IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION MADE BY THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF ARMENIA

THE CASE ON CHALLENGING THE 18-A DECISION OF MAY 17, 2007 OF THE TERRITORIAL ELECTION COMMISSION N36 ON "THE ELECTION OF THE DEPUTIES OF THE REPUBLIC OF ARMENIA NATIONAL ASSEMBLY UNDER MAJORITARIAN CONTEST IN CONSTITUENCY N 36"

Yerevan   June 29, 2007

The Constitutional Court of the Republic of Armenia with its panel of judges - G. Harutyunyan (presiding judge), K. Balayan, H. Danielyan, V. Hovhanissyan, Z. Ghukhassyan (rapporteur), H. Nazaryan, R. Papayan, V. Poghosyan,

with the participation of

the applicant

M. Saghatelyan, candidate of deputy of Constituency N 36 of the Republic of Armenia National Assembly Elections under Majoritarian Contest and his representatives G. Minasyan and S. Saghatelyan,

the respondent

B. Stepanyan, Chairman of the RA Territorial Electoral Commission N 36 and his representative attorney V. Grigoryan,

Pursuant to Paragraph 3.1 of Article 100 and Paragraph 9 of Article 101 of the RA Constitution and Articles 25 and 74 of the RA Law on "Constitutional Court",

the Constitutional Court *examined in a public hearing **the case on challenging the 18-A decision of May 17, 2007 of the Territorial Electoral Commission N36 on***

"The election of the deputies of the RA National Assembly under majoritarian contest in constituency N 36".

The case was triggered through the application submitted to the Constitutional Court by M. Saghatelyan, National Assembly Candidate of Deputy under Majoritarian Contest in Constituency N 36.

During its working session held on May 31, 2007 the Constitutional Court reviewed the above-mentioned applications and issued decisions on the admissibility of the case in accordance with part 3 of Article 31 of the RA Law "On Constitutional Court" and on engaging the RA Territorial Electoral Commission N 36 as a respondent. Meanwhile, it appointed Court member Z. Ghukhassyan as a rapporteur on the case.

During the proceedings from the respondent the protocols, the receipts for providing ballots and envelops to all the precinct election commissions, the protocols of the administrative registers of the Precinct Electoral Commissions of precincts N 36/06, 36/14, 36/15, 36/16, 36/27, 36/34, 36/36, 36/40 were requested and were studied.

Having heard the report put forward by the rapporteur on this case, the explanations of the parties and their representatives, having studied the documents submitted by them, as well as having examined the applications and other documents available in the case, the Constitutional Court of the Republic of Armenia

FOUND

1. The RA Parliamentary Elections were held on May 12, 2007 within the timeframe prescribed by Article 68 of the RA Constitution. In accordance with Articles 17[1], 31 and 36 of the RA Election Code, Territorial Electoral Commission N 36 was established for organizing and administering the elections. The Constituency consists of 59 precincts.

In Constituency N 36 three (3) National Assembly candidates of deputy were registered for the majoritarian contest and their names were included in the ballots. According to the final protocol of Territorial Electoral Commission N 36, the total number of voters was 53992, and 36349 voters voted at the elections. The number of votes cast in favor of the candidates was 35609, which was allotted as follows: M.

Petoyan – 13661, M. Saghatelyan – 7107, M. Varagyan – 14841. The number of discrepancies was 134.

According to the 18-A decision of May 17, 2007 made by Territorial Electoral Commission N 36, M. Varagyan was recognized as the deputy elected from Constituency N 36 with the majority of votes under majoritarian contest of the RA National Assembly Elections.

2. According to the applicant, Territorial Electoral Commission N 36 made an illegitimate decision, as there was sufficient grounds for invalidating the election results. By the applicant's calculations, the number discrepancies in Constituency N 36 reached 9632, which pursuant to paragraph 1; part 5 of Article 116 of the RA Election Code should have been basis for invalidating the elections.

The applicant also holds that according to the calculations done based on the protocols presented by the respondent, the number of discrepancies predominates over the difference between the votes cast for the two candidates who received the maximum number of ballots. In the meantime, he indicates that in different protocols and ballot distribution receipts there are certain differences between the total number of voters and the number of the provided ballots.

The applicant party believes also that there are numerous discrepancies in the voter lists, which do not enable to find out about a voter's address. In their opinion, the competent bodies treated their alarming calls in a formal manner.

According to the applicant, Sanasar Voskanyan was engaged as a commission member in Territorial Electoral Commission N 32. At the same time, he was a candidate of deputy nominated by "Azgayin Miabanutyun" (National Unity) party for proportional contest, and was respectively included in the party's candidate list. In fact, the provision of paragraph 4, of Article 34 of the RA Election Code was breached.

In the meantime, the applicant does not dispute the number of votes that the candidates received, by referring that it was only in one out 59 precincts that a deviation of a candidate's votes was registered (about 40 votes) between the data of the protocols provided by their proxies and those submitted by the Territorial Electoral Commission.

3. The respondent party holds that the applicant's petition to argue the decision made on the election results and to invalidate the election results is groundless, since incorrect calculations have been submitted to the Constitutional Court. According to the respondent, the applying party has calculated the number of discrepancies based on the incomplete data of the protocols, has done incomprehensible mathematical actions, and in some cases has manifested a mechanical approach by neglecting the requirements of the Code regarding the amount of discrepancies.

The respondent also holds that when drafting the protocols separate Precinct Electoral Commissions made technical or arithmetical mistakes. Article 63 of the RA Election Code prescribes the possibility of their elimination.

The respondent party presented the reasoning that guided by the above mentioned article and recounting the actual amount of discrepancies in all 59 precincts; they inferred that 134 discrepancies could in no way affect the election results.

With regard to the voter lists, the respondent finds that the competent bodies at that time gave the candidate of deputy a justified response.

The respondent did not refute the applicant's argument about deputy candidate's involvement in the Precinct Electoral Commission who was included in the voting lists for proportional contest in Constituency N 32.

4. The Constitutional Court records that part 8 of Article 61 of the RA Election

Code stipulates that "An excerpt from the protocols on the number of voters having voted in the precinct, as well as the precinct voting results shall be provided to the proxies of a candidate, party, party alliances, a commission member or an observer at their request, which shall be endorsed by the signatures of the Commission Chairman (Deputy Chairman) and the Secretary and the seal of the Commission". The CEC has not set any excerpt form for the elections under majoritarian contest. The Precinct Electoral Commissions provided the proxies of the candidates with copies of protocols with incomplete data instead of the excerpts. Based on the copies, the applicant party has attempted to count the discrepancies, which is practically impossible and cannot reflect the true picture of the elections.

In the meantime, part 1 of Article 63 of the RA Election Code stipulates, "The validity of the protocols on the precinct voting results shall be checked in the Territorial Electoral Commission, and if arithmetical errors are found, the Chairman and the Secretary of the relevant Precinct Electoral Commission shall correct them and endorse the corrections with their signatures. The original data shall not be modified". Under the circumstance that the determination of discrepancies based on the initial data is also made by the computer, nevertheless, the TEC shall enforce the requirement of the law and verify the validity of all data included in the protocols. TEC N 36 has not carried out this requirement according to the prescribed manner, specifically with regard to precincts N 36/06, 36/16, 36/27, 36/36, 36/40. Such work done by Precinct and Territorial Electoral Commissions, the low preparedness of their members, mechanical and arithmetical errors made by them have given rise to suspicion about the election results.

Based on the information collected from the initial data of the voting results, the receipts of ballots and envelopes as distributed to the precincts, as well as PEC administrative registers of precincts N 36/06, 36/14, 36/15, 36/16, 36/27, 36/34, 36/36, 36/40, the Constitutional Court has ascertained the true situation of the discrepancies in precincts N 36/08, 36/10, 36/12, 36/14, 36/15, 36/16, 36/20, 36/27, 36/29, 36/34, 36/35, 36/40, 36/66, 36/50 and the entire constituency that have become the subject of the applicant's special attention.

The procedure for calculating the discrepancies is prescribed in part 1 of Article 62 of the RA EC, according to which

"1. In order to calculate the amount of discrepancies in a precinct

1) compare the number of ballots allocated to the Precinct Electoral Commission (A) with the number of cancelled ballots (C) and the sum (D) of the number of valid ballots (d_1) and the number of invalid ballots (d_2) in the ballot box. The difference (its absolute value) shall be noted as the amount of the first inaccuracy;

2) compare the number of signatures in the voter list (B) with the sum (D) of the number of valid and invalid ballots in the ballot box. If the sum (D) of the number of valid and invalid ballots in the ballot box is grater than the number of signatures in the voter list (B), then the difference shall be noted as the amount of

the second inaccuracy. If the sum (D) of the number of valid and invalid ballots in the ballot box is smaller than or equal to the number of signatures in the voter list (B), then the amount of the second inaccuracy is 0;

3) compare the number of used ballot stubs (E) with the sum (D) of the number of valid and invalid ballots in the ballot box. The difference (its absolute value) shall be noted as the amount of the third inaccuracy

3_1) compare the number of voting envelopes of the established specimen (F) with the sum (D) of the number of valid and invalid ballots in the ballot box. The difference (its absolute value) shall be noted as the amount of the third inaccuracy; 4) add the amounts of discrepancies mentioned in subparagraphs 1, 2, 3 and 3_1 of this paragraph. The sum of this number shall be considered as the amount of discrepancies in that precinct."

As it has been mentioned, according the applicant, the total number of discrepancies was wrongly calculated and, in fact, it should not have been 134 (as recorded in the protocol of TEC N 36 on election results under majoritarian system) but should amount to 9632. The precincts that are challenged by the applicant, where, in particular, great numbers of discrepancies are mentioned, the real picture are the following:

- In precinct N 36/08, according to the applicant, the number of discrepancies amounts to 591. Based on the data existing in the protocol submitted by the applicant (which are identical with that submitted by the respondent) and as a result of calculations done according to the procedure stipulated by law, the picture is the following: the first discrepancy is (5), the second discrepancy is (5), which pursuant to paragraph 2 of Article 62 of RA EC 0, 3 inaccuracy is marked as 5, the fourth inaccuracy is 0. Thus, the amount of discrepancies in precinct N 36/08 equals 10. The number of discrepancies presented by the applicant is not substantiated by any calculation based on the data submitted by the applicant himself.

- In precinct N 36/10, according to the applicant, the number of discrepancies amounts to 225. Based on the data existing in the protocol submitted by the applicant (which are identical with that submitted by the respondent) the real number of discrepancies is 2 (the first inaccuracy is 1, the second is 1, which pursuant to paragraph 2 of Article 62 of RA EC should be marked as 0, the third inaccuracy is 1, the forth is 0);

- In precinct N 36/12 according to the applicant, the number of discrepancies amounts to 129. Based on the data existing in the protocol submitted by the applicant, the latter was able to calculate the second, third and forth discrepancies, since the two of the data necessary for calculating the first inaccuracy were missing in the protocol available with him ("the number of ballots allocated to the Commission (A) and the number of cancelled (…) ballots (C)" in respective 3rd and 5th lines). As a result of the calculation done pursuant to the procedure prescribed by law, the picture is the following:
- The sum of the first inaccuracy is zero, since "the number of ballots allocated to the Commission (A)" is possible to make up from the receipt data received from TEC N 36, according to which 724 ballots were allocated to PEC N 36/12 for holding the elections under majoritarian system. The number of cancelled ballots (C) was 129 according to the summative protocol. The second inaccuracy is 0, the third is 0 and the forth is 0. Hence, the number of discrepancies in precinct N36/12 is 0.

- In precinct N 36/14, according to the applicant, the number of discrepancies amounts to 4068. The comparison of documents submitted by the applicant and the respondent enables to evidence that some data vary in those. In his explanations, the respondent stated, that in some lines of the protocol of precinct N 36/14 (lines 2, 4 and 5 in particular) the appropriate lines contained the numbers of summarization of the voting results of both majoritarian and proportional election systems. Later they were corrected based on the requirements of part 1 of Article 63 of the RA Election Code by virtue of the receipts and the notes in the administrative registers available in the TEC, which was confirmed by the Constitutional Court due to the examination of

the mentioned receipts and the notes available in the TEC administrative registers. Thus, as an outcome of the calculation done pursuant to the procedure prescribed by law, the picture is the following: the first inaccuracy is 32, the second is 13, the third inaccuracy is 13, the forth is zero. Hence, the number of discrepancies in precinct N 36/14 is 58.

- In precinct N 36/15, according to the applicant, the number of discrepancies amounts to 1118. The comparison of documents submitted by the applicant and the respondent enables to evidence that some data vary in those. The study of the recorded data included in the administrative registers of PEC N 36/15 evidences that the data of the protocol provided by the TEC are well grounded and is specifically confirmed that the number of registered voters is 975. As an outcome of the calculation done pursuant to the procedure prescribed by law, the picture in this precinct is the following: the first inaccuracy is zero, the second is zero, the third inaccuracy is zero, and the forth is zero.

- In precinct N 36/16, according to the applicant, the number of discrepancies amounts to 207. The comparison of documents submitted by the applicant and the respondent enables to evidence that "The number of cancelled (…) ballots (C)" is mentioned 3 on line 5 of the excerpt submitted by the applicant, but in the protocol submitted by the respondent a correction has been made and is fixed as 210. The Constitutional Court has studied the protocol of the administrative register of PEC N 36/16 and has confirmed that the number of cancelled ballots is 210. As an outcome of the calculation done pursuant to the procedure prescribed by law, the real number of discrepancies is as follows: the first inaccuracy is zero, the second is zero, the third inaccuracy is zero, and the forth is zero.

- In precinct N 36/20, according to the applicant, the number of discrepancies amounts to 1720. Based on the document data submitted by the applicant it is impossible to get such a number. As an outcome of the calculation done pursuant to the procedure prescribed by law, the actual amount of discrepancies is as follows: the

first inaccuracy - /A-(C + D)/+=/2005-(860+(44+1101))/=0, the second inaccuracy is 0 (D-B=1145-1145=0), the third inaccuracy is 0 (E-D=1145-1145=0), the forth inaccuracy is 0 (F-D=1145-1145=0)

- In precinct N 36/27, according to the applicant, the number of discrepancies amounts to 100. The comparison of documents submitted by the applicant and the respondent enables to evidence that some data vary in those. The difference is specifically between the numbers mentioned on line 5 of "The number of cancelled (…) ballots (C)", which is mentioned 2 in the excerpt submitted by the applicant, but in the protocol submitted by the respondent a correction has been made and the number is fixed as 102. The Constitutional Court has studied the protocol of the administrative register of PEC N 36/27 and has confirmed that the number of cancelled ballots is 102. As an outcome of the calculation done pursuant to the procedure prescribed by law, the real number of discrepancies is as follows: the first inaccuracy is zero, the second inaccuracy is zero, the third is zero and the forth is zero.

While calculating the number of discrepancies in precinct N 36/27 the applicant party has demonstrated a mechanical attitude and has not taken into account that out of 451 voting envelops that were allocated to the commission, 102 have not been used (this can be seen from the data of the administrative register). Hence, on line 12 - "The number of voting envelops of the established specimen (F)"- not 451 should be assumed as basis, but 349 (the total number of valid and invalid ballots or 451-102). In this precinct, the actual number of discrepancies is 0.

- In precinct N 36/29, according to the applicant, the number of discrepancies amounts to 120. The comparison of the documents submitted by the applicant and the respondent enables to infer that only the figures standing for calculating data differ. In particular, "The number of voting envelops of the established specimen (F)" (line 12) differs from "the number of valid ballots (d₁)" (line 13) (both numbers are 164 in the excerpt of the protocol submitted by the applicant, but are 124 in the protocol submitted by the respondent), which is due to wrong arithmetical actions done by the PEC. When admitting the protocol from precinct N 36/29, those arithmetical mistakes

were discovered in TEC N36 and the Chairman of the PEC corrected them according to the procedure prescribed by law. In the protocol of precinct N36/29, the number of discrepancies has been calculated as zero by the PEC. TEC N36 has input the number of discrepancies as 0 in the table. As a result of verification, the number of discrepancies has also turned out to be 0.

- In precinct N 36/34, according to the applicant, the number of discrepancies amounts to 687. The comparison of the documents submitted by the applicant and the respondent enables to infer that some of the data differ, specifically "The number of cancelled ballots (C)" on line 5 is numbered 1 in the excerpt submitted by the applicant, but in the protocol submitted by the respondent a correction has been made and is numbered 687. The examination of the protocol data of the administrative register of PEC N 36/34 confirms that the number of cancelled ballots is 687, the number of registered voters according the signatures is 818 and the number of used ballot stubs is also 818. As an outcome of the calculation done pursuant to the procedure prescribed by law, the actual number of discrepancies is as follows: the first inaccuracy is 1, the second inaccuracy is 1, the third is 1 and the forth is zero. Thus, the number of discrepancies in precinct N 36/34 is 3.

- In precinct N 36/35, according to the applicant, the number of discrepancies amounts to 22. The final number of discrepancies in the protocol of precinct N 36/35 was fixed 0 by the PEC and was input 0 by TEC N 36 in the table. In the verification process of the calculated figures, as a result of the calculation done based on the data existing in the documents provided by the respondent, the number of discrepancies is 17 (the first inaccuracy is 4, the second is 13, which according to paragraph 2 of Article 62 of the EC should be marked as zero, the third inaccuracy is 13, the forth is zero).

- In precinct N 36/40, according to the applicant, the number of discrepancies amounts to 319. The comparison of documents submitted by the applicant and the

respondent enables to evidence that "The number of cancelled (…) ballots (C)" is fixed 4 on line 5 of the protocol submitted by the applicant, but in the protocol submitted by the respondent a correction has been made and is mentioned 323. The examination of the data included in the administrative register of PEC N 36/40 corroborates that the number of cancelled ballots is 323. As an outcome of the calculation done pursuant to the procedure prescribed by law, the actual number of discrepancies is as follows: the first inaccuracy is 0, the second inaccuracy is 0, the third is 0 and the forth is 0.

- In precinct N 36/46, according to the applicant, the number of discrepancies amounts to 43. The comparison of documents submitted by the applicant and the respondent enables to evidence that the data included in those are identical. The number of discrepancies in the protocol of precinct N 36/46 is mentioned 0 by the PEC and was input 0 in the table by TEC N 36. As an outcome of the calculation done pursuant to the procedure prescribed by law, the actual number of discrepancies is as follows: the first inaccuracy is 43, the second inaccuracy is 0, the third is 0 and the forth is 0. Thus, the number of discrepancies in precinct N 36/46 is 43.

- In precinct N 36/50, according to the applicant, the number of discrepancies amounts to 85. The comparison of documents submitted by the applicant and the respondent enables to evidence that the data included in those are identical. The number of discrepancies in the protocol of precinct N 36/50 is mentioned 85 by the PEC and was input 85 in the table by TEC N 36. As an outcome of the calculation done pursuant to the procedure prescribed by law, the actual number of discrepancies is also 85 (the first inaccuracy is 85, the second, the third and the forth discrepancies are 0).

5. The Constitutional Court states also that the applicant party and respondent party have wrongly calculated the discrepancies in the following precincts:

- In precinct N 36/06 the amount of discrepancies is 0;

- In precinct N36/17 the amount of discrepancies according to the applicant is 6. In the protocol submitted by the respondent, the calculation is missing. In the result of calculations done according to the procedure prescribed by law, the actual picture of the discrepancies is as follows: the first inaccuracy is 14, the second inaccuracy is 14, and the third is 14 and the forth is zero. Thus, the number of discrepancies in precinct N 36/17 is 42;

- In precinct N 36/28 the mechanical interchange of data of lines 6 and 7 can not be regarded as rationale for the increase of discrepancies. When comparing the initial data, it becomes apparent that in this precinct the amount of discrepancies is 0;

- The applicant party holds that in precinct N 36/36, according to the respondent's protocol, the amount of discrepancies is 697. However, it has not been considered that the number of unused envelopes is fixed 697 both in the protocols provided to his proxy and submitted to the TEC, as well as in the PEC administrative register of the given precinct. Hence, F) could not equal 1711, which is the number of envelopes allocated to the commission. When calculating the discrepancies at least 1014 should have been considered (the total number of valid and invalid ballots or 1711-697);

- In the protocol of precinct N 36/37 the final number of discrepancies is marked 145 by the PEC. TEC N 36 has input 0 while tabulating the results. As an outcome of the calculation done according to the procedure prescribed by the law the actual amount of discrepancies is 9 with the following distribution: first inaccuracy - 5, second inaccuracy – zero, third inaccuracy – 4, the forth is zero;

- In the protocol of precinct N 36/51 the amount of discrepancies was initially mentioned as 126 by the PEC and then it was corrected and was mentioned 0. It

was input 0 during the tabulation by the TEC. As an outcome of the calculation done according to the procedure prescribed by the law the actual amount of discrepancies is as follows: the first inaccuracy is 0, the second inaccuracy is 0, the third is 0 and the forth is 0.

The calculation of the number of discrepancies of all precincts of constituency N 36, according the procedure prescribed by law, proves that their total number is 364, which is 3.2 times less than the difference of votes cast for the candidates who took the 1st and the 2nd places under majoritarian system in that particular constituency and is 21.3 times less than the difference of votes of the candidates who took the 3rd and the 1st places.

Taking into account that the applicant presented partial differences in the number of ballots allocated to the Commission in separate precincts, according to the protocols and the receipts, in that case the amount of discrepancies has also been calculated based on the data summarized in the receipts, which is 363.

The Constitutional Court holds also that the data regarding the number of voters according to the protocols and receipts cannot be compared, since the rationales for determining the number of voters vary in the receipts and protocols. In particular, the data of additional voter lists formulated in accordance with the law are also reflected in the protocol data. Therefore, for determining the total number of voters the protocol data should serve as basis.

6. The comparison of the questions brought by the applicant party and the official data of the RA Police can lead to an inference that not a citizen was left out from the voter list. The inclusion was done according to the place of their registration (based on the property certificate submitted by citizens) on the one hand, and according to the address of the registration place written in their passports on the other hand (when the citizens had not submitted new property certificates on changing the addresses of their residence). There is no fact in the case that evidences that any citizen indicated by the applicant has not been able to enjoy his/her right to vote. The Constitutional Court holds also that different principles have been put in the basis of forming the voter lists, since

necessary measures were not timely undertaken by Artik department of the RA Police Shirak Administration and Artik Municipality, which gave rise to mistrust towards the voter lists.

7. During the proceedings, the applicant's argument that in precinct N36/32 Sanasar Voskanyan was engaged as a Commission member, who simultaneously was a candidate of deputy nominated by "Azgayin Miabanutyun" party for the proportional contest, was confirmed. Regardless of the thing that this person is in no partisan relationship with the persons nominated as candidates for deputy under majoritarian contest, the Constitutional Court holds that because of insufficient control exercised by TEC N 36, the requirement of part 4, Article 34 of the RA Election Code was breached, according to which among other people a candidate for deputy cannot be a Commission member either. In the meantime, even if the TEC annulled the voting results in that precinct, in that case considering also the requirement of part 13, Article 40 of the RA EC, this could not be sufficient grounds to make another decision on the election results with the bases stipulated by Article 116 of the Code.

Proceeding from the results of the hearing and guided by paragraph 3.1, Article 100 and Article 102 of the Constitution of the Republic of Armenia, Articles 63, 64 and 74 of the RA Law on "The Constitutional Court", the Constitutional Court of the Republic of Armenia DECIDED

1. to leave No. 18-A Decision of May 17, 2007 of the Territorial Electoral Commission N 36 on the "Election of deputies of the National Assembly of the Republic of Armenia under majoritarian contest in constituency N36" in force.
2. in accordance with the second part of the Article 102 of the Constitution of the Republic of Armenia, this decision shall be final and shall enter into force from the moment of its promulgation.

PRESIDING JUDGE   G. HARUTYUNYAN

June 29, 2007

CDD-704