

## **RA Constitutional Court Decision Regarding 2008 Election Results**

### **Summarized Translation of Excerpts**

### **Unofficial Translation**

**March 8, 2008**

**CCD-736**

10. While preparing for the case investigation the Constitutional Court has requested and received from Central Election Commission of the RA protocol of appeals of Presidential candidates (proxies) concerning the RA election 19.02.08, decisions, copies of responses, reference about re-count of voting results based on appeals and not re-counting results in case of existence of appeals according to exact precincts. The reports of pre-election funds of the RA Presidential candidates were received, as well as the results of inspection and those decisions of election commission of election districts, according to which re-count of application of electoral results were denied. Appeals, protocol of sessions concerning them and copies of responses addressed to National Commission of TV and Radio were requested and received from the RA Prosecutor's office about the initiation of criminal proceeding concerning the election violations. Copies of legal acts made by the RA Administrative court concerning the protection of electoral right in 19.02.08 Presidential elections were requested and received from the RA Administrative court. All the mentioned documents have been given to the parties of trial in this case.

During the trial A. Zeynalyan, the applicant's representative, spoke as a witness based on the article 51, part 5 and article 52 of the RA law on "Constitutional court".

11. According to article 100, point 3.1 of the RA Constitution, the Constitutional Court settles disputes concerning the decision of election results based on constitutional amendments in the result of referendum of November 27, 2005. The decision of the Central Election Commission for the Presidential elections results can be disputed through 2 aspects: by formal grounds and material grounds. In the second case the election results can be affected by those legal violations, which distort the general picture of election right of citizens, and do not make it possible to conclude the final electoral results. Meanwhile within the frameworks of passive electoral right protection, in the result of evaluation of violations of electoral results, the electoral rights of active voters, who voted legally, can not be violated. The Constitutional court also states, that within the frameworks of dispute investigation concerning the election results decision, the Constitutional court is not competent moreover to investigate the issue of constitutionalism of laws, which is not prescribed by the RA law on "Constitutional Court". According to article 94 of the RA Constitution, the activity of the Constitutional court is established by Constitution and by the RA law on "Constitutional

Court”. Meanwhile article 100 of Constitution also establishes that Constitutional court realizes its authorities vested in the article prescribed by law.

12. The duty of disclosure of factual circumstance of case regardless of position of parties has its particular limits, the existence of which is arranged by constitutional and legal authorities. The official clarification of case is possible only within those scopes, and that principle does not authorize the Constitutional court to assume the authorities of other legal bodies (prosecutor’s and investigation) to substitute other administrative bodies. According to article 51, part 5 of Constitution; the Constitutional court shall make a decision within 10 days of period based on the appeal concerning the disputes of President’s election results.

13. Following the requirements of article 100, point 3.1 and article 101, point 9 of the RA Constitution as well as the procedures of judicial protection of electoral right, Constitutional Court in its 703 decision June 10, 2007 has expressed a legal position regarding disputes on registration of candidates, the settlement competence of which is assumed to other courts and they cannot be topic of investigation in Constitutional Court and the final acts of those courts are accepted as evidence. The investigation of this case stated that the applicant referring various legal positions of Constitutional Court in the whole electoral procedure and in the process of presenting application has not paid sufficient attention to this position. Constitutional Court emphasizes the maintenance of normative requirements regulating the appeal relations of electoral procedure in all its stages, which is a stable legal precondition for protection of violated electoral rights.

14. Constitutional Court emphasizing the role and activity of the international observer mission, finds that during the trial the preliminary report of that mission regarding the legal violation concerning the President’s election results is not a sufficient evidentiary ground to recognize the decision of Central Election Commission invalid. Particularly the first of the applicants has not added any evidentiary facts to those observations. In such case that report shall be observed totally, taking into consideration the statement in it “Presidential elections of the RA on February 19 are held according to assumed duties and principles towards OSCE and EU”.

15. More than 500 various initial documents concerning voting were presented to the Constitutional Court by the Presidential candidate L. Ter- Petrosyan of which 94 were properly formulated and evidentiary, including 23 applications requesting re-count, 7 announcements about violations, 12 applications, 7 appeals, 13 protocol about violations, 28 extracts from protocol concerning voting

results, 2 extracts from protocol of election commissions sessions, 2 receipts for getting applications. Separate video materials about election violations have also been presented. Applications for re-count have been presented to the electoral commission of precincts by all the Presidential candidates concerning 258(13.4% of total number) election districts, of which:

- a) 53% or 135 applications (62 are L. Ter-Petrosyan's and 15 are based on T. Karapetyan's representatives' applications) are satisfied, a re-count has been made based on them and the results have been presented by defendant's party.
- b) 24 applications for re-count were denied because the deadline for submitting them was missed.
- c) 99 applications were denied for different reasons, particularly:
  - 35 applications were denied for not being submitted by appropriate applicants according to article 40<sup>2</sup> part 1 and 13 of the RA EC.
  - 16 applications were denied based on the grounds that they were not documented properly according to article 40<sup>2</sup> part 2, 3 and 13 of the RA EC.
  - 25 applications were denied according to article 40<sup>2</sup> part 1, 2, 3 and 13 of the RA EC because they were not filled out personally by the applicants.
  - Only 23 re-count applications were denied on the basis that the requests were baseless; nevertheless, those decisions were not appealed through administrative or judicial procedure.

Moreover the applicant has submitted extracts from appropriately ratified protocols of voting results from 25 Election Commission of election districts the data of which differ from the data posted in the official website of the Central Election Commission. A re-count was made in 3 precincts due to the materials submitted to the Constitutional Court by Central Election Commission. According to the information provided by the RA prosecutor's office a criminal proceeding has been initiated regarding 3 precincts on the basis of article 150 of the RA Civil Code. There is a negligible difference (1-4 units) between the data of protocol extracts of 7 precincts and the ones posted in the official website of the Central Election Commission. There is a considerable difference between the data of protocol extracts of 12 precincts and the ones posted in the official website of the Central Election Commission. The applicant rejected performing inspection in the exact precincts by the Constitutional Court, considering it senseless to perform it after the elections. A criminal proceeding has been instituted and a preliminary investigation is realized according to reference 2/8-01 submitted to the RA Constitutional court on 01.03.08 by the RA Prosecutor's office.

Before the constitutional amendments according to 412 decision 16.04.03 of the RA Constitutional Court, during dispute settlement in the Constitutional Court the voting results of precincts are not authentic, if:

- a) There are various summarized protocol in the same precinct concerning the official voting results.
- b) It is legally proved that there are ballot stuffing, wrong count of votes and other violations, but have been rejected by election commissions of precincts, the rights of members of the commission and proxies to verify the voting results were not defended by courts.

Moreover in order to evaluate the influence of not authentic results on total voting results, the Constitutional Court had reduced the total difference of votes given to candidates to the extent of votes given to a candidate having received the most of the votes.

16. Following articles 14, 14<sup>1</sup>, 17<sup>1</sup>, 18, 20, 25, 26, 40, 63<sup>2</sup>, 75, 79 and 139 of the RA EC, as well as articles 143-150 of the RA Administrative Procedures Code newly- created administrative courts are authorized for judicial protection of electoral right in the result of legislative developments in the Republic of Armenia. According to article 100, point 3.1 of the Constitution, Constitutional court has the competence of dispute investigation related to decisions of election results. In addition, following the above mentioned articles of EC and Administrative Procedures Code, legal violations in the election procedure are evidential in case, when they are obtained in the result of factual investigation in the competent court. The means of administrative justice have not been productively applied even in such cases, when election commission of separate election districts have rejected re-count, those decisions have not been judicially reviewed, this is the real picture of election results of 19.02.08. As to the applicant, there's a mistrust towards the administrative court, however such evidence is not a guarantee for further legal procedure. Meanwhile, violations in any precinct or election district cannot be considered grounds for similar violations in other precincts or cannot lead the whole legitimacy of election procedure under suspicion. The decision of election can be recognized invalid only based on those exact violations, which had or could have vital influence on final election results.

17. The applicant particularly emphasizes the circumstance of unequal conditions for candidates during pre-election campaign and especially the violation by "Haylur" program of Public TV of the impartiality principle prescribed by electoral code. In this regard the Constitutional Court finds that during Presidential election the productive supervision of pre-election campaign has been out of control of the RA Central Election Commission. The National Commission on TV and Radio had formal approach to law requirements. Accordingly not only biased approach has emerged from the

media, but also legal and moral violations were noted during separate elucidations. The problem of pre-election campaign of Presidential candidates is closely related to the formulation of voters' opinions and the Constitutional court finds, however, that the candidates by various means could present their views to the voters. Following the international legal standards, the principles of fair pre-election campaign cannot be commented so widely to exclude the right of freedom of speech and information.

18. The analysis of legal violations pointed by applications, the criminal proceedings for election procedure by the RA Prosecutor's office, the fact presented by the RA Police testify that the basic imperfections of election procedure and the lack of public confidence have deep reasons.

According to RA Constitutional Court decision 703, 10.06.07, the protection of electoral right, especially within the scopes of constitutional justice does not imply a formal approach on how the electoral rights of participating voters and nonparticipating voters are violated. This issue is of a wider framework and relates to the public function of elections in regard to how the public governing system forms and what credibility it gains, how the right of participation in governing bodies harmonizes with the responsible formation of such bodies and how the public behavior of individuals relates to this process. Holding democratic elections is the duty of state and not the duty of separate political unions and individuals.

According to article 1, point 4 of the RA EC the state, state administration, local self-government, bodies forming Central Election Commission and officials are responsible for the legitimacy of election procedure. The state is obliged to guarantee:

- a) the protection of election legislation from imperfections
- b) the separation of political activity from pre-election campaigning
- c) the exclusion of compatibility of political and benevolent activity
- d) the prevention of unanimity of political and business profits in all stages of election.

Elections must be the factor for overcoming political conflicts and strengthening the basis of state order in the RA. In reality post- election procedures more and more strain either political or public conflicts threatening democratic values such as tolerance, collaboration, public confidence, civilized dialogue.

According to the Constitutional Court there are several issues which require primary settlement. It refers to the current electoral system. The exclusion of possible legal violations principle shall be the basis of electoral system. It can be achieved only in the result of radical amendment of electoral system.

As to the evaluation of the situation within the frameworks of the dispute during the trial, comparing the evidence of the parties, analyzing case materials, current legislative regulations and

their application in practice, the Constitutional Court finds that based on factual election results received according to the RA EC requirements, the RA Central Election Commission could not make any other decision with the Presidential election results of February 19, 2008.

Following the results of case investigation and following article 100, point 3.1 and article 102 of the RA Constitution, article 63, 64, 74 of the RA Law on Constitutional Court, the RA Constitutional court made a decision:

1. To leave in force number 24-A decision of February 24, 2008 of the RA Central Election Commission on “Presidential election”.
2. In order to clarify the legitimacy of protocol changes of election commissions of number 01/28, 08/27, 17/02, 20/18, 23/41, 28/15, 33/04, 33/21, 33/22, 37/11, 37/44 precincts, legitimacy of rejecting the re-count decisions by election commission of number 30, 31, 38 precincts as well as the legitimacy of ballot papers, voting envelopes and video-materials submitted to the RA Prosecutor’s office for legal proceeding.
3. According to article 102, part 2 of the RA Constitution this decision is final and comes into force after announcement.

Chief Justice

G. Harutyunyan

*Translated by Mary Hovsepyan*