

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

---

**THE CASE ON CHALLENGING THE DECISION N-62-U OF THE CENTRAL  
ELECTORAL COMMISSION OF 25 FEBRUARY 2013 ON ELECTING THE PRESIDENT  
OF THE REPUBLIC OF ARMENIA BASED ON THE APPLICATIONS OF THE  
CANDIDATES OF THE RA PRESIDENT RAFFI K. RICHARD HOVHANNISYAN AND  
ANDRIAS GHUKASYAN**

Yerevan

14 March 2013

The Constitutional Court of the Republic of Armenia composed of G. Harutyunyan (Chairman), Justices K. Balayan (Rapporteur), F. Tokhyan (Rapporteur), M. Topuzyan, A. Khachatryan (Rapporteur), V. Hovhannisyanyan, H. Nazaryan, A. Petrosyan, V. Poghosyan, with the participation of K. Mezhlumyan and Z. Postanjyan, the representatives of the Applicant, the RA candidate of President Raffi K. Richard Hovhannisyanyan, the Applicant A. Ghukasyan, the candidate of the RA President, the representatives of the Respondent the RA Central Election Commission, T. Mukuchyan, the Chairman of the Central Election Commission of the RA, A. Smbatyan, Secretary and N. Hovhannisyanyan, Head of the Legal Department of Staff of the same commission, the representatives of co-respondents the RA Prosecutor's Office, A. Tamazyanyan, Deputy Prosecutor General of the RA, K. Piloyan, Head of the RA Prosecutor General Office's Corruption and Organized Crime Department, H. Harutyunyan, Senior Prosecutor of the Prosecutor General's Office, the representative of the RA Police adjunct to the RA Government T. Petrosyan, Head of the Legal Department of the RA Police, D. Harutyunyan and H. Tovmasyanyan, the representatives of the third party, the candidate of the RA President S. Sargsyanyan, involved in the proceeding based on Article 74, Part 5 of the RA Law on the Constitutional Court, pursuant to Article 51, Part 5, Article 100, Point 3.1, Article 101, Point 9 of the Constitution of the Republic of Armenia, Articles 25 and 74 of the Law of the Republic of Armenia on the Constitutional Court,

examined orally in a public hearing the Case on challenging the Decision N-62-U of the Central Electoral Commission of 25 February 2013 on electing the President of the Republic of Armenia based on the applications of the candidates of the RA President Raffi K. Richard Hovhannisyanyan and Andrias Ghukasyan.

The Case was initiated on the basis of the applications submitted to the Constitutional Court of the Republic of Armenia on 04.03.2013 by Raffi K. Richard Hovhannisyanyan and A. Ghukasyan, the candidates of the RA President at the Elections of 18 February 2013.

By the Procedural Decision UԴԱՈ-13 of 5 March 2013 the Constitutional Court accepted for consideration the case on challenging the Decision N-62-U of the Central Electoral Commission dated 25 February 2013 on electing the President of the Republic of Armenia based on the application of the candidate of the RA President Raffi K. Richard Hovhannisyanyan. Simultaneously, according to Article 74, Part 4 of the Law of the Republic of Armenia on the Constitutional Court the RA Central Electoral Commission was involved as a respondent, the RA Prosecutor's Office and the RA Police adjunct to the RA Government as co-respondents in the proceeding by the same Procedural Decision. By the Procedural Decision UԴԱՈ-14 of 5 March 2013 the Constitutional Court accepted for consideration the case on challenging the Decision N-62-U of the Central Electoral Commission dated 25 February 2013 on electing the President of the Republic of Armenia based on the application of the candidate of the RA President Andrias Ghukasyan.

The cases accepted for consideration on the basis of the applications of Raffi K. Hovhannisyanyan and Andrias Ghukasyan, the candidates of the RA President, were joined to be examined in the same session of the Court by the Procedural Decision UԴԱՈ-14 dated 5 March 2013 pursuant to Article 39 of the RA Law on the Constitutional Court. Simultaneously, by the Procedural Decision UԴԱՈ-13 of 5 March 2013 based on the necessity of preparation of the case to the examination the following were required:

- a) From the RA Administrative Court - the judgments adopted on the submitted claims concerning the issues of 2013 RA Presidential election;
- b) From the RA CEC
  - the protocol on the results of voting compiled in accordance with the procedure prescribed by law,
  - the decisions adopted as a result of the consideration of the applications (complaints) received by the electoral commissions,

- the decisions of the Territorial Electoral Commissions on violations registered in the record book of the Precinct Electoral Commissions on Election Day,
  - to submit reference by certain electoral precincts on the results of recounting made on the basis of the applications of the candidates of President related to elections of the RA President held on 18.02.2013,
  - the Decisions adopted on the results of voting,
  - Reference on the number of members to Precinct Electoral Commissions, chairs and secretaries of commissions nominated by different political forces, as well as on the number of proxies of the candidates of President;
- c) From the RA Prosecutor's Office – brief information on measures taken for prevention of electoral violations and other cases, which took place during the RA presidential elections held on 18.02.2013;
- d) From the RA Police adjunct to the RA Government brief information on measures taken for prevention of electoral violations and other cases by the police authorities, which took place during the RA Presidential Elections held on 18.02.2013.

The litigants were also provided with all materials according to the procedure prescribed by law.

By the Procedural Decision UՂԱՌ-18 of the Constitutional Court dated 11 March 2013, in accordance with Article 74, Part 5 of the RA Law on the Constitutional Court, based on his application S. Sargsyan, the candidate of the RA President in the Presidential Elections of the Republic held on 18 February 2013, was involved as a third party to the proceeding.

Having heard the report of the Rapporteur on the Case, the explanations of the parties to the case, co-respondents and the third party, having examined and compared their arguments, as well as examining the applications and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES**:

The presidential election was held in the Republic of Armenia on 18 February 2013, in accordance with the time-term prescribed by Article 51 of the Constitution on the Republic of Armenia. Under Article 14 of the Electoral Code of the Republic of Armenia 1,988 Precinct Election Commissions were formed in the territory of the Republic of Armenia for conducting the relevant voting and summarizing the results. In accordance with the procedure prescribed by Article 17 of the Electoral Code of the Republic of Armenia, 41 Territorial Election Commissions were

formed in the territory of the Republic for organizing and conducting the elections. In accordance with Article 34 of the same Code, for purposes of organizing and conducting elections, a three-level system of electoral commissions was formed, consisting of the Central Electoral Commission, territorial electoral commissions, and precinct electoral commissions. In the framework of the powers prescribed by the law, the RA Central Electoral Commission organized and supervised the entire process of elections.

Twelve international organizations (632 observers), as well as 26 local NGOs (6251 observers) conducted election observation of the presidential elections of the RA held on 18 February 2013.

In line with the requirements of the RA Electoral Code, Hrant A. Bagratyan, Paruyr A. Hayrikyan, Raffi K. Richard Hovannisyanyan, Andrias M. Ghukasyan, Arman V. Melikyan, Serzh A. Sargsyan and Vardan Zh. Sedrakyan were registered and included in the ballots as candidates to the 2013 presidential elections of the RA.

2. On 25 February 2013 the RA Central Election Commission summarized the results of the presidential elections of the RA held on 18 February 2013. In accordance with the protocol on the results of voting of the elections of the candidate of the Republic submitted to the Constitutional Court by the RA Central Election Commission the total number of the ballots cast for 7 candidates included in the ballots is 1.468.864, which was distributed among the RA candidates of President as follows: Hrant Bagratyan with 31.643, Paruyr Hayrikyan with 18.096, Raffi Hovannisyanyan with 539.693, Andrias Ghukasyan with 8.329, Arman Melikyan with 3.520, Serzh Sargsyan with 861.373 and Vardan Sedrakyan with 6.210 votes.

Based on the above mentioned results and being ruled by Article 91, Part 1, Point 1 and Article 92, Part 1 of the RA Electoral Code, the RA Central Election Commission adopted the Decision N-62-U of 25 February 2013, according to which, Serzh A. Sargsyan was elected as the President of the Republic of Armenia.

3. By applying to the RA Constitutional Court, the Applicants find that it is necessary to declare as invalid the Decision N-62-U of the RA Central Election Commission dated 25.02.2013. The Applicant, the candidate of the RA President Raffi K. Richard Hovhannisyanyan also finds necessary to declare him to be elected or to declare as invalid the results of the elections of the President of Republic held on 18 February 2013.

Referring to the letter of response of the RA President addressed to Diaspora Armenian musician Serzh Tangyan, OSCE/ODIHR preliminary statement of 19.02.2013, as well as interim

reports, interviews of a number of territorial governors and mayors and information on resigning of some of them, the Applicant, the candidate of the RA President Raffi K. Richard Hovhannisyán finds that the system of checks and balances prescribed by Article 5 of the Constitution, either does not practically exist or is identified with the institution of the RA President. In accordance with the Applicant, in numerous cases 1600 campaign offices of the candidate of the RA President, the RA incumbent President functioned in the state or local self-government bodies, and during the RA President elections the state and local self-government systems transformed into electoral mechanisms.

Considering certain analysis and the Post-Election Interim Report of OSCE/ODIHR dated 02.03.2013 on the presidential election held on 18 February 2013, to his opinion, in the context of the impact of a number of violations and other different circumstances, i.e. quick disappearing of the ink stamped on the passport and erasing it with a usual paper, cases of proxy voting, including voting instead of absent voters and ballot box stuffing big number of invalid ballots, in one case absence of invalid ballots in one precinct, and availability of 337 invalid ballots in the other, the Applicant Raffi K. Richard Hovhannisyán expressed his doubts concerning participation of too much number of voters in some precincts and stated that in all precincts where the number of the cast voters exceeded average index registered in the Republic according to the official results, the incumbent President has won with great advantage, which, according to the Applicant, is the result of the provision prescribed in Article 11, Part 1 of the RA Electoral Code that prohibits to publish the signed voters lists as well as subjective intermediacy.

To substantiate his application, the Applicant, in particular, presented the following arguments:

- The candidate of the RA President, the RA incumbent President's expenses subject to declaration for the campaign were made not from the means of pre election fund,
- The candidate of the RA President, the RA incumbent President's sum of the expenses subject to declaration for the campaign purposes have exceeded the permissible maximum limit,
- The total number of the campaign posters of the candidate of the RA President, the RA incumbent President have exceeded 1600, as they were posted not only outside but also inside of the campaign offices,
- The payment for the rent for the of the campaign offices of the candidate of the RA President, the RA incumbent President, used as campaign spaces, shall be included in the campaign expenses but by the Decision of the RA CEC they were excluded from the list of the expenses,

meanwhile there are OSCE/ODHIR 19.02.2013 interim, as well as 02.03.2013 post interim reports on the 18 February 2013 presidential election about them,

- According to the Applicant, the RA Central Election Commission performed inaction, did not study the above mentioned facts and did not apply to the court for declaring the registration of the candidate of the RA President as invalid, instead of that on 25.02.2013 adopted the Decision N-60- U, by which, according to the Applicant, tried to justify its inaction,

- The electoral commissions performed inaction and did not make recounts in any precinct by their own initiative; about 125 applications on declaring the results of the elections in the precincts invalid were refused.

The application of the candidate the RA President Raffi K. Richard Hovhannisyan submitted to RA Constitutional Court is composed of 16 pages. The first 5 pages containing “Brief assessment of the elections” with 11 references made to the attached materials, present analytical observations on the alleged electoral violations. The second part titled “The arguments and legal grounds of the Application” within 3.5 pages contain quotations from relevant legal acts. The following 6 pages contain the arguments submitted to the RA Administrative Court, and which were considered in the framework of its jurisdiction and on 04.03.2013 a final decision ՎԴ/1423/05/13 was adopted, according to which the claim was recognized as groundless and subject to refusal. In the last page of the above mentioned application the Applicant's request and the list of attached materials is presented (receipt of payment of state duty, power of attorney, the copies of passports of the Applicant and his representative, the copy of license, publications of mass media, videotaping, photographs and their materials on digital data carriers – totally 24).

Nearly 40 percent of the materials attached to the application are decisions of different election commissions, 18 percent - applications addressed to electoral commissions, nearly 24 percent information – taken from different websites of internet, nearly 7 percent – the reports of the organizations, which exercised observation missions over the election process; and 11 percent – various other materials. In the stage of the court trial of the dispute concerning the decision adopted on the results of the RA President election, the Applicant had not submitted any other additional material to the Constitutional Court, except for two copies of photographs.

4. Referring to two announcements made by the candidate of the RA President, the RA incumbent President S. Sargsyan concerning the letter of response addressed to the Diaspora Armenian musician Serzh Tangyan and the answer to the question to the journalist in Gyumri, the Applicant, the candidate of the RA President A. Ghukasyan finds that, in his opinion, during the

elections of the RA President the three-level system of the RA electoral commissions was ruled by the incumbent President of the RA, and as incumbent President the latter possessed the levers of ensuring any result of voting

The Applicant expressed his doubt concerning high turnout of voting in 576 precincts and found that the mentioned fact had essential impact on the general results of elections.

To substantiate his application, the Applicant, in particular, presented the following arguments:

- In 414 precincts, the number of participants of elections exceeded the number of the envelopes of defined sample in the ballot box by 1729,

- In 469 precincts, in total 1883 ballots lacked from ballot boxes,

- The above-mentioned discrepancies were not included in the final protocols of the results of voting of the precincts,

- The RA Central Electoral Commission performed inaction as it neglected the above-mentioned facts,

- The application of the candidate of the RA President A. Ghukasyan consists of 7 pages where by presenting his approaches and concerns regarding the independent and objective activity of the electoral system, the Applicant mainly presents his own analysis and the conclusions concerning the results of voting by precincts.

During the case trial, the candidate of the RA President A. Ghukasyan also mentioned that his arguments are mainly based not on the issue of protection of his subjective suffrage, but the issue of constitutional-legal systemic reforms, which may be an important guarantee for raising the public confidence towards the election processes.

In their explanations, the Applicants raised the issues connected with the lawfulness of participation of the state officials in the electoral processes, the procedure of compiling the voters lists and publicity of the signed voters lists, presenting the data of the citizens temporary absent from the Republic to the Applicants, declaration of the registration of the candidate to the RA President S. Sargsyan as invalid by court. The Applicants also referred to the independence of the RA Central Electoral Commission and legal contents of structural interrelations between this Commission and the RA President, as well as the issues of assessment of the activity of the law enforcement bodies for ensuring legality during the entire electoral process.

5. The Respondent did not accept the arguments of the Applicants presented in the applications and found that the Decision N 62-U of the Central Electoral Commission dated 25 February 2013 is

lawful, it is adopted in accordance with the requirements of the Electoral Code of the Republic of Armenia, and three-level electoral commissions were formed and functioned in line with the manner and powers prescribed by the RA Electoral Code.

As for the issue of participation of the state officials in the electoral process raised by the candidate to the RA President Raffi K. Richard Hovhannisyanyan, based on Article 18, Part 6 and Article 22 of the RA Electoral Code, the Respondent mentioned that the officials are free to exercise pre-election campaign, taking into consideration the restrictions prescribed by the RA Electoral Code.

The Respondent also mentioned that in the time-period from January 21, 2013 to February 18 the Tele-Radio Broadcasting National Commission had not received any complaint concerning the election campaign from the candidates to the President of the Republic, as well as from the state bodies, non-governmental or international organizations, mass media and citizens. During the campaign of Elections of the President of the Republic of Armenia held on February 18, 2013 (21.01.2013-16.02.2013), as well as on «silence» day and the Election Day up to 20.00 p.m. no violations of the requirements of the Electoral Code of the Republic of Armenia and the Law on «Television and Radio» were registered.

Regarding to the enquiry concerning the location of the campaign offices of the candidate of the RA President, incumbent President, referring to Article 18, Part 5 of the RA Electoral Code, and Statement of the Preliminary Findings and Conclusions of 19.02.2013 of OSCE/ODIHR mentioned by the Applicant, the Respondent stated that even in that case the mentioned judgment were not in concordance with the source mentioned by the Applicant, as the presented conclusion mentioned **only a few cases** of location of the campaign offices **occupied in the buildings** of the state and local self-government bodies. The Respondent stated that there was no complaint concerning the above- mentioned cases, although by Decision N 42 – U RA CEC on its own initiative initiated an administrative proceeding, conducted hearings by inviting also the proxy of the Applicant and as a result adopted Decision N-49 –U on 11.02.2013.

Regarding the issue of compiling the voters' lists, the Respondent, referring to Article 2, Article 7, Part 1 and Article 8, Part 1 of the RA Electoral Code, stated that the principles, entire procedure of compiling and keeping of the voters' lists is regulated in details by the RA Electoral Code, and as for the conceptual suggestions of the Applicant connected with other principle of compiling voters' lists, the Respondent finds that the discussion of the suggestions concerning legislative amendments is not in the framework of consideration of this case.



As for the issue of the absolute impossibility and ineffectiveness of fight against the violations because of limitation of publication of the voters' lists, referring to Article 11, Part 1, Articles 31, 33 and 48 of the RA Electoral Code, the standards defined by the European Commission Democracy Through Law of the Council of Europe (Venice Commission) and OSCE Office of Democratic Institutions and Human Rights, Point 4 (Right of Secret Suffrage) Sub point C, of the Code on Good Practice in Electoral Matters of Venice Commission of the Council of Europe of 30.10.2002 (CDL – AD (2002) 23), Report on Joint Recommendations CDL-AD (2010) 043 of OSCE Office of Democratic Institutions and Human Rights and Venice Commission, Document CDL-EL (2009) 015 of OSCE/ODIHR on Monitoring the Process of Registration of the Voters, legal positions of the RA Constitutional Court, the Respondent finds that the Applicant had no obstacles in getting acquainted with the signed voters' lists and making extracts from them.

Referring to the issue connected to the application submitted to the CEC on 25.02.2013, raised by the Applicant, where the latter required from the Central Election Commission to apply to the court with the demand to declare the registration of the candidate of the RA President S. Sargsyan as invalid, the Respondent also stated that as a result of the examination of the mentioned application, on 25.02.2013 the CEC adopted Decision N 60- U which was appealed to the Administrative Court and the final judgment of the Court is available, according to which the Decision N 60- U of the CEC was declared as lawful.

Regarding the institutions for protection of suffrage, such as the recounting of the results of voting of a precinct, declaring the results of the voting of a precinct as invalid, the Respondent states that that all submitted applications were considered in accordance with the requirements of Articles 45, 46 and 47 of the Electoral Code of the Republic of Armenia and accordingly decisions were made and written responses were provided. The Applicants were duly notified about the day and time of the consideration of the applications and the decisions made on the basis of examination were sent to the Applicants in the manner prescribed by Law and were published at the official web site of the Central Election Commission of the Republic of Armenia.

According to the Respondent:

- During the organization of elections, till the Election Day no complaint or an application was submitted to the Territorial Election Commissions,

- On Election day only one application on discrepancy in the voters' list was submitted to only one from 41 Territorial Election Commissions, i.e. in Territorial Election Commission N 28, to

which the Chair of the Commission answered with a written note, and one warning signal was submitted in TEC N 29 upon which a relevant decision was made,

- After the election day of the Presidential Elections, besides the applications submitted for declaring the results of voting invalid and recounting, only Territorial Election Commission N 17 had received 7 applications, which were discussed by the Territorial Election Commission in accordance with the manner prescribed by law. Central Election Commission readdressed one application submitted by non-governmental organization exercising domestic election observation to the Territorial Election Commission N 17, which was received and examined by the latter,

- The situation analysis center studied the information published at electronic websites especially on the election day (panorama.am, news.am, hra.am, lurer.am, asparez.am, ilur.am, haynews.am, aravot.am, 1in.am, tert.am, slaq.am, galatv.am, etc.) and in mass media, the reliability of information was ascertained, clarifications or information was provided on 65 publications, and in the case of conformation of the facts of violations the appropriate measures were immediately undertaken to prevent the violations and eliminate the consequences,

- From 1988 Precinct Election Commissions only in the record books of 40 Precinct Election Commissions notes were made in accordance with the procedure prescribed by Article 66, Part 6 of the Electoral Code of the Republic of Armenia,

- During the organization and conduct of the presidential election held on 18 February 2013 until the summarizing of the results of the election, three claims appealing the decisions and actions (inaction) of the electoral commissions were submitted to the Administrative Court of the Republic of Armenia, and the Administrative Court rendered the Judgments No. ՎԴ/0094/05/13, ՎԴ/0359/05/13 and ՎԴ/0377/05/13 on refusing the claims,

- After the summary of the results of the elections for the President of the Republic, two more claims were submitted to the RA Administrative Court, and the Administrative Court rendered the Judgments No. ՎԴ/1423/05/13 and ՎԴ/1606/05/13 on refusing the claims.

Referring to the materials submitted to the Constitutional Court, the Respondent states that they are just correspondence, materials taken from different websites, which do not have any evidential significance and may not be subject to discussion at the Constitutional Court.

Referring to the issue raised by the candidate of the RA President Andrias Ghukasyan on high percentage of turnout and high number of votes received by the candidate of the RA President Serzh Sargsyan in a number of precincts, the Respondent finds that marking out these precincts from others only because one of the candidates had received more than 64 percent, is illogical. According

to the Respondent, it is unacceptable to mark out the precinct only on the basis of digital indicative and propose a hypothesis, according to which the Central Election Commission should be especially confident of the results at those precincts of not being forged. According to the Respondent, the Applicant made the digital argumentations with subjective approach, which does not reflect the entire picture, as well as, in the application there is no fact, based on which the results of the voting of the presented precincts shall be under suspicion.

Regarding the precincts where all voters cast votes, the Respondent states that in all 6 precincts where the turnout was 100 percent, are the precincts formed in penitentiary institutions where, as a rule, all voters participate, and the total number of the voters in those precincts is 248, in average, 40 voters. One of the 5 precincts where the turnout was more than 95 percent, where the highest turnout 98.44 percent was registered, also was a precinct formed in penitentiary institution and the rest were small rural communities.

According to the Respondent, in the application the precincts with participation of 63 and more percent were marked out, and if all such precincts are marked out by this logics, then by the results of voting of those precincts, in 61 precincts the candidate on the second position won, and according to the logic of the Applicant, the results of voting of those precincts should be under suspicion, despite the fact which candidate had received more votes which, according to the Respondent, is an inexplicable approach.

The Respondent also states that candidate of the RA President A. Ghukasyan had not attempted to challenge the results of voting in precincts, and, there is no fact or proof on non-trustworthy of the results in the application, but some ideas were sounded in the application, according to which in considerable number of the precincts the results of the voting contradict the reality and that the three-level system of the electoral commissions has entirely performed inaction, which, according to the Respondent, is groundless.

6. The representatives of the co-respondent the RA Prosecutor's Office state that during the pre-election campaign there were no cases of crime related to the electoral process, except for the case of attempted murder committed against the candidate of the RA President P. Hayrikyan. During the campaign, prosecutor's bodies received 88 reports, announcements, and publications concerning electoral violations, which, however, did not contain any attribute of crime. During the campaign the copies of the decisions made by the investigation bodies regarding the reports, announcements and publications received on electoral violations were sent to their addressees and none of these decisions was appealed.

Regarding the next stage of the electoral process, i.e. voting, 159 reports, announcements and publications were proceeded by the Prosecutor's Office, 12 criminal cases were initiated, 4 criminal cases with indictment were sent to the court.

Assessing the entire picture of the violations during electoral process, the representatives of the RA Prosecutor's Office stated that, in essence, the violations registered during the entire electoral process were not universal and widely practiced; and the facts of crimes were isolated and not related with each other.

7. In the conclusion presented by the co-respondent, the RA Police adjunct to the RA Government regarding the materials attached to the application it is mentioned that the information presented in the application "... by their content are mostly of general nature, different circumstances connected with elections are presented as suspicious without any distinct argumentation, the analyses are subjective and certain circumstances of the process of elections are interpreted as infringement from the perspective of their own perception without any distinct substantiation." It is also stated that the warning signals concerning electoral violations and their examination state, that they were not of general and systemic nature, simultaneously, most of them were groundless and unreasoned.

As for the information presented in the applications of the candidates of the RA President, as well as presented by videotapes, the representative of the RA Police finds that by their content part of them are mostly of general nature, they are presented without any precise reasoning; the analysis are of subjective nature and interpreted from the perspective of own perception. Regarding the other part of the information from 19 infringements in 13 cases the police investigation have already been implemented and are still pending. From the mentioned 13 cases, in 8 cases decisions were made to refuse initiating the case, in 2 cases the filed criminal cases with indictment were sent to the courts, in 2 cases the prepared materials were sent to the RA Special Investigation Department; and 1 case is still pending. The RA Police departments have received no warning signal concerning the other 6 cases. Nevertheless, regarding the mentioned 6 cases the relevant departments of Police have received instructions to make checking and to resolve the further process in accordance with the procedure prescribed by law.

8. The representatives of the candidate of the RA President Serzh Sargsyan, involved as third party, touching upon the arguments of the Applicants first stated that from 1988 precinct election commissions in 1884 (95 percent) the political party Heritage had nominated members, 38 of which had not appeared on election day, Heritage had the chairs of precinct election commissions in 108 precincts and the secretaries of the precinct election commissions in 104 precincts. Only in 79

precincts (3.9 percent), concurrently there was no member of the commission nominated by the political party Heritage and no proxy of the candidate of the RA President Raffi Hovhannisyan.

120 applications on declaring the results of voting in electoral precincts as invalid were submitted, which, according to the assessment of the representative of the third party were not due applications. Nevertheless, it is stated that if even hypothetically it is excepted that all 120 applications on declaring the results of voting in electoral precincts as invalid are substantiated, then in the case of decalring the results of voting in those precincts as invalid, the votes for the candidate of the RA President Raffi Hovhannisyan would become 37.85 percent; and the votes for the RA candidate of President Serzh Sargsyan – 57.46 percent, i.e. in fact, the result of voting would not change.

Simultaneously, as opposed to the tabulation of the results of the voting per precincts by different criteria and conclusions deriving from them submitted by the applicants, the representatives of the candidate of the RA President Serzh Sargsyan, involved as third party, presented similar analysis made by different criteria. In particular, marking out all the precincts where the chairs or the secretaries of the precinct election commissions were nominated by the political parties Heritage and ARD and comparing the results of the voting in those precincts, considered as obvious that they do not essentially deviate from the entire and final official results of the elections.

9. In the framework of examination of this case, the RA Constitutional Court, in particular, necessitates considering:

- The requirement of Article 5 of the RA Constitution, according to which, “State and local self-government bodies and public officials are competent to perform only such acts for which they are authorized by Constitution or the laws.”

- The legal scopes of the powers prescribed by Article 100, Point 3.1 of the Constitution, according to which, **the Constitutional Court shall, in conformity with the procedure defined by law resolve all disputes arising from decisions adopted with regard to the elections of the President of the Republic and Deputies.**

- The peculiarities of the procedure for consideration and resolving of such disputes prescribed by Article 74 of the RA Law on the Constitutional Court.

In Points 12 and 13 of the Decision DCC-736 from 8 March 2008, as well as in Points 6 and 7 of the Decision DCC-1028 from 31 May 2012, the RA Constitutional Court expressed its precise legal positions concerning the constitutional legal content and the frames of the power prescribed in Article 100, Point 3.1 of the Constitution.

In particular, in the Decision DCC-736 of 8 March 2008 the RA Constitutional Court stated: “As a result of constitutional amendments based on the results of the referendum of 27 November 2005, in accordance with Article 100, Point 3.1, the Constitutional Court shall resolve disputes arising from decisions adopted with regard to the results of elections. The legal substantiation of the decision of the RA CEC on the results of the elections of the President of the Republic may be challenged from two perspectives: regarding both keeping the prescribed manner (procedure) of its adoption (formal grounds) in accordance with the procedure required by the law, and the grounds of alleged mistakes of implementation of the norms of material law, according to which, the Central Election Commission, summarizing the results of elections, made a wrong conclusion on the fact whether the candidates were elected or not (material grounds).”

In the Decision DCC-1028 of 31 May 2012, the RA Constitutional Court first stated that: “The amendments of legal regulation of the electoral processes made in recent years had an important reflection in the field of judicial protection of suffrage in Armenia, which though, has not been accepted relevantly by the legal subjects participating in the election process yet.” It was also highlighted that: “for efficient judicial protection of electoral right it is necessary:

a/ to take into account the requirement of Article 5 of the RA Constitution, according to which each body is competent to perform only such acts for which it is authorized by Constitution or the laws,

b/ to understand precisely the scopes of competence of each court instance,

c/ to implement remedies of protection for electoral right before the Court with relevant jurisdiction in the time limits and manner prescribed by law,

d/ to take into consideration that the RA Constitutional Court is not a superior court to other courts, regarding the issues of judicial protection of electoral right, but it is entitled to implement specific power, set forth by the Constitution,

e/ the disputes on the Decisions adopted on the results of elections may not be deemed as disputes on constitutionality of a legal norm, since other constitutional legal requirements and procedures are prescribed to resolve them.

The Constitutional Court stated that “according to the RA legislation the Constitutional Court is not authorized to consider all those issues, which should be considered beforehand and be legally resolved at the RA Administrative Court, and the decisions of which on those issues ... **are final and not subject to review.**”

The amendment of the power of the Constitutional Court linked with the electoral legal relations is also conditioned with the circumstance that if up to 2005 time term restrictions for such

issues were not prescribed by the RA Constitution, after the constitutional amendments, under Article 51, Part 5 of the Constitution, based on Article 100, Point 3.1 the time limit prescribed for the consideration of the disputes was strictly restricted and deriving from the essence of the abovementioned competence 10 day time limit was stipulated. That is, the restriction of the time limit is conditioned with the amendments of the Constitutional Court's power concerning the electoral disputes, in line with which the more concise framework of the issues of legal significance subject to clarification was prescribed.

During the entire electoral process and also while applying to the Constitutional Court, the Applicants in the instant case not only should have considered the legal positions on this issue expressed in the abovementioned decisions, as well as in Decision DCC-1027 from May 5, 2012 of the Constitutional Court, but also in the systemic entity should have considered and be based:

1. The requirements of Article 5 (Part 2), Article 51 (Part 5), Article 94 (Part 3), Article 100 (Points 3.1) and Article 101 (Part 1, Point 9) of the RA Constitution.
2. The requirements of Article 74 of the RA Law on the Constitutional Court in their systemic entirety and interrelation with other legislative provisions.
3. The requirements of the RA Electoral Code, in particular, Article 37, Part 12, Article 46, Parts 1,3,5,7,8 and 9, Article 48, Part 1, Article 66, Part 6, Article 91, as well as requirements of the entire Chapter 25 of the RA Administrative Procedure Code.

**The consideration of the case states that these requirements were mainly neglected by the Applicants or were not implemented legitimately or in concordance with the manner and time limits prescribed by law.** It has also become obvious that the Applicants did not duly conceive the new procedure of judicial protection of suffrage established as a result of the 2005 constitutional amendments and the power of the Constitutional Court prescribed by Article 100, Point 3.1 of the Constitution, without differentiating the manner and the peculiarities of exercising the authorities in concordance with the legal provisions **“challenging the decision made on the results of elections” and “challenging the results of elections”**.

Moreover, Article 91 of the RA Electoral Code also precisely prescribes the procedure for summarizing the results of the elections and **the decision adopted, which may be challenged in the RA Constitutional Court**. Taking into consideration the provisions prescribed by Article 91 and Article 75, Part 6 of the RA Electoral Code, as well as the requirements of Article 100, Point 3.1 of the RA Constitution, Article 74 of the RA Law on the Constitutional Court, regarding the disputes connected with the decision of the RA Central Election Commission the Constitutional Court clarifies whether during the adoption of the decision in accordance with the procedure prescribed by law were available and taken into consideration:

- a/ the protocol on the results of voting compiled in accordance with the law,
- b/ the judgments concerning the electoral processes within the scopes of competence of the Administrative Court,

- c/ the decisions adopted on the basis of the results of examination of the applications (complaints) received by the electoral commissions,
- d/ the decisions of Territorial Election Commissions on the violations registered in the record books of the Precinct Election Commissions on the Election Day,
- e/ Decisions adopted on the results of the voting.

Besides, in line with the requirements of Article 74, Part 13 of the RA Law on the Constitutional Court, the Constitutional Court clarifies the circumstances of unsubstantiated refusal by the competent electoral commission to examine (consider) the complaints regarding elections submitted in line with the manner prescribed by law, non-examination (non-consideration) of such complaints in the time limit prescribed by law and refusal or deviation from the examination (consideration).

Thus, the legislatively defined task of the Constitutional Court, as a court of right (and not of fact), is to assess whether the final decision of the Central Election Commission is legitimate, as a result of considering the abovementioned circumstances of legal significance.

**The RA Constitutional Court is not competent and may not assume over-exercising the authorities and obligations within 10 day period in the manner prescribed by law and in line with the powers of the political forces participating in the electoral process and ten thousands of legal subjects representing them or nominated by them, electoral commissions, other courts which ex officio were obliged to undertake relevant actions in the manner and in certain time limit prescribed by the RA Electoral Code. Non implementation of the actions in time or inadequate implementation of these actions, the representatives of the Applicant tried to fill up with unlawful or practically unfeasible motions, creating the public impression that the Constitutional Court could but did not want to implement what they should have implemented in due time and the frames of the powers prescribed by law and should submit an application substantiated with legal arguments of evidential significance.**

**The compared assessment of totality of the legal facts of evidential significance, which are exclusively formed because of legitimate actions of the mentioned subjects, may serve as legal grounds for the decision of the Constitutional Court. This is the requirement of the RA Constitution and the RA Law on the Constitutional Court.**

10. The Constitutional Court also states that from the constitutional legal perspective the pre-election and postelection situation created in the country may not become a subject of discussion only in the framework of the direct comparison of the legal facts having evidential significance. There are situations which need relevant legal positions concerning the constitutional fundamental principles, the guarantee of supremacy of the constitution and its direct action.

The Constitutional Court, first, states the fact that, though especially the former decisions of the Court made on the results of the republican elections, were substantiated and reasoned legally, contained legal positions, however, they were not accepted unequivocally by the certain slices of society. This is resulted not only from the current level of legal consciousness and legal and political culture, but also from the objective situation, where this perception is first the reflection of distrust towards the political system and authorities of the country, which has not been overcome yet. This problem requires such legal political solutions, which will essentially consolidate the guarantees of



sustainable development and public trust by effective implementation of the constitutional fundamental principles.

The reality is that regardless the outcome of these elections, more than half of the parliamentary political forces, having the right and obligation also to participate in the organization and conduct of electoral process, have formed the atmosphere of distrust towards them. The fact is that 2/3 of the candidates have not jointly collected more than 5 per cent of the votes cast by the voters. The number of the ballots recognized as invalid because of being marked differently, essentially exceeds the number of votes received by half of the candidates. These are facts that are also the expression of the social relevant expectations and sow relevant attitude towards the legal processes.

Thus, the Constitutional Court finds that the issue is not only the assessment of factual circumstances in the framework of the subject in dispute, but from the perspective of the constitutional axiology possible revealing of the current situation and its constitutional legal reasons and expression of the relevant legal positions, which were referred to during the examination of this case likewise.

The deep reasons of the expression of such discontent conditioned with electoral processes are much deeper from the perspective of the constitutional legal assessment. They are substantially conditioned with the tendencies of integration of the political, economical, and administrative forces during the decades, when the danger of the distortion of the constitutional fundamental values and principles, in particular, the principle of the balance and checking of the authorities rises. In decisions DCC-703 dated 10.06.2007 and DCC – 736 dated 08.03.2008, the Constitutional Court already expressed the legal position that in line with the principles prescribed in Articles 2 and 4 of the RA Constitution, in the electoral processes it is initial for the legal state to ensure legislative and procedural guarantees for supremacy of political interests of the society, **which will exclude any possibility of direct combination of political and business interests in the formation of the authoritative representative bodies endowed with the initial mandate.** This legal position, which was expressed also by the international observers during the previous elections, has not received sufficient attention yet in the process of amendment of the RA Electoral Code and entire legal system, **in particular, also regarding the assurance of entire implementation of the requirements of Articles 65 and 67 of the RA Constitution.** This could essentially assist the normal development of the political structures in the country, effective implementation of the constitutional functions of the state institutions, as well as strengthening the public trust towards the electoral system and certain electoral process.

The Constitutional Court finds that it will be difficult to anticipate radical changes in the conditions of amendment of electoral technologies only and even their impeccable implementation. The Constitutional Court stated this circumstance in Decision DCC – 736 from 8 March 2008, according to which “It can be inferred from the fundamental principles of RA Constitutional order that the elections in the Republic of Armenia should turn into a factor for strengthening the bases of the state order and for overcoming the political confrontation. In reality, the post electoral processes sharpen both political and public confrontation, endangering such democratic values, as tolerance,

pluralism, cooperation, public confidence, civilized dialogue. Such situation is a problem, which requires constitutional-legal solution, which was numerous times referred to by constitutional court in its decisions, as well as in annual reports of 2006 and 2007”.

**The RA Constitutional Court finds that only the proper estimation of this reality and practical consequences deriving from it may contribute the formation of the legal political adequate to the agenda of the objective situation, the normal development of the country, manifestation of the social behavior of people and society, which has the guarantee of rule of the law the as an axiological axis.**

This issue has risen to the state political level in Armenia recently. Although the electoral and post electoral processes confirmed that what was already done is not relevant to the challenges and constitutional legal new approaches and relevant active solutions are required.

11. In the framework examination of factual materials of the case and on the basis of the of the case consideration, the RA Constitutional Court stated that during the entire process of the election of the RA President held on 18 February 2013, the complaints mainly concerned the stages of summarization of the results of voting and elections except for the disputes related to the registration of a number of candidates,.

As it was mentioned, 1988 electoral precincts were formed in the Republic of Armenia for conduct of the election of the RA President held on 18 February 2013.

During the elections of the RA President, the political party “Heritage” supported the candidacy of Raffi K. Hovhannisyan. Two parliamentary parties, ARD and PPA, as well as alliance ANC announced officially that they would not support any candidate of the RA President during the electoral process. All mentioned political forces participated in the formation of the precinct electoral commissions in the manner prescribed by law and on Election Day their nominated members who passed trainings in advance (1950 from PPA, 1884 from “Heritage”, 1909 from ARD, 1482 from ANC), factually participated in the work of commissions. The total number of the members of the precinct electoral commissions was 15652, from which 7224 or 46, 03 per cent of the members of the commissions was nominated by the above mentioned political forces. PPA nominated 1225 chairs and secretaries of the precincts, APD – 211, “Heritage” 212 and ANC – 265. The total number of these persons is 1913. Meanwhile, 48, 8 per cent of the persons nominated by these political forces were chairs of the precinct electoral commissions, 47,4 were secretaries. **From them 1912 persons verified the protocols of the results of the voting with their signatures without any reservation.**

On Election Day 5038 proxies (among which 299 for the candidates of President H. Bagratyan, 141 for P.Hayrikyan, 1009 for Raffi K. Hovhannisyan, 3589 for Serzh Sargsyan) were present in the precincts. The Applicant, candidate of the RA President A. Ghukasyan did not nominate any proxy in the precincts.

On Election Day, according to the CEC data, the international observers visited 1208 polling stations. 4469 local observers were present in 1426 polling stations. 1993 representatives of mass media, who in accordance with the manner prescribed by law also enjoyed wide range of power of review, followed the process of elections in 1321 polling stations.

The Constitutional Court considers important to state that the RA Electoral Code, in particular, as a result of new procedural solutions of formation of the electoral commissions, has stipulated a system of functions and their implementation, which may guarantee the necessary and sufficient control of the electoral process and effective implementation of suffrage, if the political forces presented in the RA National Assembly would properly implement the rights and obligations prescribed by law. Consequently, in the framework of the electoral dispute in this case, as well as from the perspective of trust towards the electoral system, it is an important criterion to legally assess the fact, how fully the political forces involved in the electoral processes implemented the functions reserved for them by the RA Electoral Code for the abovementioned aim.

The legal process of post electoral processes also shall be anchored on the results of the legitimate activity of that system. This is the pivotal of the legal regulation of the electoral system and the necessary and objective demand for the legal and political culture of the democratic state.

**12. On February 18, 2013 20690 persons who participated in the electoral legal relations and enjoyed the competence prescribed by law (from which as 8233 were nominated by the above mentioned four political forces presented in the National Assembly) together with other legal subjects involved in the electoral processes by their rights and responsibility only in the polling stations were called to guarantee the proper process of the voting, ensure full implementation of review functions and assist effective exercising of suffrage of the RA citizens. This could be implemented, in particular, as a result of legitimate, consistent and timely exercising of the following competences prescribed by law.**

**First**, in accordance with Article 37, Part 12 of the RA Electoral Code:

“At the first sitting of commissions, each member of the electoral commission shall publicly read and sign a commitment “On performing duties of the electoral commission member in accordance with the requirements of the Constitution of the Republic of Armenia and legislation of the Republic of Armenia”, which is attached to the record book of the electoral commission...”

**The member of the commission assumes this obligation as a person nominated as a result of political trust and as a person also endowed with functional independence. In the international practice the formation of the precinct electoral commissions on the basis of multiparty principles is one of the effective means for ensuring of balances in review. For many years, the RA political forces have been trying to achieve this. The RA Electoral Code ensured with this possibility as a guarantee of trust towards the electoral process. During these elections 15652 citizens of the Republic of Armenia, who were nominated by the political forces representing the RA National Assembly as the members of the precinct electoral commissions and were mainly highly qualified ones, undertook the relevant obligations towards the entire electoral process.**

Simultaneously, Article 66, Part 6 of the RA Electoral Code prescribes: “If the commission member or the proxy finds that cases of violations of voting procedures have taken place during the voting process as stipulated by this Code, he or she has the right to require for his or her opinion to be recorded in the register.”

**Despite the contents and legal substantiation of factually recorded material, from 20690 legal subjects prescribed by law (as a member of the commission or proxy) records were made only in the record books of 40 precinct electoral commissions from 1988, which comprises only 2 percent of the total number of the polling stations.**

**Secondly**, Article 46, Part 3 of the RA Electoral Code stipulates that, amongst the others, also the proxy if s/he was present in that electoral precinct may submit an application for declaring the voting results in an electoral precinct, as well as the member of the relevant electoral precinct if s/he has made a record in the protocol on having a special opinion.

**None of 20690 legal subjects, nominated as members of the commission or proxies by the political forces represented in the RA National Assembly and by the candidates of the RA president, has submitted any such application. That is, in the framework of the obligations assumed by the mentioned persons, the signed protocols were considered as reliable and non-appealable.**

**On the basis of the abovementioned same Article, the applications of the candidate of the RA President Raffi K. Hovhannisyan were proceeded by the manner prescribed by law. According to the materials of the case, the decisions of the Territorial Electoral Commissions regarding them were not appealed by supremacy or judicially, and concerning about 85 percent of the precincts mentioned in the applications there was no warning signal or record in the record books of the mentioned Territorial Electoral Commissions.**

**The case consideration also proved that in line with Article 74, Part 13 of the RA Law on the Constitutional Court there were recorded cases of unjustified rejection of examination (review) of the electoral appeals submitted in the procedure prescribed by Law, as well as the cases of breaking of timeframes of examination (review) of such appeals and of refusal or avoidance of examination (review) of those appeals by the relevant electoral commissions.**

**Thirdly**, Article 48, Part 1 of the RA Electoral Code stipulates:

“The candidate, the proxy, where they have been present at the process of summarizing the voting results in the electoral precinct, as well as the member of the precinct electoral commission in case of making a record — in the protocol on the voting results in the electoral precinct — on having a special opinion concerning the procedure of summarizing the voting results, shall have the right to appeal, in the manner and within the time limits specified by this Code, against the results of voting in the electoral precinct concerned, by submitting an application for recount of the results of voting in the electoral precinct (hereinafter referred to as “recount”) to the constituency electoral commission.

An application for recount of the voting results in the electoral precinct may be submitted only to the relevant constituency electoral commission from 12.00 to 18.00 on the day following the voting.”

**According to the materials of the case, only 12 applications (concerning 0,6 per cent of the electoral precincts) were submitted, from which 10 applications were submitted by 2 persons.**

**Actually 20690 legal subjects, including 1009 proxies, who assumed the legal obligation to protect the rights of R. Hovhannisyan, may have submitted applications for the recounts.**

**The latter submitted only one application based on the requirements of the law.**

**On Voting Day of the Elections of the RA President, only one person from 15652 members of the precinct electoral commissions submitted a special opinion (Precinct 3/33 where the recount was held). This means that 15652 legal subjects, who were nominated by all political**

forces representing the National Assembly and who assumed special obligations, considered the results of voting as reliable and by their signatures verified it. These served as grounds for the summarization of the results of the elections.

The legislatively stipulated possibility to appeal the results of voting by the means of recount and checking the reliability of the voters' lists signed by the voters, who participated in the elections, is the main means prescribed by law to dispel any suspicions which Applicants almost did not use.

**Fourthly**, materials on the various violations concerning the electoral process submitted to the Constitutional Court by the Applicant were provided to the RA Prosecutor's Office and the RA Police adjunct to the RA Government as correspondents, for studying them, in the frames of their competence, as well as for submitting the precise explanation concerning the means undertaken for preventing the electoral violations and registered cases related to the 18.02.2013 RA elections to the RA President. According to the explanations submitted by the RA Prosecutor's Office, the examination of the video materials attached to the application of the candidate of the RA President Raffi K. Hovhannisyan revealed that one of the video materials contained the recording of the session of the RA Administrative Court of the administrative case AC/423/05/13 which may not be the subject to examination at the Constitutional Court and in other video materials and photographs made in different electoral precincts, their contiguous territories and other places, part of which were examined in time, and the others are currently examined by relevant competent bodies.

Simultaneously, in the framework of the entire electoral process the RA Prosecutor's Office received 247 warning signals, including 187 - from the publications posted in mass media, 5 - by the Hot Line of the RA Prosecutor General Office. **From received 247 warning signals 13 (or 5.3%) were clarified, 13 (or 5.3%) decisions were adopted to initiate a criminal case, 218 (or 88.3%) decisions were adopted to refuse filing the criminal case on the grounds of absence of the criminal event and corpus delicti**, and three cases are pending. Moreover, not a single appeal was submitted **concerning** the refused cases in the manner prescribed by law. It is also stated that the violations, as well as the warning signals concerning them were limited in number and were not of large scale.

The RA Police informed that during the campaign, voting, and post election stages 276 warning signals on apparent violations were considered or are pending. **From these, 250 or 90,6 percent were refused or left without consideration on the basis of absence of the criminal event or corpus delicti.**

**The entire picture is following: all 27152 legal subjects, who participated in the entire electoral process, had legislatively stipulated powers of review, and could not only prevent, but at least signal about the possible electoral violations. In fact, 1.9 percent of the persons entitled with such competence made warning signals.** Moreover, the considerable portion of the warning signals was made by the citizens with no concrete competence in the electoral processes.

**Fifth**, Chapter 25 of the RA Administrative Procedure Code (which entered into force from January 1, 2008) is entirely dedicated to the procedures for judicial protection of suffrage. Article 144 of this Code defines: "The persons defined by Article 3 of this Code, as well as, the relevant electoral

commission may apply on the electoral cases to the Administrative Court in the cases prescribed by the Electoral Code of the Republic of Armenia.”

Article 3 of this Code, in particular, stipulates that:

“Each legal and physical person in accordance with the manner defined by this Code is authorized to apply to the Administrative Court if s/he considers that administrative acts, actions, and inaction of the state or local self-government or their officials violated or could directly violate his/her rights and freedoms stipulated by the Constitution of the Republic of Armenia, international agreements, laws and other legal acts”.

In addition, Article 46, Part 7 of the RA Electoral Code prescribes: “Decisions and actions (inaction) of the Central Electoral Commission (except for the decisions taken with regard to the results of national elections) may be appealed against before **the Administrative Court.**”

**Before the summarization of the results of the elections, 3 claims were submitted to the RA Administrative Court with regard to registration of the candidates. At the moment of summarization of the results of the elections no claim with regard to the voting and challenging its results based on Article 91 of the RA Electoral Code were submitted to the RA Administrative Court.**

**After publication of the final results of the elections and adoption of Decision 62- U by the CEC, on 28.02.2013 and 07.03.2013 the RA Administrative Court proceeded two claims with regard to the electoral process which were exclusively in the competence of the Administrative Court and were refused based on the results of case examination. Moreover, as it has been already mentioned, the decision of the Administrative Court with regard to the registration of the candidates is final and cannot be subject to discussion at the Constitutional Court, which the representatives of the Applicant have not paid relevant attention to.**

Sixth, the Applicants have not submitted any evidential legal argument with regard to the possible victory of Raffi Hovhannisyanyan in the elections. In this concern, the only argument was challenging of the registration of the candidate of the RA President Serzh Sargsyan, which by the judicial procedure was examined in accordance with jurisdiction and refused by the final decision of the RA Administrative Court. Meanwhile, , based on the Article 101, Point 6 of the RA Constitution, on 07.03.2013, R. Hovhannisyanyan submitted an individual application to the RA Constitutional Court, challenging the constitutionality of the provisions of the law applied in this case by the RA Administrative Court, which is in the stage of the examination in accordance with the procedure prescribed by law.

During the instant case trial, inquires of the Applicants mainly concerned to the declaration of the results of elections as invalid, in the framework of the materials attached to the applications. Regarding these materials, the parties were able to express the precise position at the Constitutional Court. Resulted from their combined assessment, the Constitutional Court stated that they could have been served as grounds or cause for appealing the results of voting in the electoral precincts in accordance with the procedure and time limit prescribed by law, which was not done. Exception is the arguments concerning the results of the voting in PEC 17/5, based on the examination of which, the RA Constitutional Court finds that those results could not be considered as trustworthy. Thus, based on Article 46, Part 10 of the RA Electoral Code the results of the voting in this precinct shall be considered as invalid, based on Article 72, Part 3 of the RA Electoral Code the number of the cast

voters shall be stated as a sum of inaccuracies in the precinct. In accordance with Article 46, Part 10 of the RA Electoral Code, the Territorial Electoral Commission shall send all materials concerning this precinct to the RA Prosecutor's Office.

**Seventh**, besides the abovementioned, Article 46, Part 9 of the RA Electoral Codes stipulates, "An application for declaring the election results invalid may be submitted to the relevant electoral commission before 18.00 not later than two days prior to the expiry of the relevant time limit prescribed by this Code for summarizing the election results."

**The mentioned norm is a precise and exclusively significant procedure for challenging the results prescribed by law before adopting a final decision on the results of election.**

**As it derives from the materials of case, the RA Central Electoral Commission had not received such an application from the candidates of the RA President within the time limits, the results of the elections were not challenged within the time limits and procedure prescribed by law, thus omitting one more legislatively prescribed possibility to dispel the possible suspicions.**

**During the examination of the case, arguments were also presented concerning shortcomings, which occurred in a number of precincts, theoretically impossible results of voting in those precincts, different announcements made by certain candidates, which were not challenged by the grounds and time limits prescribed by Article 46, Part 9 of the Electoral Code and were not the subject to discussion before the adoption of the Decision N 62 – U of the Central Electoral Commission dated February 25, 2013.**

Based on the materials and results of the examination, these are the general picture and factual results exclusively in the framework of the dispute concerning the legal procedure of the protection of passive suffrage during the Elections of the RA President held on 18 February 2013. **These, in their turn, have conditioned the legal contents and logics of the final decision on the results of elections made by the CEC by the manner and time limits prescribed by the RA Electoral Code.**

**The combined assessment of the above-mentioned facts states that by the procedure and in the time limits prescribed by Article 91, Part 1 of the RA Electoral Code the RA Central Election Commission could not have made other decision.**

Simultaneously, the RA Constitutional Court states that the considerations of the parties in regard to the possible imperfections of the electoral system are out of the framework of the subject of the considered case and may be the issue of the legislative reforms, taking into consideration also the legal positions of the RA Constitutional Court. **Besides, as it has been already mentioned in Point Ten of this decision, in the condition of the current post election situation the implementation of the necessary reforms of constitutional legal essence resulting from political wide consent, tolerance and civilized dialogue may become the means to ensure the normal development of the state and legitimate and effective remedy for the strengthening of constitutionality, the need of which was also highlighted during this case consideration.**

Proceeding from the review of the Case and being ruled by Article 100, Point 3.1, Article 102 of the Constitution of the Republic of Armenia, Articles 63, 64 and 74 of the RA Law on Constitutional Court, taking into consideration the legal positions expressed in this decision, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. To leave in force the Decision N-62-U of the Central Electoral Commission on electing the President of the Republic of Armenia dated 25 February 2013.

2. Pursuant to Article 102, Part 2 of the RA Constitution this Decision is final and enters into force from the moment of its announcement.

**Chairman**

**G. Harutyunyan**

14 March 2013  
DCC - 1077