

The Sources and Causes of Constitutional Reform in the South Caucasian Republics

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Abstract

The three republics of Azerbaijan, Armenia, and Georgia ratified their first constitutions as independent countries in 1995 and amended them at least 2 or 3 times in the subsequent years. The simultaneity of these amendments with elections and transitions of power has made their political effects broader and more noteworthy. Taking this into account, the main research question of this paper is, what has been the most important factor leading to constitutional amendments in these South Caucasian republics? The comparative analysis of this issue illustrates both homogeneities and heterogeneities among these republics, and the same may also be observed in other developing countries. To answer the main question, the context of reform, especially the political atmosphere, the main actors, and beneficiaries of reform must be taken into account and analyzed, as well as legal and political consequences of each amendment. The main hypothesis of this article is that in all three republics, the main reason for constitutional amendment, both in presidential and parliamentary forms, has been to design a mechanism to prevent the circulation of ruling elites. The comparison of these three republics shows that these amendments have not resulted in improvement of democracy in these republics. This research uses a descriptive-analytical method.

Keywords: Armenia, Constitutional Amendments, Republic of Azerbaijan, Georgia, Elite Circulation, Power.

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Introduction

Defining reform as a gradual evolution to preserve the original structure, rejecting the idea and program of reform in the Soviet era caused numerous crises within the system, and led to the demise and dissolution of the Soviet Union. With the collapse of the previous system, the member states of the Union entered a new psychological and environmental atmosphere in which, despite the existence of Soviet legacies, they started to reproduce new legal, administrative, cultural, political, economic, social, and even military structures, from within the old ones. In each state, in fact, in accordance with the political culture, economic and living conditions, elites' interests, individual and collective rights and freedoms, foreign relations, partisan and political pluralism, and the state-specific challenges and events, unique movements emerged that amounted to constitutional amendments. This article focuses on studying the evolution of basic rights and political entities of these republics and analyzing the reasons for transformation of their constitutions.

In any political system, two distinctive structures can be identified: constitution-based structures, and actual structures that define the real rights of people. For example, the constitution of the Soviet Union was a cover-up for the party's rule over the country. The first and the second constitutions of the Soviet Union, written and codified during the early days of the revolution, were not representative of the reality of the politics of the party and the real pattern of power (Koolae, 2001: 117). In 1995, after the collapse of the Soviet Union, all three republics of the South Caucasia ratified their first constitutions. In their era of independence, all three republics amended their constitutions two or three times, and these amendments have not only affected their fundamental rights and political entities, but also had broad and noteworthy political consequences due to their simultaneity with periods of transition in power or elections.

Along with the main question of the study, a secondary question will be answered in this research: "What are the amendments to the first constitutions of these republics and what are the political developments that coincided with them?" The geographical scope of this research is the three South Caucasian Republics of Azerbaijan, Armenia, and Georgia. Temporally, this research focuses on the period after the dissolution of

the Soviet Union in December 1991 and up to 2018. Subject-wise, this is an interdisciplinary politico-legal study

Politico-Legal Transformations in Three South Caucasian Republics

In mid-1989, the English writer Timothy Garton Ash wrote an article on the broad and foundational changes that was under way in Poland and Hungary. On the one hand, these were not like other traditional revolutions, and on the other, they were something beyond reformist movements. There was a transition from one kind to another under way, and Timothy Garton Ash described it by combining “reform” and “revolution” to get “refolution”. During the months following the publication of this article, more countries got involved in this process and, in most cases, transitions were bloodless instead of conventional revolutions similar to those of France, US, Russia, and China. After the collapse of the Soviet power in the early 1990s, the surviving Soviet republics, too, experienced important and unprecedented changes. Economic, political, and legal transitions in these republics were completed not with violent revolutions, but through reform of the existing entities (Grossman, 1997: 45-48).

Upon initial investigation, the rich and tumultuous history of the Caucasus riddled with an abundance of complexities leaves researchers bewildered. Throughout this vast territory, dozens of tribes each comprised of different races and ethnicities cohabit while maintaining their unique cultures and customs (Roosta, 2015: 229). In the 20th Century, the formation of the Caucasian Independent Republics took place when nationalistic movements were at their peak around the world. The Caucasus was amongst the regions heavily influenced by such movements (Koolae and Nezami, 2019: 459).

After all, article 72 of the Soviet constitution of 1977 had emphasized the right of every republic to freely leave the Union; this article was used in the process of Soviet Union’s collapse. After separation from the Union, the republics joined a new discourse of constitutionalism and started to compile new democratic constitutions. After their independence, one of the fundamental issues the three South Caucasian republics were facing was the process of preparing, codifying, and ratifying a new constitutional framework. Studying the constitutional changes in each country alongside the simultaneous

developments in the political arena will clearly illustrate that the interests of dominant political actors are the most important factor in most legal developments. Here three levels of pre-reform, process and nature of reform, and post-reform are studied to offer a clearer illustration of the context, process, nature, and consequences of reform in each of these republics.

Politico-Legal Changes in the Republic of Azerbaijan

Following the independence of Azerbaijan, fundamental reforms in legal and judiciary systems of the country were considered. On 12 November 1995, the new constitution was approved in a referendum and on November 25th of the same year, it was passed by the national assembly of the Republic of Azerbaijan. The document has been drafted in 5 sections, 12 chapters, and 158 articles (Constitutional Court of the Republic of Azerbaijan, 2016). The 1995 constitution of the Republic of Azerbaijan has been amended three times on 24 August 2002, 18 March 2009, and 26 September 2016 through referenda.

Heydar Aliyev's Term: Constitutional Amendments for Transferring Power to Ilham Aliyev

On 12 November 1995, a referendum on the new constitution of the Republic of Azerbaijan, proposed by a committee headed by Heydar Aliyev, and the parliamentary elections of the country to elect 125 members of the national assembly were held. The results heavily favored the New Azerbaijan Party¹ headed by Heydar Alyiev², and the new constitution that granted an unprecedented amount of power to the president was also approved by 91.9% of the votes (Europa, 2011: 747). Thus, the centralized military-presidential foundation of the Republic of Azerbaijan was established.

On 22 June 2002, President Heydar Alyiev proposed 39 amendments on 23 articles of the constitution. Two of the most

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1. The establishment of the party was a result of the events that happened in the country after 1988; it was also due to the famous "Appeal of 91 Intellectuals", a group of intellectuals and political activists. After Heydar Alyiev's death, his son Ilham Alyiev took the head seat of the party. In the last parliamentary elections in 2015, this party won a landslide victory, taking almost half of the seats (Bagirova, 2015).
 2. The Azerbaijani Popular Front Party, headed by Abulfaz Elchibey, that experienced successive failures and lost almost a quarter of the Azerbaijani territory, had previously left the political arena (Koolae, 1995: 176).

important aspects of reform were, first, to transfer the executive power from the head of the National Assembly to the Prime Minister, who is appointed by the President, in case the President is not able to perform his/her duties, and second, to replace the two-thirds vote requirement of the presidential elections with a majority requirement. The first amendments, therefore, were finalized on 24 August 2002, seven years after the constitution passed. One of the most important consequences of the amendment was the preparation of the stage for Ilham Aliyev¹ to become first the Prime Minister and then the President of the Republic of Azerbaijan.²

Ilham Aliyev's Term: From Amendments to Extend His Presidential Terms to Amendments for Expanding the Presidential Power

In 2008, Ilham Alyiev was elected to presidency for the second time in elections the atmosphere of which had been approved by International organizations (*International Crisis Group*, 2010). After a while, Ali Ahmadov, the executive secretary of Ilham Aliyev's New Azerbaijan Party proposed the removal of the "two-term limit of presidential service" act.³ In the referendum, 29 out of 158 articles of the constitution were changed; the most important of which was about the limitation of presidential terms. In 2009, the Venice Commission issued a report assessing these amendments and suggested that some of the amendments should be welcomed as positive and progressive steps. At the same time, the commission expressed its concerns regarding some changes, especially the removal of the two-term limit for presidency (Venice Commission, 2009). As a result of the amendment, Ilham Alyiev was able to sign up for his the third and fourth terms in office.

On 26 September 2016, the third constitutional referendum was held on 29 different amendments, the most important of which were

1. On August 4th, the National Assembly approved the appointment of Ilham Alyiev as Prime Minister. Two days later, Artur Rasizade took over the duties of Prime Minister so that Ilham Alyiev could prepare for the election. At the beginning of October, it was announced that Heydar Alyiev had officially stepped down in favor of his son (Europa, 2011: 748).
2. The 5th presidential election was held in the Republic of Azerbaijan in 2003. According to official results, Ilham Alyiev was elected as the 4th president of Azerbaijan with 79.5% of the votes.
3. Opposition leaders announced their support for boycotting the referendum (Europa, 2011: 749).

extending the presidential term to seven years, creating two new president-appointed vice president positions, transferring some of the Prime Minister's authorities to the two new vice presidents, and granting the President the authority to dissolve the parliament (Radio Free Europe/Radio Liberty, 2016). Thus, Ilham Alyiev's fourth term in office began in 2018 owing its legality to the 2009 amendments and its strengthened power to the 2016 amendments. The 2018 elections were boycotted by opposition parties that condemned Ilham Alyiev for his dictatorship and suppression of opponents (Bagirova, 2018).

Political-Legal Changes in Armenia

The historical development of Armenian politics points to a historical and non-evolutionary movement from relying on allocative resources limited in time and space (such as castle-holding, landownership, and armed forces) toward authoritative resources (such as legislation, divinity, mediation, lobbying, and interpretation) and newer forms of allocative resources (such as endowment, money, and commerce) that are unlimited both temporally and space-wise (Aghajari and Mazinani, 2017: 239).

Armenia's declaration of independence that was completed in 1991 with articles regulating the presidency, the Soviet Union, and the government structure was generally treated as the constitution. Even after the dissolution of the Soviet Union, this document was considered the source of fundamental rights in the country until 1995, when their independent constitution was approved. On 12 May 1995, during the Levon Ter-Petrosyan administration, the new constitution was ratified (*The Project on Constitution Writing and Conflict Resolution (PCWCR)*, 2004). With the establishment of a presidential system in Armenia, the President was placed on top of the country's political structure and the Prime Minister (whose appointment was suggested by the President and approved by the Parliament) took over the executive tasks. Ter-Petrosyan resigned in February 1998 and Robert Kocharyan won the snap election.

Kocharyan's 2005 Reforms and Transition to the Semi-Presidential System

Kocharyan's first attempt in amending the constitution on 25 May 2003 was not successful due to low participation of people. However,

on 27 November 2005, during Kocharyan's second term, the constitutional amendments were approved in a referendum. The new constitution was designed to reduce presidential authorities, emphasize civil rights, expand on the previous rights and freedoms, and obligate the government to take certain steps on these issues. In the 2008 elections, Kocharyan supported Sargsyan, his last Prime Minister. Sargsyan won the election with 52.82% of the votes and Levon Ter-Petrosyan, his rival, got only 21.51% (*International Foundation for Electoral Systems, 2008*).

Sargsyan's 2015 Reforms: Maintaining Power in a New Framework

The Republican Party of Armenia (HHK) gained 69 out of 131 seats of the unicameral National Assembly in May 2012 elections (Azgayin Zhoghov) with a 60% voter turnout (*International Foundation for Electoral Systems, 2012*). During the last years of his presidency, Sargsyan, the head of the HHK, supported and adopted reforms that, after their implementation in 2017 and 2018, led to an important shift in Armenia's political structure and changed the system from semi-presidential to parliamentary. Not long before leaving office, Sargsyan finalized the draft of reforms aiming to strengthen the parliament, make the presidency a ceremonial office, and increase the authorities of the parliament. The Armenian Republican Party, the Armenian Revolutionary Federation, and the Prosperous Armenia Party voted in favor of these changes while the Armenian National Congress, the Heritage Party, and the Orinats Yerkir (Lawful Country) Party voted against (*Venice Commission, 2014: 2*).

Sargsyan, who had officially announced he will not return to politics and is not looking to gain power as Prime Minister, surprisingly became the Prime Minister after leaving the ceremonial presidential office. However, he was forced to resign due to public pressure and protests; thus, the Karabachians were removed from the Armenian political scene (*CCES, 2018*).

Politico-Legal Changes in Georgia

Shevardnadze's Term: Ratification of the Constitution

Georgia has faced many challenges since its independence from the Soviet Union. Some of these challenges were inherited from the

Soviet era and some, like political instability, disintegration, separation, and insecurity, emerged in the era of independence (Sazmand et al., 2018: 141).

On 24 August 1995, the Georgian parliament ratified the constitution for the new independent state (The Embassy of Islamic Republic of Iran in Tbilisi, 2012). In the 1995 constitution, the presidential pattern of government and the balance of power were in favor of the president. In 1999, the analysis began to reform the main laws of the Georgian state. In the same year, election laws were also subjected to important changes. The ruling party increased the threshold of election to 7% with the reform in election laws since previous experience proved such acts to be beneficial (Godoladze, 2013: 444). In November 2003, a referendum regarding the decrease of parliament seats from 235 to 150 for the next election in 2008 was held along with the parliamentary elections; 90% of the votes were in favor of this change (Müller, 2016).

Saakashvili's Reforms: From Increasing the Presidential Powers in 2004 to Decrease of which in 2010

Due to the famous Rose Revolution, parliamentary and presidential snap elections were held in Georgia; Saakashvili won the election with 96.3% of votes with 88% voter turnout (Europa, 2010: 1922). After the election in January 2008, Saakashvili faced the same protests and demonstrations Shevardnadze had experienced in 2003 (Koolae, 2010: 213). The constitution commission was ordered to prepare a new draft for the constitution. In 2009, during Saakashvili's term, the second wave of reforms started and consequently weakened the president's position once again. Some of the prominent authorities were transferred to the parliament and the cabinet – the latter was appointed by the Prime Minister.

In its 2009 report, the Venice Commission concluded that the presidential system of Georgia is in transition toward a system in which the executive branch would be answering to the parliament (Venice Commission, 2010: 6). Due to the reforms, the United National Movement Party headed by Saakashvili was not able to maintain its power and lost the parliamentary elections in 2012 and the presidential election in the following year.

The Attempts of the Ruling Party to Complete the Transition Towards a Parliamentary System

In 2012, after the Georgian Dream Party took the power from Saakashvili and his party, constitutional amendments were once again getting attention from the new elite. The constitutional amendment that was one of the main election promises of the Georgian Dream party in 2016 parliamentary elections was approved in the parliament on 26 September 2017 despite the attempts of some minorities, namely Saakashvili's party, to boycott the voting (Agenda, 2017). Thus, the Georgian Dream Party successfully placed the parliament at top of the Georgian political structure.

Reasons for and Motivations behind Reforms

a) Reasons for and Motivations behind 2002 Reforms in the Republic of Azerbaijan

In the final year of Heydar Alyiev's second presidential term (2002), one year before his death, the first wave of constitutional reforms (discussed above) were proposed by him and carried out. A considerable part of these reforms was focused on harmonizing with the values and regulations of European organizations and multilateral agreements. Due to geopolitical reasons and the issue of energy security,¹ the West was not interested in the advancement of reform in Azerbaijan; therefore, external factors did not have a salient role in these reforms. Thus, among external, social, and political factors, the political element is the main factor in 2002 constitutional reforms since Heydar Alyiev was trying to transfer power to his son through these amendments.

b) Reasons for and Motivations behind the 2009 and 2016 Reforms in the Republic of Azerbaijan

The role of four elements of obligations and external pressures, civil society and political pluralism, the economic factor, and the political factor must be analyzed. With the 2009 reforms, the European Council

1. Energy security has some important aspects. The European Commission issued a very important document in 2009, "**The Executive Plan of Energy Security and Solidarity of the European Union**", in which it directly mentioned Azerbaijan as of the main partners of the plan (Sazmand and Kavianifar, 2015).

expressed dissatisfaction regarding some changes, namely the removal of the presidential limit which was labeled as a "violation of democracy" (Europa, 2011: 749). On the other hand, development of legal rights and freedoms was praised; "Some amendments, undoubtedly, constitute important improvements as compared to the existing Constitution and they must be welcome", the Venice Commission said in its report (Venice Commission, 2009). In 2009, the Republic of Azerbaijan joined the Eastern Partnership Initiative of the EU. Since then, however, Azerbaijan's willingness to converge with Europe has declined, and this is reflected in the few agreements signed between the two.

Regarding the civil society and political pluralism factor, Reporters without Borders have accounted that during Ilham Alyiev's first term as president, the Freedom of Press Index declined in Azerbaijan and its rank dropped from 113 in 2003 to 150 in 2008. In his second term, simultaneous with the 2009 reforms, the index declined once again to 156 in 2013, and consequently to 163 in 2016. Opposition parties had no significant position in the political scene of the country, losing more seats to Ilham Aliyev's New Azerbaijan Party in every election.

Regarding the economic factor, massive amounts of oil revenue helped Ilham Aliyev increase his power, and also increased the dominance of elite and commercial networks. One thing to note about the role of the economy in the process of these changes is that rather than being the main reason for or motivation behind constitutional amendments, it is a predisposing or facilitating factor in attracting social support for such authoritarian trends and maintaining the status quo. According to the International Crisis Group, Ilham Aliyev's authoritarian trends started after 2005 when the parliament was under the control of the New Azerbaijan Party and the government started serious suppression of opposition. Since then, Ilham Aliyev launched extensive political changes. Amongst, the arrest of Insanov, one the main Yarazi leaders, was the symbolic end of clans' influence on Azerbaijan's politics. Yarazis and Nakhchivanis still held some important positions, but individual loyalty and close relations with the President became more important than local and regional affiliations (International Crisis Group, 2005 and 2010). These clues demonstrate that the 2009 constitutional reforms were part of a political trend that started in 2005 and peaked in 2009 with the removal of presidential

limits. The 2016 reforms provided the President with even more power. It can be concluded, therefore, that there was a political factor behind all 2002, 2009, and 2016 reforms with a focus on maintaining and strengthening Ilham Aliyev's power.

c) Reasons for and Motivations behind 2005 and 2015 Reforms in Armenia

Unlike the Republic of Azerbaijan, Armenia has a long history in partisan activities and different parties are still active in this country. However, the Republican Party has always been dominant in the political scene. During the rule of the Republican Party, two sets of constitutional reforms were carried out in 2005 and 2015 that transferred some authorities from the judicial branch to the parliament and officials who responded to the parliament. The main actor in the 2005 reforms was Kocharyan.

In spite of the positive attitude of Armenia towards convergence with European values, the external factor should not be considered the main reason; it can, however, be viewed as setting the ground for reform and coordination with European values, which, due to alignment with the interests of the political elite, took a practical form at the time of the transition of power.¹

As for the ties between civil society and political parties, it is important to note that although many Armenian citizens identify as European,² the public movements in the country are generally organized by political parties rather than NGOs. However, opposition parties were unable to carry out their plans for the constitution in 1995, 2005, or even 2015. The Republican party has always been dominant in the political scene; the elections of Kocharyan and Sargsyan as well as successive victories in parliamentary elections illustrate the importance of this party in the process of political change

1. In the National Security Strategy Document of Armenia, one of the high documents of the country, participation in European organizations has been emphasized. The 2005 constitution draft was prepared under the supervision of the European Council through frequent consultations with the Venice Commission.

2. According to the 2005 survey of Armenian Notational and International Studies Center, two of three Armenians believe that Armenia should join the European Union in order to become more democratic, safer, and more prosperous (Radio Free Europe/ Radio Liberty, 2005). Civil organizations, however, have not been very active in the political domain of the country so far.

in Armenia. Thus, the ruling party and presidents of the time were the most important players in the political reforms, and maintaining their own power was the most important motivation in this regard.

d) Reasons for and Motivations behind the 1999 and 2003 Reforms in Georgia

Shevardnadze, a member of the Union of Citizens of Georgia Party, with whose management the 1995 constitution had been finalized amended the election law in 1999 and attempted at least once to carry out extensive constitutional reform by 2004. Most analysts considered the 1999 reform in election law a completely political act in favor of the ruling party. The amendment was enforced the same year and Shevardnadze's own Union of Citizens of Georgia Party benefited the most. It appears that the ruling party carried out this amendment in order to strengthen its position in the parliament. Shevardnadze's second attempt for constitutional amendment in 2001 confirms this conclusion. This time he tried to amend the constitution in order to revive the position of Prime Minister and prepare the ground for increasing the power of the President; however, he was not successful.

e) Reasons for and Motivations behind the 2004, 2009 and 2017 Reforms in Georgia

A little after the victory of the Rose Revolution and presidency of Saakashvili, the candidate of United National Movement Party, the Georgian constitution underwent amendments. The two sets of reform at the beginning and end of Saakashvili's presidency were opposite in nature. The first one, carried out just after his election, increased the presidential power, while the second one, carried out by Saakashvili in challenging conditions in 2010, decreased the presidential power and increased the power of parliament. There were no external, economic, or NGO-related factors in the process; therefore, the political aspect is the only noteworthy factor. In the course of the 2004 reforms, Mikhail Saakashvili, Nino Burjanadze and Zurab Jvania were important actors and respectively took over the positions of presidency, speaker of the parliament, and Prime Minister following the amendment. All three were members of the United National Movement Party, which had taken control of the parliament in the elections, too (Muskhelishvili, 2005: 49).

Saakashvili faced many challenges in the course of his second term. In such a challenging environment, he established the State Constitutional Commission and started another extensive constitutional amendment in 2010; consequently, the presidential system was replaced with the semi-presidential system. However, considering the failure of his party and him in parliamentary and presidential elections, he was not able to realize his political goals.

The Republic of Azerbaijan has overall moved towards a centralized power. Different factors were involved in this shift including the rentier government, the situation with the political parties, and political organizations, but the main and strongest drive for it has been the political interests at the highest level of power. Armenia has had a linear transition towards institutionalization and consolidation of the partisan system while Georgia has experienced a sinusoidal transition to the parliamentary system due to its unstable political system. These shifts, however, have not improved their overall democracy indices. In all three countries, the motivation to keep the ruling elite in new legal structures has turned the constitutional amendment into a way to bypass the previous laws and prevent the circulation of elites rather than be a way of improving democracy.

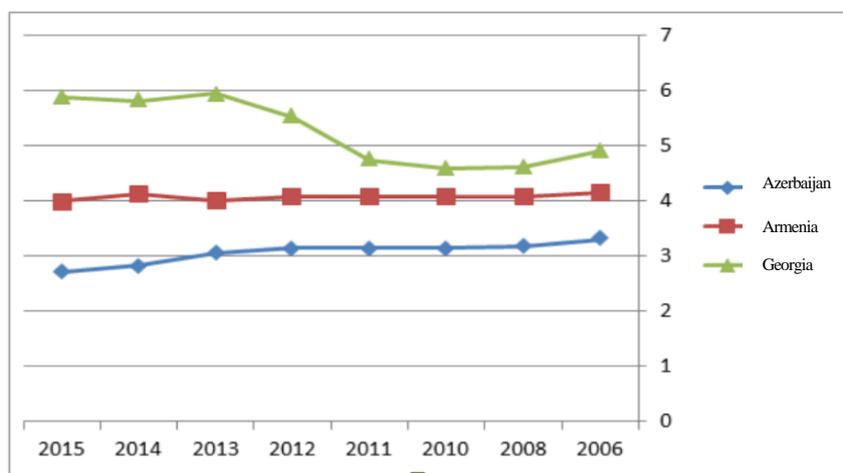


Fig. 1. Democracy Index for Azerbaijan, Armenia, Georgia, Selected Years
 Source: Economist Intelligence Unit, 2016.

Table 1. The democracy Index for Azerbaijan, Armenia, Georgia, 2015

Rank	Armenia	Azerbaijan	Georgia
	116.00	149.00	82.00
Overall score	4.00	2.71	5.88
Electoral process and pluralism	4.33	0.50	8.67
Functioning of government	2.86	2.14	4.29
Political participation	4.44	3.33	5.56
Political culture	2.50	3.75	5.00
Civil liberties	5.88	3.82	5.88
Regime Type	Hybrid	Authoritarian	Hybrid

Source: Economist Intelligence Unit, 2016.

Conclusion

In the Republic of Azerbaijan, the presidential system along with the rise of available oil resources and lack of public control over them have constantly prevented democratic reforms in the past decade. Among external pressures and commitments, civil society and political pluralism, and economic and political factors, preventing the circulation of political power has played the main role. The positive aspects of the reforms that were focused on in propaganda did not have a real impact on improvement of democracy.

In Armenia, constitutional amendments were carried out at sensitive times of transition of power. In the long term, these reforms could shift the political regime of the country towards democracy, increase other human rights standards, and improve the monitoring of power in the country, but the democracy index has not showed any noteworthy improvements yet. Like Azerbaijan, the main reason behind the 2005 and 2015 reforms was the ruling elites' exploitation of the developments and their willingness to prevent a transition of power. This process eventually led to public protests, Sargsyan's resign, and removal of Karabachis from the political scene of Armenia.

In Georgia, like the other two republics, preventing a transition of power played the main role in the process of reform. Therefore, in all three south Caucasian republics, the ruling elite used the structural changes in law in order to maintain their power and this has been the main reason for constitutional amendments.

Governments have always used this method so long that public protests have allowed them to do so. Sargsyan's resign must be viewed in this context. As it is experienced in developing countries, democracy indices typically do not improve with constitutional amendment; it may even make the situation worse for people. A desirable process that could result in stable, efficient, and continuous reform towards a more democratic and politically stable country would be constitutional amendment in a pluralistic political environment in which there is consensus regarding the elements of democracy – like elections, laws, organizations, and democratic procedures – among different parties and groups. On the other hand, there should be a mechanism for circulation of elites and a relative balance of power among these groups.

Authors' Statement: The authors declare that they have fully complied with ethical regulations regarding issues such as plagiarism, double publication and/or submission, redundancy, data fabrication and/or falsification, informed consent, misconduct, etc.

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