IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION MADE BY THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

THE CASE ON CHALLENGING 149-A DECISION DATED MAY 19, 2007 OF THE CENTRAL ELECTION COMMISSION ON THE ELECTION OF THE DEPUTIES TO THE REPUBLIC OF ARMENIA NATIONAL ASSEMBLY UNDER PROPORTIONAL CONTEST BASED ON THE APPLICATIONS FILED BY 'IMPEACHMENT' ALLIANCE, 'NEW TIMES', 'ORINATS YERKIR' AND 'REPUBLIC' PARTIES

City of Yerevan June 10, 2007

The Constitutional Court of the Republic of Armenia with its panel of judges - G. Haroutyunyan (presiding judge), K. Balayan, H. Danielyan (rapporteur), V. Hovhanisyan (rapporteur), Z. Ghukasyan, H. Nazaryan, R. Papayan, V. Pogosyan,

with the participation of

the applicants

V. Hovakimyan, N. Pashinyan and V. Grigoryan, representatives of «Impeachment» Alliance,

H. Sargsyan, R. Torosyan and H. Baghdasaryan, representatives of "New Times" Party,

H. Margaryan, A. Avoyan and G. Sargsyan, representatives of "Orinats Yerkir" Party,

A. Zeynalyan, representative of "Republic" Party,

the respondent

the representatives of the Central Election Commission (hereinafter CEC) of the Republic of Armenia (RA), in particular the Chairman of the CEC G. Azaryan, the Deputy Chairman of the CEC A. Bakhchagulyan, the Head of the Legal Department of the CEC Department N. Hovhannisyan,

the adjacent respondents

the representatives of the Office of the RA Prosecutor General, in particular the Deputy General Prosecutor G. Danielyan and the Deputy Head of the Department at RA Prosecutor's Office G. Haroutyunyan, the representatives of the RA Ministry of Justice, in particular the Minister of Justice D. Haroutyunyan and First Deputy of the Minister of Justice G. Malkhasyan, the representatives of the RA Police Office, particularly the First Deputy of the Head of the Police Office A. Mahtesyan, the representative of the National Television and Radio Commission, particularly Head of the National Television and Radio Commission G. Amalyan.

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 149-A decision dated May 19, 2007 of the Central Election Commission on the election of the deputies to the RA National Assembly under proportional contest based on the applications filed by "Impeachment" Alliance, "New Times", "Orinats Yerkir" and "Republic" parties.***

The case was triggered through the applications submitted to the Constitutional Court by "Impeachment" Alliance, "New Times", "Orinats Yerkir" and "Republic" parties on May 26, 2007.

During its working session held on May 27, 2007 the Constitutional Court reviewed the above-mentioned applications and issued decisions on the admissibility of the cases and on engaging the CEC as a respondent. Meanwhile, in accordance with Article 31.5 of the RA Law on "Constitutional Court" it appointed the court members H. Danielyan and V. Hovhanissyan as rapporteurs to prepare the case for court proceedings and to present the circumstances of the case during the court session.

During its working session on May 29, 2007 the Constitutional Court decided to adjoin the cases pursuant to the procedure, set out by Article 39 of the RA Law on "Constitutional Court". Furthermore, in accordance with Articles 45 and 74.4 of the RA Law on "Constitutional Court" the court involved the Office of the RA Prosecutor General, the Ministry of Justice, the Police Office and the National Television and Radio Commission as adjacent respondents for this case.

Having heard the joint report put forward by the rapporteurs on this case - Constitutional Court members V. Hovhannisyan and H. Danielyan - the arguments and

counter-arguments of the parties, 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 in proportional contest were conducted on May 12, 2007 within the timeframe, prescribed by Article 68 of the RA Constitution. In accordance with Article 15 of the RA Election Code 1,923 precincts were established on the territory of the RA for the purpose of organization of voting and summarization of voting results. 41 constituencies were established for election administration. In accordance with Article 31 of the same code three-level electoral commissions were formed: Central Election Commission, Territorial Election Commissions and Precinct Election Commissions. The entire election process was organized and supervized by the Central Election Commission.

2. Pursuant to Article 29 of the RA Election Code during the preparation, organization and summarization of the voting results of the elections to the RA National Assembly there were 768 accredited observers from international organizations and 13,693 observers from national organizations conducting election observation mission. During the entire election process throughout the whole election process the observers were empowered to exercise their functions, set out in Article 30 of the RA Election Code. The election observation missions of the Parliamentary Assembly of the Council of Europe, the OSCE Organization for Democratic Institutions and Human Rights, the Commonwealth of Independent States, as well as local organizations conducting election observation missions presented opinions on the elections.

3. On May 19, 2007 the RA Central Election Commission summarized the results of May 12, 2007 RA Parliamentary Elections in proportional contest. In accordance with the final protocol presented to the Constitutional Court by the Central Election Commission, the total number of ballot-papers, cast for 22 parties and one party alliance, included in the ballot paper in the procedure set by Paragraph 2 of Article 114 of the RA Election Code, amounted to 1.351.423, which was distributed in the following proportion: National Democratic Party – 8,556 votes; “National Unity” Party – 4,199; “Prosperous Armenia” Party – 204,483; “Dashink” Party – 32,943; “Heritage” Party – 81,048; People’s Party – 37,044; “Democratic Way” Party – 8,351; “Impeachment” Party – 17,475; “Armenian Revolutionary Federation”

Party – 177,907; Democratic Party of Armenia (DPA) – 3,686; Youth Party of Armenia – 2,291; People's Party of Armenia – 2,291; Communist Party of Armenia – 8,792; Republican Party of Armenia – 458,258; Marxist Party of Armenia – 2,660; "Republic" Party – 22,288; United Labor Party – 2,739; "New Times" Party – 47,060; Social Democrat Hnchak Party – 989; Christian-Democratic Renaissance Party – 3,433 and "Orinats Yerkir" Party – 95,324. The number of discrepences amounted to 14,665.

Based on the above-mentioned results and governed by sub-Paragraph 1 of Paragraph 1 of Article 115 of the RA Election Code, the RA Central Election Commission, with its 149-A decision dated May 19, 2007, within the scope of the mandate prescribed by Paragraph 2 of Article 95 of the RA Election Code for the proportional contest of the RA National Assembly, recognized as elected 41 deputy candidates from the election list of the Republic Party of Armenia; 18 from the election list of "Prosperous Armenia" Party; 16 from the election list of "Armenian Revolutionary Federation" Party; 8 from the election list of "Orinats Yerkir" Party and 7 from the election list of "Heritage" Party.

4. By filing an application with the Constitutional Court, the applicants hold that No. 149-A decision dated May 19, 2007 "On the election of deputies to the National Assembly of the Republic of Armenia under proportional contest" of the RA Central Election Commission and the election results need to be revoked, while "Orinats Yerkir" Party holds that it is necessary to revoke the mentioned decision of the RA CEC and based on the recount of voting results recognize as elected a respective number of candidates, included in the proportional list of the party.

The representatives of the "Impeachment" Alliance, pursuant to the application filed with the Constitutional Court, also in the course of the court proceedings of the case, claimed that:

- the legal requirement for ensuring equal conditions for parties and party alliances running in the NA elections was breached during the organization and conduct of elections;
- Articles 1, 2, 3, 4, 5, 7, 30 and 94 of the RA Constitution, commitments under a number of international agreements, Article 20 of the RA Law on "Political Parties", numerous articles of the RA Election Code were breached during the preparation, organization and conduct of elections;

- the elections were falsified in a planned and organized manner, and it was to this that the amendments to the RA Election Code, depriving the RA citizens abroad of the opportunity to exercise their right to vote and voting with false passports were aimed at;

- according to the applicant party, the procedure for pre-election campaigning, set out by the law, was breached; parties distributed money; gave promises, prohibited by the law,; provided services; forced people to go to public gatherings, which resulted in the breach of the voter's right for free expression of will.

The representatives of "Impeachment" Alliance hold that voting pedestals were put instead of voting booths in a number of polling stations, which resulted in a partial oversight over the elections; wide-scale cases of voters being transferred by minibuses took place on the election day; necessary conditions were not ensured in the polling stations for the disabled to exercise their right to vote.

The party holds that the CEC is not a constitutional body and is not competent to organize elections; meanwhile it holds that the CEC arbitrarily interpreted the provisions of the laws and summarized the election results with a breach of the requirements of the RA Election Code.

To support their arguments, the representatives of "Impeachment" Alliance provided the RA Constitutional Court with applications addressed to the RA Minister of Justice, RA Prosecutor General, Central, Territorial and Precinct Election Commissions, as well as final protocols, complaints and appeals, judicial acts, a list of newspapers with respective publications and other documentation.

5. The representatives of "New Times" Party hold that:

- breaching the requirements of Paragraph 3 of Article 63^2 , Paragraphs 1, 2 and 7 of Article 115 of the RA Election Code, the CEC failed to review and consider at a session such breaches of the RA Election Code, which could have influenced the election results.

The party holds that by revoking the CEC's No. 41-N decision of March 12, the CEC eliminated the legal grounds for keeping a registry-book of payments and expenses of the pre-election funds, which deprived the CEC of the possibility to appeal to the court based on Paragraph 7 of Article 25 of the RA Election Code, requiring to revoke the registrations of the candidates exceeding the finances of pre-election funds; whereas a number of parties, the expenses of which exceeded their pre-election funds, took part in voting and were elected to the NA.

According to the applicant, the NTRC and the CEC breached Article 11 of the RA Law on "Television and Radio" and Paragraph 11 of the Procedure, set out by the CEC's No. 48-N decision of March 14, 2007, allowing television companies to broadcast political and campaigning programs without respective titles and airtime rates.

In the opinion of the applicant, the courts of general jurisdiction breached part 8 of Article 40 of the EC, by apparently failing to review any application, rejecting them upon various justifications and breaching the established five-day timeframe. The applicant also holds that:

- the CEC breached part 1 of Paragraph 2 of Article 102 of the EC by registering the list of candidates of the RPA, PAP and ARF parties based on false documentation;

- the RA Prime Minister breached Article 22^1 of the EC, particularly by carrying out pre-election campaigning when fulfilling official duties, covering his activity through the mass media, carrying out campaigning in banned places, etc;

- the RA President breached the law by clarifying the requirements of the EC and carrying out smear campaigning on H1;

- the regulations for publishing the results of sociological surveys, set out by Paragraph 3 of Article 22 of the EC, were breached;

- provocative materials were published about "New Times" party and its chairman, thus, breaching the requirements of the part 7 of Article 21 of the EC;

- changes in the initial data were allowed in the TECs, thus, breaching the requirements of part 1 of Article 63 of the EC;

- the requirement of part 2 of Article 48 of the EC was breached by forcing the voters to make marks in inks of different colors;

- the same individuals voted for multiple times, thus, breaching the requirements of part 1 of Article 55 and part 2 of Article 10 of the EC;

To supports its arguments, "New Times" party provided the RA Constitutional Court with applications addressed to the Central, Territorial and Precinct Election Commissions, their own observations reflecting the results of election process, complaints and appeals, judicial acts and other documentation.

6. The representatives of "Orinats Yerkir" party, pursuant to the application filed with the Constitutional Court, also during the proceeding of the case, claimed that:

- Articles 6, 14^1, 15, 27^1, 40^1, 40^2, 44, 53, 56, 60, 61, 62, 63 of the RA EC and No. 19-N, 20-N, 21-N decisions dated June 22, 2006 of the RA CEC were breached during the summarization of the voting results in a number of polling stations, as well as the election results in proportional contest.

The representatives of "Orinats Yerkir" party hold that polling station 32/40 was formed with a breach of the requirements of Article 15 of the RA Election Code, the initial data of voting results were not recorded in the registry-books of particulae polling stations, the existing records fail to meet the established procedure, some polling stations lack protocols on actions taken during the session for summarizing the voting results; numerous breaches of implementations of actions, prescribed by the law, with election documentation and changes, not prescribed by the law, were made in the protocol data.

The representatives of "Orinats Yerkir" party also hold that the election results were summarized with a breach of the procedure on following the complaints and appeals of competent individuals, the courts of general jurisdiction failed to ensure the right of a citizen for effective judicial protection, and the CEC inadequately fulfilled the authorities prescribed to it by the Election Code, refused its major obligation to monitor the legitimacy of the elections.

To support their arguments, the representatives of "Orinats Yerkir" party provided the RA Constitutional Court with applications addressed to the Territorial and Precinct Election Commissions, final protocols, own observations reflecting the results of the election process, complaints and appeals, court decisions and other documentation.

7. The representative of "Republic" party holds that:

- Samvel Andranik Babayan, nominated in the proportional list of "Dashink" party, was registered by the CEC with a breach of Article 64 of the RA Constitution and Article 101 of the RA EC;

- the RPA started its pre-election campaigning earlier than the timeframe set out by the RA EC – January 2007, under the pretext of the 15-year anniversary of the establishment of the Armenian Army – pointing out that the advertising dedicated to the 15-year anniversary of the establishment of the Armenian Army was identified through its major campaign poster by the RPA with its leader, RA Minister of Defense, later the RA Prime Minister S. Sargsyan, heading the proportional list of the RPA;

- mass media demonstrated a discriminatory approach towards "Republic" party during the pre-election campaign;

- television companies breached part 2 of Article 11 of the RA Law on "Television and Radio", particularly, the broadcast of programs was not followed by *"political advertisement"* title, which, in the opinion of the applicant, resulted in the non-transparent financing of advertising that is in fact political;

- discriminatory approach was demonstrated towards "Republic" party, by failing to provide the hall of the National Academic Theatre of Opera and Ballet for organizing and holding a pre-election activity of "Republic" party and providing it to the RPA for a similar activity;

- a number of actions, prohibited by the law, brought in the application, had direct or indirect impact on the election process and election results;

- the failure in establishing polling stations in the RA diplomatic representations and consular missions abroad could have influenced the election results, as an indefinite number of the RA citizens were deprived of their right to vote. The failure of the mentioned individuals to participate in the elections could have impacted on the election of such parties that did not receive only several thousands votes to be elected;

- there are facts on the distribution or promise of vote-buying and services to the voters in some polling stations, which could have impacted on the expression of the voters' will in those polling stations;

- a number of complaints, addressed to competent election commissions, mainly received groundless responses, and in some cases they avoided to respond at all. Almost in all cases the CEC failed to initiate administrative proceedings and adopt an administrative act based on respective applications, pursuant to the RA Law on the "Principles of Administration and Administrative Proceedings". What is more, the applications addressed to the CEC as a collegial body, were always responded by the CEC Chairman with his written notice.

8. The respondent party – the representatives of the RA Central Election Commission - holds in relation to the arguments presented by the applicant party that during the NA elections 2007 no such election violations occurred, which could have influenced the election results, and the applications should be rejected, as in the opinion of the respondent party:

- the arguments of the applicant party are highly subjective, are based on arbitrary interpretations of the legislation and are not supported by the materials attached to the applications;

- the failure in the establishment of polling stations abroad cannot be viewed as a circumstance influencing the election results, as the RA Election Code does not prescribe voting administration outside the geographical territory of the Republic of Armenia;

- the voters' lists were posted in polling stations with attached information notes on the time, place, procedure and condition of reviewing the applications on discrepences in the lists; provided to election commissions, posted on the CEC website also aggregated by precincts, the correction of the lists resulted in the decrease of the number of voters by 40,000, including 9,607 names of the deceased were removed from the lists;

- the argument of the applicant party on the failure in compiling an additional list for police servicemen is groundless and irrelevant;

- pursuant to Article 3 of the RA Law on "Civil Service", the position of a minister is a political position. The RA legislation does not define any differentiation between the individuals holding the position of the minister of defense and other political positions; hence the latter may be nominated and registered on general principles as a deputy candidate to the National Assembly. The founding document of the PA is available, and the ARF is registered in the state register for legal entities, consequently the claim of the respondent party on revoking the registration of the election lists of the ARA, PA, ARF by judicial procedure is groundless;

- the issue regarding Samvel Babayan, deputy candidate nominated in the election list of "Dashnik" party was solved with October 17, 2000 decision of the RA Court of Appeal.

The respondent party, in response to the arguments of the applicants on election violations made in the pre-election campaign period, holds that:

- the raised issues were reviewed in the CEC, and the applicants were provided with clarification that prior to the official start of the pre-election campaign, in compliance with the RA Constitution, RA Law on "Political Parties", a party shall be entitled to freely disseminate information about its activity, campaign for its goals and objectives in accordance with the procedure, set out by the law. Even in the event that the mentioned activity contains campaign elements, it shall not be identified with a pre-election campaign:

- the activities and posters dedicated to the 15-year anniversary of the Armenian Army shall not be identified with the activity of its leader, as the installed advertising

billboards cannot be identified with any person and do not contain any pre-election campaign element. Furthermore, there are decisions of the Court of First Instance on the questions related to the pre-election campaign that entered into legal force, which did not assess the facts, mentioned by the applicants, as election violations.

The respondent party, in response to the claims of the applicants in relation to the mass media activity in the pre-election campaign period that the pre-election activities of some parties were not covered at all, isolated mass media did not participate in the pre-election activities of isolated parties in certain cases, holds that:

- the questions of the applicant party on qualifying the presented as an election violation, are groundless, as the rights and responsibilities, guarantees of mass media activity are stipulated in the Law of the Republic of Armenia on "Mass Media", and the peculiarities of their activity during the pre-election campaigning are stipulated in Article 20 of the Election Code of the Republic of Armenia, in compliance with which the mass media shall present impartial and unbiased information in their news casts on the pre-election campaign of the candidates, parties and party alliances, ensuring fair and equal possibilities. Instead of informing the mass media on their activities, the applicants chose the way to lodge complaints against state bodies. By the way, even in that case they failed to attach the timetable of their further meetings.

The respondent party, in response to the questions of the applicants on the breaches of Article 11 of the RA Law on "Television and Radio", holds that the mentioned article allows contradictory, arbitrary interpretation, which complicates the application of the provisions set out in Article, in many cases making it impossible, as it is not clear which time period is, that precedes the referendum and election campaigning.

In relation to the mandatory display of the title "Political Advertisement" on the screen, the representatives of the Central Election Commission hold that that issue is regulated in the R (99) 15 Order of the Committee of Ministers of the Council of Europe, where Paragraph 5 states that the title shall be mandatory for paid advertisement.

In response to the circumstances of failing to invite the representatives of any particular party to isolated author's programs of isolated television companies, in the opinion of the respondent party, those cannot be qualified as an election violation, since in compliance with the RA Law on "Mass Media" it is prohibited to put any pressure on mass media, that is aimed at or led to refusal of dissemination of information.

In response to the claims of the applicant party on pre-election campaigning by official individuals, the respondent party, holds that the identification of the content coverage of the notions “official duties” and “working hours” is not acceptable.

According to the respondent party, the applicants identified the financial means aimed at the natural operation of the parties with those spent on pre-election campaigning, which resulted in a wrong conclusion. The Central Election Commission, through a supervisory service created by its No. 27 decision of February 1, 2007, monitored the pre-election funds in an established procedure.

The respondent party, in response to the question of the applicant party on failing to allocate premises and other installations for pre-election campaigning and referring to Paragraph 1 of Article 18 of the RA Election Code, CEC’s August 3, 2005 decision, clarified that only state bodies possess such an obligation, and only upon the request of a respective Territorial Election Commission. Meanwhile, the applications fail to note any case, when upon applying to the TEC in an established procedure, the premises at the disposal of the state bodies had not been allocated to parties.

The respondent party, in response to the questions of the applicant party on the forced participation of voters in the activities implemented within the scope of pre-election campaigning, noted that the RA Central Election Commission, back on May 10, 2007, applied to the Office of the RA Prosecutor General with a respective written notice and received a response on May 29, 2007 regarding having prepared the materials, and the institution of a criminal case was rejected with the decision of May 25, 2007 due to the absence of the event of the crime.

The respondent party, in response to the claims of the applicant party in relation to the revision of complaints and appeals by the CEC, expressed a position, that the Central Election Commission had reviewed all the received appeals and sent responses to the addressees within the procedure and timeframe set out by Article 40^1 of the RA Election Code. Within the election period over twenty acts of the Central Election Commission had been appealed to the court, where in total of one was revoked. As far as not initiating an administrative proceedings is concerned, the RA Central Election Commission does not hold such an obligation under the above-mentioned provision.

The respondent party, in response to the statement of the applicant party on vote-buying and rendering services, noted that pursuant to the notice of the Office of the RA

Prosecutor General, criminal cases were instituted against three individuals under the elements of Article 154.2 of the RA Criminal Code.

The respondent party, in response to the arguments of the applicant party on the implementation of charity projects, noted that prior to the start of the pre-election campaigning parties may contribute to the implementation of charity projects, as no respective legislative ban exists.

The respondent party, in response to the claims of the applicant party on the summarization of voting results, breach of the procedure for submitting election documentation, holds that:

- Precinct Election Commissions completed the summarization of voting results with the procedure, set out by the RA Election Code, within 10 hours from the end of voting;

- in polling stations for the summarization of results for a single voting, in the timeframe, set out by the RA Election Code, both the proportional and majoritarian voting results were summarized, due to which they worked in an overloaded manner, which in isolated cases resulted in the non-adherence of and lapses in some procedural norms of the Election Code, which are technical and have not led to changes in the initial data in the final protocols;

- arithmetical errors in the data (not initial) in the final protocols were removed in the procedure established by the law by the chairmen /deputy chairmen/ and /or/ secretaries of the Territorial Election Commissions and were validated by their signatures and seals of the Precinct Election Commissions;

- the data of the “Total Number of Ballot-Papers Cast For”, “Number of Valid Ballot-Papers”, “Extent of Discrepancies” lines was calculated by the “Elections Automated System” software, and the total of those data was included in the final protocol of the voting results;

- the RA Central Election Commission, summarizing the received data, aggregated them, did not exercise a mechanical treatment in the event of discovering apparent discrepences, lapses, omissions and other similiar deficiencies, as it summarizes the voting results and not the mechanical total of received numbers.

The respondent party, in response to the question of the applicant party on the recount, holds that only TECs 5, 11, 14, 15 and 23 received applications, requesting recount within the procedure and timeframe, prescribed by the RA Election Code, or regarding 32 polling stations, which comprises only 1,66% of the total number of polling stations. In four

Territorial Election Commissions the recount was carried out in full extent, and in Territorial Election Commission 33, with regard to 23 applications, it was possible to carry out a recount of voting results of three polling stations in the timeframes, set out by the RA Election Code, which has an objective justification – applications, requesting the recount of voting results in the majoritarian contest in 23 polling stations, were submitted by the same applicant in the same constituency:

- as a result of recounts, there were no substantial changes in the number of votes cast for the parties, nevertheless in polling stations 14/55, 14/70 and 15/16 isolated violations were discovered, and materials were sent to the Office of the RA Prosecutor General, criminal cases were instituted upon the facts.

9. Involved as an adjacent respondent on the case, the representative of the Office of the RA Prosectuor General, Deputy of the RA Prosecutor General G. Danielyan stated in relation to the presented arguments that the arguments brought in the applications were not supported and could not serve as a ground for invalidation of May 19, 2007 decision of the Central Election Commission of the Republic of Armenia.

Meanwhile, G. Danielyan noted that:

- no well-grounded arguments were introduced in relation to the violations pointed out by the applicants, which resulted in the conclusions of the latter largely comprising subjective interpretations;

- the so-called extensive election violations are not valid, their majority was reviewed in the Office of the RA Prosecutor General. Particularly, back on April 10, 2007 two task groups were formed in the Office of the Prosecutor General, which coordinated the revision of reports regarding election violations on the territory of the Republic. The analysis of the work of those task groups revealed various election violations, however not extensive.

- the parties, presenting reports regarding election violations, were, as a rule, satisfied with mere presentation of the reports and categorically refused to give explanations:

- as of May 31, 2007 the Office of the Prosecutor General of the Republic of Armenia received 80 reports regarding election violations, 41 of which – from natural and legal persons, including the Central Election Commission of the RA, 39 – from the media. As a result of their revision, 15 criminal cases were initiated, and a decision was rendered on rejecting the institution of a criminal case on 57 of them. In particular, the analysis of

rejection decisions shows that the absence of a criminal element is placed in the basis of the majority.

- only Article 40^1 of the RA Election Code on Administrative Violations stipulates a responsibility for violating the established regulations for pre-election campaigning, hence it was thoroughly clarified to the authors of the reports, mentioning such violations;

- the list of reports is dominated by those, where questions are raised regarding a legal act endorsed by any particular election commission or other authorized state body as contradicting the law, or an apparently groundless judicial act. The Office of the Prosecutor has issued clarifications on multiple occassions regarding the fact that in the alleged cases it would be legitimate to challenge the mentioned legal acts in the procedure, set out by the norms of Chapters 24 and 26 of the Civil Code of the Republic of Armenia;

- in relation to the claims of the representatives of the respondent party regarding the application to the Office of the Prosecutor General of the Republic of Armenia on particular facts of violations and failure to receive any response, were not valid, since all the reports had been reviewed without exception and responded in the established timeframes.

10. Involved as an adjacent respondent on the case, the Minister of Justice of the RA D. Haroutyunyan claimed in connection with the question regarding the legitimacy of the registration of parties that their registration was legitimate.

In response to the financial statements of the parties, D. Haroutyunyan pointed out that RPA, ARF and PA parties had submitted their financial statements in a timely and proper manner, and a respective financial statement had been made public in a timeframe set out by the law.

11. Engaged as an adjacent respondent on the case, a representative of the RA Police, the First Deputy of the Head of the RA Police A. Mahtesyan stated in relation to the arguments presented by the applicant party that the responses, made in the applications and voiced during the court proceedings, lacked any supporting argument regarding the incomplete compilation of the voters' lists for those to influence the final election results. An extremely low percentage of discrepences (0,13%) was first recorded in the voters' lists of national elections of 2007 in the Republic of Armenia, compiled by the Police of the Republic of Armenia. The voters' lists were posted on the website in advance, suggestions

on correcting them were received from citizens and two parties, and no call made by any party was left without feedback.

A. Mahtesyan pointed out in relation to the questions of the applicant party that the allegation of the applicant party, that additional passports had been printed in the Republic of Armenia during the pre-election campaign period for falsifications during the elections to the National Assembly of the RA, were groundless, and to date, the individuals making such allegations had failed to present any fact to the authorized bodies to support that circumstance.

In response to the argument of the representative of the applicant party R. Torosyan that according to the "The Parliamentary Elections of the RA 2007, Preliminary Findings and Conclusions" document of the International Election Observation Mission, the observers saw people outside a polling station in TEC 31, who had a false page in their passports (including the photograph), which, in their opinion, suggested voter impersonation frauds, A. Mahtesyan pointed out that there was no specific proof affirming a false passport; secondly, the Office of the Prosecutor General of the RA applied to the Election Observation Mission to provide them with case details with regard to that fact, however to date no response or argument was received. It can only be inferred that in this case it refers to the Russian-language date page inserted in the passport of the RA citizen, the form and description of which is endorsed by No. 347 decision of May 25, 1999 of the RA Government, pursuant to which a passport of the RA citizen may have a Russian-language data page, containing the passport data in Russian and the photograph of the RA citizen.

12. Involved as an adjacent respondent on the case, a representative of the National Commission on Television and Radio, Chairman of the National Commission on Television and Radio G. Amalyan stated in relation to the claims brought by the applicant party in regard to the alleged breaches of legislation on the RA Election and Television and Radio by television and radio companies and authorized bodies overseeing their activity, which could have impacted the results of May 12, 2007 elections to the RA NA, that the provisions stipulated in Article 11 of the RA Law on "Television and Radio" were contradictory and allowed various interpretations. They often cause misunderstandings and speculations. It is to the legislatively unclarified time period preceding the election campaigning that accounts for the prevailing or at least a substantial part of the violations pointed out by the applicants. Pursuant to Paragraph 24 of the timeline of major activities for administration of consecutive

elections of the NA deputies of the upcoming May 12, 2007 RA NA elections, endorsed by February 1, 2007 No. 1-A decision of the Central Election Commission of the RA, the pre-election campaigning had started since April 8, 2007 and ended on May 10. In this regard, the question of qualifying the campaigning carried out since mid 2006 or February 2007 as pre-election, as pointed out by the applicants, is groundless. Under Article 11 of that law, the identification of political material with campaigning served as a ground for the applicants to qualify the broadcast of informational, editorial, documentary, author's or a range of other programs without a permanent title "Political Advertisement" or "Pre-election Campaign Program" as a breach of law. Only the airtime, allocated in the procedure, set out by part 3 of Article 11 of the RA Law on "Television and Radio", should be followed by "Political Advertisement" or "Pre-election Campaign Program" titles. This is also attested by Paragraph 5 of No. R (99) 15 September 9, 1999 Recommendation of the Committee of Ministers of the Council of Europe on the "Measures Concerning Mass Media Coverage of Election Campaigning", pursuant to which it is required to inform the public on the airtime, allocated for pre-election purposes on paid terms, and on it being a paid political advertisement.

In response to the statement of the "New Times" party representative, pursuant to which the television companies had failed to present the rate for paid airtime, with the exception of the established rates for political advertisement, G. Amalyan pointed out that the airtime, allocated to the candidates, parties and party alliances running in the elections, for pre-election purposes on paid terms, was the same political advertisement. Eight Armenian television companies and one radio company publicly announced the rate for their airtime for paid political advertisement in the procedure, set out by the RA legislation, before February 11, 2007, meanwhile mentioning the duration of airtime, being allotted for that purpose.

13. During the preparation of the case for examination, the Constitutional Court required and obtained from the RA Central Election Commission the protocols of the Precinct Election Commissions of the elections to the RA National Assembly in proportional contest on the voting results in polling stations; reports on the pre-election funds, as prescribed by the law, of the parties and party alliances registered in the proportional contest of the RA National Assembly, the protocols of reviewing the appeals and complaints, received in the course of elections in the proportional contest to the RA National Assembly

and their responses; data of the members of the formed Territorial and Precinct Election Commissions, required from the RA Government statistical data on the number of the RA citizens outside the RA territory, required and obtained from the Commission of the RA Government on Coordination of Philantropic Projects the list of philantropic projects, approved and implemented within the scope of its jurisdiction in 2003-2007, required and obtained from the RA Judicial Department the copies of the acts, adopted by the RA courts on the cases regarding May 12, 2007 elections to the RA National Assembly. All the enlisted materials were provided to the parties of the proceeding.

14. Upon the order of the Constitutional Court, the Central Election Commission of the RA checked the protocols, compiled by the Precinct Election Commission 14/46, 14/64, 14/72, 15/11, 15/19, 15/28, 15/33, 15/35, 15/53, 15/61, 15/64, 16/19, 16/33, 16/52, 17/30, 17/35, 17/36, 18/21, 18/43, 20/27, 20/35, 20/36, 20/39, 20/45, 20/47, 21/16, 23/12, 23/16, 23/21, 23/22, 23/23, 23/28, 23/32, 23/33, 23/37, 23/39, 23/41, 23/43, 23/50, 23/56, 23/57, 23/58, 23/64, 25/13, 27/16, 27/23, 28/31, 38/22, 40/54, 41/14, pointed out by Orinats Yerkir party, which resulted in the clarification of the following:

- the data on stubs had not been mentioned by mistake or had been wrongly mentioned in the protocols of the Precinct Election Commissions 14/46, 14/64, 14/72, 15/11, 15/19, 15/28, 15/33, 15/35, 15/53, 15/61, 16/19, 17/36, 17/35, 17/30, 18/21, 18/43, 20/39, 23/33, 23/37, 23/41, 25/13 27/16, 27/23, 28/31, 41/14, there had been other lapses as well, which had been corrected based on the receipts of the mentioned polling stations. The voting results of the mentioned polling stations had been recounted by the TECs in the procedure, prescribed by the law, and the results had not been changed;

- TECs 15/64, 16/33, 16/52, 20/27, 20/36, 20/45, 23/12, 23/16, 23/21, 23/22, 23/23, 23/28, 23/32, 23/43, 23/50, 38/22, 40/54, when summarizing the voting results, had corrected their mistakes on their own, and the results had not been changed.

- the number of votes cast in favor of the RPA in the protocol, compiled by the Precinct Election Commission 41/14, had been increased, mentioning 102 instead of 72, which, in the opinion of the respondent, was a breach of the EC requirements. The number of discrepancies in the Precinct Election Commission 20/35 had increased by 2, 24 in the Precinct Election Commission 20/36, 752 in the Precinct Election Commission 20/39, 539 in the Precinct Election Commission 23/41, 60 in the Precinct Election Commission 23/56, 330

in the Precinct Election Commission 23/57, 59 in the Precinct Election Commission 23/64, 3 in the Precinct Election Commission 41/14.

15. In the legal assessment of the arguments presented by the applicants on this case, the Constitutional Court proceeds from the following position: in the event that the applicant party failed to challenge the decisions, actions or inaction of election commissions, other authorized bodies, conditioned by election preparation, administration and results summarization processes, in the extrajudicial (administrative) or judicial procedure, prescribed by the RA Election Code and other legal acts, before applying to the Constitutional Court, i. e. failed to utilise (exhaust) all the remedies, prescribed by the law, for the protection of his/her voting rights, hence is not fully empowered with his/her procedural opportunities to present facts of evidential significance and support his/her arguments with them within the public law dispute, examined in the Constitutional Court on the election results.

Pursuant to Paragraph 3.1 of Article 100 of the RA Constitution, the decision adopted on the election results is the subject matter of the dispute in the Constitutional Court, which, in accordance with Paragraph 9 of Article 101 of the Constitution, the applicant shall make a subject matter for examination within the scope of "questions related to him/her".

The legal justification of the decisions of competent election commissions on the results of the elections to the RA National Assembly can be challenged in the Constitutional Court from two perspectives: both on the ground of the established procedure (rules of procedure) for their adoption, their adherence to the format and structure required by the law (formal grounds) and on that of the alleged mistakes in applying the norms of the substaintive law, due to which the election commissions, when summarizing the election results, drew a wrong conclusion on the number of candidates, included in the list of any party (party alliance), being elected or not (material grounds).

Procedural (formal) errors can be recognized by the Constitutional Court as a ground for legal assessment only in the event that the applicant proves their direct causal link with the election results. The Constitutional Court proceeds from the impact those have on the free will of voters and the election results, and not the necessity to formally affirm those mistakes.

Meanwhile, the decision of a competent election commission on the election results can be challenged in the Constitutional Court only in the event that, in the opinion of the

applicant, the commission should have rendered another decision, i. e. stipulated other election results, and that is what should be justified by the applicant. For that purpose the applicant party should present to the Constituional Court facts of such election violations, which were submitted in advance to the competent election commission in the procedure, set out by the law, which, in his opinion, would have resulted in the affirmation of other election results. The objective of the constitutional procedure is to reveal the reliability and influence of such election violations on the election results. It is based on this principle, as well as the necessity to ensure constitutional and legal guarantees for further improvement of the election system in the Republic of Armenia, that the Constitutional Court examined and assessed the facts and arguments presented on the case.

16. Upon comparing the arguments of the parties and assessing the facts on the case, the Constitutional Court deems it justified that:

- the RA CEC and Territorial Election Commissions mainly preferred to be guided by the principle of exerting supervision in case of an appeal on an election violation, which cannot guarantee the effective excercis of the powers of those commissions prescribed by the law;

- there were cases of improper notification of voters on the day and place of voting;

- the level of preparedness of isolated election commission members is still low, which resulted in organizational lapses and formal errors in compiling protocols, as indicated by international observers;

- the conditions for the disabled to fully participate in the voting were inadequate in a substantial number of polling stations;

- there were cases of incorrect compilation of protocols, unacceptable changes in the protocols, as well as isolated cases of falsification of election documentation, which is also emphasized by international obsevers in their post-election interim report;

- in the absence of clarification of the notion of “initial protocol data” in the RA Election Code, the election commissions interpreted it arbitrarily in some cases;

- the requirement of Paragraph 3 of Article 22 of the RA Election Code on indicating the financial source for publicizing the sociological survey results was not fully met.

The Constitutional Court holds that there are also certain problems in monitoring pre-election campaigning by the RA CEC, ensuring insufficient effectiveness of the system for

protection of voting right in the procedure of special appeal proceedings in courts of general jurisdiction, as well as control over expenditures of pre-election funds.

17. Notwithstanding certain improvements of the RA Election Code, there were inconsistencies and other shortcomings in the code and other RA legislative acts that create problems in the organization of pre-election processes and effective judicial protection of the right to vote. For instance, Paragraph 3 of Article 40 of the Election Code stipulates that "The decisions, actions (inaction) of the Central Election Commission, with the exception of decisions on election results, may be challenged in a court of appeal." Such norm considered the importance and peculiarity of a complaint, the necessity to also ensure greater confidence towards the examination of those complaints in a collegial manner and towards the judicial act, as in accordance with part 8 of the same article "The courts shall adjudicate on complaints regarding the decisions and actions (inaction) of the election commission within the timeframe set out by Paragraph 7 of this Article. Such court verdicts shall be final and shall enter into force from the moment they are publicised." Basically, election disputes shall be settled in the procedure of special appeal proceedings also in a court of appeal. Meanwhile, the RA Civil Procedure Code did not prescribe such an opportunity for the court of appeal, which made it impossible to challenge the RA CEC's decisions and actions (inaction) in the procedure of special appeal proceedings in the court of appeal under the procedures prescribed by the RA Election Code.

The legal practice lacks a unified approach towards the requirements of Article 11 of the RA Law on "Television and Radio". Particularly, this refers to the conscientious implementation by the CEC and National Televison and Radio Commission of their supervisory authorities in the time period preceding pre-election campaigning, and the execution of the right to effective judicial protection towards their actions and inaction. In reference to the phenomenon, the Constitutional Court states that as far as the applicant's claims on the non-adherence or improper fulfillment of law requirements by courts is concerned, the judicial acts are under constitutional supervision pursuant to Article 100 of the RA Constitution, hence their content assessment is not within the jurisdiction of the Constitutional Court. The Constitutional Court also holds that all the questions related to the disputes on the registration of candidates at the time of elections, which shall be settled during the pre-election stage, and the settlement of which is within the jurisdiction of the courts of general jurisdiction, cannot become a subject matter of another case in the

Constitutional court, and the final act adopted by the courts of general jurisdiction is accepted as the ground of evidential significance.

The Constitutional Court holds that not only should the RA National Assembly eliminate the mentioned legislative inconsistencies, but it should also consolidate the legal grounds of the institution of special appeal proceedings, by further clarifying the procedure and peculiarities of such proceedings. This issue was also reflected by the Constitutional Court in its CCD-700 of May 8, 2007. Definite legislative formulations and elimination of internal inconsistencies will enable the participants of election processes to protect their rights with greater effectiveness.

18. The Constitutional Court holds that Article 40^1, stipulating the procedure for reviewing appeals (complaints) and suggestions by the election commissions, which largely contains formal requirements towards those documents, is also imperfect in the RA Election Code. Meanwhile, for effective supervision of election processes and increase of public confidence towards elections, legislative amendments need to lead to a clear normative requirement set especially for procedural review of complaints (appeals) and suggestions and, thereof justified decision-making by election commissions. It will create ponderable prerequisites to enhance the responsibility of those commissions, if necessary, to challenge those decisions in the court, and, in the processes conditioned by election results, also to guarantee the effective judicial protection of the constitutional rights of individuals.

19. The applicant party deems the failure in establishing polling stations outside the country and ensuring sufficient prerequisites to fulfill the voting right of the RA citizens abroad as one of the major arguments to invalidate the election results of the RA National Assembly. In regards to this question the Constitutional Court states that the RA CEC acted in the procedure set out by the law. The Constitutional Court also states that the "Democracy through Law" experts of the European Commission, analysing the amendments of the RA Election Code dated February 28, 2007, presented an opinion (CDL-EL(2007)014 and CDL-EL(2007)015) in the 71st full session of the Commission held on May 31, 2007, which was approved by the Commission, pursuant to which such practice exists in various countries, and it up to the national legislative body whether a respective state accepts or rejects the institute of organizing elections inside a country.

Meanwhile, in regard to the protection of individual rights, this particular question could have become a subject matter on the case in the Constitutional Court in the context of the constitutionality of the amendments to the RA Election Code becoming a subject matter of the case in the event of a respective application and in the procedure assessing the constitutionality of the law.

20. Accoeding tothe representative from "Impeachment" Alliance expressed during the proceedings, the fact that the RA CEC is not a state body under the RA Constitution, and the existence of that body does not proceed from the requirements of Articles 2 and 5 of the Constitution, is an essential ground for invalidation of the election results.

The Constitutional Court holds that such an approach results from a subjective interpretation of the Constitutional norms. The Central Election Commission is a body formed on a legal basis, and the Constitutional Court expressed its legal position on the state and legal status thereof in the reasoning of decision No. CCD-664 dated November 7, 2006.

21. The applicants empahsizes the importance of the issue of guaranteeing adherence to the principles of pre-election campaigning. As is also mentioned in the preliminary statement of May 13, 2007 of the International Election Observation Mission, "The Election Code does not address what constitutes campaigning and whether campaign activities or fund-raisings by election contestants or third parties are permitted prior to the campaign period." Meanwhile, it notes that "The absence of definite prohibitions on early or indirect campaigning, and deficiencies in enforcing party and campaign finance regulations, leave scope for election contestants to exceed campaign finance limitations." The results of case examination proved the validity of such a conclusion. The RA CEC stands that the supervision over early pre-election campaigning is not of its concern, and that it has largely become a function of non-governmental organizations.

The Constitutional Court states that the comparison of the arguments brought by the parties in relation to the violations of the norms of Paragraph 7 of Article 18 of the RA Election Code, the official information received from the Office of the RA Prosecutor General and the analysis of the case materials reveal that the applicants failed to consistently excercise their rights prescribed by Paragraph 8 of Article 18 of the Code. The Constitutional Court attaches particular importance to the fulfillment (adherence) of normative requirements regulating the relations of challenging the election processes, in all

the stages of that process, which serves a stable legal prerequisite for the protection of violated voting rights under the procedure of constitutional justice.

Meanwhile, the Constitutional Court states that the legal relations related to the processes preceding voting are inadequately regulated by legislation, particularly, the expression “pre-election campaigning” needs a clear definition that is perceived in the same way, which, as proven by the practice related to the 2007 election of the RA NA deputies, were often identified with “political processes”, “time period preceding campaigning and campaign period” and other expressions. It was first of all contributed by the contradictory regulation of pre-election campaigning, as an institution to excercise the voting right of the RA citizens guaranteed by the Consitution, in Article 11 of the RA Law on “Television and Radio” and Article 18 of the RA Election Code.

The Constitutional Court deems it necessary to prescribe an unambiguous (specific) procedure and conditions in the RA Election Code for the application of that institution within the content and timeframe of “pre-election campaigning”, which also serves a guarantee for ensuring the equal application of limitations of Paragraph 7 of Article 19 and Articles 19-23 of the Code, conditioned by election processes.

22. The protection of voting right, especially within constitutional justice, does not presuppose a formal approach towards the extent to which people’s active or passive voting rights were breached. The issue has a wider coverage and relates to the public element of the elections, i. e. the way and the level of confidence in which the cross-section governance system is formed, the way in which the freedom to participate in the governance and the obligation to form cross-section bodies are harmonized, the social behaviour of individuals in this process. Hence, it is the obligation of the state, and not that of isolated political units or individuals to enable the conduct of democratic elections. The requirement of Paragraph 4 of Article 1 of the RA Election Code also proceeds from it and the international committments of the Republic of Armenia, pursuant to which, “The state, the government and local self-governance bodies, as well as bodies and officials forming the Central Election Commission, shall bear responsibility for the legality of election administration within the authorities given to them by the legislation.” Hence, the state shall be obliged to guarantee that;

a) the election legislation is free from any deficiencies hindering the effective execution of the voting right;

b) the ongoing political activity is clearly separated from pre-election campainging;

c) the combination of political and philantropic activity is eliminated;

d) the convergence of political and business interests is prevented in all the stages of election process.

In accordance with the fundamental principals stipulated by Articles 2 and 4 of the RA Constitution, it is crucial for a rule of law state to ensure such legislative and structural guarantees for the domination of political interest of the society in election processes, which will eliminate any possiblity for an immediate convergence of political and business interests in the formation of the representative bodies of authorities with a primary mandate.

23. The representatives of "Orinats Yerkir" and "New Times" parties brought forth the issue of illegal changes or wrong completion of protocols on the proportional results in a number of polling stations. The analysis of the protocols submitted by the applicants and required from the respondent revealed that the main issue relates to such errors that the Territorial Election Commissions were authorized to correct on the grounds of part 1 of Article 63 of the Election Code while checking the validity of compilation of protocols on voting results in polling stations. It also appeared that the final protocols of several polling stations were changed with the breach of requirements set by the law, and the Constitutional Court deems it necessary, particularly for the verification of changes in the final documents of polling stations 18/43, 20/36, 23/39, 20/47, 23/41, 41/14 and the legality of other materials on the case, to provide those to the Office of the RA Prosecutor General to proceed in the procedure set out by the law.

The Constitutional Court holds that the subsequent changes in the protocols create mistrust towards the election process, and part 1 of Article 63 of the RA Election Code shall clearly and specifically mention the protocol data, which are not subject to changes under any circumstance. Meanwhile, upon assessing the subject matter of the dispute – the changes in the protocols in view of their impact on the election results – the Constitutional Court also proceeds from the fact that the recouted number of discrepences increased by about 3,000. Pursuant to Paragraph 7 of Article 115 of the RA Election Code, the number of discrepences cannot serve as a ground for invalidating the elections in proportional contest. Pursuant to Paragraph 2 of the same Article, the number of discrepences shall

impact on the distribution of mandates, and when calculating the threshold of 5 or 7 per cent, even if that number had undergone changes, it did not lead to any changes in the election outcome. The RA Constitutional Court examines not an abstract, but a specific case, and in this case the number of discrepences did not impact on the number of votes received by the applicants. In addition to that, the comparitive analysis of the protocols of 14/46, 14/64, 15/19, 15/61, 15/64, 16/19, 16/33, 16/52, 17/30, 17/35, 17/36, 17/72, 21/16, 23/32, 23/58, 28/31, 36/42, 36/43, 38/22, 40/54 and 60 other polling stations submitted by the applicants revealed that the partial changes brought by the applicants had been made based on the requirements of Article 63 of the RA Election Code, and had no impact on the number of votes cast in favor of parties.

Overall, 17,685 were involved as election commissions members. In elections of proportional contest 22 parties and one party alliance had 40,766 proxies in election commissions. Over 100,000 persons had a right to submit an application for a recount of voting results in 1,923 Precinct Election Commissions in the procedure set out by Article 40^2 of the RA Election Code, a total of 32 appeals on breaches were filed, 23 of which were submitted by individuals without a direct right for it. In particular, "Impeachment" Alliance had 336 proxies, "Republic" – 1,222, "New Times" – 803, while "Orinats Yerkir" party had 3,181 proxies and 1,923 election commission members. Only three persons from among them filed a request for a recount.

As inferred from the case materials, the difference between the initial and final data of the elections in the number of initial data of the final protocol of the RA CEC and votes case in favor of parties (party alliance) ranges from 0,15 to 1,5 per cent.

24. The case examination proved the validity of the conclusion of the International Election Observation Mission that, despite the legislative and organizational lapses and isolated violations, "visible and vigorous campaigning by many candidates nominated both in proportional and majoritarian was observed, which was conducted in a permissive environment." Notwithstanding the legal and structural lapses, improper fulfillment of the requirements of legislation in isolated cases, their volume and character did not serve as a ground for the RA CEC to render another decision on the election results.

The Constitutional Court states that the nature of election disputes has changed essentially, conditioned by the process of 2007 election of the RA National Assembly deputies and amendments to the Election Code, a number of election violations peculiar to

young democratic systems have been eliminated, voters have become increasingly politically active, which resulted in substantial strengthening of social demand on election violations, particularly on elimination of breaches of pre-election campaigining principles and further regulation of the supervisory activity of authorized state bodies. In this regard the Constitutional Court reinstates its legal position on the fact that provision of equal opportunities to participants of election processes is closely connected with the formation of voters' opinion and presupposes neutrality of state bodies towards pre-election campaigning and mass media coverage. However, based on the necessity for unconditional adherence to international legal standards for election administration, it is worthwhile to mention on this case that the principle of fairness and freedom in carrying out pre-election campaigning cannot be interpreted broadly enough to eliminate the execution of a right to freedom of speech and information, as well as that of the mass media for having a viewpoint of its own and its expression.

25. The activity of a party, as a participant in the election of the RA National Assembly deputies under proportional contest, is first of all regulated on the level of the constitutional normative principle: "The parties shall ensure the publicity of their financial activity (Article 7 of the RA Constitution). It is to the guarantee and ensurance of the application of this principle that the provisions stipulated in Article 28 of the RA Law on "Political Parties" is called for.

The Constitutional Court holds that the latter can serve as a sufficient ground for legislative provision of effectiveness in supervising the financial activity of parties in election processes, in the event that the supervisory mechanisms are harmonized with the requirement of the law. However, the case examination revealed that.there were legislative, structural lapses in this issue. Particularly, Paragraph 7 of Article 18 of the RA Election Code needs to be revised, which shall not only relate to pre-election campaigning, but shall be generally prohibited for the parties to take an illegal action. The international practice reveals that organization of regular and independent auditing of the financial activity of the parties is a tool for transparent and effective monitoring. The Republic of Armenia shall be obliged to take active steps towards systematic stipulation and guarantee of the provisions of the "Joint Rules against Corruption during Funding of Political Parties and Election Processes" order of the Committee of Ministers of the Council of Europe, adopted on April 8, 2003, in domestic legislation.

26. The Constitutional Court holds that any dispute connected with the decision adopted on the results of the RA NA elections under proportional contest shall become a subject matter in view of protection of a specific right to vote considering breaches of rights in the RA Election Code and Constitution during election administration, which could have served as a ground for rendering another decision. It refers to violations, occured in the election process and revealed in a timely manner and submitted with the legal justification required, which reveal that in case of an election dispute filed on the protection of a passive voting right, the opportunity for proper exercise of that right is disabled. The examination of this case reveals that those opportunities were mainly guaranteed. Meanwhile, the international practice of constitutional justice proves that only specific violations, affirmed in the procedure set out by the law, can serve as a ground to invalidate the election results, which had had or could have had a substantial impact on the proportion of votes received by candidates and reveal the fact that the election results did not reflect the actual expression of voters' will.

Upon assessing the positions and arguments, presented by the applicants on this case, on the grounds of Article 74 of the RA Law on "Constitutional Court", analysing the materials submitted to the Constitutional Court by the applicant and respondent parties, as well as adjacent respondents, assessing within a specific election dispute the facts of evidential significance, presented by the parties, and other evidences obtained in the course of the case proceedings, the Constitutional Court holds that there were no justified reasons for the CEC to adopt another decision on the results of the elections of the RA National Assembly under proportional contest of May 12th, 2007.

Based on the results of case proceedings and guided by Paragraph 3.1 of Article 100, as well as Article 102 of the Constitution of the Republic of Armenia, and Articles 63, 64 and 74 of the Law of the Republic of Armenia on "The Constitutional Court", the Constitution Court of the Republic of Armenia

DECLARED:

1. to leave in force No. 149-A Decision of May 19, 2007 of the Central Election Commission of the Republic of Armenia on the "Election of deputies of the National Assembly of the Republic of Armenia under proportional contest".

2. for the purpose of determination the legitimacy of the changes in the final protocols of Preceinct Election Commissions 18/43, 20/36, 20/47, 23/39, 23/41, 41/14 and other materials, to provide them to the Office of the RA Prosecutor General to proceed in the procedure set out by the law.

3. in accordance with the second part of 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 publication.

PRESIDING **G. HAROUTYUNYAN**

June 10, 2007
CDD-703