



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

**ON THE CASE OF RESOLUTION OF THE DISPUTE RELATED TO THE DECISION
NO 184-A OF THE CENTRAL ELECTORAL COMMISSION OF THE REPUBLIC OF
ARMENIA DATED 27 JUNE 2021 ON SUMMARIZING THE RESULTS OF EARLY
PARLIAMENTARY ELECTIONS IN THE REPUBLIC OF ARMENIA HELD ON 20
JUNE 2021 ON THE BASIS OF THE APPLICATIONS OF ARMENIA ALLIANCE,
AWAKENING NATIONAL CHRISTIAN PARTY, HOMELAND OF ARMENIANS
PARTY AND WITH HONOR ALLIANCE OF POLITICAL PARTIES**

Yerevan

July 17, 2021

The Constitutional Court composed of A. Dilanyan (Chairman), V. Grigoryan, H. Tovmasyan, A. Tunyan, A. Khachartryan, Ye. Khundkaryan, E. Shatiryan, A. Petrosyan, A. Vagharshyan, with the participation of (in the framework of the oral procedure):

the applicants: representative of Armenia Alliance A. Vardevanyan,

Head of the Executive Body of Awakening National Christian Party A. Zohrabyan and representative G. Mkrtychyan,

Chairman of Homeland of Armenians Party A. Yeghoyan, representatives S. Sargsyan and A. Galstyan,

the representative of With Honor Alliance of political parties D. Harutyunyan,

the respondents: representatives of the RA Central Electoral Commission – Chairperson of the RA Central Electoral Commission T. Mukuchyan, Secretary of the RA Central Electoral Commission A. Smbatyan, and member of the RA Central Electoral Commission N. Hovhannisyan,

co-respondents: representatives of the RA Prosecutor's Office – Prosecutor of the city of Yerevan S. Hovhannisyan, Deputy Prosecutor of the city of Yerevan V. Mkrtychyan, Head of the Department for Crimes against Public Security of the RA Prosecutor General's Office K. Bisharyan,

Representative of the RA Police – Deputy Head of the RA Police, Police Colonel A. Fidanyan,

Chairperson of the RA Television and Radio Commission T. Hakobyan and representative – Assistant to the Chairperson of the RA Television and Radio Commission H. Sarkisov,

third party: representatives of Civil Contract Party R. Badasyan, S. Grigoryan and V. Hovakimyan, pursuant to Clause 5 of Article 168, Clause 11 of Part 1 of Article 169 of the Constitution, as well as Article 77 of the Constitutional Law on the Constitutional Court,

examined in a public hearing by an oral procedure the case on resolution of the dispute related to the Decision No 184-A of the Central Electoral Commission of the Republic of Armenia dated 27 June 2021 on summarizing the results of Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021 on the basis of the applications of Armenia Alliance, Awakening National Christian Party, Homeland of Armenians Party and With Honor Alliance of political parties.

The case was initiated on the basis of the applications of Armenia Alliance, Awakening National Christian Party, Homeland of Armenians Party and With Honor Alliance of political parties submitted to the Constitutional Court on 2 July 2021.

By the Procedural Decisions PDCC-138, PDCC-139, PDCC-140 and PDCC-141 of the Constitutional Court dated 4 July 2021, the cases based on the above-mentioned applications were accepted for consideration, and by the Procedural Decision PDCC-142 the cases on resolution of the dispute related to the Decision No 184-A of the RA Central Electoral Commission dated 27 June 2021 on summarizing the results of Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021 on the basis of the applications of Armenia Alliance, Awakening National Christian Party, Homeland of Armenians Party and With Honor Alliance of political parties were joined in one proceeding, and the judge of the Constitutional Court E. Shatiryan was appointed as the rapporteur on the joint case.

By the mentioned Decision in the joint case, the RA Central Electoral Commission was involved in the proceedings as the respondent, and the RA Prosecutor's Office, the RA Police and the RA Television and Radio Commission were involved in the proceedings as co-respondents.

According to the same Decision, the RA Central Electoral Commission, the RA Prosecutor's Office, the RA Police, the RA Judicial Department, the RA Special Investigation Service, the RA Investigation Committee and the RA Television and Radio Commission were requested to provide documents and information related to the Early Parliamentary Elections of 20 June 2021 that refer to the competence of the mentioned authorities.

Having examined the applications, the explanations of the representatives of the applicant and the respondent, the representatives of the co-respondents and the explanations of the third party, as well as having examined other documents and materials of the case, the Constitutional Court **FOUND:**

1. The Early Parliamentary Elections were held on 20 June 2021, within the period envisaged in Part 2 of Article 92 of the Constitution.

In accordance with Article 16 and Part 5 of Article 104 of the Constitutional Law of the Republic of Armenia Electoral Code (hereinafter referred to as the Electoral Code, adopted on 25.05.2016, signed on 28.05.2016 and entered into force on 01.06.2016), for organizing the voting and summarizing the election results, 2008 electoral precincts have been formed in the territory of the Republic, 12 of which – in the penitentiary institutions (based on Part 5 of Article 104, Part 4 of Article 17, and Part 1 of Article 18 of the Electoral Code).

In accordance with Article 36 and Parts 5 and 6 of Article 44 of the Electoral Code, a three-tier system of electoral commissions has operated, i.e. RA Central Electoral Commission, Territorial Electoral Commissions and Precinct Electoral Commissions.

38 Territorial Electoral Commissions have operated within the territory of the Republic of Armenia, 10 of which – in the city of Yerevan and 28 – in the Marzes (Regions) of the Republic.

Early Parliamentary Elections were organized by the Central Electoral Commission of the Republic of Armenia, which exercised control over its legality.

2. On 27 June 2021, the RA Central Election Commission, based on the protocols of voting results at polling stations, as well as the protocols drawn up by electronic voting, prepared a Protocol on

voting results of Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021.

According to this Protocol:

Total number of voters - 2.595.512;

Total number of voting participants - 1.281.997;

Total number of self-adhesive stamps allocated to the precinct electoral commissions - 2.690.900;

Total number of numbered passes allocated to the precinct electoral commissions – 206.400;

Total number of passes printed by means of technical equipment, received from electors - 1.278.655;

Total number of numbered voting passes received from electors - 2.742;

Total number of numbered voting passes received from electors - 1.281.397;

Total number of unused numbered passes – 203.665;

Total number of unused self-adhesive stamps – 1.409.889;

Total number of invalid ballot papers – 4.593;

Total amount of inaccuracies – 973;

The number of ballot papers cast in favor of 21 parties and four alliances of political parties included in the ballot papers, according to the aforementioned Protocol, shall be as follows:

Fair Armenia Party – 3.914;

Armenian National Congress Party – 19.691;

Civil Contract Party – 688.761;

Awakening National Christian Party – 4.619;

Liberty Party 1.844;

With Honor Alliance of political parties – 66.650;

United Homeland Party – 964;

Pan Armenian National Statehood Party – 803;

Bright Armenia Party – 15.591;

Our Home is Armenia Party – 12.149;

Republic Party – 38.758;

Fatherland of Armenians Party – 13.130;

Free Fatherland Alliance – 4.119;

Prosperous Armenia Party – 50.444;

Democratic Party of Armenia – 5.020;

5165 National Conservative Movement Party – 15.549;

Citizen's Decision Social-Democratic Party – 3.775;

Shirinyan-Babadjanyan Democrats Union – 19.212;

National Agenda Party – 719;

Rise Party – 1.233;

Liberal Party – 14.936;

European Party of Armenia – 2.440;

Armenia Alliance – 269.481;

National Democratic Axis Pan-Armenian Party – 18.976;

Sovereign Armenia Party – 3.915;

According to the Decision No 184-A of the RA Central Electoral Commission dated 27 June 2021, the following shall participate in the distribution of mandates:

1. Civil Contract Party, number of ballot papers with affirmative vote – 688.761 (53.91%);
2. Armenia Alliance, number of ballot papers with affirmative vote – 269.481 (21.09%);

3. With Honor Alliance of political parties, number of ballot papers with affirmative vote – 66.650 (5.22%).

The mandates are distributed as follows:

1. Civil Contract Party – 71 mandates;
2. Armenia Alliance – 29 mandates;
3. With Honor Alliance of political parties – 7 mandates.

3. Positions of the applicants

The main arguments of the applicants in the present case are as follows:

3.1. Armenia Alliance

In its application, Armenia Alliance has requested to resolve the “*Dispute regarding the results of Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021, i.e. 1) to declare the election results as invalid, or 2) to declare the election results as invalid and prescribe the procedure for distributing mandates, or 3) to appoint the second phase of elections*”. The applicant has substantiated its request, in particular, by the following arguments:

a) On 18 March 2021, RA Prime Minister N. Pashinyan announced that the Early Parliamentary Elections shall be held on 20 June 2021, ignoring the constitutional legal grounds for calling Early Parliamentary Elections (Article 93 of the Constitution), as well as the grounds prescribed by the Electoral Code (Part 2 of Article 104). This unconstitutional behavior, according to the applicant, obviously violated the assuredness of the fundamental principles of the right of suffrage. In particular, prior to the official start of purely electoral processes, one of the party leaders (actual candidate) had announced about his participation in the electoral process and had already conducted election campaign thus emphasizing his apparent superiority over all possible political forces, and this fact, according to the positions prescribed by international legal documents, is assessed as a violation of the principle of equal and free right of suffrage. In addition, the interference with the powers of the President of the Republic and the actual coercion of their implementation have had a significant impact

on the legality of the electoral process, and the superiority of a particular person and the status of a political force has been displayed over the persons having the right of suffrage.

b) On 25 April 2021, RA Prime Minister N. Pashinyan announced his resignation, at the same time informing that he would continue to fulfill his duties. During the entire process of the Early Parliamentary Elections and onwards, N. Pashinyan has held and continues to hold the position of the Acting Prime Minister of the Republic of Armenia. During the entire process of the Early Parliamentary Elections, Article 7 of the RA Constitution has been violated, which guarantees the principle of equality and legality of elections as the fundamental norm of the constitutional system, since although the Prime Minister had resigned from his post, he openly bypassed the fundamental provisions of the Constitution and continued to carry out the powers granted to the Prime Minister, such as having speeches at the National Assembly in the status of Prime Minister, making decisions, chairing the meetings of the Government, promulgating Government decrees, holding ex officio meetings with persons holding leading positions in the executive branch, including at the stage of parliamentary elections - starting from May 10. According to the applicant, the indicated unlawfulness is significant not only in the general constitutional legal aspect, but also from the viewpoint of violations of the right of suffrage, since he continued to unreasonably hold office and fully exercise the powers of the Prime Minister also during the Early Parliamentary Elections, and in essence, violated the normal implementation and assuredness of core constitutional processes, which subsequently led to a constitutional crisis.

c) During the entire process of the Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021, which started since 10 May 2021, administrative resources were used to a large extent. According to the applicant, the illegal use of administrative resources, which led to serious violations of the right of suffrage, in particular the principle of equality, was carried out in different ways - both through the use of official vehicles, property and other means, as well as through the authorities actually operating in the system of executive power (such as cases of systematic and massive involvement of the RA Police officers during any public meeting), thereby seemingly ensuring the so-called “chilling effect” on political rivals, as well as creating the illusion of a large number of participants in the meeting allegedly guaranteeing a high rating (cases of involving the staffs of Marzpetarans /regional authorities/, employees of the Office of the Prime Minister etc). In this regard, the applicant has noted that in the judicial act of the RA Administrative Court dated 26 June 2021, it is stated the following: “To declare Clause 1 of the Decision No 161-A of the Central

Electoral Commission dated 19.06.2021 as invalid in part of failing to recognize the participation of one employee of one of the RA Marzpetarans /regional authorities/ and the employees of two educational institutions in the election campaign of CIVIL CONTRACT Party as a violation of Clause 1 of Part 1 of Article 23 of the Constitutional Law Electoral Code”.

During the election campaign, in particular during his visits to Syunik, Vayots Dzor and Lori Marzes (Regions), the Acting Prime Minister has actively involved children also through the administrative resource.

d) During the election campaign of the Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021, the candidate for deputy from the Civil Contract Party and at the same time de facto Acting Prime Minister N. Pashinyan used hate speech, which violates the principles of equal and free electoral process. The applicant has mentioned the judicial act of the Administrative Court dated 17.06.2021 in the administrative case No VD/6861/05/21.

e) During the entire process of the Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021, which started since 10 May 2021, the members of Armenia Alliance have been subjected to disproportionate criminal prosecution measures and coercive measures.

f) The elements of the principles of free and equal right of suffrage have also been violated in the electoral process insofar as since May 10, hundreds of representatives of election campaign offices of Armenia Alliance, as well as active representatives have been regularly taken to the RA Police, and the so-called “check operations” have been carried out without any proper grounds. According to the applicant, the fact that all the coercive measures leading to the creation of an atmosphere of general threat and fear were dictated not by real and legal grounds but unfounded and artificial factors, is especially supported by the arguments that none of the mentioned persons were in fact accused and none of them had the status of a suspect. Moreover, in addition to creating an atmosphere of general fear, such illegalities have irreversibly damaged the propaganda activity of Armenia Alliance, since the key employees have been unnecessarily deprived of the elementary opportunity to carry out their normal activities at the election campaign offices.

g) Many persons with RA passports have been deprived of the opportunity to participate in the elections at the discretion of the RA Passport and Visa Department.

h) 23.790 citizens have taken part in the voting, who voted with non-biometric passports and consequently, without the relevant image on the voting pass.

i) 10.993 voters registered in military units have taken part in the voting, and the data on the submission of electoral lists, voting results at a specific polling station were kept secret, cases of referral were registered, as well as without the relevant image on the voting pass.

j) In the case of 109.618 RA citizens who took part in the voting, the passport was entered by a specialist through keyboard, by inserting the submitted document in the technical equipment.

k) Inaccuracies have been recorded in the published electoral lists and final protocols.

l) As a result of recounts in 83 polling stations, an increase of 742 votes was registered in Armenia Alliance.

m) As a result of counting and distribution of mandates carried out by the RA CEC, Civil Contract Party has received 71 mandates thereby receiving more than 3/5 of the number of deputies of the RA National Assembly and violating the opportunities vested to the role and authorities of the opposition factions of the RA National Assembly.

3.2. Awakening National Christian Party

The applicant considers that during the Early Parliamentary Elections held on 20 June 2021 the constitutionally prescribed fundamental principles of the right of suffrage, i.e. freedom and equality, have been violated. In addition, there was a significant impact on the free expression of the will of the voters, and the right to secrecy of voting, as well as the rights of persons having the right to elect have been widely violated. The applicant requests to invalidate the Decisions No 183-A and No 184-A of the RA Central Electoral Commission dated 27.06.2021 adopted by the results of parliamentary elections, as well as to invalidate the election results. The applicant substantiates his position on the following arguments:

a) Both before and during the election campaign, N. Pashinyan actually conducted an election campaign using administrative resources, which gave him an advantage over both the applicant and the other parties and alliances. In particular, the applicant states that in the judgment adopted in the case No VD/6999/05/21 of the Administrative Court dated 26.06.2021, the cases of use of administrative resources and the inaction of the RA Central Electoral Commission have been verified.

b) During the election campaign N. Pashinyan called for hatred and violence. The applicant states that in the judgments of the Administrative Court adopted in the case No VD/6861/05/21 dated 17.06.2021 and in the case No VD/6997/05/21 dated 25.06.2021 (that have entered into legal force), it has been verified that the statements made by the candidate of the Civil Contract Party N. Pashinyan could be objectively and reasonably perceived as threats of violence, and there is a violation of the established procedure for the election campaign, i.e. precondition proposed by the RA Central Electoral Commission from the viewpoint of application of the instruments prescribed by Part 8 of Article 19 of the RA Electoral Code.

c) The applicant also points out alleged violations, such as the interweaving of state functions and party interests, participation of high-ranking public officials in the election campaign, the actions taken by the civil servants in favor of Civil Contract Party through the abuse of official position, the violations of the right to free expression of will of the voters, including the violations of the secrecy of voting, directing voters (including servicemen) and assembling in groups, disproportionate inaction of the RA Central Electoral Commission of the Republic of Armenia, problems with electronic voter registration equipment, cases of campaigning during the voting, voting instead of another person, such attempt and/or cases of signing electoral lists instead of another person, as well as the transparency of ballot envelopes.

d) Vote has been taken through identity documents instead of the persons outside the Republic of Armenia.

e) Ballot boxes could be changed as a result of massive blackout.

3.3. Homeland of Armenians Party

The applicant considers that there were a number of violations during the Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021, and requests to invalidate the Decisions No 183-A and No 184-A dated 27.06.2021 adopted by the results of parliamentary elections, as well as to declare the election results invalid. The applicant substantiates his request mainly on the following arguments:

a) More than half of the polling stations were not accessible to people with disabilities, as a result of which their right of suffrage was violated;

b) During the elections, the form of the ballot papers prescribed by law has not been observed, i.e. the procedure for notifying the voters about the voting procedure established by law has not been observed;

c) Ballot paper “against all” was missing among the ballot papers, as a result of which the voters intending to vote against all were deprived of the right to express their will to vote and to have their votes counted;

d) In almost all polling stations, ballot papers have not been stored in fire-resistant safes;

e) Total use of administrative resources by the candidates of current government and other candidates at the election campaign stage, in particular, during the election campaign;

f) The entire period of the electoral process i.e. the election campaign and the elections were accompanied by hate speech,

g) A number of records made by Akanates (Eyewitness) Observation Mission.

3.4. With Honor Alliance of political parties

The applicant considers that the Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021 were accompanied by gross and persistent violations of the principles of freedom and equality, which affected the election results, leading to the violation of the fundamental constitutional principle of democracy.

The applicant notes that there have been significant violations of the principle of ensuring equal conditions for elections both during the election campaign and the election process. The applicant requests to invalidate the challenged Decision No 184-A of the RA Central Electoral Commission dated 27 June 2021 on summarizing the results of Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021, as well as to invalidate the election results. To substantiate its position, the applicant submits the following arguments:

a) During the election campaign, there have been cases of discriminatory and unequal conditions of coverage of political forces and candidates participating in the elections.

b) Candidate from Civil Contract Part and Acting Prime Minister N. Pashinyan has involved administrative resources, as a result of which the ruling political force has received significant advantages.

c) In the run-up to the entire election campaign, the first number of the electoral list from Civil Contract Party and the Acting Prime Minister of the Republic of Armenia N. Pashinyan has manifested conduct which contained precise elements of intimidation, violence, administrative influence, as well as further revenge. Moreover, according to the applicant's assessment, calls for violence, hate speech and threats by N. Pashinyan in his public speech during the election campaign were addressed "... not only to political rivals, but also to officials and voters in general". According to the applicant, an atmosphere of fear and tension was created, and the voter was subjected to psychological pressure which deprived him/her of the opportunity of freedom of choice.

The applicant notes that the atmosphere of violence and threats was not limited to public calls and expressions, but was also manifested in certain actions and consequences, such as the "hammer" demonstrated by N. Pashinyan during public speeches which, according to the applicant's assessment, was manifested as a way to take revenge on political opponents, which was emphasized by the concern of the Human Rights Defender in this regard.

d) The above-mentioned atmosphere during the election campaign was accompanied, in the applicant's assessment, by the inaction or support of law enforcement agencies, which was demonstrated against the opposition by law enforcement agencies during the election campaign and by demonstrative arrests of opposition figures and their supporters on the Election Day, including by illegal actions (for instance, the arrest of two candidates for deputy in breach of the immunity guaranteed by the Electoral Code), which had a continuing character even after the arrest warrants were declared unlawful by the court. The applicant notes that by making visits of law enforcement officers to the regional election campaign offices of With Honor Alliance of political parties, by "prophylactic talks", by requesting information about the heads of the election campaign offices, by demanding the legal basis of the territory occupied by the election campaign offices, and by other actions the law enforcement agencies pursued the aim to intimidate, stress and oppress the team members of With Honor Alliance of political parties, as a result of which some activists of the Alliance have refused to continue participating in the election campaign.

4. Positions of the respondent

The respondent, the RA Central Electoral Commission states that for invalidating the election results, it is necessary to clarify whether there were violations of the requirements of the Electoral Code during the organization and conduct of the elections, as well as during the voting process and tabulation of election results; secondly, these violations should call into question the voting results; thirdly, the nature of the violations should be such that it is no longer possible to determine the real result of expression of will of the voters in the process of summarizing the election results or consideration of the complaint. In other words, the invalidation of the election results requires that the consequences of the violations be of irreversible nature and the opportunity to accurately determine the will of the voters must be lost.

Referring to the applications and the legal grounds prescribed therein - according to which the applicants find that the constitutionally prescribed fundamental principles of the right of suffrage, i.e. freedom, justice, equality and secrecy of the ballot have been violated thus undermining the free expression of voters' will - the respondent disagrees with the legal grounds and assertions considering that the claims formulated in the applications are subject to rejection for the following reasons:

The Early Parliamentary Elections in the Republic of Armenia were called via presidential Decree No NH-99-N dated 10.05.2021 on Calling for Early Parliamentary Elections, which entered into force on 11.05.2021. The election process shall start with the entry into force of the mentioned legal act i.e. Decree of the President of the Republic on Calling for Early Parliamentary Elections. On the same day, the RA Central Electoral Commission adopted the Decision No 27-A, thus approving the schedule of the main events for the preparation and holding of the Early Parliamentary Elections in the Republic of Armenia to be held on 20 June 2021. Therefore, the respondent finds that the actions referred to in the applications, which occurred before that date, cannot be the subject to consideration in this case.

As for the use of administrative resources during the early elections, the respondent states that the legislator does not in general prohibit a certain category of public servants, employees of health or medical organizations, educational institutions, pre-school educational institutions to campaigning, but stipulates a certain rule in this regard. In particular, this category of persons, including community leaders and members of the Council of Elders directly elected by voters, may campaign, except when exercising their powers or acting ex officio. In other words, it becomes obvious from the mentioned legal norms that officials, including those holding political positions, are free to conduct election

campaign taking into account the restrictions prescribed by the Electoral Code. State and local self-government bodies, state and community servants, as well as certain specific employees are not prohibited to conduct election campaign and distribute campaign material of any kind within the scopes of certain and precise restrictions prescribed by law. Prohibitions by the relevant restrictive norms are directly stipulated only in cases where the election campaign and the distribution of any kind of campaign material are carried out along with exercising the powers of the given persons. Moreover, the law prescribes a restriction on the implementation of the mentioned activity or actions by the given persons along with exercising those powers, i.e. the law prohibits the official to combine election campaign and exercising official powers, but the law does not prohibit persons from campaigning for any party only because that the person is an official at the same time.

Referring to the arguments on the violation of Articles 2 and 7 of the Constitution during the organization and the process of elections, in particular the principle of freedom of choice, the respondent states that firstly, the violations of the Electoral Code must be confirmed and they must be of such a nature as to affect the election results. The applicants' arguments and justifications refer to considering those arguments as violations based on the assessment of specific circumstances, but no causal link is presented between the mentioned violations and the election results.

As for the Decision No 171-A of the Marzpet (Governor) of the RA Tavush Marz (Region) dated 04.06.2021, as well as the Decision No 808-N of the RA Government dated 20.05.2021, the respondent considers that no direct legal prohibition is envisaged for adopting these decisions.

Referring to the argument that “the RA Passport and Visa Department did not provide an opportunity to participate in the elections at its sole discretion”, the respondent notes that the RA Central Electoral Commission conducted a public awareness on the mentioned legal provision on 29 May 2021 noting that for temporary inclusion in the electoral lists, the mentioned persons can submit an application to the Passport and Visa Department or the Passport Service by place of residence until 10 June 2021 by indicating the place of residence in the Republic of Armenia on the voting day. The decision on the mentioned issue shall be adopted by the authorized body, either temporarily including the mentioned voters in the electoral lists, or adopting a rejection decision, and the legitimacy of such decisions can be challenged in court. In essence, the legislator has established a comprehensive legal procedure to challenge both the rejection and possible inaction, where the voters have had a full opportunity to exercise their rights.

Referring to Parts 3 and 4 of Article 66 of the Electoral Code, the respondent states that the mentioned legal provision already considers it possible to have voting passes without the image of the elector, and providing such passes does not violate the requirements of the Electoral Code. The applicant does not provide any argument that the absence of the image in the case of any citizen has occurred in violation of the requirements of the Electoral Code and, moreover, that it has caused any violation.

The respondent states that the legislator has envisaged the possibility of failure of the technical equipment and has established the appropriate legal regulation. It is obvious from the above that even if all the technical equipment did not work and the passes with image were not printed, this could not be considered as violations of the requirements of the Electoral Code thus leading to invalidity. The Electoral Code unequivocally considers it permissible for a specialist to insert identification data through keyboard in the technical equipment. There is no polling station where the statement has not been printed through the technical equipment, as well as there is no application that the certain statement has not been provided to the competent entities.

As for the repeated pages of electoral lists used by the precinct electoral commissions, the respondent considers that in this regard, the applicant Armenia Alliance has submitted repetition/recurrence of pages of the electoral lists, which referred to 9 precincts. The explanation for this may be a possible technical error. However, in 6 of the 9 polling stations presented, the fact of double signature in the lines related to the same person is directly absent; two signatures on behalf of the same person have been indicated in 3 polling stations, and this is about 10 repeated signatures, i.e. 5 additional signatures. The RA Central Electoral Commission has sent the materials on the mentioned circumstance to the Prosecutor's Office.

Regarding the arguments with the recount, the respondent stated that in 3 territorial electoral commissions (Nos. 2, 3 and 9), 4 applications were submitted for the recount of the voting results in 4 polling stations. The applications were submitted by the proxies of Awakening National Christian Party. The RA Central Electoral Commission has also received applications from the authorized representative of Sovereign Armenia Party and the Helsinki Citizens Assembly Vanadzor Office regarding the inaccuracies in the voting results in different polling stations. The submitted applications referred to the data of a total of 24 polling stations. In accordance with the requirements of the Electoral Code, the Territorial Electoral Commissions have conducted a recount both on the basis of applications submitted by proxies and on their own initiative, also taking into account the polling

stations indicated by the authorized representative of Sovereign Armenia Party and the Helsinki Citizens Assembly Vanadzor Office. Territorial Electoral Commissions Nos. 2, 3, 4, 5, 6, 7, 9, 10, 11, 13, 14, 17, 23, 24, 25, 33, 34 and 35 have conducted a recount of voting results on their own initiative. In total, the results of 83 polling stations have been recounted (Nos. 2/1, 2/2, 2/3, 2/6, 2/32, 2/44, 3/20, 3/26, 3/27, 4/3, 4/4, 4/5, 4/6, 4/8, 4/9, 4/10, 4/11, 4/16, 4/40, 4/44, 5/4, 5/14, 6/9, 6/13, 6/18, 6/22, 6/26, 7/7, 9/4, 9/30, 9/32, 9/33, 9/43, 9/44, 9/55, 10/33, 10/43, 11/11, 11/17, 11/22, 13/31, 14/8, 14/40, 17/14, 17/38, 23/38, 23/46, 23/47, 23/50, 24/4, 24/7, 25/12, 25/19, 25/21, 25/25, 25/34, 25/39, 25/43, 33/31, 34/2, 34/3, 34/4, 34/5, 34/6, 34/8, 34/9, 34/10, 34/12, 34/13, 34/19, 34/20, 34/21, 34/22, 34/24, 34/27, 34/29, 34/37, 34/44, 34/60, 34/63, 34/68 and 35/30). As a result, the initial voting results registered in 16 polling stations remained unchanged, and the “affirmative” votes cast for the candidates in 31 polling stations remained unchanged. In the rest of 51 polling stations, insignificant changes were registered due to the recognition of the ballots papers as valid or invalid. The members of the relevant Precinct Electoral Commissions, proxies of the parties participating in the elections, media representatives and observers were present at the recount. All the presented information has been published on the website of the RA Central Electoral Commission in parallel with the recount process. The tabulation of the entire recount has also been published on the website. In the polling stations where inaccuracies were registered, the materials have been passed to the law enforcement agencies. As for the arguments in the application of Armenia Alliance related to the distribution of mandates, it has been conducted in full compliance with the requirements of Articles 95 and 96 of the Electoral Code.

As for the arguments on the violations of the right of suffrage of the persons with disabilities, the respondent states that a number of measures have been taken to ensure that voters with disabilities exercised their right of suffrage. However, it should be noted that there is no evidence that persons have been deprived of the right to participate in the voting due to lack of access.

As for the bandwidth of the equipment used in the precinct electoral commissions, the respondent considers that the devices have been distributed based on the estimated technical capabilities, and no voter has been deprived of the right to vote due to the bandwidth.

Referring to the questions on the voting procedure, the respondent notes that the applicants list the assembling in groups in the polling stations on the voting day, which, even if they existed, could not anyhow affect the election results. The materials assessed by the Territorial Electoral Commissions in connection with the cases of directing voters have been passed to the law enforcement agencies, but

following the voting process with the help of cameras, the publications on the websites, as well as studying the registration books of the Precinct Electoral Commissions, the respondent finds that the cases of directing voters have not been of organized or universal nature, and therefore could not have any impact on the election results.

As for the blackout in the polling stations, the respondent states that there were cases of blackout both during and after the voting. In this regard, clarifications were provided that the blackout had occurred as a result of accidents, measures were taken to eliminate the consequences in the shortest possible time, and the consequences of the accident were eliminated as soon as possible, and electricity supplies were restored. The blackout during the voting have not caused any problems, since the technical equipment also run respectively on batteries, so no malfunctions have been reported and no violations related to the summarization of election results have been reported.

The respondent insists that no cases of transparency of ballot envelopes have been registered during the voting.

The respondent states that according to the applicants, premade packages with ballot papers have been distributed to the voters in a number of polling stations, as a result of which a number of cases have been registered when those packages have not contained all the ballots papers, and only after the observers' remarks the missing ballots papers were filled in, and the members started collecting the ballots papers in front of the voters. Referring to Part 2 of Article 66 of the Electoral Code, the respondent states that the main emphasis in the mentioned law is that all ballots papers should be distributed to the voter. In other words, there is a rule that all ballots papers should be distributed to the voter. Assuming that the voter was distributed pre-collected ballot papers, this cannot be qualified as a violation of Part 2 of Article 66 of the Electoral Code.

As for the judgments on the obstruction of observers' rights due to the ban on participation in pre-election meetings in both cases, the respondent believes that the Electoral Code does not contain any restrictions on the organizers of the meetings, and their conduct has not led to any violation; moreover, the mentioned cases have nothing to do with the election results.

The respondent states that in addition to the data defined by the Electoral Code, the voting passes printed by means of technical equipment include the following additional information: the name of the election, the day, month and year of the voting, the time of printing the voting pass, and in case of using more than one technical equipment – the information about the technical equipment by means of

which the voter has been registered. In case of the legal regulation prescribed by Part 6 of Article 66 of the Electoral Code, when a red sign appears on the screen, an audible signal is activated, and in this case the name, surname, photo (if available in the electronic database), Identification Card Number and the record number in the electoral list of the precinct appears on the screen together with the notification “Double registration attempt”, as well as the number of the document through which the person had already been registered in the given precinct, the date and time of registration appear on the screen. The pass on the double registration attempt printed by the device contains almost all the necessary data (name of the election, date, time of printing of the pass, the number of the polling station, the record number in the voter list of the precinct, the name of the voter, the number of the document inserted during the double registration attempt, the number of the document by which the voter had already been registered in the given polling station, the date and time of the first registration) for the registration of the violation and undertaking appropriate measures. During the Early Parliamentary Elections held on 20 June 2021, the technical equipment operated in 1996 polling stations, according to the established procedure, were equipped with the software for registering the participants of the voting and excluding double registration. In the Precinct Electoral Commissions, where more than one technical equipment were used, their work was synchronized, which enabled the voter to register by each of the technical equipment used in the precinct electoral commission, thus excluding the possibility of double registration of the same voter through other technical equipment.

Based on the above, the respondent considers that the challenged Decision is lawful, it was adopted in compliance with the requirements of the Electoral Code, therefore, the respondent requests to reject the applications, and to leave in force the Decision No 184-A of 27 June 2021 of the RA Central Electoral Commission.

5. Positions of the co-respondents

5.1. Position of the RA Prosecutor’s Office

As a co-respondent, the RA Prosecutor’s Office refers to the alleged illegitimacy of the circumstance that after resignation the RA Prime Minister N. Pashinyan remained on the post of the Acting RA Prime Minister, and states that the Prosecutor General's Office received crime reports on 28.04.2021 and on 24.05.2021 requesting to initiate a criminal case based on Part 2 of Article 300 of the RA Criminal Code (Usurpation of power) on the fact that after resignation on 25.04.2021 the RA

Prime Minister N. Pashinyan continued to implement the powers of the RA Prime Minister. By the letters of 29.04.2021 and 31.05.2021 the prosecutors clarified the applicants that the circumstances mentioned in the applications refer to the alleged dispute related to the application of constitutional legal norms, the settlement of which is beyond the powers of the RA Prosecutor's Office.

As for the use of hate speech and public calls for violence in the campaign speeches and campaign videos of the candidates participating in election campaign, the RA Prosecutor's Office informs that the most controversial cases of speech containing elements of violence during the election campaign have been reviewed by criminal proceedings and decisions on rejecting to initiate criminal cases have been adopted. Based on Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Rabat Action Plan, as well as certain positions of the ECHR in this regard, the RA Prosecutor's Office concludes in the response letter that during the election the speeches of campaign leaders N. Pashinyan, R. Kocharyan, S. Sargsyan and other leaders, in their entirety, cannot be considered provocative of violence and containing calls to publicly justify violence.

Referring to the allegations of the applicants that since 10 May 2021, representatives of hundreds of election campaign offices and active representatives have been regularly brought to the police without any proper grounds which resulted in the violation of the elements of free and equal electoral principles, the RA Prosecutor's Office emphasizes that throughout the electoral process, 861 reports on alleged electoral irregularities were processed, and those actions, including the mass arrests of supporters of the alliances, as well as the illegal searches of their apartments, according to the applicants, have been conducted within the scopes of verification activities taken on the mentioned hundreds of reports and the materials prepared in compliance with the criminal procedures, and that those actions have been carried out based on the procedure prescribed by Clause 1 of Article 11 of the RA Law on Police, Article 153 and Articles 225-231 of the RA Criminal Procedure Code.

As for the allegations of the applicants about the searches conducted, the RA Prosecutor's Office states that 29 searches have been carried out within the framework of criminal cases during the election process, seven of which were in the apartments or buildings of persons affiliated with Armenia Alliance, twenty – With Honor Alliance of political parties, and two – other forces. The Prosecutor's Office states that the searches have been carried out on the basis of judicial acts adopted on the grounds of motions duly substantiated on legal and factual framework. Referring to the case of the leaflets with defamatory and discrediting content about Armenia Alliance and its leader R. Kocharyan thrown in many streets of the capital Yerevan on the Election Day, the Prosecutor's Office

states that an administrative proceeding has been initiated in that case by the Yerevan Department of the RA Police, within the framework of which the person who committed the administrative offense has been identified, and the materials of the administrative proceedings about the offender have been sent to the RA Central Electoral Commission to resolve the issue of subjecting the latter to administrative responsibility.

Referring to the cases of damage or destruction of propaganda posters, the Prosecutor's Office states that all the cases of destruction, which could have caused material damage to their owners within the meaning of Article 185 of the RA Criminal Code, have been substantiated in accordance with Articles 180-181 of the RA Criminal Procedure Code.

With respect to demonstrative arrests of opposition figures and their supporters during the election campaign and on the voting day, including the illegal arrests of opposition candidates, the Prosecutor's Office reports that the statistics of electoral violations mentioned in the explanations provided by the Prosecutor's Office show that a significant part of these alleged electoral irregularities have been committed by supporters of the With Honor Alliance of political parties, and in 17 cases of such irregularities, criminal cases have been initiated under different articles of the RA Criminal Code.

Referring to the issue raised by the applicants that during the election process, including on the voting day, the officials of state bodies and local self-government bodies have constantly and systematically used vast administrative resources, the RA Prosecutor's Office reports that 102 cases of alleged violation of a citizen's right of suffrage by the use of official or other dependence was registered during the election process, of which 53 related to the alleged crime committed by the supporters of one of the applicants – Armenia Alliance, and 49 – by the supporters of Civil Contract Party. However, the RA Prosecutor's Office informs that in 101 out of 102 mentioned cases, the circumstances mentioned in the reports have not been confirmed, and only one criminal case is initiated with a completed preliminary investigation.

As for the issue of discrepancy in the number of signatures in the electoral lists at the polling station and the number of participants in the protocols, the RA Prosecutor's Office states that the RA Prosecutor's Office has instructed to prepare materials on the inaccuracies in 109 polling stations (as mentioned by the applicants) in accordance with Articles 180-181 of the RA Criminal Procedure Code, and based on the analysis of the above the RA Prosecutor's Office notes that this “view of discrepancy” takes place because in one case the applicant has made a direct incorrect combination of

these two starting numbers, and in another case a mechanical comparison took place without considering a number of circumstances. The RA Prosecutor's Office, per se, states that the voting of servicemen at the polling stations (the number of such voters is secret) and that they sign in the electoral list registered in the military unit, but in the protocol summarizing the voting results, their number is included in the total number of voting participants in the precinct. Secondly, as a result of scanning the signed lists of a number of precincts, some pages of the list have not been scanned and have been published incompletely. Thirdly, in a number of cases, according to the RA Prosecutor's Office, the applicant has made wrong comparisons, and during the preparation of materials it has become clear that there is no discrepancy in the total number of voting participants in the precinct and the signatures in the scanned lists in the polling stations. Fourthly, in a few cases - the sloppy work of the commission members, where the discrepancy has been caused by a difference of one or two signatures, etc.

As for the case of another person voting instead of the citizen J. Martirosyan, referred to by one of the applicants during the trial, the RA Prosecutor's Office states that materials have been prepared in accordance with Articles 180-181 of the RA Criminal Procedure Code, as a result of which, according to the explanations of J. Martirosyan's granddaughter, the member of the commission E. Marukyan and the voter G. Shahgaldyan, as well as by studying the pass with the latter's name printed through the technical equipment and the relevant page of the electoral list, it was found out that G. Shahgaldyan was registered in the electoral list and has mistakenly signed in front of J. Martirosyan's name, and the signature in front of his name is missing in the list. As a result, based on these materials, on 06.06.2021 a decision was made to refuse to initiate a criminal case.

Referring to a number of other arguments of the applicants and summing up the explanations on the actions taken by the RA Prosecutor's Office during the preparation and holding of Early Parliamentary Elections in the Republic of Armenia dated 20.06.2021, as well as their process and the results, the RA Prosecutor's Office notes that they managed to ensure the prevention, detection of alleged electoral irregularities, taking necessary judicial and other actions and providing a proper criminal legal assessment by cooperating with other law enforcement agencies, and due to this circumstance, according to the RA Prosecutor General's Office, the legality of the national elections and the exercise of the free will of the RA citizen was ensured.

5.2. Position of the RA Police

The co-respondent states that since the election campaign, the RA Police has carried out measures aimed at maintaining public order and ensuring public security throughout the RA territory, as well as has operatively responded to the violations and incidents, has ensured the transfer and security of election related documents from the Territorial Electoral Commissions to the polling stations, in order to serve the citizens, on the Election Day and the days before the elections, a Hotline service operated in the RA Police, as well as meetings, discussions, exchange of information and adjustment of electoral lists have been organized with both international and local observation missions, etc.

Referring to the arguments of the applicants on the use of administrative resources to involve a large number of RA police officers in the election campaign, the co-respondent states that the Administrative Court has referred to the matter at issue in framework of the case No VD/6999/05/21, noting that no evidence of the use of the resources of the RA Police officers to get a vote in favor of a third party was found. Moreover, during the mentioned period the RA police officers exercised their authority exclusively to ensure the maintenance of public order in public places, as prescribed by Article 12 of the Law on Police.

The co-respondent has added that the RA Police has always shown a balanced approach to all political parties and factions.

285 cases of violations committed during the election campaign have been registered in the RA Police, of which 132 cases were processed as reports on crimes in accordance with Articles 180-181 of the RA Criminal Procedure Code, and 153 cases have not contained apparent elements of crime and have been checked as incidents. 207 cases were registered on the Election Day.

Referring to the applicant's allegations that the co-respondent has not taken proper measures connected with the distribution of leaflets on the Election Day, the co-respondent has emphasized that immediately after receiving the alarm, i.e. just hours after 07.00, the violation was revealed due to operative measures taken. As for the cases of damage to the posters, the RA Police has registered all the reported cases and has taken the necessary measures for their disclosure. At the moment, 6 of those cases are already disclosed.

Referring to the allegations of the applicant on the voting of 23.790 citizens without a biometric passport, the RA Police has stated that the main respondent has already provided a relevant explanation. In addition, it is inadmissible to force a citizen to change his passport with a biometric one, and in this respect the RA Police does not have any tools.

Referring to the argument mentioned by the applicants that many persons with RA passports have been deprived of the opportunity to participate in the elections at the discretion of the RA Passport and Visa Department, the co-respondent has emphasized that the Passport and Visa Department of the RA Police was guided exclusively by the legal regulations governing the relevant relations when compiling the main and additional electoral lists, thus ensuring the proper exercise of the suffrage of the RA citizens. In addition, the Passport and Visa Department also took into account the existing case law on the inclusion of citizens in electoral lists. As for the citizens who are not registered in the Republic of Armenia, the latter, according to Part 5 of Article 10 of the Electoral Code, shall have the right to submit an application to the authorized body for temporary inclusion in the electoral list no later than 10 days prior to the voting day, indicating the address of their location in Armenia on the voting day. On this basis, 1479 voters not registered in the Republic of Armenia were included in the electoral lists.

As for the decisions on the rejection by the Passport and Visa Department of applications for receiving statements for the participation in the elections, they are not final, and the legislation provides a clear legal mechanism to appeal them, due to which some of the decisions have been appealed in court. The RA Police has noted that 239 lawsuits were received from the courts, of which 178 were judged to satisfy the claim and to include the plaintiff in the electoral lists, and 61 lawsuits were rejected, terminated or returned. The citizens have applied to the passport services to obtain statements for participating in the elections not in the case of all 178 satisfied verdicts. According to the information available in the Passport and Visa Department, the number of statements issued on the basis of court verdicts is 59.

Referring to the fact that from 1 January to 20 June 2021, more than 70.000 identification documents were printed compared to the same period of the previous year (238.912) as a hypothesis of alleged violations in the assessment of the applicants, the co-respondent states that due to the spread of a new coronavirus disease, the quantitative difference of printed documents is justified by arguing that the number of identification documents printed in the first half of 2019 was 239.772, i.e. a thousand more, and in the same period of 2018 - 275.669, i.e. about 37,000 more.

Referring also to the issue of prophylactic talks mentioned by the With Honor Alliance of political parties, the co-respondent has stated that since the beginning of the National Assembly election campaign, the RA Police has cooperated with the political parties and alliances participating in the elections and met with the representatives of election campaign offices. The RA Police has exchanged

contact information with the latter and has had prophylactic conversations aimed at responding rapidly to possible electoral irregularities, their prevention and detection, as well as more effective maintenance of public order.

5.3. Position of the RA Television and Radio Commission

The co-respondent notes that prior to the start of the campaign for the Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021, the RA Television and Radio Commission (hereinafter referred to as the Commission or TRC) has adopted relevant decisions aimed ensuring equal and accessible appearance on the Public Broadcaster for the political forces participating in the elections. The Commission has organized seminars-trainings aimed at presenting the methodology for ensuring the assessment of equal conditions, the requirements of the legislation governing the election campaign, the rights and responsibilities of broadcasters during the election period and the consequences of non-compliance with the rules of ethics.

The co-respondent has emphasized that although during the elections in question the parties/alliances have had the opportunity to free broadcast 2340 minutes of propaganda materials on public television and radio, but the latter have partially realized their right.

The Commission has stated that no complaints have been submitted to the Commission by international organizations, political parties and alliances participating in the elections, state bodies, non-governmental organizations and mass media by broadcasters during the election campaign regarding the violations of the procedure prescribed by law, and the complaint submitted by the representative of Armenia Alliance on 08.06.2021 not related to the pre-election and election period as well as the complaint of the same content submitted by the representative of With Honor Alliance of political parties on 09.06.2021 have received appropriate responses.

During the election campaign, 9 administrative proceedings were instituted as a result of the monitoring by the TRC, within the framework of which, according to the Commission Decision No 111-A of 1 July 2021, a fine of 200.000 AMD was imposed on “Azatutyun TV” LLC, the administrative proceedings instituted against “FM-105.5” LLC were dismissed in accordance with the Commission Decision No 118-A of 1 July 2021, and the administrative proceedings instituted against “Dzagedzor Broadcaster” LLC on 11 June 2021 are not accomplished. Administrative proceedings have been instituted against authorized “Azatutyun TV” LLC (“Azatutyun TV” audiovisual program), “Free News” LLC (“Free News” audiovisual program), “Multi Media-Kentron TV” CJSC (“Kentron”

audiovisual program) , “Shark” LLC (“5th Channel” audiovisual program), “Husaber” CJSC (“Yerkir Media” program) and “Armnews” CJSC (“Armnews” program) during the period prohibited by the RA legislation for the conduct of campaign on the grounds of broadcasting campaign related material or material promoting the conduct of campaign, as a result of which a written warning as a penalty was imposed on the companies based on the decisions of the Commission dated 1 July 2021.

The commission states that certain TV and radio companies have disproportionately distributed the airtime to the political parties and alliances participating in the elections due to the differences in the planning and implementation of election campaigns by the political parties/alliances, as well as scheduling of events, their quantity and location; therefore, the above-mentioned cannot be assessed as a violation of providing equal conditions for political forces by television and radio companies.

According to the Commission, the political forces were actively involved in the election campaign, namely, for the period 07.06.2021-18.06.2021, free of charge and for pay airtime provided to the political parties/alliances for the election advertisements in TV programs and radio programs totaled 28.700 minutes /478 hours/, and in news and other programs the campaign and election-related materials totaled about 79.000 minutes /1316 hours/.

The Commission notes that harsh, intolerant and provocative rhetoric, hatred and reproach have increased during the election period, but ethical violations are in the realm of media self-regulation.

6. Position of Civil Contract Party involved as the third party

Civil Contract party considers that in this case no proper grounds have been presented for the existence of legislatively prescribed grounds for declaring the election results as invalid or prescribing the procedure for distributing mandates or appointing the second phase of elections, as well as relevant evidence for electoral violations have not been presented. The minimum criterion for invalidating election results both at the precinct and national levels is the presence of such electoral irregularities that affect the outcome of the election or the systemically interconnected, mass, recurrent, or recurring electoral irregularities that undermine the principles of suffrage laid down in Article 7 of the Constitution. No information is submitted in this Case about such electoral irregularities, and the justifications provided are of a formal nature. It is also noteworthy that the necessary legal processes regarding the registration of electoral irregularities are almost absent.

Referring to the calls for violence and hate speech, as well as their impact on freedom and equality of suffrage, the third party considers that N. Pashinyan has repeatedly stated that this is not about violence, physical revenge and similar acts, as well as it is obvious that the poignant political speech, which is unfoundedly described by the applicants as a call for violence, is addressed only to those who will try to illegally influence the will of the electors. The mentioned group of persons can in no way be considered as a group, due to the protected feature of which a call for violence is made.

Regarding the use of administrative resources, the third party states that within the framework of the administrative case No VD/6999/05/21, the Administrative Court has provided exhaustive reasons why there is no misuse of administrative resources in the episodes presented by Armenia Alliance. As for the court analysis on the participation of one employee of one of the Marzpetarans (regional authorities) of the Republic of Armenia and two pedagogues in the election campaign, in this case we are dealing with the violation of the prohibition prescribed by Clause 1 of Part 1 of Article 23 of the Electoral Code, but not with the case of misuse of administrative resources by the representatives of Civil Contract Party or the executive branch, which is attributed to the latter by the applicants.

As for the impossibility of participating in the elections of persons with passports of the Republic of Armenia, the third party states that the Passport and Visa Department has satisfied the applications of all persons registered in Artsakh, who acquired RA citizenship in accordance with the RA Law on Citizenship, but later left for residence to the Republic of Artsakh (including through resettlement programs) and, having no registration in the Republic of Armenia, applied to the Passport and Visa Department in order to be included in the electoral list by place of residence for participating in the elections. Moreover, the rejections of applications for participation in the elections made by the departments of the Passport and Visa Department are not final, and the legislation provides legal possibility for appeal, due to which part of these decisions were appealed in court.

The third party informs that as for the condition of secrecy of the polling station for the persons registered in the military units, it is directly prescribed by Part 12 of Article 8 of the Electoral Code.

Referring to a number of other arguments of the applicants, the third party concludes that in this Case the Constitutional Court should make the decision on leaving in force the decision adopted on the results of the National Assembly elections as prescribed by Sub-clause 1 of Clause 13 of Article 77 of the Constitutional Law on the Constitutional Court.

7. As a result of the inquiries, the Constitutional Court received the following information:

From the RA General Prosecutor's Office:

By the content description, **375** reports containing apparent elements of crime of electoral nature have been outlined from the publications of mass media and social networks. In addition to the mentioned reports, **486** calls of the same nature received by the RA Police on the Hotline of the RA General Prosecutor's Office have become the subject of inspection. By 06.07.2021, as a result of the measures envisaged by the law, in all other cases the circumstances mentioned in the reports have already been rejected except for the criminal cases initiated in 60 cases, and no grounds for initiating a criminal case have been obtained. As a result of investigative and operative-investigative actions undertaken, criminal cases have already been initiated in 60 cases.

The preliminary investigations in 5 criminal cases initiated by alleged electoral crimes have been completed, two of which involved bribery, the other two - involving the participation of several individuals in elections, forcing them to vote for a party or an alliance, and one - involving compulsion to participate in campaign. Three of the mentioned cases have been sent to court with indictments against 3 persons for trying those cases on the merits.

From the RA Police

The reference submitted by the RA Police to the Constitutional Court on 10.07.2021 states that according to the information received on the violations during the campaign in Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021, 285 cases have been registered in the RA Police prior to the voting day, of which 132 cases have been processed as reports on crimes in accordance with Articles 180-181 of the RA Criminal Procedure Code, and 153 cases have not contained apparent elements of crime and have been checked as incidents. Out of the mentioned 132 materials/cases, criminal cases were initiated by 27 (only by the RA Police), 57 decisions were made to reject the initiation of criminal cases, 58 were sent for preliminary investigation, 1 was sent to the military police, and materials are being prepared in 16 cases. On the Election Day and in the post-election period, 600 cases were registered in the RA Police, of which 355 cases were processed as reports on crimes in accordance with Articles 180-181 of the RA Criminal Procedure Code, and 245 did not contain apparent elements of crime and were checked as incidents. Out of the mentioned 355 materials/cases, criminal cases were initiated by 10 (only by the RA Police), 31 decisions were made to reject the initiation of criminal cases, 122 were sent for preliminary investigation, 3 were sent to

another body, and materials are being prepared in 199 cases. 97 calls were received through the RA Police Hotline Service, and no calls were received from the CIS and international observers.

From the RA Investigation Committee

Within the competence of the RA Investigative Committee related to the Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021, 148 materials were received and prepared in the subdivisions of the Committee, of which:

- Criminal cases were initiated in 11 cases;
- Decisions were made to reject the initiation of a criminal case in 121 cases in accordance with Clauses 1 and 2 of Part 1 of Article 35 of the RA Criminal Procedure Code;
- Additional materials are being prepared in 16 cases.

In addition to the 11 criminal cases initiated, the prosecutor's office and the investigative bodies received 9 criminal cases initiated by the latter. The preliminary investigation of 1 out of 20 criminal cases ended with an indictment (Part 1 of Article 149.1 of the RA Criminal Code, 1 accused, measure of restraint - detention), 2 criminal cases were sent to the RA Special Investigation Service (Article 154.2 of the RA Criminal Code), and the preliminary investigation continues with the remaining 17 criminal cases.

Six persons were charged in 17 criminal cases, and restricted residence orders were issued against the latter as a measure of restraint.

From the RA Special Investigation Service

33 criminal cases related to the Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021 were investigated by the investigators of the RA Special Investigation Service, of which:

- 3 criminal cases with indictments against 4 persons were sent to court (the criminal prosecution against 1 person was terminated due to remorse for actions);
- 2 criminal cases were terminated due to lack of corpus delicti;
- 2 criminal cases were joined in another criminal case;
- The preliminary investigation of 26 criminal cases continues.

52 persons were charged, of which:

- Detention as a measure of restraint was applied against 13 persons;
- Restricted residence orders were issued against 35 persons;
- 2 persons were declared wanted applying arrest as measure of restraint.

6 materials related to the Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021 were prepared in the proceedings of the investigators of the RA Special Investigation Service, of which:

- The initiation of criminal cases in 4 materials were rejected,
- Criminal cases were initiated in 2 materials.

From the RA Judicial Department and the Administrative Court

During the elections, 225 lawsuits were received by the courts of general jurisdiction and 27 lawsuits - by the Administrative Court.

8. Positions of the observation missions

The Preliminary Conclusions on the Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021 /the Statement is the result of a common endeavour involving the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of Council of Europe (PACE) and the European Parliament (EP)/, in particular, state that: “(...) early parliamentary elections (...) were competitive and generally well-managed within a short timeframe. However, they were characterized by intense polarization and marred by increasingly inflammatory rhetoric among key contestants. The legal framework is generally comprehensive, but the fact that amendments were adopted so close to the elections caused some legal uncertainty. The election administration conducted its work in a transparent, collegial and professional manner and enjoyed electoral stakeholders’ confidence. Voters were provided with a broad range of options, and fundamental rights and freedoms were generally respected, with contestants being able to campaign freely. However, the negative tone and the personality driven

nature of the campaign hindered a policy-focused debate. (...) Election day, including the vote count, was assessed positively overall.

(...) The legal framework is broadly conducive to the conduct of democratic elections and provided comprehensive regulation of most components of the electoral process despite some shortcomings.

(...) Fundamental rights and freedoms were generally respected, and contestants were able to campaign freely”¹.

The representatives of the CIS Observation Mission have concluded that the Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021 were conducted in accordance with the Constitution and the Electoral Code, on a multi-party basis, were transparent and competitive and election commissions of all levels provided conditions for the free expression of the will of citizens.

9. Circumstances to be ascertained within the framework of the case

Within the framework of this case, the Constitutional Court considers it necessary to refer, in particular, to the following circumstances:

- Whether, according to the Constitution, a person who has resigned from the post of the Prime Minister is entitled to continue to hold the post of the Acting Prime Minister until the newly appointed Prime Minister takes office,
- Whether the administrative resources were illegally used during the elections and the period preceding the elections;
- Whether there were calls for violence and threats during the election campaign that could have affected the election results;
- Whether the other facts and arguments submitted by the applicants to the Constitutional Court are of probative value.

10. Legal positions of the Constitutional Court

¹ <https://www.osce.org/files/f/documents/0/c/490436.pdf>

10.1. The Constitutional Court has further classified among the peculiarities of the examination of the dispute related to the decision made as a result of the elections as follows:

“(…)

- The decision to invalidate or not the elections in each case depends on the specific circumstances; the seriousness and gravity of the legally substantiated violation, the extent of the violations, as well as the means and ways of committing the violations must be taken into account;

- (….) When considering cases, the Constitutional Court must not only be based on the protection of the constitutionally guaranteed rights and freedoms, but also on the circumstance of reliability and credibility of the electoral process and the entire electoral system in the aspect of organizing and conducting elections in accordance with the legislation;

- The proven violations of the right of suffrage may serve as grounds for reviewing the election results, but the essential content of that review should be the answer to the question of whether the existing violations have such a scope that they may call into question the entire results and validity of the elections;

- Violations committed in any polling station or district may not serve as grounds for assuming or questioning similar violations in other polling stations. Only legally substantiated certain irregularities that have had or could have a significant impact on the final election results, can serve as basis for invalidating the election results;

- The election results can be invalidated if the violations have significantly affected the proportion of votes received by the candidates and if the overall result is distorted” (DCC-408 dated 24.03.2003).

The Constitutional Court states that for the effective judicial protection of the right to suffrage, it is necessary:

- To take into account the requirement of Part 1 of Article 6 of the Constitution, according to which: state and local self-government bodies and officials shall have the power to perform only such acts for which they are empowered by the Constitution or laws;

- To have clear understanding of the scope of jurisdiction of each court,

- Within the timeframe and procedure prescribed by law, to implement measures aimed at the protection of the right of suffrage in the court that has the appropriate jurisdiction;

- To take into account that with respect to the issues on the protection of the right of suffrage, the Constitutional Court is not a court superior to other courts, but exercises a specific jurisdiction vested in it by the Constitution.

10.2. According to Article 7 of the Constitution, elections of the National Assembly and of community councils of elders, as well as referenda shall be held on the basis of universal, equal, free and direct suffrage, by secret ballot.

The Constitution enshrines the fundamental principles of suffrage, which outline the structures of constitutional legal regulation of electoral legal relations.

By virtue of the principle of **universal** suffrage, the Republic of Armenia has the obligation to ensure the right of its citizens to elect and be elected (except in cases prescribed by the Constitution) in terms of certain constitutional conditions. According to Article 48 of the Constitution, citizens of the Republic of Armenia having attained the age of eighteen on the day of an election to the National Assembly or on the day of a referendum, shall have the right to elect and the right to participate in the referendum. By virtue of the same article, everyone who has attained the age of twenty-five, has held citizenship of only the Republic of Armenia for the preceding four years, has been permanently residing in the Republic of Armenia for the preceding four years, has the right of suffrage and has command of the Armenian language, may be elected as a Deputy of the National Assembly.

The same article of the Constitution also prescribes that persons declared as legally incapable by a court judgment that has entered into legal force, as well as persons sentenced and serving sentence for the intentional commission of a grave crime by a court judgment that has entered into legal force may not vote and be elected, as well as take part in a referendum. Persons sentenced and serving a sentence for other crimes under a court judgment that has entered into legal force, shall not have the right to be elected.

The essence of the principle of **equal** suffrage is the provision of the “one voter, one vote” formula, which implies the obligation of the state to exclude the possibility of double/multiple voting through effective procedures and structures, as well as to ensure equal participation opportunities for political units participating in the electoral process.

The element of equal suffrage, i.e. equality of opportunities, was revealed by the Decision DCC-1028 of the Constitutional Court, in which the Court, in particular, has noted: “... equality of opportunities is one of the essential constituent components of equal suffrage. The latter, in turn, includes, in particular, conditions such as media coverage, the provision of radio and television airtime, the unburdened conduct of the election campaign, the guarantee of freedom of speech and expression, as well as ensuring financial transparency of election campaign, etc”.

The Constitutional Court has also noted that “... the Court reaffirms its legal position that the provision of equal opportunities to the subjects of the electoral process is closely related to the expression of the opinion of the electorate and presupposes the neutrality of state bodies in the election campaign and the coverage in the media. However, due to the need for unconditional observance of international legal standards for the organization and conduct of electoral processes, in this Case it should be noted that the principle of fairness and freedom of campaigning cannot be interpreted so spatially as to exclude the realization of the rights to freedom of speech and information, as well as the realization of the rights of the media to have own point of view and present it” (10.06.2007, DCC-703).

The principle of **free** suffrage requires the State to ensure that the will of the voter is freely formed and expressed, to exclude any unlawful interference with the political will of the voter, as well as the presentation of programs and ideas by rival political forces in the electoral process, neutrality of state authorities when communicating with voters, introduction of implementation of legal structures of other components of free suffrage and their effective implementation.

The principle of **direct** suffrage requires that in the Republic of Armenia, the National Assembly, local self-government bodies, with the exception of the heads of communities elected by community councils of elders, be directly and straightforwardly elected by the voters.

According to the principle of **secrecy of ballot**, it is the duty of the State to ensure that the expression of the political will of the voter during the voting is in secrecy and guaranteed.

10.3. The Constitutional Court emphasizes the need for disclosure by the Constitutional Court of the criteria for the assessment of the arguments presented by the parties during the consideration of disputes related to the decision adopted on the election results.

Firstly, the Decision DCC-1364 of the Constitutional Court dated 28 April 2017 states that: “It follows from the above-mentioned legal regulations prescribed by the RA Electoral Code, as well as from the requirement prescribed by Part 1 of Article 6 of the RA Constitution (with amendments of 2015) that:

a/ The legal entities participating in the electoral process are obliged to implement measures aimed at the protection of the right of suffrage in the court which has the relevant jurisdiction;

b/ they must take into account that with respect to the issues of protection of the right of suffrage, the RA Constitutional Court is not superior to other courts, but exercises a specific authority vested in it by the RA Constitution, and the requirement prescribed by Part 1 of Article 6 of the RA Constitution (with amendments of 2015) also applies to the Constitutional Court. According to the RA Constitution and laws, the Constitutional Court is not authorized to examine all the issues (applications) that must be firstly examined and legally resolved administratively (extra-judicially) or in the RA Administrative Court, and the decisions adopted by this Court on the mentioned issues shall be final;

c/ the disputes related to the decisions adopted on the election results cannot be considered as disputes over the constitutionality of a legal norm, since other constitutional requirements and procedures are provided for their resolution.

In its decisions (particularly, DCC-1028), the RA Constitutional Court has repeatedly stressed and clarified to the legal entities participating in the electoral process that (...) with respect to the disputes related to the decision of the RA Central Electoral Commission adopted on the election results, **the Constitutional Court finds out whether:**

a/ The protocol on the voting results drawn up in the manner prescribed by law;

b/ The acts of the competent courts related to the electoral process;

c/ The decisions adopted as a result of the consideration of applications (complaints) received by election commissions;

d/ The decisions of Territorial Electoral Commissions on the violations registered in the registration books of Precinct Electoral Commissions on the voting day, and

e/ The decisions adopted by electoral commissions on voting results **were adopted and taken into account with the necessary legal justification when adopting the mentioned decision”**.

Reiterating the above-mentioned legal positions, the Constitutional Court at the same time finds that deviations from the condition of conscientious exercise of the legislatively envisaged legal protection of the right of suffrage for the resolution of disputes presented in the applications submitted to the Constitutional Court are permissible only in cases where the circumstance referred to in the position of the applicant or the third party clearly indicated a violation of any of the principles prescribed by Article 7 of the Constitution.

In any case, in the disputes prescribed by Clause 5 of Article 168 of the Constitution, the applicant is obliged to provide the minimum probative threshold necessary for proving the circumstances underlying his claim. Otherwise, the Constitutional Court - taking into account the lack of time for the examination of this type of dispute, the possible broader composition of legal entities participating in the trial, the volume of materials and information submitted for examination and consideration which is much more extensive in comparison with other cases and trials, the possible wide range of questions and issues to be examined in the presence of multi-layered legal relations, as well as other issues significant for the administration of justice - cannot allow the purpose of the time-limits for such disputes to be examined in the absence of *prima facie* circumstances relevant to the resolution of this type of dispute, at least in the absence of *prima facie* arguments, that is, the early implementation of the result of the democratic process (free elections) and constitutional stability.

In this regard, the Constitutional Court notes that assumptions about the possible violations or their impact, as well as the episodic manifestations of such electoral offences cannot be sufficient for considering the threshold of proof proposed to the applicant in the disputes prescribed by Clause 5 of Article 168 of the Constitution as met, therefore, for subjecting this circumstance to consideration by the Constitutional Court.

Therefore, when assessing whether circumstances presented by the applicants and the third party in this Case meet the minimum probative threshold, as well as when assessing their significance for the outcome of this Case, the Constitutional Court will be guided by the above-mentioned approach previously expressed.

At the same time, as a result of the analysis of Part 10 of Article 77 of the Constitutional Law on the Constitutional Court, the Constitutional Court notes that for the resolution of the dispute over the decision adopted on the results of parliamentary elections, a special rule is envisaged, according to

which: the information submitted by the applicant are considered reliable, and this rule shall apply only in case of simultaneous existence of the following two preconditions:

- The respondent refuses to express his position on the latter;
- The latter are not refuted by other evidence obtained by the Constitutional Court and essential for adopting a decision in a given case.

That is, even in the absence of one of these two preconditions, the presumption of the reliability of the information provided by the applicant does not apply. At the same time, in accordance with Part 11 of Article 77 of the Constitutional Law on the Constitutional Court, where the respondent party accepts the circumstances, whereby the applicant party substantiates the claims and objections thereof, the applicant party shall be exempt from the duty to further submit evidence on these circumstances.

The Constitutional Court considers it necessary to refer to the legal regulation of Part 14 of Article 77 of the Constitutional Law on the Constitutional Court, according to which: where as a result of examination of the case the Constitutional Court, exhausting all the means provided for by this Law for obtaining evidence, did not, however, have an opportunity to determine the actual results of the elections, but it has become obvious from the evidence assessed as reliable by the Constitutional Court that the election fraud has had an organized, massive, repeated or regular nature, and the comparison thereof attests to such a systemic interconnection between them, against the backdrop of which the principles of suffrage enshrined in Article 7 of the Constitution are violated, the Constitutional Court shall - when rendering a decision - be entitled to declare the results of elections as invalid based on that ground. In this context, the Constitutional Court notes that the exercise of the power to invalidate election results requires the simultaneous existence of two conditions, i.e. “the electoral violations have been of organized, mass, recurrent or recurrent nature” and “their comparison is an indication of a systemic interconnection between the latter, in the conditions of which the principles of the right to suffrage prescribed by Article 7 of the Constitution are violated”.

The characteristics in question for invalidating the election results should be objectively considered in combination, by revealing their systemic interconnectedness in order to find out whether they were significant in their type and characteristics; that is, whether their quantitative and qualitative indicators were such that, by assessing them throughout the electoral process, it can be unequivocally stated that they influenced the outcome of the elections thus violating any of the principles of the right of suffrage prescribed by Article 7 of the Constitution.

10.4. Referring to the issue raised by the applicants that after the resignation on 25 April 2021, Prime Minister N. Pashinyan remained on the post of the Acting Prime Minister, the Constitutional Court states that this circumstance is significant for the resolution of the dispute in the decision adopted on the election results, since it concerns the constitutionality of the highest-ranking official in the executive branch of the Republic, and the gap in this issue could affect the public confidence in the results of the Early Parliamentary Elections of 2021 as well as it may have direct importance for the assessment of the Constitutional Court on the issue of illegal use of administrative resources.

In addition, the Constitutional Court finds that this circumstance is subject to assessment by the Constitutional Court, given that it was raised by three applicants in the Constitutional Court in the context of this dispute, as well as the circumstance that the RA Central Electoral Commission as the respondent in this Case and the RA Prosecutor's Office as the co-respondent have considered the issue of the assessment of the legality of the issue - that after the resignation of the Prime Minister, the same person remained on the post of the Acting Prime Minister - as a matter beyond their competence, when the applicants raised this issue before them.

The Constitutional Court considers it necessary to touch upon the procedures for appointing the Prime Minister and his status in the system of executive bodies prior to the assessment of constitutionality of the issue that after the resignation of the Prime Minister, the same person remained on the post of the Acting Prime Minister. In particular, the Constitution envisages two procedures for assuming the post of the Prime Minister, and according to the first procedure, the President of the Republic shall appoint as Prime Minister the candidate nominated by the parliamentary majority, in accordance with Part 1 of Article 149 of the Constitution. In the case of the second procedure, according to Part 2 of Article 149 of the Constitution, the President of the Republic shall, by his decree, appoint as Prime Minister the person elected to the post of the Prime Minister by the National Assembly. In fact, in the two cases listed above, the appointment of the Prime Minister is a decision made as a result of democratic processes.

The Constitutional Court also states that after the appointment of the Prime Minister, the Government is formed by the Prime Minister nominating the members of the Government to the President of the Republic who appoints them. That is, the decision to appoint the Prime Minister in the issue of forming the highest body of the executive power of the Republic is the main source of democratic legitimacy of the Government and the irreplaceable condition for the formation of the Government regardless of whether the decision to appoint the Prime Minister was adopted in

accordance with Part 1 of Article 149 of the Constitution - by a decision adopted by the people as a result of the nationwide election, or in accordance with Part 2 of the same Article - by a decision adopted by the National Assembly as a representative body of the people.

In the applications submitted to the Constitutional Court and in the explanations presented during the trial, the representatives of Armenia Alliance, With Honor Alliance of political parties and Fatherland of Armenians Party substantiated the interpretation of the constitutional provisions regarding the regulations of the office of the Acting Prime Minister by the provisions of the Law on the Structure and Activity of the Government. In this regard, the Constitutional Court considers it necessary to note that the will of the legislator has not been considered as a guideline for revealing the legal content of the norms of the Constitution and for their interpretation.

In the sense of Part 2 of Article 2 of the Constitution, the issues of both the appointment and termination of the powers of the Prime Minister of the Republic, in terms of democracy and the key role of democratic institutions, are subject to discussion in the context of constitutional regulations of the protection of democracy, as well as the principles and goals underlying the latter.

The procedure for appointment to and assuming of the post of the Prime Minister, as clearly defined by the Founder of Constitution, as well as the termination of the term of office of the person appointed to the post of the Prime Minister are clearly described in the constitutional regulations as an interference in a decision adopted as a result of a democratic process or a guarantee of exclusion of such an interference. In particular, according to Part 1 of Article 147 of the Constitution, the Government shall be composed of the Prime Minister, Deputy Prime Ministers and Ministers. According to Part 2 of Article 149 of the Constitution, in case the Prime Minister submits a resignation or in other cases of the office of the Prime Minister becoming vacant, the factions of the National Assembly shall be entitled to nominate candidates for Prime Minister within a period of seven days after accepting the resignation of the Government.

By virtue of Article 158 of the Constitution, the Government shall present its resignation to the President of the Republic on the day of the first session of the newly-elected National Assembly, of the expression of non-confidence in the Government, of not approving the program of the Government, of the Prime Minister submitting his resignation, or of the day on which the office of the Prime Minister becomes vacant. The members of the Government shall continue discharging their duties until a new Government is formed.

It follows from the systemic analysis of the above-mentioned legal norms that in Article 158 of the Constitution the Founder of Constitution has directly envisaged the rule of continuity of office of persons appointed to the positions of members of the Government, which stems from the necessity of continuity of the functions of the Government. At the same time, taking into account the current constitutional procedures for ensuring democratic legitimacy for the Government, as the highest executive body, by virtue of appointing the Prime Minister, the Constitutional Court states that the constitutional requirement for the continuation of the tenure of the members of the Government after the resignation of the Government until the assumption of the office of the newly appointed Prime Minister applies to all members of the Government including the Prime Minister, and not to all members of the Government except the Prime Minister.

Comparing the cases of resignation of the Prime Minister and of the President of the Republic, the Constitutional Court notes that Article 144 of the Constitution stipulates that in case of impeachment of the President of the Republic, the impossibility of the President discharging his powers, or the resignation or death of the President, and before the newly-elected President of the Republic assumes the office, the powers of the President of the Republic shall be discharged by the President of the National Assembly. In other words, in case of termination of the powers of the President of the Republic, the Founder of the Constitution has clearly defined who shall exercise the powers of the President of the Republic before the newly elected President of the Republic assumes office. Whereas in the case of the Prime Minister, Part 2 of Article 152 of the Constitution provides for the possibility of replacing the Prime Minister only during his absence and in accordance with the procedure established by the Prime Minister. Accordingly, one of the Deputy Prime Ministers shall, in accordance with the procedure established by the Prime Minister, replace him during his absence. It is obvious that in this case the absence of the Prime Minister cannot be identified with the case of the latter's resignation.

In view of the above, it should be borne in mind that the continuation of the office of the Acting Prime Minister after the resignation of the Prime Minister is guaranteed only on condition that the requirements envisaged for the Prime Minister by the Constitution and the law, are met. The rule of continuity of the resigned Prime Minister does not apply to the cases where the person appointed as the Prime Minister does not meet the requirements presented for the post of Prime Minister, as prescribed by the Constitution or the law. After the resignation of the Prime Minister, the office of the Acting Prime Minister shall terminate in case of violation of the requirements presented to the Deputy, the

incompatibility requirements, as well as in case of grounds for termination of the office of the Prime Minister; however, in this Case the applicants have not made any reference to any of such grounds.

Therefore, within the framework of the facts submitted by the applicants and the third party in this Case, remaining by Prime Minister N. Pashinyan on the post of the Acting Prime Minister after the resignation on 25 April 2021 is in concordance with the constitutional regulations.

10.5. Referring to the issue of illegal use of administrative resources during the elections and the period preceding the elections, the Constitutional Court notes that in order to guarantee the democratic nature of elections, first of all it is necessary to ensure their conduct on the basis of universal, equal, free and direct suffrage, by secret ballot, and in strict accordance with the ideological and principal periodicity established by the legislation. At the same time, it is important to ensure a “fair competition” during the elections. The misuse of administrative resources in the electoral process, undermining the idea of “healthy competition” in the electoral process, undoubtedly undermines the implementation of the general electoral principles guaranteed by the Constitution.

The positions of the European Commission for Democracy through Law of the Council of Europe (Venice Commission) and the Office for Democratic Institutions and Human Rights (OSCE/ODIHR) are of fundamental importance in revealing the legal content of the institution of the misuse of administrative resources.

According to the 2013 Report CDL-AD(2013)033 of the Venice Commission, *administrative resources are human, financial, material, in natura and other immaterial resources enjoyed by both incumbents and civil servants in elections, deriving from their control over public sector staff, finances and allocations, access to public facilities as well as resources enjoyed in the form of prestige or public presence that stem from their position as elected or public officers and which may turn into political endorsements or other forms of support.*

According to the Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes adopted in 2016 by the Council of Democratic Elections and by the Venice Commission, “The legal framework should provide explicit requirements for civil servants to act impartially during the whole electoral process while performing their official duties. Moreover, the legal framework should ensure the neutrality of the civil service by prohibiting civil servants from campaign activities in their official capacity, either by being themselves candidates or when supporting candidates. The legal framework should provide for a range of adequate and proportionate rules. Such

rules may include a clear instruction on how and when campaigning in a personal capacity may be conducted, suspension from office or resignation of certain public authorities running for elections”. The Guidelines does not preclude incumbent candidates from running for election and campaigning outside of office hours and without the use of administrative resources.

Adopting the advanced models proposed by the international community in the electoral process, Article 19 of the Electoral Code stipulates the fundamental principles of the election campaign, and Article 23 of the Code, titled “Restrictions for election campaigns”, describes administrative resources as human, financial and material resources that persons holding public positions and those in public service own, which is due to their control over staff, finances and allocations in the public sector.

According to the mentioned article, it shall be prohibited to conduct an election campaign, disseminate any type of campaign material, use premises, means of transport and communication, material and human resources provided for performing official responsibilities for election campaign purposes, except for security measures applicable in respect of high-ranking officials subject to state protection under the Law of the Republic of Armenia on Ensuring the Safety of Persons Subject to Special State Protection.

Misuse of administrative resources in electoral processes undermines the basis for conducting democratic elections, since it does not guarantee:

√ *Equal conditions for all candidates*, i.e. the latter should have an equal opportunity for self-nomination and to “compete freely” in an environment that guarantees equality;

√ *Equal treatment of different candidates*, i.e. candidates should be treated equally when dealing with individual institutions, such as access to the media for all;

√ *Freedom of expression of the electors*, i.e. every person, having the right to elect, should be free from any pressure, the best guarantee of which is the “neutrality” of the state power, which should be expressed in the exclusion of any kind of “interfering” behavior in the process of exercising the free will of the elector;

√ *Observance of the principle of impartiality in the electoral process*, i.e. the organization of elections by the state government should be without providing advantages for the ruling political party.

The Constitutional Court states that from the viewpoint of *ensuring the possible exclusion of misuse of administrative resources*, the RA legislation envisages a number of *legal structures*; in particular, the RA Law on Public Service stipulates that a public servant, according to the specifics of the service, shall be politically neutral in performing his official duties (Article 27)², and according to the Electoral Code, candidates for Deputy who are in public service shall have no right to use the advantages of their official or work related capacity (Article 91). Moreover, it not only prohibits the misuse of administrative resources in electoral processes, but also establishes explicit mechanisms for legal assessment of relevant violations (Article 48); the RA Criminal Code envisages liability for obstructing exercise of the right of suffrage (Article 149), breaching the secrecy of ballot (Article 154), giving bribes to the elector, violating the prohibition of charity during the elections or obstructing the exercise of the free will of the elector (Article 154.2), entering a polling station with weapon (Article 154⁴), and other criminal offences that may be committed also by using administrative resources.

Manifestations of the use of administrative resources in electoral processes can be both massive and limited. In this regard, according to the assessment of the Constitutional Court, *the quantitative description of the resources used is not essential, because in one case the one-time use of administrative resources, depending on its nature, may even lead to a systemic problem, and in another case, the use of administrative resources in separate episodes may not lead to essential influence on the outcome of the elections (the problem is that the public authorities must give an adequate legal assessment in each case and apply proportionate measures of responsibility)*. The *qualitative characteristics* of the use of administrative resources are mostly to be assessed in the context of the matter at issue, since in each case it is necessary to assess their impact on the overall election results. From this point of view, the task of the Constitutional Court is to find out the *content and continuity of misuse of administrative resources, and afterwards its consequences on the final result of the electoral process*.

According to the applicants' assertion, Civil Contract Party and, in particular, the Acting Prime Minister has used administrative resources before the start of the election campaign, during the campaign and on the election day, thus gaining an obvious advantage over the other parties and

² As a result of the amendment to the Law on Public Service dated 07.05.2021, the Law was supplemented with Part 4 of Article 27.1, with the following content: "Public servants ... while participating in the election campaign shall not have the right to act ex officio or to state their official position, title or in any way use their authority in favor of any political party (alliance) or candidate". This amendment was also welcomed by the Venice Commission in its Opinion 1026/2021 dated 21.04.2021 (paragraph 85).

alliances. In this regard, the applicants submit relevant videos, as well as they refer to the judgment adopted in the case No VD/6999/05/21 of the RA Administrative Court dated 26.06.2021, according to which Clause 1 of the Decision No 161-A of the Central Electoral Commission dated 19.06.2021 was declared invalid in part of failing to recognize the participation of one employee of one of the RA Marzpetarans (regional authorities) and the employees of two educational institutions in the election campaign of Civil Contract Party as a violation of Clause 1 of Part 1 of Article 23 of the Electoral Code.

By the Decision DCC-1364 dated 28 April 2017, the Constitutional Court has stated: “(...) The RA Electoral Code has also established appropriate procedures for resolving the issue in administrative or judicial order in case of violations of order prescribed for the election campaign. The Constitutional Court has repeatedly referred to this issue, stressing that such procedures, which are directly related to the issue of declaring the registration of candidates or parties running in the elections as invalid, should be appealed in accordance with the law and resolved prior to the election day.

The examination of this Case indicates that the applicant has not taken any legal action in relation to the given issue in the manner and within the timeframe prescribed by law, and there is no factual basis of probative value (in particular, a judicial act) for proving the opposite, or on obstructing the protection of the applicant’s rights in that case. The alleged violations of this nature should be adequately assessed by the competent authorities in accordance with the law and, in particular, in the cases that are still under investigation - by law enforcement agencies”.

The applicant Armenia Alliance has acted as a plaintiff in the framework of the administrative case No VD/6999/05/21 and presented several manifestations of alleged use of administrative resources, namely, the involvement in the election campaign of RA police officers, state security officers, members of the Office of the Prime Minister, employees of Marzpetarans (regional authorities) and other state bodies under their control.

The Administrative Court has noted that in this Case no fact has been established that police officers were involved in obtaining a vote in favor of a third party. Moreover, the Administrative Court has stated that there are no reasons to claim that the third party had used the means of the state protection body for its own political purposes, and in the episode concerning the civil servant it is impossible to prove that he was involved in the election campaign ex officio and used his position for the benefit of a third party. There is no information that this episode refers to a working day or hour.

Emphasizing that public servants are not prohibited to engage in campaigning (except for certain special positions), the Administrative Court has stressed that they should not misuse their position during this period, which would give one of the political forces participating in the election an unfair advantage over the others. In this episode, there is no evidence of such a situation.

In addition, the Administrative Court has stated that the identity of the Marzpet (Governor) of the Syunik Marz (Region) is indisputable in this episode; however, it is not possible to confirm that the latter is using his administrative resources in favor of the election campaign for the third-party only by this episode. In the episode with the participation of the Marzpet (Governor) of the Syunik Marz (Region), it is not possible to clarify the specific functions that the latter performed at that moment. In the given situation, it is impossible to point out a case when the Marzpet (Governor) of the Syunik Marz (Region) is ex officio involved in the election campaign.

It is noteworthy that the Administrative Court has noted that an employee of one of the RA Marzpetarans (regional authorities), interviewing a journalist as a “coordinator of the education sector” while apparently participating in an event organized by the third party within the election campaign, admitted that he was at the meeting place during working hours; moreover, he also encouraged the presence of pedagogues, in his words, at the “meeting of the Prime Minister”. A similar situation was recorded in the episode of the interviewed pedagogues. The mentioned facts were qualified by the Administrative Court as a violation of Clause 1 of Part 1 of Article 23 of the Electoral Code, being considered as misuse of administrative resources.

In view of the legal assessments of the Administrative Court in the cited judicial act on the separate arguments pointed out by the applicant, and considering that the legality of the judicial act cannot become subject for consideration by the Constitutional Court, the Constitutional Court does not address the arguments cited by the applicant in this regard.

At the same time, the Constitutional Court states that no lawsuits have been filed by other participants in this Case concerning other manifestations of the use of administrative resources, including the holding of rallies with the participation of children and the distribution of appropriate funds by the Government.

In such circumstances, the Constitutional Court finds that although several arguments presented in this Case in essence indicate the illegal use of administrative resources, however, the latter are of episodic nature as such. Moreover, in this Case it is not substantiated that the administrative resources

were used in an organized manner by the political majority in the National Assembly and were of a mass nature; therefore, the combination of its use does not prove that it has anyhow affected the election results.

10.6. The applicants also note that during the election campaign, the candidate of Civil Contract Party and the Acting Prime Minister N. Pashinyan called for violence and threats that resulted in an atmosphere of hatred, which, according to the applicants, had a negative and irreversible effect on the election results.

As the foundations of the constitutional order in the Republic of Armenia, ideological pluralism shall be guaranteed in the Republic of Armenia (Article 8 of the Constitution), and freedom of expression of opinion is prescribed by Article 42 of the Constitution.

Both the right of free suffrage and the right to freedom of expression are guaranteed by international instruments. In particular, according to Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, everyone has the right to freedom of expression, and Article 3 of Protocol No. 1 to the Convention prescribes that the High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Referring to the above-mentioned provisions, the European Court of Human Rights has noted that free elections and freedom of expression, in particular freedom of political debate, together constitute one of the essential foundations of a democratic society (*Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 47; *the Lingens v. Austria*, 8 July 1986, §§ 41-42). These two rights are interconnected and they apply to strengthen each other; for instance, freedom of speech is one of the “conditions” necessary for “ensuring the free expression of the opinion of the people as regards the method of appointing the legislature” (*Mathieu-Mohin and Clerfayt*, § 54). That is why, in the period preceding the elections, it is especially important that all kinds of opinions and information be allowed to circulate freely. In the context of electoral debates, the unhindered exercise of freedom of speech by candidates is of particular significance (*Kudeshkina v. Russia*, 26 February 2009, § 87).

The Constitutional Court states that the political forces participating in the elections and their representatives use a wide range of opportunities to express their views during the election campaign, which allows the people to freely express their will in a democratic society; therefore, this is a necessary condition for ensuring the principle of free electoral process.

However, the election campaign cannot be accompanied by calls for hatred, violence and threats (even if that threat is not real), which disrupt the peaceful and healthy social environment. Political forces and their representatives must exercise maximum restraint and political correctness during the election campaign, excluding any calls for hatred, violence and threats, or any humiliating conduct.

The issue of calls for violence, threats and other similar statements made during the election campaign has become a subject of discussion by the Administrative Court in the Judgment adopted in the administrative case No VD/6861/05/21 dated 17.06.2021, where the Administrative Court has rejected the lawsuit of Awakening National Christian Party against the RA Central Electoral Commission and the third party Civil Contract Party on request to oblige the respondent to go to court.

In the mentioned Judgment, the Administrative Court has stated the following: “Some of the statements made by the candidate of the Civil Contract Party N. Pashinyan in his speeches (these statements, in fact, are similarly presented in the applications submitted to the Constitutional Court) could be objectively and reasonably perceived as threats of violence, so the Administrative Court has stated that there is a violation of the established procedure for the election campaign. On the other hand, due to the fact that these statements were made at different times, the Administrative Court has also considered the continuation of such a violation.

However, assessing the issues of possibility of eliminating the consequences of the mentioned violations during the election campaign, as well as the significant impact on the election results, the Administrative Court has stated in its Judgment that the criterion of impossibility of eliminating the consequences of the violation of the established procedure for the election campaign is missing and that there is no reasonable doubt that these persistent violations could have a significant impact on the election results. In this regard, the Administrative Court has noted that “the term ‘significant impact’ should be viewed from the standpoint of a direct causal link with the election results. This means that the impact can be considered significant only if there is a real danger or such a reasonable suspicion due to the persistent violation of the established procedure for the election campaign, and that in terms of the ratio of votes, there has been an impact on the free expression of a mass of voters that would change the outcome of the election. Accordingly, the persistent nature of the violation in this case is strongly correlated with the significant impact, since only in the event of a causal link between them or in the case of such a reasonable suspicion it may be stated that a persistent violation has occurred that could have a significant impact on the election results or there is such a reasonable doubt. In other words, by comparing the facts presented in this case and its legal interpretation, the Court states that

there is no reasonable doubt that the above-mentioned persistent violations could have a significant impact on the election results”.

The Constitutional Court takes note of the lack of substantial impact on the election results in the publications considered by the statements cited in the Judgment of the Administrative Court, as well as the possibility of eliminating the consequences of irregularities, at the same time reiterating the position expressed by the decisions of the Constitutional Court, according to which:

“... the RA Constitutional Court is not a court superior to other courts related to issues of judicial protection of the right of suffrage, but exercises a specific jurisdiction vested in it by the Constitution” (31.05.2012, DCC-1028),

“... According to the RA Constitution and laws, the Constitutional Court shall not have the power to consider all the issues (applications) that must be considered in advance and get legal solution in the administrative (extrajudicial) procedure or in the RA Administrative Court, the decisions of which on those issues shall be final” (28.04.2017, DCC-1364).

The Constitutional Court states that the applicants’ arguments about the impact of alleged calls for violence and threats by the candidate of the Civil Contract Party N. Pashinyan on the election results are abstract, uncertain, and based on separate statements constructed from excerpts from political speeches without reference to their general context.

In any case, the Constitutional Court considers it necessary to address these expressions from the viewpoint of their addressability, noting that despite their unacceptable rudeness and shocking effect, the context analysis of the mentioned expressions indicates that they were directed at political rivals and, reasonably, could not be considered by the electors as threat or hate speech against themselves; consequently, these expressions could not influence the formation of the political will of the elector to the extent that they predetermined or significantly influenced his decision to vote or not to vote.

In addition, the Constitutional Court states that despite the rich life experience of high legal awareness, political maturity and participation in political events of the electors of the Republic of Armenia in the run-up to the Early Parliamentary Elections of 20 June 2021, using inadmissibly low cultural and morally reprehensible expressions by the politicians in their political speech cannot be attributed to only one political force and its representative. Such expressions were used in the public

speech of a number of competing political forces and their representatives, unfortunately becoming a permanent component of political speech in Armenia.

The Constitutional Court considers highly theoretical the allegations of the representative of With Honor Alliance of political parties that the speech of the candidate of the Civil Contract Party N. Pashinyan could lead some of the electors to adapt, and some of them not to participate in the elections, in the absence of scientifically substantiated methods of assessment and calculation of the impact of such a statement on the will of the electors and the election results.

Therefore, referring to the issue of the impact of the expressions used by the candidate of the Civil Contract Party N. Pashinyan on the results of the Early Parliamentary Elections, as mentioned by the applicants, the Constitutional Court finds that the applicants' allegations on this issue are groundless.

Taking into account the constitutional status of the Prime Minister and the scope of powers in the conditions of Armenia's constitutional democracy, as well as the influence of the political majority in the system of public authorities, as analyzed by this Decision, the Constitutional Court emphasizes the need for taking effective measures by the latter in Armenian political speech for the purpose of excluding any manifestation of hate speech, violence, insults and degrading speech and behavior, also including the period of election campaign. The election campaign carried out by the political forces participating in the elections is aimed at gaining (strengthening) the trust of the electors. The key role in this process should be played by informing the electors about the program provisions of the political forces in economic, social, defense and the substantive discussion of those provisions, not excluding sharp critical speech during the election campaign, which, however, should not be accompanied by any manifestation of hate speech, violence, insults and degrading speech and behavior. Moreover, all the political forces participating in the elections have a great role in ensuring the effectiveness of the mentioned process.

10.7. Referring to the other circumstances mentioned in the applications and the issue of significance of the presented arguments for the resolution of the case under consideration (in particular, criminal prosecution during the elections, use of coercive measures, deprivation of persons with RA passports of the opportunity to participate in the elections at the discretion of the RA Passport and Visa Department of the RA Police, participation of 23.750 citizens in the voting without the relevant image on the voting pass, in the case of 109.618 RA citizens who took part in the voting, entering the passport by a specialist through keyboard, by inserting the submitted document in the

technical equipment, inaccuracies in the published electoral lists and final protocols, discriminatory and unequal conditions of coverage of political forces and candidates participating in the elections during the election campaign, voting instead of persons outside the Republic of Armenia through identity documents, possible electoral irregularities as a result of massive blackout, inaccessibility of polling stations for people with disabilities, lack of notification about the voting procedure on the ballot papers, lack of opportunity to vote “against all”, violation of the requirement to store ballot papers in a fire-resistant safes, confidentiality of data related to the participation of 10.993 voters /servicemen/ registered in military units, violation of the campaign ban on the day before the voting, disproportionate coverage conditions during the election campaign for political forces/candidates participating in the election campaign, etc.), the Constitutional Court, **based on the legal positions expressed in Clause 10.3 of this Decision**, finds that some of those cases had episodic or unique manifestations (for instance, voting instead of persons outside the Republic of Armenia through identity documents), or the relevant allegations are based only on assumptions and on factually unsubstantiated suspicions (for instance, inaccuracies in the published electoral lists and final protocols, possible electoral irregularities as a result of massive blackout and confidentiality of data related to the participation of 10.993 voters /servicemen/ registered in military units), or they relate to legislative regulations (for instance, participation of 23.750 citizens in the voting without the relevant image on the voting pass, in the case of 109.618 RA citizens who took part in the voting, entering the passport by a specialist through keyboard), etc.

In connection with the above, the Constitutional Court first notes that as an argument, the applicants have also submitted to the Constitutional Court such issues, the solution of which was vested in other competent bodies in the manner prescribed by law. In the Decision DCC-703 of 10 June 2007, the Constitutional Court has expressed the following legal position: “... if the applicant has not appealed against the decisions, actions or inaction of the electoral commissions and other competent bodies conditioned by the process of preparation, conducting and summarizing the results of the elections prior to applying to the Constitutional Court in non-litigious procedures (in administrative procedure) or in court, as prescribed by RA Electoral Code and other legal acts, i.e. if the applicant has not used (exhausted) all the means of protection of his electoral rights provided by law and in accordance with the procedure and within the period prescribed by the legislation, then the procedural opportunities of the applicant in presenting facts of probative significance within the framework of the public-legal dispute considered in the Constitutional Court and substantiating his arguments with such fact remain incomplete”.

In addition to the above-mentioned, the Constitutional Court deems it necessary to consider, as examples, some of the circumstances cited in the applications.

Thus, Armenia Alliance raises the suspicion of voting instead of other persons (particularly, persons outside the Republic of Armenia), citing one example when there was a signature in front of a citizen mentioned in the signed electoral list, but that person, according to the applicant, has been outside the Republic of Armenia on the election day.

In addition, Awakening National Christian Party considers that there is a reasonable suspicion that a vote has been taken through identity documents instead of the persons outside the Republic of Armenia.

The Constitutional Court notes that elections, as a means of implementing the rule of democracy, express the will of the people, which should not be distorted by mass voting instead of other persons. Therefore, in the process of organizing and conducting elections, the existence and application of such structures must be ensured that would make it possible to exclude the cases of voting instead of other persons, which may distort the real results of the elections.

Referring to the case submitted by Armenia Alliance, the Constitutional Court states that no legal measures have been taken by the interested parties in connection with that certain case (there is no evidence to that effect), the mentioned example has been submitted only to the Constitutional Court. At the same time, the Constitutional Court finds that in this case that example cannot prove the systemic problem of voting on behalf of other persons or the ineffectiveness of control structures in that matter.

In addition, in connection with the case mentioned by Armenia Alliance, the RA Central Electoral Commission and the RA Prosecutor's Office have provided an explanation that the mentioned signature was mistakenly made by another elector who took part in the voting, and that the signature in front of his name is missing. The mentioned circumstance is substantiated by the explanation and materials submitted by the RA Prosecutor's Office to the Constitutional Court.

Moreover, the Electoral Code stipulates tools that allow a wide range of individuals to initiate legal proceedings in the event of detection of voting on behalf of another person. It follows from Part 16 of Article 48 of the Electoral Code that the authorized representative of the political party running in elections, the proxy, the member of the relevant precinct electoral commission, as well as the elector

not having participated in the voting – if there is a signature in front of the latter’s name in the electoral list, according to which he or she has participated in the voting – shall have the right to submit an application to the relevant Territorial Electoral Commission regarding voting instead of another person. It is noteworthy that for submitting an application regarding voting instead of another person and for the application of its examination structure, the statement of the given elector that he or she has not participated in the voting is not obligatory, and the unambiguous statement of any person, according to which the elector has not participated in the voting and another person has voted instead of that elector is sufficient (Part 18 of Article 48 of the Electoral Code). In addition, the legislator has regulated in detail the examination of the application for voting instead of another person by the relevant Territorial Electoral Commission and has prescribed the actions that the Territorial Electoral Commission must take when examining applications regarding voting instead of a person outside the Republic of Armenia. Moreover, the legislation stipulates the rule, according to which: where there is no sufficient evidence proving participation by the given person in the voting, solely for rendering a decision based on the election results, it shall be considered that, applying the principle of presumption of reliability, voting instead of another person has taken place (Part 17 of Article 48 of the Electoral Code).

The availability of signed electoral lists is also aimed at excluding cases of voting instead of another person. Thus, during the Early Parliamentary Elections, the district electoral commission shall – on the day following the voting, from 12:00 – carry out scanning of the lists of electors, (...) the scanned lists of electors shall, no later than 24 hours after the launch of scanning activities, be officially published and posted on the website of the RA Central Electoral Commission, with the possibility to download and to search by electoral precincts (Part 3.1 of Article 73 of the Electoral Code). According to the Decision No 183-A of the RA Central Electoral Commission dated 27.06.2021, “The signed electoral lists have been posted on the website of the RA Central Electoral Commission in due procedure and within a due time limit, more than two hours before the deadline. The public was informed about this through press releases”.

According to Part 16 of Article 48 of the Electoral Code, the competent person shall submit the application regarding voting instead of another person to the relevant district electoral commission on the day following the voting, from 12:00 to 11:00 of the third day following the voting. It follows from the above that the publication of the signed electoral lists allows people included in the framework prescribed by Part 16 of Article 48 of the Electoral Code (especially the electors) to get acquainted

with these lists, and in case of revealing cases of voting instead of another person - to submit an application to the relevant Territorial Electoral Commission in the manner prescribed by law.

The Constitutional Court states that according to the Decision No 183-A of the RA Central Electoral Commission dated 27.06.2021, “During the period prescribed by the Electoral Code of the Republic of Armenia and even after that period, no application was submitted to the Territorial Electoral Commissions and the RA Central Electoral Commission on voting instead of another person”.

Taking into account the above-mentioned, the Constitutional Court states that the applicants have submitted only abstract assumptions without proper grounds about the existence of cases of voting instead of another person, which cannot prove the existence of violations in the electoral process, and one example presented by Armenia Alliance does not substantiate the alleged systemic problem indicated by the latter.

Regarding the inaccuracies in the published final electoral lists and final protocols, the Constitutional Court notes that the RA Prosecutor’s Office has instructed to prepare materials on the inaccuracies in 109 polling stations (mentioned by Armenia Alliance) in accordance with Articles 180-181 of the RA Criminal Procedure Code. During the preparation of the materials, it was found out that the applicant actually made a mechanical combination of the two starting numbers, without taking into account a number of circumstances, and sometimes a wrong combination was made.

According to the case file and the explanation of the representative of the RA Prosecutor's Office, at the certain polling station, the servicemen (the number of such voters is secret) sign in the electoral list registered in the military unit, but in the protocol summarizing the voting results, their number is included in the total number of voting participants in the precinct. As a result of scanning the signed lists of a number of precincts, some pages of the list have not been scanned and have been published incompletely, in some cases the applicant has made wrong comparisons, and during the preparation of materials it has become clear that there is no discrepancy between the total number of voting participants in the precinct and the signatures in the scanned lists in the polling stations; in a few cases, the sloppy work of the commission members has caused discrepancy by a difference of one or two signatures, etc.

Moreover, in the protocols of voting results at polling stations, the total number of voting participants and the total number of numbered voting passes received from electors coincide.

According to the information provided by the RA Prosecutor's Office,

“- 76, 16, 535 and 253 military servicemen have voted by additional list of servicemen in the precincts 3/31, 25/13, 37/14 and 38/29 respectively and their number has been included in the protocol on the number of voting participants, but the data on the additional list has not been published due to secrecy. No discrepancy in calculation of their number is indicated;

- In the scanned version of the electoral list of the precincts 1/02, 1/05, 6/08, 11/12, 11/15, 11/31, 24/20, 24/24, 24/38, 24/41, 24/50, 37/38, 38 / 19, 38/20, 38/38, 38/35, 38/39, 38/55, 38/54, 38/53, 38/52, 38/51, 38/50, 38/42, 38/46, 38/47, 38/40, 38/02, 38/17, 38/14 and 38/48, certain pages are missing and the number of the participants calculated by the signatures in those pages coincides with the number of signatures in the lists. For instance, page 46 was missing from the electoral lists of the precincts 1/02 and 1/05, which include 16 and 12 signatures respectively; and in such conditions the number of participants coincides with the number of current signatures in the lists;

- In the precincts 11/49, 12/38, 22/34, 23/29, 24/35, 24/31, 24/46 and 22/06, no discrepancy has been registered in the conditions of combination of the grounds presented by the applicants;

- In the precincts 5/01, 11/47, 16/03, 16/08, 12/24, 20/24, 21/57, 22/04, 22/17, 22/20, 22/25, 23/7, 23 /39, 24/07, 36/25, 24/02 and 25/45 one or two discrepancies have been registered which, in fact, is conditioned by the human factor (inattention of the commission member, or when the elector does not sign the list, etc);

- Three and six discrepancies in the precincts 21/56 and 21/57 respectively are conditioned by the same factor, and in these cases it has turned out that the list contained the data on the voter's identity document and the personal stamp of the commission member, but the voter's signature was missing”.

Armenia Alliance and With Honor Alliance of political parties have presented arguments about regularly taking people related to them to the RA Police during the election campaign and carrying out the so-called “check operations” without any proper grounds, as well as about disproportionate criminal prosecution measures and coercive measures during the early elections. In this regard, the Constitutional Court states that in the period preceding the examination of this Case, the actions of the RA Police or other law enforcement agencies in certain cases or in relation to certain persons are envisaged by the criminal procedure legislation and are subject to assessment within the framework of

the legislation, and the assessment of their legality is beyond the competence of the Constitutional Court.

The Constitutional Court emphasizes that **the Constitutional Court cannot and is not competent to replace the electoral administration bodies, courts and law enforcement agencies, and the effectiveness of the latter in the fight against electoral irregularities directly depends also on the full realization of the procedural rights vested by the Electoral Code to the political forces participating in the electoral process in accordance with the procedure and with the corresponding rights and by the thousands of legal entities representing or nominated by the latter. Exclusively the compared assessment of legal facts having probative significance and formed due to the lawful action of the mentioned entities may serve as the legal basis for the decision of the Constitutional Court.**

The Constitutional Court states that the following complaints were upheld by the Decision No 183-A of the RA Central Electoral Commission: during the organization and the process of elections of the Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021 and prior to the voting day – 20 June 2021, 1 application was received in the Territorial Electoral Commissions on the alleged violation of the procedure for the election campaign, requesting to remove the poster posted on the election campaign office. The application was rejected since the poster was posted in accordance with the regulations of the Electoral Code.

Prior to the voting day – 20 June 2021, the RA Central Electoral Commission received 85 applications (complaints), of which 13 applications were submitted by the parties and alliances, 17 applications – by the candidates for recusal, 2 applications – by the Union of Informed Citizens NGO for clarification, 2 applications – by a Deputy of the National Assembly, 48 applications – by citizens, 2 applications – by the citizen Tigran Arzakantsyan, whose registration as a candidate was declared invalid by the decision of the RA Central Electoral Commission, 1 application – by an NGO for accreditation of observers for the election observation mission, which was rejected on the grounds that it did not meet the requirements of the Electoral Code.

The mentioned 2 applications for clarification were satisfied.

Since the voting day up to 2 days before the deadline for summarizing the results, at 18:00, 21 applications were received in the Territorial Electoral Commissions, one of which was submitted by

the elector, one – by a candidate for Deputy, 19 – by the Transparency International Anti-Corruption Center NGO and Asparez Journalists' Club NGO.

Since the voting day up to 2 days before the deadline for summarizing the results, at 18:00, the RA Central Electoral Commission received 18 applications.

On the voting day of the Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021, 2 applications were submitted to the 2 Territorial Electoral Commissions in accordance with the established procedure by an elector and a candidate for Deputy. The submitted applications were discussed in accordance with the established procedure.

No application was received in 38 Territorial Electoral Commissions to invalidate the voting results at the precincts.

The Constitutional Court emphasizes that the analysis of the entire electoral process and the applications submitted to the Constitutional Court attests to the low level of control by political forces over the electoral process through legal means.

The Constitutional Court finds that the applicants have not overcome the minimum probative threshold required to prove the circumstances underlying their claims. As mentioned above, the assumptions about the possibility of election irregularities or their impact, as well as the episodic manifestations of such irregularities may not be sufficient for considering overcome the minimum probative threshold for the applicant on the disputes prescribed by Clause 5 of Article 168 of the Constitution, therefore, for making that circumstance subject to consideration by the Constitutional Court.

The Constitutional Court also states that the political parties and alliances that submitted applications to the Constitutional Court, have not presented facts of irregularities having probative significance (that would become subject of consideration) during the Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021 in the manner and within the timeframe prescribed by law, on the basis of which the Constitutional Court would invalidate the election results.

10.8. As for the position of Armenia Alliance presented in its application and afterwards in its explanations, that the Constitutional Court should address the issue of the constitutionality of the provisions of the Electoral Code within the framework of this dispute and verification of those provisions within the scopes of the decision to be adopted in this Case, the Constitutional Court finds

that scope of its competence does not exclude the authority to verify the constitutionality of the applicable norms also within the framework of the disputes prescribed by Clause 5 of Article 168 of the Constitution in case of ensuring the relevant procedures. However, the exercise of such authority is conditioned by the introduction of relevant procedures envisaged by the Constitutional Law on the Constitutional Court, without which the Constitutional Court faces the issue of actual procedural possibility of exercising a specific authority and not the issue of constitutional competence.

Together with the constitutional possibility of exercising the power prescribed by Clause 1 of Article 168 of the Constitution for the resolution of disputes envisaged by Clause 5 of Article 168 of the Constitution, however, the Constitutional Court finds that such a possibility does not apply to the verification of the constitutionality of the norms of the right of suffrage in similar disputes, based on the predictability of the right of suffrage and the stability of the electoral system. In particular, the Constitutional Court emphasizes the need to maintain a “safe space” for the implementation of amendments to the fundamental norms of the electoral law from the start of the electoral process, due to the need for predictable organization of the conduct and activities of the participants in the electoral process, as well as public authorities. The principle of stability of the fundamental regulations of the right of suffrage has universal (consensual) recognition also in comparative right of suffrage (in particular, CDL-AD (2005) 004, Comments on the Stability of Electoral Law of the European Commission for Democracy through Law of the Council of Europe, §§ 1-5; CDL-AD(2020)036, Joint Opinion of the Venice Commission and the OSCE/ODIHR on the Draft Amendments to the Constitution and to the Electoral Code of Albania, §§ 19-20; CDL-AD (2020)023, Report on electoral law and electoral administration, §§ 19 -20).

In this regard, the verification of the constitutionality of the legal norms regulating the electoral law within the framework of the dispute prescribed by Clause 5 of Article 168 of the Constitution may lead to a dangerous interference with the stability of the norms of electoral law in the event of a retroactive application of the norm after the end of the electoral process or in the case of adoption by the Constitutional Court on the results of elections, or an interpretation of the norm that was not applicable at the time of the electoral process. If the decision of the Constitutional Court on the verification of the constitutionality of the norms of electoral law in cases related to the dispute prescribed by Clause 5 of Article 168 of the Constitution does not apply to the results of the preceding election and its results, then the Constitutional Court does not consider it appropriate in this case to verify the constitutionality of the norms in cases related to the dispute prescribed by Clause 5 of Article 168 of the Constitution,

since the possibility of this verification is provided no less effectively in cases related to the exercise of the powers of the Constitutional Court prescribed by Clause 1 of Article 168 of the Constitution.

In view of the above, the Constitutional Court emphasizes the role of public authorities empowered to submit applications to the Constitutional Court on abstract constitutional review in the process of verification in the Constitutional Court of the alleged problematic regulations that took place as a result of the previous elections by virtue of maintaining the “safe space” for time-period from the start of the electoral process, thus ensuring the fruitful result of the “lessons learned” for each subsequent electoral process.

Localizing these approaches to the issue raised by the applicant Armenia Alliance, namely, in part of the examination of the assertions on the non-constitutionality of the regulations allowing 3/5 or more seats of the total number of Deputies of the RA National Assembly for the political majority in the RA National Assembly, the Constitutional Court notes that insofar as this issue refers to the regulation of the transfer of seats in the RA National Assembly, it is one of the fundamental regulations of the right of suffrage. Accordingly, in the context of this dispute, even if the Constitutional Court had been provided with the necessary procedures, the verification of the constitutionality of the norms of the Electoral Code would be considered problematic in the case related to the dispute over the decision made as a result of the elections from the viewpoint of the dispute over the principle of fundamental voting rights.

10.9. Taking into account that one of the applicants - Armenia Alliance also disagreed with the distribution of mandates by the RA Central Electoral Commission and as an alternative requested to invalidate the decision adopted on the results of the RA National Assembly elections and to stipulate the procedure for distributing mandates, the Constitutional Court considers it necessary to refer to the procedure for distributing mandates.

Thus, according to Part 4 of Article 95 of the Electoral Code, mandates of the National Assembly shall be distributed among the electoral lists of those political parties (alliances of political parties) which have received 5 per cent, in case of a political party, and 7 per cent, in case of an alliance of political parties, of ballot papers with affirmative vote out of the sum of the total number of ballot papers with affirmative vote and the number of inaccuracies. Where less than 3 political parties (alliances of political parties) have received at least 5 (7) per cent of ballot papers with affirmative vote out of the sum of the total number of ballot papers with affirmative vote and the number of

inaccuracies, 3 political parties and alliances of political parties having received the maximum number of ballot papers with affirmative vote shall participate in the distribution of mandates.

According to the data published by the RA Central Electoral Commission, **Civil Contract Party** received 688.761 (53.91%) ballot papers with affirmative vote, **Armenia Alliance** received 269.481 (21.09%) ballot papers with affirmative vote, and **With Honor Alliance of political parties** received 66.650 (5.22%) ballot papers with affirmative vote. Meanwhile, the total number of ballot papers with affirmative vote cast in favor of the mentioned three parties and alliances is 1.024.892.

Since less than 3 political parties (alliances of political parties) have received at least 5 (7) per cent of ballot papers with affirmative vote out of the sum of the total number of ballot papers with affirmative vote and the number of inaccuracies, i.e. Civil Contract Party and Armenia Alliance, therefore With Honor Alliance of political parties also participated in the distribution of mandates as the 3-rd alliance of political parties (political party) having received the maximum number of ballot papers with affirmative vote.

According to Part 5 of Article 95 of the Electoral Code, *mandates of the National Assembly shall be distributed among political parties (alliances of political parties) in proportion with the number of ballot papers with affirmative vote cast in favor of each of them. The calculation of the number of mandates available for each political party (alliance of political parties) shall be carried out as follows: the number of ballot papers with affirmative vote cast in favor of each political party (alliance of political parties) shall be multiplied by 101, the product shall be divided by the total number of ballot papers with affirmative vote cast in favor of political parties (alliance of political parties) having passed the threshold, and integer numbers shall be parted, which shall be the numbers of mandates available for each political party (alliance of political parties).*

Namely, Part 5 of Article 95 of the Electoral Code prescribes the following formula:

Mandates

$$= \frac{\text{Ballot papers with affirmative vote cast in favor of each political party} \times 101}{\text{Total number of ballot papers with affirmative vote cast in favor of political parties}}$$

Meanwhile, the calculation of the number of mandates available for each political party (alliance of political parties) shall be carried out on the basis of the **integer number** received by the above-mentioned formula.

Based on the above data, the distribution of mandates under Part 5 of Article 95 of the Electoral Code should be conducted as follows:

$$\text{Mandates of Civil Contract Party} = \frac{688.761 \times 101}{1.024.892}$$

$$\text{Mandates of Armenia Alliance} = \frac{269.481 \times 101}{1.024.892}$$

$$\text{Mandates of With Honor Alliance of political parties} = \frac{66.650 \times 101}{1.024.892}$$

As a result, the mandates, according to the regulations of the Electoral Code, should be distributed as follows:

Civil Contract Party – 67 mandates (integer number is taken from 67.87);

Armenia Alliance – 26 mandates (integer number is taken from 26.55);

With Honor Alliance of political parties – 6 mandates (integer number is taken from 6.56).

According to Part 6 of Article 95 of the Electoral Code, the mandates remaining from 101 mandates shall be distributed among political parties (alliances of political parties) by the sequence of value of remainders, by the principle of one mandate to each. In case the values of remainders are equal, the contested mandate shall be given to the political party (alliance of political parties) with the highest number of ballot papers with affirmative vote cast in favor, and in the event of a tie, the mandate shall be given by drawing of lots.

Since 99 mandates were distributed as a result of the calculation made by the previous formula, it is necessary to distribute also 2 mandates, which should be conducted by the sequence of value of remainders, by the principle of one mandate to each.

In this case, the remainder of mandates distributed to Civil Contract Party is the largest - **67.87**, followed by With Honor Alliance of political parties - **6.56**, then Armenia Alliance - **26.55**. Since only 2 mandates are subject to distribution, **Civil Contract Party and With Honor Alliance of political parties must receive one mandate each.**

As a result, the mandates, according to the legislative regulations, should be distributed as follows:

Civil Contract Party – 68 mandates;

Armenia Alliance – 26 mandates;

With Honor Alliance of political parties – 7 mandates.

According to Part 9 of Article 95 of the Electoral Code, *four mandates of Deputies shall be distributed among national minority representatives by the principle of 1 mandate to each of the first 4 national minorities with the largest number of resident population according to the data of the latest census preceding the elections. To this end, mandates shall be distributed among the political parties (alliances of political parties) having passed the threshold, by the coefficient received for each mandate, which shall be calculated by the following formula:*

$$Cp = \frac{Fm}{Mm + 1}$$

Where:

Cp — coefficient of a political party (alliance of political parties);

Fm — the number of mandates received from the first part of the list of the political party (alliance of political parties);

Mm — the total number of mandates already received by the political party (alliance of political parties) out of the 4 mandates for national minority representatives, in calculating the coefficient of the political party (alliance of political parties) for the next mandate.

Mandates of national minority representatives shall be distributed among political parties (alliances of political parties) by the sequence of reduction of coefficients. In case of equal coefficients, the mandate shall be distributed by drawing of lots.

When distributing mandates of national minority representatives a political party (alliance of political parties) shall provide the mandate to the national minority under the smallest record number in its list not yet having a mandate. Where there is not any in the second part of the electoral list of the political party (alliance of political parties), the turn for the distribution shall be passed on to the political party (alliance of political parties) having the next coefficient by value. Where in the course of such a process it is impossible to distribute mandates of national minority representatives any more, the respective mandate shall remain vacant.

In the electoral lists of the parties and alliances of political parties participating in the National Assembly elections published on the website of the RA Central Electoral Commission, the national minorities have the following sequential numbers: **I - Yazidis, II - Russians, III - Assyrians, IV - Kurds**. Moreover, the second part of the electoral list of Civil Contract Party includes one candidate from all the above-mentioned national minorities, the second part of the electoral list of Armenia Alliance does not include only Kurdish candidates, and the second part of the electoral list of the With Honor Alliance of political parties does not include any candidate.

$$1) \quad \text{Coefficient of Civil Contract Party} = \frac{68}{0 + 1}$$

$$\text{Coefficient of Armenia Alliance} = \frac{26}{0 + 1}$$

$$\text{Coefficient of With Honor Alliance of political parties} = \frac{7}{0 + 1}$$

As a result:

Coefficient of Civil Contract Party – 68;

Coefficient of Armenia Alliance – 26;

Coefficient of With Honor Alliance of political parties – 7.

In the second part of the electoral list of Civil Contract Party, the Yezidis are the national minority under the smallest record number not yet having a mandate, so **the mandate to be provided to the Yezidis is provided to Civil Contract Party.**

$$2) \quad \text{Coefficient of Civil Contract Party} = \frac{68}{0 + 1}$$

$$\text{Coefficient of Armenia Alliance} = \frac{26}{0 + 1}$$

$$\text{Coefficient of With Honor Alliance of political parties} = \frac{7}{0 + 1}$$

As a result:

Coefficient of Civil Contract Party – 34;

Coefficient of Armenia Alliance – 26;

Coefficient of With Honor Alliance of political parties – 7.

In the second part of the electoral list of Civil Contract Party, the Russians are the national minority under the smallest record number not yet having a mandate, so **the mandate to be provided to the Russians is provided to Civil Contract Party.**

$$3) \quad \text{Coefficient of Civil Contract Party} = \frac{68}{2 + 1}$$

$$\text{Coefficient of Armenia Alliance} = \frac{26}{0 + 1}$$

$$\text{Coefficient of With Honor Alliance of political parties} = \frac{7}{0 + 1}$$

As a result:

Coefficient of Civil Contract Party – 22.66;

Coefficient of Armenia Alliance – 26;

Coefficient of With Honor Alliance of political parties – 7.

In the second part of the electoral list of Armenia Alliance, the Assyrians are the national minority under the smallest record number not yet having a mandate, so **the mandate to be provided to the Assyrians is provided to Armenia Alliance.**

$$4) \quad \text{Coefficient of Civil Contract Party} = \frac{68}{2 + 1}$$

$$\text{Coefficient of Armenia Alliance} = \frac{26}{1 + 1}$$

$$\text{Coefficient of With Honor Alliance of political parties} = \frac{7}{0 + 1}$$

As a result:

Coefficient of Civil Contract Party – 22.66;

Coefficient of Armenia Alliance – 13;

Coefficient of With Honor Alliance of political parties – 7.

In the second part of the electoral list of Civil Contract Party, the Kurds are the national minority under the smallest record number not yet having a mandate, so **the mandate to be provided to the Kurds is provided to Civil Contract Party.**

As a result, the mandates to be provided to the national minorities, according to the regulations of the Electoral Code, should be distributed as follows:

Civil Contract Party – 3 mandates (a Yezid, a Russian and a Kurd);

Armenia Alliance – 1 mandate (an Assyrian).

According to Part 2 of Article 96 of the Electoral Code, where as a result of due application of Parts 4-9 of Article 95 of this Code any political party receives more than 2/3 of the total number of mandates distributed under Parts 4-9 of Article 95, other political parties shall receive as many minimum additional mandates (AM) as necessary for the total number of their mandates to result in no less than 1/3 of the total number of mandates of the National Assembly. The number of additional mandates available for each political party shall be determined as follows: the number of mandates received by that political party shall be multiplied by the number of AM, the product shall be divided by the total number of mandates received - before providing additional mandates - by political parties receiving additional mandates, and the integer numbers shall be parted which shall be the numbers of additional mandates available for the given political party. The remaining mandates shall be distributed among political parties by the sequence of value of remainders, by the principle of one mandate to each. In case the values of remainders are equal, the contested mandate shall be given to the political party with the highest number of mandates, and in the event of a tie, the mandate shall be given by drawing of lots.

Namely, Part 2 of Article 96 of the Electoral Code prescribes the following formula:

Additional mandates of the political party

$$= \frac{\text{Mandates of the political party} \times \text{AM}}{\text{Total number of mandates received - before providing additional mandates - by political parties receiving additional mandates}}$$

Mandates received - before providing AM - by political parties receiving AM

Since as a result of due application of the above provisions, Civil Contract Party received more than 2/3 (70 mandates) of the 105 mandates distributed, i.e. 71 mandates, therefore the other political parties shall receive as many minimum additional mandates (AM) as necessary for the total number of their mandates to result in no less than 1/3 of the total number of mandates of the National Assembly. In this case, for the total number of their mandates to result in no less than 1/3 of the total number of mandates of the National Assembly, the total number of mandates must be 107(107/3 = 35.33), which means that a total of 2 additional mandates must be distributed to the other parties, as a result of which the latter would have a total of 36 mandates.

$$\text{Additional Mandates of Armenia Alliance} = \frac{27 \times 2}{34}$$

$$\text{Additional Mandates of With Honor Alliance of political parties} = \frac{7 \times 2}{34}$$

As a result:

Armenia Alliance – 1 mandate (integer number is taken from 1.88);

With Honor Alliance of political parties – 0 mandate (integer number is taken from 0.41).

As for the non-distributed mandate from 2 mandates, it must be provided to **Armenia Alliance**, based on the value of remainders.

Summarizing the above-mentioned, by the results of Early Parliamentary Elections held on 20 June 2021, 107 mandates should be distributed according to the regulations of the Electoral Code, of which:

Civil Contract Party – 71 mandates, including 3 mandates to be distributed to the national minorities;

Armenia Alliance – 29 mandates, including 1 mandate to be distributed to the national minorities;

With Honor Alliance of political parties – 7 mandates.

The Constitutional Court states that the mandates were distributed in the mentioned way by the RA Central Electoral Commission. As for the position of Armenia Alliance that for ensuring the proper role for the political minority of the National Assembly - the opposition, it was necessary for the RA Central Electoral Commission to distribute the mandates so that Civil Contract Party received no more than 63 mandates, the Constitutional Court notes that Part 3 of Article 89 of the Constitution requires the legislator to guarantee the formation of a stable parliamentary majority by the Electoral Code. On the other hand, the Constitution considers mandatory the existence of opposition factions in the National Assembly and prescribes in Part 1 of Article 104 that one of the Deputy Chairmen is elected from among the parliamentarians included in the opposition factions. At the same time, the regulation of issues related to the procedure of elections to the National Assembly and the distribution of mandates is reserved for the legislator, and the latter must take into account the above-mentioned constitutional requirements.

Due to the transition to a parliamentary system of government as a result of the constitutional amendments of 2015, the role of the parliamentary minority was increased. In this regard, the representation of the parliamentary opposition in the bodies of the National Assembly was fixed at the constitutional level, as well as the adoption of a number of laws and the election of a number of officials by a qualified majority of votes was envisaged. As a result of the formation of the National Assembly, the degree of representation of the parliamentary opposition (the minimum number of mandates) is first of all conditioned by the will of the people, which is expressed in the election results. The above-mentioned follows from the essence of the elections as a means of realizing democracy.

The issue raised by the applicants in this regard is one of the issues of assessing the constitutionality of the provisions of the Electoral Code, which, as the Constitutional Court has noted in this Decision, cannot be part of the consideration of cases prescribed by Clause 5 of Article 168 of the Constitution.

In the light of the above-mentioned, the Constitutional Court finds that the applicants have not presented facts of irregularities having probative significance (that would become subject of consideration) during the Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021 in the manner and within the timeframe prescribed by law, that would serve as a basis for the RA Central Electoral Commission for adopting a decision on the basis of another clause of Part 1 of Article 95 of the Electoral Code.

Based on the results of the review of the case and governed by Clause 5 of Article 168, Clause 11 of Part 1 of Article 169 and Parts 1, 2 and 4 of Article 170 of the Constitution, as well as Articles 62, 63 and 77 of the Constitutional Law of the Republic of Armenia on the Constitutional Court, the Constitutional Court **HOLDS:**

1. To leave in force the Decision No 184-A of the Central Electoral Commission of the Republic of Armenia dated 27 June 2021 on summarizing the results of Early Parliamentary Elections in the Republic of Armenia held on 20 June 2021.

2. Pursuant to Part 2 of Article 170 of the Constitution this Decision shall be final and shall enter into force upon its promulgation.

Chairman

A. Dilanyan

July 17, 2021

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