

IN THE NAME OF THE REPUBLIC OF ARMENIA

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

**ON THE CASE ON THE DISPUTE OF THE RESULTS OF
THE ELECTIONS FOR RA PRESIDENT HELD ON FEBRUARY 19, 2003**

City of Yerevan

March 24, 2003

The Constitutional Court of the Republic of Armenia chaired by the President of the Constitutional Court G. Harutiunian, represented by the Deputy President of the Constitutional Court V. Hovhannissian and the Constitutional Court Members A. Gyulumian, F. Tokhian, H. Nazarian, R. Papayan, V. Poghosian and M. Sevia,

with the participation of

A. Karapetyan, R. Hovhanisyan, E. Hovhanisyan, the representatives of the plaintiff Artashes Geghamyan, the candidate for President of the Republic of Armenia,

the respondent, G. Nersisyan, N. Hovhanisyan, A. Sinanyan, the representatives of the RA Central Electoral Commission,

pursuant to Clause 3 of Article 100 and Clause 3 of Article 101 of the Constitution of the Republic of Armenia, to Clause 3 of Article 5, to Clause 3 of Article 25, and to Articles 57 of the Republic of Armenia Law “On the Constitutional Court”,

considered in a public hearing, the case “On the dispute of the results of the elections for RA President held on February 19, 2003”.

The case was initiated by the candidate for President of the Republic of Armenia; Artashes Geghamyan’s petition filed with the Constitutional Court and contested the results of the Republic of Armenia Presidential Elections held on February 19, 2003.

Having examined the complaint of the candidate for President of the Republic of Armenia Artashes Geghamyan at March 3, 2003 session, the Constitutional Court of the

Republic of Armenia made a procedural decision to accept the case for hearing. Concurrently, in order to prepare the case for examination following the procedure of Article 36 of the Republic of Armenia Law “On the Constitutional Court” and to present the circumstances of the case the Deputy Chairman of the Constitutional Court V. Hovhanisyan, the Constitutional Court Members A. Gyulumian and F. Tokhian were appointed as rapporteurs.

In conformity with Articles 39, 40 and 57 of the Republic of Armenia Law “On Constitutional Court”, the Constitutional Court designated the RA Central Election Commission as respondent.

Having heard the reports of the Deputy Chairman of the Constitutional Court V. Hovhanisyan, the Constitutional Court Members A. Gyulumian and F. Tokhian, having examined the explanations of the representatives of the plaintiff and the respondent, and as well as having investigated the petition and other existing documents of the case, the Constitutional Court of the Republic of Armenia

FOUND:

1. The Elections for President of the Republic of Armenia were held on February 19, 2003 in the timeframe stipulated by Article 51 of the RA Constitution. In compliance with the Article 15 of RA Electoral Code for the purpose of organization of voting and vote count, 1,865 precincts were established all over the Republic. In compliance with Clause 4 of the present article, precincts were also established in foreign countries at the Diplomatic and Consular Missions of the Republic of Armenia. For the purpose of the organization and implementation of the elections following the procedure stipulated by the Article 17 of RA Electoral Code, 56 constituencies were established all over the Republic. In compliance with the Article 31 of the present Code, a three-tier system of electoral commissions was established; that is the Central Election Commission, Territorial Election Commissions and Precinct Election

Commissions. The whole process of elections was organized and overseen by the Central Election Commission.

2. In compliance with the procedure stipulated by the Article 29 of RA Electoral Code, 12 international and 31 domestic organizations were accredited to perform election observation missions in the course of preparation and implementation of the RA presidential elections, as well as in the course of the summarization of results. In the whole process of elections observers were provided with possibility to implement their role as specified in the Article 30 of RA Electoral Code. The Election Observation Missions of PACE, OSCE/ODIHR and CIS, as well as domestic organizations, conducted election observation missions and presented conclusions concerning the First round of the elections.
3. Following the procedure stipulated by the Article 82 of RA Electoral Code, on the day of the RA Presidential Elections the following candidates for President were registered in the ballot paper: Rouben Avagyan, Artashes Geghamyan, Stepan Demirtchyan, Aram Karapetyan, Aram Harutyunyan, Vazgen Manoukyan, Garnik Margaryan, Aram G. Sargsyan and R. Kocharyan.

On February 20, 2003 the Central Election Commission issued a summarization protocol of preliminary results according to which the total number of voters was 1,464,093, and the number of votes given to all candidates was cast in the following way: Rouben Avagyan 5,073 votes, Artashes Geghamyan 247,360, Stepan Demirchyan 400,846, Aram Karapetyan 41,683, Aram Harutyunyan 1,218, Vazgen Manoukyan 12,988, Garnik Margaryan 855, Aram G. Sargsyan 1,633, Robert Kocharyan 707,155. Based on the above-mentioned results, on February 20, 2003 the Central Election Commission made Decision 18-A on the implementation of a runoff for the Presidential Elections to be held March 5, 2003 with the participation of two candidates for RA President, R. Kocharyan and S. Demirchyan.

By having summarized the final results of elections the Central Election Commission drew up a summarization protocol on February 25, 2003 according to which the total number of voters was 1,463,499. The number of votes given to all candidates was cast in the following way: Rouben Avagyan 5,788 votes, Artashes Geghamyan 250,145, Stepan Demirchyan 399,757, Aram Karapetyan 41,795, Aram Harutyunyan 1,272, Vazgen Manoukyan 12,904, Garnik Margaryan 854, Aram G. Sargsyan 3,034, and Robert Kocharyan 700,808. The size of discrepancies compiled was 2,536. On February 25 the Central Election Commission drafted the Decision 27-N on the implementation of a runoff for the Presidential Elections to be held March 5, 2003 with the participation of two candidates for RA President, R. Kocharyan and S. Demirchyan.

4. On February 27, 2003, by submitting a complaint to the Constitutional Court of the RA, the candidate for RA President Artashes Geghamyan asked to recognize the presidential elections held on February 19, 2003 as null and void. The plaintiff's contention is that the Decision 18-A of the RA CEC dated February 20, 2003 should be declared null and void since in the preliminary results of the elections the size of discrepancies was not specified and, in this case, the CEC did not have jurisdiction to make a decision on implementation of the second round of the elections by referring to Article 83 of RA Electoral Code.

The plaintiff insists that the summarization protocol dated February 25, 2003 and the CEC Decision 27-N on implementation of the second round of the presidential elections on March 5 2003 drawn up on February 25, 2003 must be also declared null and void since during the course of preparation and implementation of the elections different provisions of some 49 articles of RA Electoral Code were violated. As a result, the universal, equal and direct suffrage of citizens and the principle of voting by secret ballot were not ensured, which had a direct impact on the results of elections. According to the plaintiff the availability of violations of that kind is supported by materials presented in attachments and written explanations of witnesses, as well as by facts presented by the international observers.

In the plaintiff's opinion, the CEC published the PEC protocols of the presidential elections in which all discrepancies are specified according to each precinct. But, instead of presenting the absolute number, which is required by the Law, the CEC counted by itself and instead of 11,460 put 2,536.

The plaintiff also finds that, in the case of having 2,295,330 voters according to the Article 82 of RA Electoral Code, the CEC should have provided an extra 5% of ballot papers. However, the TECs were supplied with only 0.3% extra ballots.

The plaintiff also thinks that in some cases the electoral rights of proxies for presidential candidates were violated when, either directly or through voting, TECs declined their written requests to verify the conformity of protocols of polling stations with the factual results of the elections in compliance with Clause 10 of the Article 62 of RA Electoral Code.

5. With regard to the materials submitted by the plaintiff, the respondent contends that there are no substantial grounds to declare the RA presidential elections held on February 19 as null and void. According to the respondent, the RA CEC made the Decision 18-A on February 20, 2003 within the frame of its jurisdiction. That Decision had an individual nature. It was aimed at regulating procedural questions of the elections and in general it referred to the work of the CEC. The CEC Decision had a provisional character and was made with an aim to amend certain contradictions existing in the Electoral Code and to guarantee the implementation of the second round of the RA presidential elections in compliance with the timeframes stipulated in the Article 51 of the RA Constitution. The regular normative act is the CEC Decision 27-N dated February 25, 2003, according to which the question about the second round of the RA presidential elections was settled.

The respondent also contends that the violations occurred during the implementation of elections were mainly conditioned by the huge effort carried out in the course of

preparation, organization, and implementation of the elections and the summarizing of the results. A million of voters, as well as thousands of members of commissions formed on the basis of multi-party principle and observers and mass media representatives participated in this process. Hence, it was possible for some violations to take place, which, however, did not have a considerable impact on the results of elections.

The respondent pointed out that, according to Clause 4 of Article 62 of RA Electoral Code, if any member of the commission in a constituency has a special opinion on the data of the summarization protocols, s/he makes a remark next to his/her signature and submits the special opinion in written form which is attached to protocol. Only from 10 of 56 TEC special opinions concerning summarization protocols have been submitted. It is not anticipated by the Constitution what kind of procedure that particular document will have in case of special opinion submitted by the commission member. Due to this, CEC could not put into action a part of those special opinions. At the present time, the respondent informed [the Court] that, along with special opinions, there were no written demands to organize verifications submitted. Only 7 of 16,680 members from 1,865 PEC submitted special opinions in which the above-mentioned petition was not mentioned. According to the respondent, proxies of the candidates for RA president sometimes submitted documents, which in essence were protocols and announcements, which are not documents established by the Law. Thus, no action was taken upon those.

6. On the Decision 18-A on the “Implementation of the Second Round of the RA Presidential Elections” made at the CEC February 20, 2003 session, the plaintiff, as stated, contends that the above mentioned Decision should be invalidated since the terms of Clause 1 of Article 63 of the RA Electoral Code were violated and, while making the decision on the implementation of the second round of the RA presidential elections, the size of discrepancies was still not specified.

On February 20, 2003 at 18:00 at an extraordinary session the CEC made a decision to hold a second round of the RA presidential elections on March 05, 2003 and determined the two candidates for President to participate in the second round, Stepan Karen Demirchyan and Robert Sedrak Kocharyan. Subpoint 2 of Clause 1 of Article 82 and Article 85 of the RA Electoral Code were taken as grounds to make this kind of decision.

Article 83 of RA Electoral Code refers to the summarizing of results. Clause 1 of the present Article establishes that “The Central Election Commission based on the results of summarization protocols of the elections in compliance with procedure established in Article 60 of the RA Electoral Code summarizes in constituencies the results of elections and, within timeframes established in Clause 3 of Article 63 of the present Code, makes one of the following decisions:

1. On electing a President of the Republic
2. On implementing a second round of voting
3. On recognizing elections invalid and on non electing a President of the Republic
4. On recognizing elections as not held and on non electing a President of the Republic

By analyzing this Article it can be supposed that:

- Both in this Article and in Articles 40, 61, 62, 63 and others of the RA Electoral Code there is a blurred and uncertain use of the concepts “results of voting” and “results of elections”.
- The reference to Article 60 is unclear (which refers to the procedure of results summarizing in precincts and the designation of discrepancies). The procedure for results summarizing at CEC is established in Article 63 of the RA Electoral Code, in which not only the timeframes for results summarizing was established, but also the procedure for issuing summarization protocol based on summarized data of **final** results;
- Taking into consideration the legal nature and significance of the legal application of the concepts “procedure on summarizing the elections results at the CEC”, “summarized data of **final results** of the elections in constituencies”, “preliminary

summarization protocol of the elections”, “preliminary results of the elections”, “final results of the elections” mentioned in Article 63 of the RA Electoral Code, as well as the fact that the provision on applying to the Constitutional Court apropos disputes on the results of the elections is established in Clause 2 of Article 83 of the RA Electoral Code (which, in compliance with Article 57 of RA Law on “Constitutional Court”, is permitted only within 7 days after the official announcement of the results), it becomes evident that:

- a. The phrase “data of summarization protocols of results of the elections” in Clause 1 of Article 83 of the RA Electoral Code means summarized data of the **final** results of the elections.
- b. The invocation of timeframes established in Clause 3 of Article 63 of the RA Electoral Code undoubtedly refers to the CEC summarizing **the final results** (the timeframes for summarizing the preliminary results are established in Clause 1 of Article 63 of the RA Electoral Code).
- c. Clause 3 of Article 63 of the RA Electoral Code considers the size of discrepancies as one of the summarized data of the elections results, without which there can be no decision made on the results of elections.

Based on the above mentioned, it is evident that on the basis of preliminary results of the elections (without information on the size of discrepancies) the Central Election Commission did not have the authority to make a decision, based on Article 83 of the RA Electoral Code, on the implementation of the second round of RA presidential elections.

CEC had jurisdiction to take preparatory steps for implementation of a possible second round of the elections in compliance with the procedure stipulated by the Law after publishing the preliminary results and for this purpose, making decisions of this nature was only in the framework of its jurisdiction.

The plaintiff did not make a correct legal conclusion on the possible alteration of his legal status based on the mentioned Decision, since, despite the ambiguity in Article 83 of the Electoral Code and despite the fact that the CEC did make such a decision, the analysis of

Articles 40, 60, 61, 62, 63, 83 of the same Code allows to definitely conclude that only the CEC decision made on the basis of the summarizing of the final results of elections can have legal consequences for the candidates.

The conclusion is that the CEC Decision 18-A “On Conducting a Second Round of the RA Presidential Elections” made at the 20.02.2003 extraordinary session is not justified from the legal point of view. In the same time, that Decision did not impact the legal status of the plaintiff, could not have any retroactive impact on the results of the first round of the RA Presidential Elections, and is legally void from the moment when CEC adopted the Decision 27-N dated 25 February 2003.

7. The RA Electoral Code and the RA Law “On Constitutional Court” do not contain concrete provisions regarding the nature of the Constitutional Court decisions related to elections. Article 86 of the Electoral Code provides basis for the CEC to recognize presidential election invalid at any stage, if:

- “1) The amount of discrepancies influencing the number of votes cast for the candidate significantly impacts the election results: i.e. it is impossible to restore the actual election results and determine the elected candidate;
- 2) Such violations of this Code have taken place during the preparation and conduct of the election, which could have influenced the result of the election”.

Based on the general logic of this article, in order for the CEC to make a decision regarding results of elections on the basis provided in Article 83 of the Electoral Code, considering the size of discrepancies, it is essential to find out to what extent are **the actual results of election precise**, and for which of the four decisions provided in the same article they can serve as legal grounds.

International constitutional law practice shows that elections are considered the main means for establishment of representational democracy in a country and formation of public government by people. The results of elections may be impacted by violations of principles of citizens’ electoral right declared by the Constitution, which make it

impossible to exercise universal, equal, free and direct electoral right with consistent regularity.

This view can be applied to those legal violations, which mutilate the overall picture of the realization of citizens' electoral right and do not allow the making of a definite conclusion regarding final results of the whole process of elections. In its turn, the electoral right of voters who have made their election in a legal manner may not be abused while evaluating the impact of various violations on results of elections. The main criteria for evaluating the impact of violations are established by the legislation: that is whether such violations individually or together can impact the election results. In order to answer this question it is necessary to find out:

- What is meant by election result in accordance with the legislation?
- How to determine the size of the impact in accordance with the legislation?

In relation to the case under investigation, the analysis of Articles 51 and 100 of the RA Constitution, as well as of Articles 40, 61-63, 83-93 of the RA Electoral Code demonstrates that the concept of “election result” refers to the completing of election process by voting and making of a decision in accordance with the Article 83 of the Electoral Code on the basis of the final summarization protocol based on the results of such voting.

What refers to determination of the size of impact, the RA legislation does not contain any specific provisions other than evaluation of the size of discrepancies stipulated in Articles 60-63 of the RA Electoral Code.

The argument of the Plaintiff related to the fact that the size of discrepancies in accordance with the protocols of the Precinct Election Commissions is 11,460 rather than 2,536 can not serve as basis to recognize the election invalid, since in that situation, again, based on the difference in the number of votes cast for candidates, it is possible to restore the actual results of the election and determine the candidates who passed to the second round, i.e. RA Presidential Candidates S. Demirtchyan and R. Kocharyan.

International legal practice and experience of constitutional justice also show that, specifically:

- The decision to recognize or not to recognize elections invalid in each case depends on concrete circumstances and must consider the heaviness and seriousness of legally evidenced violation, the scope of inclusion of violations, the means and forms of committing those violations,
- When investigating cases appealing election results, the Constitutional Court must take into consideration not only the aspect of defending rights and freedoms granted by the Constitution, but also the aspect of reliability and confidence towards the election process and the whole election system in terms of organizing and conducting it in accordance with legislation.
- Proven violations of electoral right may be the basis for reconsidering results of elections. However, the essential content of such reconsideration must be the question of whether existing legal violations have such a spread as to put in doubt the whole results and validity of elections.
- Violations that have taken place in any one polling station may not serve as basis for assuming similar violations in other polling stations or doubting the extent of confidence towards them. Results of elections may be recognized invalid only on the basis of those legally evidenced concrete violations, which had or may have had significant impact on the final results of elections.
- Results of elections may be recognized invalid if violations have significantly impacted the ratio of votes received by candidates and the overall result is mutilated.

In order to prove election related violation facts, the Plaintiff has presented various application/complaints and copies of protocols and statements, the study of which proved that a significant part of those may not be accepted in the Constitutional Court as they are presented by unauthorized subjects or not presented in the manner established by legislation.

At the same time, a complex analysis of facts of violations and the failure to organize verifications in 28 polling stations brought by the plaintiff, as well as other violations pointed out during the investigation of the case; the results of verifications undertaken by order of the Constitutional Court; and materials available in the case, demonstrate that the picture summarized by the CEC in the final results of the first round does not change due to the proven grounds presented on the legal violations.

8. Article 57 of the RA Law “On Constitutional Court” establishes that “factual circumstances relating to the case under review by the Constitutional Court may not be a subject for examination”. This is the logical basis on which the RA Electoral Code reserves the authority to investigate concrete election violations, prove illegalities, and make final decisions in this regard to the courts of general jurisdiction.

Analysis of the content and legal applicability of provisions of Clause 3 of Article 100 of the RA Constitution, as well as Clause 3 of Article 14, Clause 8 of Article 18, Clause 7 of Article 25, Article 26, Clause 8 of Article 37, Article 40, Clause 3 of Article 62, Clause 3 of Article 63, Clause 1 and 2 of Article 75, Clause 10 of Article 79, Clause 2 of Article 83, Clauses 8 and 9 of Article 102, Clauses 9 and 10 of Article 108, Clause 8 of Article 115, Clause 8 of Article 116, Clause 4 of Article 124, Clauses 6 and 7 of Article 133, Clauses 6 and 9 of Article 134 and Article 137 of the RA Electoral Code shows that:

- 1) In the Republic of Armenia the authority for judicial defense of electoral rights is bestowed upon courts of general jurisdiction, as well as the Constitutional Court. Meanwhile, there is a precise division of authorities, and each, in accordance with Article 5 of the Constitution, is authorized to perform only those actions for which it is empowered by legislation;
- 2) From the above-mentioned Articles of the Electoral Code it is seen that legal violations that have taken place during the election process obtain a proven significance as a result of the examination of factual circumstances in courts of general jurisdiction within precisely established period of time. Specifically, Article 40 of the Electoral Code establishes that decisions (which

do not relate to final results of elections), actions and inaction of election commission can be appealed to court within two days after discovering the violation of the legislation (while decisions of Precinct Election Commissions regarding voting results can be appealed to court before 14:00 of the next day of voting). It is obvious that if legal subjects involved in the election process fail to realize the legal defense of their rights in an order and within the timeframe stipulated by legislation and bypass courts of general jurisdiction then the authorities of the latter does not transfer to the Constitutional Court. The Constitutional Court, when reviewing a case, must base itself upon arguments proven in accordance with the order established by legislation;

- 3) Article 139 of the RA Electoral Code delineates 31 legal violations, which lead to responsibility. All cases relate to concrete actions or inaction and on the grounds provided in the above-mentioned Articles are subject to jurisdiction of courts of general jurisdiction. Pursuant to the examination of the complaint submitted to the Constitutional Court, documents attached thereto, reports of observation missions, and publications in the media, it is noted that regarding at least 21 out of the indicated legal violations there are various facts presented or statements made. However, in none of them was there a case initiated in courts of general jurisdiction in order and within the timeframe established by legislation or an investigation organized. None of them were confirmed as factual circumstances requiring further legal processes. Results of investigating this case show that the Plaintiff did not raise any court claims against the indicated legal violations indicated by the Plaintiff and that took place during the preparation and conduct of election.
- 4) In the same time the court practice of the Constitutional Court shows that the available order of court defense of electoral right established in the Electoral Code, practically unchanged since 1995, is complicated and ineffective. This is proven by the fact that the order of appeals established by the RA Electoral Code in terms of court appeal practically did not act from 1996 to 2003. In fact, the overall justice system does not provide the necessary and sufficient prerequisites for effective constitutional justice (when subjects of election

related legal relations due to various reasons do not utilize the possibilities of even imperfect procedure established by the law). It is undisputable that constitutional justice presumes a certain environment of constitutional democracy. From that point of view, investigation of this election related dispute reveals serious system flaws and gaps with legislation and state order, which require immediate adjustment.

9. A number of the RA Constitutional Court decisions indicate gaps in the RA Electoral Code that have negatively reflected upon appropriate organization and conduct of elections. Those specifically relate to formation and administration of votes lists, order and timeframe of formation of commissions, their number, workload, order and timeframes of making decisions and forming protocols and reviewing appeals. In the same time, Constitutional Court Decision CCD-389 date October 1, 2003 ruled unconstitutional the provision of Clause 3 of Article 14 of the RA Electoral Code, which limited the right to court defense of the violated right of citizens to be included in the voters list.

The practice of investigating election related cases in the Constitutional Court shows that a significant part of election related violations are conditioned by shortcomings of the Electoral Code itself, imperfection of the existing order of organizing and conducting elections, non sustainability of the system of court defense of electoral right, low level of legal culture, as well as insufficient consideration given by legislative and executive powers to legal positions of the Constitutional Court regarding election related disputes. For example, Article 60 of the RA Electoral Code establishes a new order for determination of discrepancies, which is essentially different from the order that existed before and the legal position regarding this issue expressed by the Constitutional Court in its previous decisions. Sub-clause 1 of Clause 4 of the said Article establishes that in order to determine the size of discrepancies it is necessary to compare the number of ballots signed in accordance with the order established by Clause 1 of Article 53 with the number of ballots in the ballot box and the number of cancelled ballots. The difference in this absolute value is indicated as the first number of discrepancies. Previously, instead

of the provision regarding “...the number of ballots signed in accordance with the order established by Clause 1 of Article 53” the calculation was based on the number of ballots allocated by the CEC. The Constitutional Court finds that the current change creates the opportunity to circulate ballots without an accurate legal status (the difference between ballots allocated by CEC and those which were not signed in accordance with the established order), which may become a serious prerequisites for possible election related falsifications. Meanwhile, concerns in this regard were also expressed by experts of OSCE/ODIHR and Venice Commission in their expert opinion regarding the changes to the RA Electoral Code adopted in July 2002. Specifically, Item 21 of that opinion emphasizes that Precinct Election Commissions must be responsible not only for the signed but also for all received ballots. The opinion was that “the new procedures create a serious risk that ballot papers may be intercepted between issuance to the precinct commission and signing, without anyone being held accountable”.

The Constitutional Court takes a record of the fact that the indicated concerns are partially becoming reality already, which is witnessed by some individual legal violations during the investigation of this case. Not only the above-mentioned provision of the law needs revision, but also the order of printing, accounting of, security and control over ballots needs be seriously strengthened. In general, it is obvious that the legislator did not succeed in bringing to the minimum the role of the subjective factor in the election process. It becomes more striking in the context of ambiguity of many provisions of the Electoral Code and often even internal contradictions.

In order to organize the electoral process effectively, it is extremely important to specifically give legally correct interpretation to Clause 10 of Article 62 of the Electoral Code, and, together with Article 40 of the Code, to guarantee an efficient legislative basis for supervision. Investigation of this case shows that Clause 10 of Article 62 of the RA Electoral Code was interpreted differently by the CEC and Territorial Election Commissions and due to legislative confusion of concepts of “factual results of elections” and “voting results” a number of verification requests submitted in accordance with the order established by the law were refused.

Comparison of Clause 1 of Article 40, Clauses 7 and 9 of Article 42, Clauses 3 and 10 of Article 62, Clause 3 of Article 63 and Clause 1 of Article 83 shows that the selected form of authority to supervise the voting and process of summarizing voting results by Territorial Election Commissions, members of Precinct Election Commissions, as well as candidate proxies, is the possibility to organize a verification by power of right. Clause 10 of Article 62 of the Electoral Code assumes that according to a written **request** of a member of a Precinct Election Commission who has submitted a special opinion or a candidate proxy, if such request is submitted in compliance with the established order and within the established timeframe by an authorized person, which, in its turn is determined based on the requirements of Clause 1 of Article 40 of the Code, Territorial Election Commission **must** organize a verification of conformity of precinct protocols and factual results of election (voting). Investigation of this case found that such procedure was not accurately followed, and in some cases, specifically in Election Territory # 6 there was “capricious” treatment shown towards the proxy’s demand.

The Constitutional Court also takes a record of the fact that the making of the 18-A Decision dated 20 February 2003 by CEC, the shortcomings in the issue of performing supervision over the legality of elections during the preparation and conducting of elections as prescribed by Clause 1 of Article 41 of the RA Electoral Code, not recording appeals in time and in an appropriate manner and the lack of appropriate response to violations reported by the OSCE Observation Mission has created an additional atmosphere of non-confidence towards the election process.

However, the Plaintiff’s arguments and evidence of a proven nature presented regarding the legal violations that took place during the election process are not sufficient ground to recognize invalid the election results of RA Presidential Election held on February 19, 2003 in accordance with Article 86 of the RA Electoral Code.

10. Considering also the fact that the RA General Prosecutor’s Office as per the presented information is undertaking investigations regarding 35 incidents related to legal

violations which have taken place during the February 19, 2003 RA Presidential Election, the Constitutional Court takes a record of the fact that during investigation of 7 election disputes, the Constitutional Court, in accordance with the order established by Article 54 of the RA Law “On Constitutional Court”, has officially informed the RA General Prosecutor’s Office to start appropriate proceedings (SDN-102 dated 24.11.1996, SDN-43 dated 17.06.1999, SDN-45 dated 24.06.1999, SDN-46 dated 24.06.1999, SDN-49 dated 28.06.1999, SDN-60 dated 28.06.1999, SDN-38 dated 01.07.2002). The overall analysis of the responses received shows that numerous criminal cases related to violations of election legislation are not proceeded with further and have mainly been ceased as a result of amnesties. The Constitutional Court does not consider it justified for amnesties to cover persons who have committed election-related falsifications and violations of election legislation.

Based on the results of the investigation of the case and based on Article 51, Clause 3 of Article 100 and Article 102 of the Republic of Armenia Constitution, Clause 3 of Article 5, Articles 67 and 68 of the Republic of Armenia Law “On Constitutional Court, the Republic of Armenia Constitutional Court **DECIDED:**

1. To refuse the RA Presidential Candidate A. Geghamyan’s demand to recognize invalid the election results of February 19, 2003 RA Presidential Election.
2. In accordance with part 2 of Article 102 of the Republic of Armenia Constitution this Decision is final, is not subject for revision, and shall be enforced from the moment of its publication.

CHAIRMAN OF THE
REPUBLIC OF ARMENIA
CONSTITUTIONAL COURT

G. HARUTYUNYAN

24 March 2003

CCD - 408