21-day period, it was signed by the Speaker of the National Assembly and is now in effect, meaning that it would apply to the election expected to take place on June 20, 2021.

#### Facilitating Coalition-Building

If no single party receives a majority of the seats at the conclusion of the first round of the election, a short period of time is allotted for parties to come together to form a governing coalition, together controlling a majority of the seats. The proposed changes would extend



this period from 6 to 14 days. Although it is still considered short by international standards, the Constitution would need to be amended to extend it further. Constitutional amendments have been out of the scope of the electoral reform effort at this time.

Also, previously, a maximum of only three parties could come together to form a coalition. Following a previous VC/ODIHR recommendation, this limit has been removed to allow governing coalitions of four or more parties, reducing the likelihood that a second-round election will be held to establish a governing majority.

### Fine-Tuning the Minimum Electoral Threshold

Currently, the minimum electoral threshold to receive seats in Parliament is 5% for political parties and 7% for electoral alliances of multiple political parties. Bill C-894 would reduce the former figure from 5% to 4%, which was welcomed in the Joint Urgent Opinion as “a step towards a more pluralistic composition of the parliament”. This change was first proposed in 2018.

However, the threshold for electoral alliances was a different story. If multiple political parties contest the election with a single combined candidate list (note that a pre-election electoral alliance is different from a post-election governing coalition), they are treated differently than political parties presenting their own individual list. In 2018, it was recommended that the threshold also be lowered, from 7% to 6%. Bill C-894 departs from that position and instead raises it. For electoral alliances of two political parties, it would be raised to 8%; if the electoral alliance consists of three parties, it would be 9%; and if it is four or more parties coming together, it would be 10%. The VC/ODIHR reiterated a previous recommendation that thresholds for individual parties and electoral alliances be harmonized to the same number.

The Joint Urgent Opinion stated that the reason for the increase was not clear. Discussions on the topic among the Parliamentary Working Group on Electoral Reform pointed to creating an incentive for political parties to permanently consolidate and become more institutionalized, instead of maintaining loose temporary associations only around election time.

An additional provision in Bill C-894 would lower the threshold to 2% in the event that the initial calculation would give one party two thirds of the seats. If this provision had been in place for the December 2018 election, three additional political parties would have been represented in parliament. The Joint Urgent Opinion recommended simplifying the legal language for this addition. The way it had been drafted included several layers of conditionality for the provision to be triggered.

### Less Bonus Seats

Though nominally proportional, Armenia’s electoral system actually diverges from a proportional allocation of seats in [several ways](#). For example, if one party would receive more than two-thirds of the seats, an “effective opposition” clause waters down the supermajority by granting additional seats to the opposition parties that did pass the threshold. This was the



case in 2018, for example. The previously-mentioned provision to lower the threshold to 2% (in this situation only) would reduce the need for this distortion.

The “stable majority” bonus seats are also being scaled down. There is currently a provision that would bump up the largest party from 50% to 54% through bonus seats to ensure a stable majority. The proposed changes in Bill C-894 now define a “stable majority” as 52%. There was a desire to eliminate the provision entirely, but it is entrenched in the Constitution, which was not in the scope of the current reform.

The four seats allocated to ethnic minorities are also structured so that they give bonus seats to the largest parties. In 2018, the governing My Step Alliance received all four of these seats. The VC/ODIHR reiterated a past recommendation that this representation be accounted for without distorting the proportionality of the seat allocation among political parties. However, no changes are being proposed to this formula.

### Regulating the Campaign Period

The most comprehensive proposed changes relate to equalizing the playing field between political parties during the campaign period. Some highlights of the proposed changes include:

- Extending the official campaign period itself so that it covers an additional seven days, beginning immediately after the nomination deadline.
- Third-party political expenditures (money spent by organizations not officially acting in tandem with political parties) will be regulated and limited by the proposed changes.
- Political advertising will need to identify itself as such, noting which political party (or other entity) has commissioned it, including online ads.
- Crowds of people and vehicles outside voting places may be dispersed by police to avoid intimidation of voters.
- Broadcast television and radio will be subject to an impartiality principle, similar to the former FCC “fairness doctrine” that used to apply in the United States.
- Public television will facilitate the broadcasting of debates that are open to all parties contesting the election.
- Electoral deposits for political parties are reduced; they are returned to political parties that receive at least 2% of the popular vote, a reduction from 4%.
- Administrative sanctions (fines) and criminal liability are introduced for an array of campaign violations, including circumventing funding rules and the misuse of administrative resources.

While many of these measures were applauded by the reviewers, in several instances, it was recommended that more precise language be used to provide clarity. Most notably, sanctions against pre-meditated disinformation campaigns were a sensitive issue.



## Will These Measures Apply to the Coming Election?

On April 25, 2021, Prime Minister Nikol Pashinyan tendered his formal resignation, triggering the process that is expected to lead to an early election on June 20, 2021. While it is possible that the proposed changes, based on the recommendations received, obtain the necessary three-fifths majority in Parliament in the coming days and weeks, it appears that the President will be hesitant to sign them into law. After 21 days, the Speaker of Parliament would sign them into law in his place; however, that timeline gets extremely close to the announced election date.

Originally, it was proposed that at least some of the proposed changes would come into effect for this election, with the rest phasing in at a later time. Whether that will be possible remains to be seen. With the ball back in the ruling party's court, there are still some concerns that even the measures applauded by VC/ODIHR might be left out of the final version of the bill. Given compressed timelines, if that does happen, civil society could be left in the dark as to the justification for any potential reversals.

Author:

Harout Manougian

*This issue is part of a series of EPDE Policy Alerts to inform relevant stakeholders and decision makers in the European Union, the Eastern Partnership, and globally about reforms in the field of electoral legislation and administration. Please feel free to forward and share our analysis.*

More Election and Policy Alerts can be found [here](#).

More information also available at [www.epde.org](http://www.epde.org)

*EPDE is financially supported by the Federal Foreign Office of Germany and the European Union. The here expressed opinion does not necessarily reflect the opinion of the donors.*



Federal Foreign Office

