

IN THE NAME OF THE REPUBLIC OF ARMENIA
DECISION OF THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF ARMENIA

**ON THE CASE ON THE APPLICATION OF CANDIDATE FOR THE RA
PRESIDENT LEVON TER-PETROSSYAN ON CONSIDERING OBSTACLES
ARISEN FOR THE CANDIDATE FOR THE RA PRESIDENT AT THE RA
PRESIDENTIAL ELECTIONS OF 2008 AS INSURMOUNTABLE**

Yerevan

11 February 2008

The Constitutional Court of the Republic of Armenia composed of: G. Harutyunyan (presiding judge), K. Balayan, H. Danielyan, F. Tokhyan, V. Hovhanissyan, Z. Ghukhassyan, H. Nazaryan (rapporteur), R. Papayan, V. Poghosyan,

with the participation of

of the representatives of the Applicant: Ruben Torossyan, Artak Zeinalyan, Robert Sanoyan,

Pursuant to Point 4, Article 100, Point 9, Article 101 of the RA Constitution, Articles 44 and 75 of the RA Law on “The Constitutional Court”,

examined in a public hearing “the case on the application of candidate for the RA President Levon Ter-Petrossyan on considering obstacles arisen for the candidate for the RA President at the RA Presidential elections of 2008 as insurmountable.

The case was initiated through the application of 07.02.2008 submitted to the Constitutional Court by the candidate for the RA President.

Having heard the report put forward by the rapporteur judge on this case, the explanations of the representatives of the Applicant, having studied the documents submitted by them, the Constitutional Court of the Republic of Armenia **FOUND**

1. The Applicant finds that “the obstacles already created during the Presidential elections of the RA of 2008 and which are for the reasons non-dependant from the candidate for the RA President Levon Ter-Petrosyan, make impossible his further participation in the electoral processes prescribed by the RA electoral legislation”. The Applicant presents as a reason, particularly, the fact that “National Tele-radio Company” by “Hailur” news broadcasting program of “H1” broadcasting company, during the last three months has grossly violated the requirements of the RA legislation (Articles 18, 20 and 22 of the RA Electoral Code, as well as Articles 11 and 28 of the Law on “Television and Radio Broadcasting” and has broadcast anti-campaign mass programs about the RA first President and the nominated and registered candidate for the RA President Levon Ter-Petrosyan”.

Among other arguments, the Applicant also mentions, “The unsuitable time, presented to the candidates for the pre-election campaign by the national television does not allow even to mitigate anti-campaign of “Hailur””. By citing specific steps undertaken by the candidate’s proxies it is emphasized that the “Candidate for the RA President Levon Ter-Petrosyan’s campaign office has undertaken all possible means stipulated by the RA legislation to prevent violations committed against the RA President candidate or abolish their consequences but they have not achieved any positive result”.

The Applicant also considers as an obstacle that “In the history of elections of our country for the first time one of the candidates has appeared in the situation when for the reasons non-dependant from him cannot realize pre-election campaign on the equal conditions with other candidates, i.e. he cannot surmount the consequences of the unprecedented state anti-campaign implemented against him and thus, to take part in the election processes prescribed by the RA electoral legislation”.

The Applicant requests the Constitutional Court “To consider the obstacles created for the candidate for the RA President Levon Ter-Petrosyan at the RA Presidential elections of 2008 as insurmountable.”

Attached to the application are presented the materials concerning the arguments of the Applicant.

2. The Constitutional Court states that the provision of “Appearing of insurmountable obstacles for one of the candidates of the RA President” is stipulated in Article 52 of the RA Constitution, according to which there are two cases for postponing the presidential elections and appointing new elections. First, as the result of evaluation of the character of the obstacle, when insurmountable obstacles have appeared for one of the candidates and they still exist, second by virtue of law, in the case of the death of one of the candidates till the voting day. Moreover, pursuant to Point 4 of Article 100 of the RA Constitution the evaluation of the character of the obstacle for one of the candidates as surmountable or insurmountable is in the competence of the Constitutional Court.

Based on the requirements of Articles 52 and 100 (Point 4) of the Constitution of the RA, Paragraph 5 of Article 75 of the RA Law on “The Constitutional Court” defines that: “The Constitutional Court can determine the obstacles as insurmountable if they appeared and make the participation of the given candidate in the electoral processes impossible for the reasons non-dependant from the candidate”.

3. Returning to the constitutional legal contents of the provision of “Appearing of insurmountable obstacles for one of the candidates of the RA President” the Constitutional Court states that the legal precedent of that provision has originated from the French constitutional-legal practice according to which “the insurmountable obstacle” is interpreted as an impossibility of further personal participation of one of the candidates in the process of elections owing to his/her specific situation.

This institution is implemented exceptionally in respect with the candidates for President taking into consideration that necessity of new presidential elections is conditioned not by disputable issues of the campaign but by insurmountability of the situation that is i.e. such a situation of a candidate, which causes incapability of a latter to participate in the later election processes.

The Constitutional Court finds that there are certain procedures, with the indication of terms and competence of different legal subjects, prescribed by the legislation for assessing, discovering and eliminating the possible violations in the electoral process and the disputable issues connected with those violations. In the frames of subject of legal regulation of Article 52, Point 4 of Article 100 of RA Constitution the constitutional-legal content of the provision

“appearing of insurmountable obstacles for one of the candidates of the RA President” is other. It presumes that during the period starting from the date of registration of candidate for President of the Republic up to the 8th day prior to election day of the President of Republic such a situation has appeared non-dependant from the will of the Presidential candidate, which cannot be objectively overcome during the mentioned period and which practically deprives him of the possibility to participate in further electoral process.

4. The Applicant mainly states that one of the candidates has appeared in such a situation that “...for the reasons non-dependant from him he cannot realize pre-election campaign activities on equal conditions with other candidates” having in view that National Tele-radio company, through “Hailur” news broadcasting program of “H1” broadcasting company continuously and grossly violating the requirements of the RA legislation have broadcast anti-campaign mass programs against him.

The Constitutional Court states that pursuant to Part 1, Article 18 of the RA Electoral Code the state ensures the citizens’ free implementation of the pre-election campaign. The law also requires the implementation of the pre-election campaign on the equal basis. Part 3 of the same Article defines that the candidates are ensured to enjoy equal conditions of mass media, i.e. air time or extent, tariffs etc.

At the same time, Article 20 of the RA Electoral Code defines that the National Television Company and the National Radio shall provide equal conditions to all candidates participating in the elections. The news programmes broadcasted by the National Television and National Radio should provide impartial information on the campaign of candidates, they also should refrain from estimating the information, in order to ensure the observance of the fair and equal conditions. The RA Law on “Television and Radio” prescribes some competences of that insure.

The RA Electoral Code also defines the order of control over the pre-election campaign (Part 9, Article 20) according which “The observance of the prescribed order of the campaign by the Television and Radio companies is controlled by the National Commission on TV and Radio, which is entitled to apply to the court in case of discovering violations. The Central Electoral Commission is entitled to present opinions on the violations to the court”. Besides, Point 5 of Part 1 of Article 41 of the RA Electoral Code defines that the Central Electoral Commission “supervises that the mass media ensure equal opportunities for campaigning”. At the same time,

according to the provisions of Chapter 25 of the Code of Administrative Procedure of the Republic of Armenia, the RA Administrative Court considers the cases on the protection of electoral rights in accordance with Articles 143-150 of the above- mentioned Code.

5. During the preparation of the hearings of the case, the Constitutional Court demanded references from the RA Administrative Court, RA Central Electoral Commission and the National Commission of Television and Radio Broadcasting. Those references state that the proxy of the Applicant on the day of filing the case to the Constitutional Court, i.e. February 7, 2008, has presented an application to the RA Administrative Court. The National Commission of Television and Radio Broadcasting by its notice of 07.02.2008, #01-17 informed the Constitutional Court that "On 07.02.2008 the Commission received a claim of performing an action filed from the RA candidate for President Levon Ter-Petrosyan's proxy Artak Zeinalyan to the RA Administrative Court on implementation of control over the defined order of pre-election campaign." In the same notice, it was also informed that the above-mentioned company had received an application-suggestion forwarded by the campaign office of the RA Presidential candidate Levon Ter-Petrosyan and it is taken for examination.

In the framework of the arguments presented to the Constitutional Court, on February 6, 2008 the proxy of the Presidential candidate presented an application-suggestion to the RA Central Election Commission.

The Constitutional Court finds that the actions of proxies of the candidate for the RA President are lawful, and derive from the abovementioned requirements of the law. The task of the RA Central Electoral Commission, the National Commission of Television and Radio Broadcasting as well as the Administrative Court is, within their competence and in a manner and terms prescribed by the law, to ensure the dully implementation of the requirements of the RA Law on "Television and Radio Broadcasting." Any formal approach of this issue can create mistrust towards election processes.

At the same time, the abovementioned actions of proxies of the candidate for the RA President in the framework of pre-election campaign, as well as the fact of continuing the pre-election campaign certify that there is no insurmountable obstacle, but there is a dispute regarding the guaranteeing the legality of the campaign, which under the procedure prescribed by

the law has been presented to the relevant authorities and bodies, which in this stage of elections have the authority to assess and solve them.

The Constitutional Court finds necessary to emphasize that, the mentioned Articles of the Constitution and the RA Law on “Constitutional Court” relate to the RA Presidential candidate as a legal subject. Which means, that they relate only to the person, who has been nominated, registered and has obtained the legal status of a Presidential candidate in a manner prescribed by law. With this regard the arguments presented by the Applicant, which relate to the processes prior to the registration of the RA Presidential candidate, does not directly relate to the request brought by the Applicant at the Constitutional Court.

Concluding the hearings and being ruled by Articles 52, 100(4), 102 of the RA Constitution, Articles 63, 64 and 75 of the RA Law on “The Constitutional Court”, the Constitutional Court of the Republic of Armenia **DECIDES:**

1. The arguments presented by the Applicant in the framework of the subject of legal regulation of Article 52 of the RA Constitution and Article 75 of the RA Law on “The Constitutional Court” cannot be considered as insurmountable obstacles in the RA Presidential Elections of 2008 for the candidate for the RA President Levon Ter-Petrosyan.

2. Pursuant to Part 2, Article 102 of the RA Constitution this decision is final and is in force from the date of publication.

PRESIDING JUDGE

G. HARUTYUNYAN

11 February 2008

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