



Բաց Հասարակության Հիմնադրամներ - Հայաստան

Open Society Foundations-Armenia

Monitoring of the National Assembly

5th Convocation, 3rd session, second report

(February 4, 2013 - June 13, 2013)

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NATIONAL ASSEMBLY OF THE 5th CONVOCATION

3rd session (February 4, 2013-June 13, 2013)

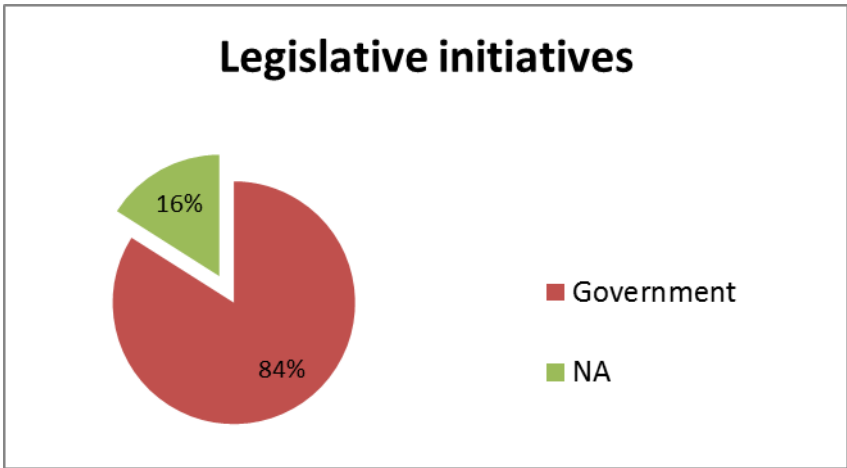
During the 3rd session of the RA National Assembly of the 5th convocation 7 four-day sessions were convened. The Government initiated 1 extraordinary session, from June 17 to 20. 95 laws were adopted: 5 were mother laws, the rest were amendments and additions in the operating laws. The Government was the author of 79 laws adopted, (10 of them the Government recognized as urgent), 15 were authored by the NA deputies, 1 was a joint draft. Around 1/3 of the laws (31) were adopted over the extraordinary session. 2nd and 3rd readings of nearly half of them were arranged in a 24-hour setting. Out of 95 laws the parliament adopted 21 through a special procedure.

Around half of the adopted laws, 42 concerned the socio-economic sector, 27-state and legal matters, 8- defense and internal affairs, 7-the education, 6-regional administration and local self-government, 2-healthcare, 3-human rights.

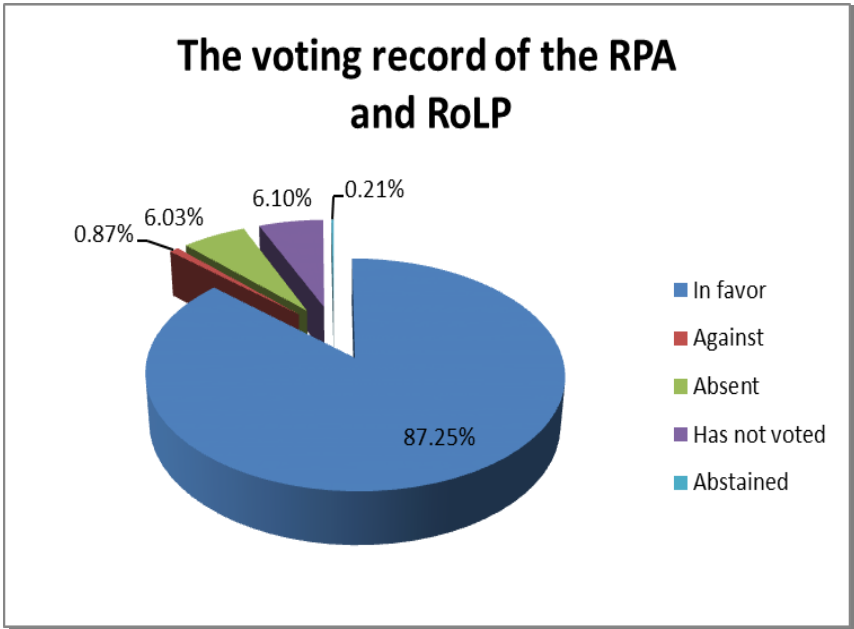
The National Assembly discussed 10 programs, reports and communications. It adopted decisions on approving the RA Government program and the State budget 2012 performance report.

The Parliament discussed and rejected two of the initiatives authored by the opposition factions. One of them authored by the Heritage proposed amendments to the Electoral Code, the other one authored by the ANC proposed setting up an ad-hoc committee inquiring into the event of March 1, 2008.

- In the law-making work the proactiveness of the parliament compared with the previous sessions has increased. For instance, in the 2nd session of the 5th convocation the Government-NA ratio in terms of legislative initiatives was 94/6, whereas in the third session it was 84/16.



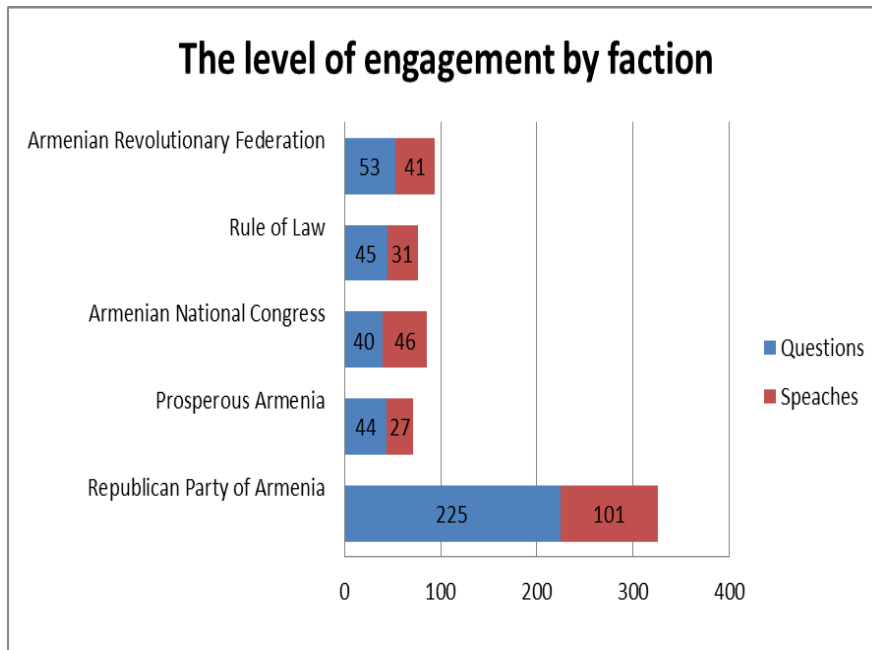
- In the course of the 3rd session of the NA of the 5th convocation the parliamentary majority has fully maintained the voting logic. The RPA-RoLP coalition has always approved the drafts submitted by the government and voted solely against the initiatives by the opposition. The parliamentary majority has objected to hardly 1% of the draft laws voted on. This is a strong evidence of an overly high consolidation level of the political majority of the parliament and the Government and its continuity.



- According to the statistics of questions and speeches¹ in the observed period the RPA faction has the highest record (176 questions and speeches), the lowest is the record for Heritage (20 questions and speeches). However, the adjustment of this indicator for the number of deputies in the factions shows that each RPA deputy has

¹The Statistics of *ParliamentMonitoring.am* website is generated based on the discussions and votes on the draft laws only.

asked questions or given speeches 2.5 times on average, whereas Heritage deputies around 4 times. From this standpoint PAP has been the most idle in the parliament, and ARF has been the most active.



- Over the observed session, like in the previous one, the parliament has not exercised its right to set up ad-hoc committees inquiring into specific issues and determining the real circumstances, in spite of the fact that the opposition factions have submitted several such proposals. Particularly, the ANC's initiative to set up an ad-hoc committee inquiring into the event of March 1, 2008, following lengthy discussions, was eventually turned down in this session with the efforts of the majority.
- During the 3rd session the Government has deemed urgent 6 legislative initiatives without solid arguments in support of their adoption without delay. The National Assembly has made 22 decisions on discussing and adopting the draft laws through a special procedure, 15 of those during the extraordinary session. Figures show that in this session as well the parliament has often failed to dedicate sufficient time to the discussion of draft laws.

General conclusions

- Over the past 17 years the Constitutional Court has reviewed only 4 cases initiated and submitted by NA deputies. The April 16 decision of the Constitutional Court recognized the 4 clauses regulating the issues of deputy absences in the Rules of Procedure of the NA as contradicting the Constitution and invalid. The parliament did not in any way respond to the decision by the Constitutional Court. Neither the parliamentary majority nor the opposition demonstrated any initiative to correct the unconstitutionality.
- Instead the issue of non-attendance of deputies, raised by the NA Chairperson Hovik Abrahamyan drew unprecedented attention during the 3rd session. As instructed by him the NA staff started publishing the statistics of cases of unjustified non-attendance of deputies. Based on this the deputies who had been absent without excuse were subjected to disciplinary penalties, in the shape of partial or full non-payment of the salary. Around 2,5 million drams were deducted from the salaries of 76 deputies for unjustified non-attendance in March-April.
- The agenda of the 3rd session of the NA of the 5th convocation was unprecedented in that it was full of questions that fall within the scope of the oversight function of the parliament, that is 4 programs, 3 reports, 2 papers and 1 communication. More than half of this 10 documents provoked lengthy and heated discussions in the parliament.
- In reality, around half of the time in the plenary sittings of the 3rd session was dedicated to hearing/approving/taking into consideration the programs/reports/communications and the other half to the adoption of 95 laws, with most of them going through more than one reading.
- As reflected in the statistics of the parliamentmonitoring.am around half of the laws in the 3rd session were passed without motivated discussion (no questions or speeches). 25 % of the laws or every 4th law was adopted through a special procedure.
- During the 3rd session of the National Assembly of the 5th convocation the Ethics ad-hoc Committee has held 14 sittings, received 6 applications, with only 1 admitted for proceedings. The committee has not admitted for proceedings 5 applications and has issued an unfavorable conclusion regarding the only 1 admitted.
- During the 3rd session the number of applications received from the public sector, citizens and NGOs has decreased by half. Most of the applications submitted were either not admitted for hearing, or rejected after the proceedings. According to the expert opinion this statistics attests to the decline in public trust towards the Ethics Committee.

- According to *parliamentmonitoring.am* website statistics during the 3rd session the deputy who has been absent the most is the leader of the PAP faction Gagik Tsarukyan, the most active deputy is Artsvik Minasyan from ARF, the deputy who has voted against the most is Nikol Pashinyan from ANC, out of top ten deputies who have voted in favor the most 9 are RPA members, the most visited page in the “Deputies” section of the website belongs to Hrant Bagratyan from ANC.
- Over the fall and spring sessions of the NA of the 5th convocation the citizens have addressed 43 letters to the deputies through the www.parliamentmonitoring.am website. Only two deputies have responded to them, Naira Zohrabyan and Artsvik Minasyan. Out of 43 letters only 13 were somewhat related to the legislative regulation of certain matters. The vast majority contained specific issues of social nature: provide with work, solve a housing problem, sponsor the school graduation event, pay for utilities and tuition. There have been requests to meet with Samvel Aleksanyan, to help financially in getting a car. Out of those 43 letters 5 were addressed to Hovik Abrahamyan, 5 to Samvel Aleksanyan, 7 to Gagik Tsarukyan.

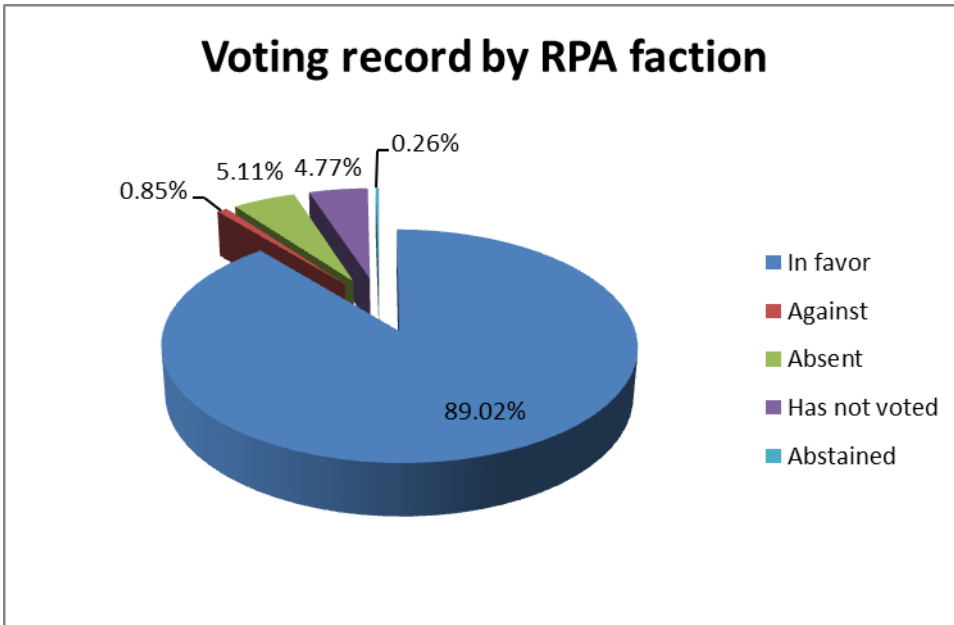
NA FACTIONS

Legislative initiatives, level of engagement

The Republican Party of Armenia

During the 3rd session of the National Assembly of the 5th convocation the RPA has authored 22 legislative initiatives. 6 of them are included in the upcoming 4th session of the National Assembly of the 5th convocation. Another draft included in the session was revised in 2013. 14 drafts already in circulation are not on the session agenda yet. Only 8 of them were authored by the faction in 2013.

In the course of the 3rd session 8 legislative initiatives authored by the RPA were adopted.



According to parliamentmonitoring.am website statistics during the 3rd session:

The deputy who has asked the most questions and given the most speeches from **RPA** faction is Khosrov Harutyunyan. Four deputies have voted in favor the most (194 times): Hayk Grigoryan, Mkrtich Minasyan, Galoust Sahakyan, Karine Poghosyan. Vahe Hakobyan has voted against the most (4), Hakob (Garnik) Hakobyan-abstained the most. The deputy who has been absent the most is Karen Karapetyan, and the deputy who has voted the least is Manvel Badeyan.

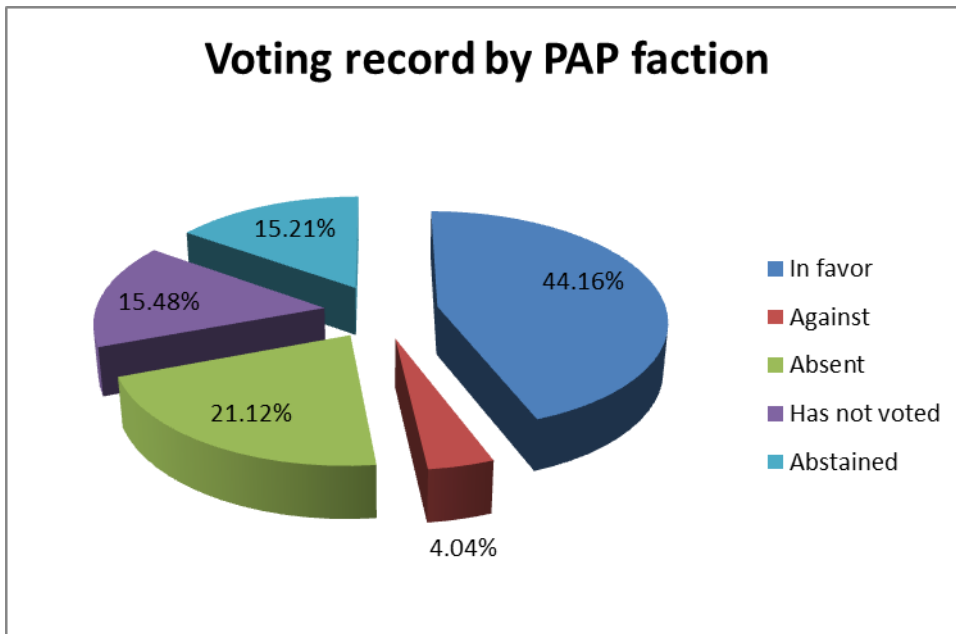
9 out of 10 deputies who have voted the most in the parliament are from the Republican Party. Instead no RPA member is on the lists of top ten deputies who have voted against or abstained the most. There is only 1 RPA member on the list of top ten absentees, and the list of top ten most active deputies has 4 RPA members.

Among the top ten most visited pages five belong to the RPA members (“Deputies” section of the *parliamentmonitoring.am* website).

Prosperous Armenia faction

During the 3rd session of the National Assembly of the 5th convocation the PAP has authored 8 legislative initiatives. 5 of them are in circulation but have not been included on the session agenda. 3 legislative initiatives were moved from the 3rd session to the 4th session agenda.

In the 3rd session no legislative initiative authored by PAP was discussed or adopted.



According to *parliamentmonitoring.am* website statistics during the 3rd session:

Naira Zohrabyan from PAP faction has given most speeches, 8 times, and Stepan Margaryan has asked questions the most. He is also the one who has abstained the most from PAP faction, 57 times. Davit Kocharyan is the deputy who has not voted the most in the faction, 119 times. The deputy who has voted against the most is Gurgen Arsenyan, 16 times, in favor-Grigori Margaryan, 128 times. With 184 cases of non-attendance Gagik Tsarukyan is the top absentee of the faction.

With this figure he heads the list of top ten absentees in the parliament. There are 4 more deputies from PAP in this list of top ten.

The lists of top ten deputies who have voted in favor or against the most, asked questions and given speeches have no PAP members.

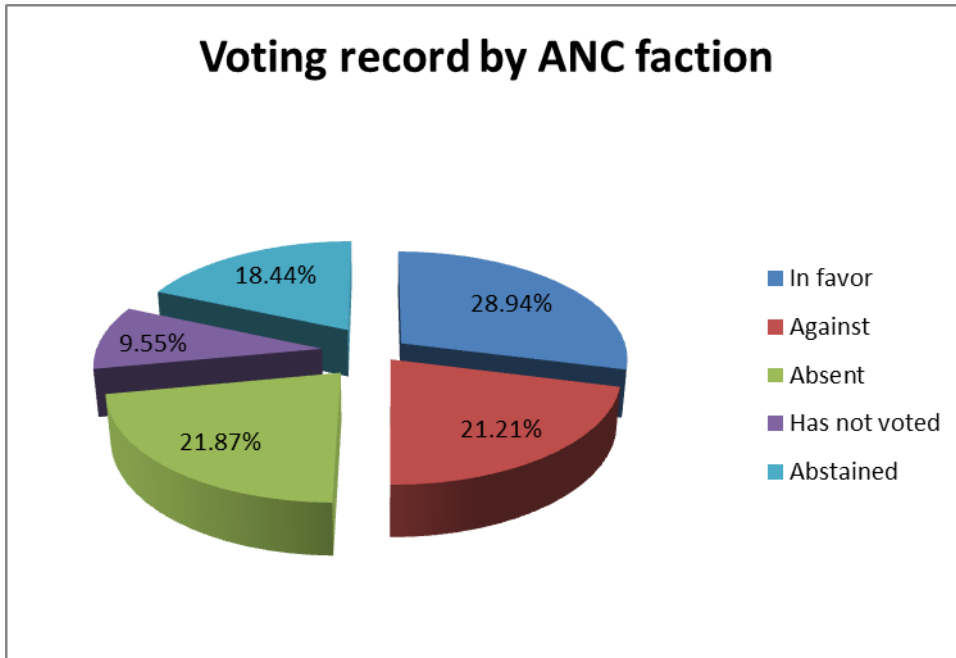
The list of top ten deputies who have abstained the most has 4 PAP members.

Among the top ten most visited pages 3 belong to PAP deputies (“Deputies” section of the *parliamentmonitoring.am* website).

Armenian National Congress

In the 3rd session of the National Assembly of the 5th convocation, like in the 2nd session, no draft law authored by the ANC was adopted. No initiative by the faction received favorable conclusion in the lead committees and was discussed in the plenary, except for one. This initiative authored by the ANC in 2012 proposed setting up an ad-hoc committee inquiring into the events of March 1. Going through several stages of discussion the draft was declined in the plenary session in 2013.

The ANC has 5 initiatives put into circulation since 2012 that are not on the agenda yet. Their inclusion on the agenda of the session was postponed for up to 1 year. Among the postponed draft laws 1 was authored by the ANC faction in full, except for Hrant Bagratyan. The author of the remaining four is Hrant Bagratyan. Inclusion of 2 draft laws authored by Hrant Bagratyan on the agenda was rejected in a vote by the deputies.



According to *parliamentmonitoring.am* website statistics during the 3rd session:

From the ANC faction the deputy who has asked the most questions, has voted in favor or against the most, is Nikol Pashinyan: questions-18, in favor-79, against-82. Hrant Bagratyan has given the most speeches, 19, Stepan Demirchyan has been absent the most, 101 instances, Lyudmila Sargsyan has not voted the most, 25 times, Levon Zurabyan has abstained the most, 47 times.

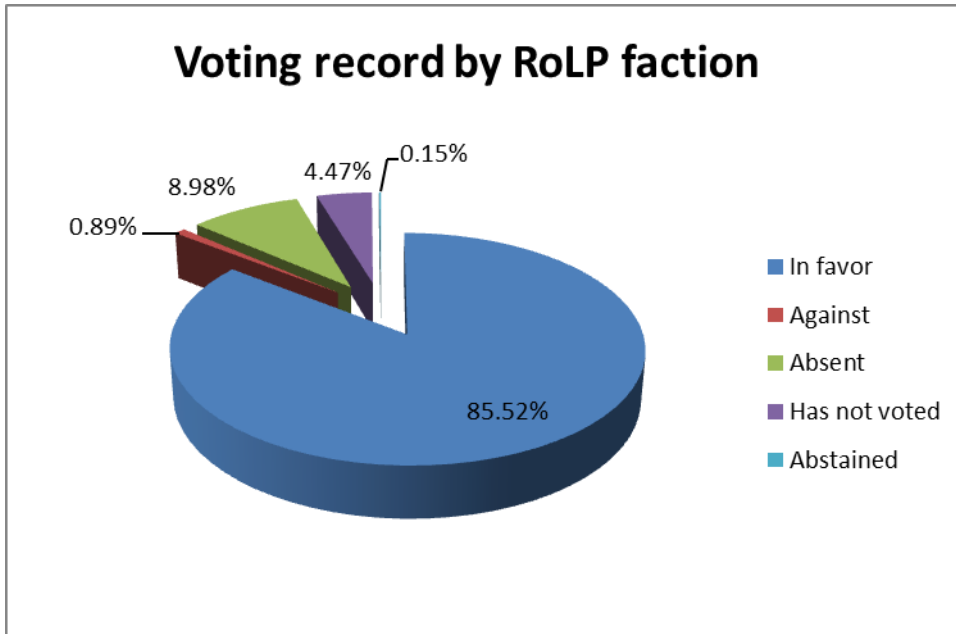
The lists of top ten deputies who have voted in favor or abstained the most and have been absent the most in the parliament do not contain any ANC members. Out of 10 deputies who have voted against the most 6 represent the ANC. The list of top ten most active deputies, who have asked questions and given speeches the most, has 2 ANC deputies.

The list of top ten most visited pages (*Deputies* section of the *parliamentmonitoring.am* website) has only Hrant Bagratyan's page from ANC. In fact, Bagratyan heads the list.

The Rule of Law Faction

During the 3rd session of the National Assembly of the 5th convocation only 1 draft authored by the RoLP, that had been on the agenda of the session since 2011, was discussed and adopted. The RoLP has 19 drafts, put into circulated but not included on the agenda of the session, 6 of them authored in 2013.

1 legislative initiative authored by the RoLP was transferred from the the 3rd session to the 4th session agenda. The RoLP has joined another 4 drafts as a co-author.



According to *parliamentmonitoring.am* website statistics during the 3rd session:

The deputy representing the RoLP faction who has asked questions, given speeches and voted in favour the most is Mher Shahgeldyan: in favor- 192 times, questions-22, speeches-14. Khachik Harutyunyan has been absent the most, 28 instances. 3 RoLP members have abstained only once, and Heghine Bisharyan has not voted the most -17 times.

No RoLP representative is on the lists of deputies who have been absent, voted against or abstained the most in the Parliament. The list of top ten deputies who have voted in favour the most has only Mher Shahgeldyan from RoLP. The list of top ten idlest deputies has 2 RoLP members.

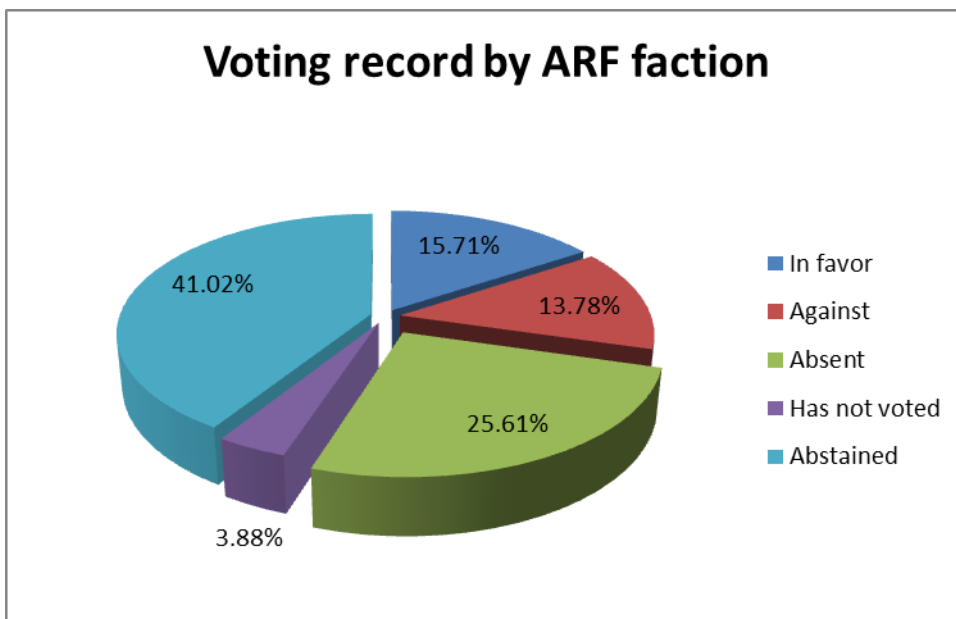
The list of top ten most visited pages (in the *Deputies* section of the *parliamentmonitoring.am* website) does not have any RoLP faction members.

Armenian Revolutionary Foundation faction

During the 3rd session of the National Assembly of the 5th convocation 2 drafts authored by the ARF, that had been on the agenda of the four-day sessions since 2012 were

adopted. The ARF has 6 drafts, put into circulated but not included on the agenda, 2 of them authored in 2013.

ARF has 2 legislative initiatives moved from the 3rd session to the 4th session agenda, 1 has passed the first reading. Their inclusion on the agenda of the four-day session was postponed for up to 1 year.



According to *parliamentmonitoring.am* website statistics during the 3rd session:

From the ARF faction the deputy who has asked the most questions and given the most speeches, who has voted in favor, against or abstained the most is Artsvik Minasyan: questions-39, speeches- 30, in favor-41 times, against-38 times, abstained-103 times. Vahan Hovhannisyan has been absent the most, 92 times, and Aghvan Vardanyan has not voted the most, 73 times.

No ARF member is on the list of top ten deputies who have voted in favor the most in the parliament. The list of top ten deputies who have abstained the most has 5 ARF members. In the list of top ten deputies with the most absences ARF is represented by 1 member. The lists of top ten deputies who have voted against the most and have been the most active has only 1 deputy from the faction.

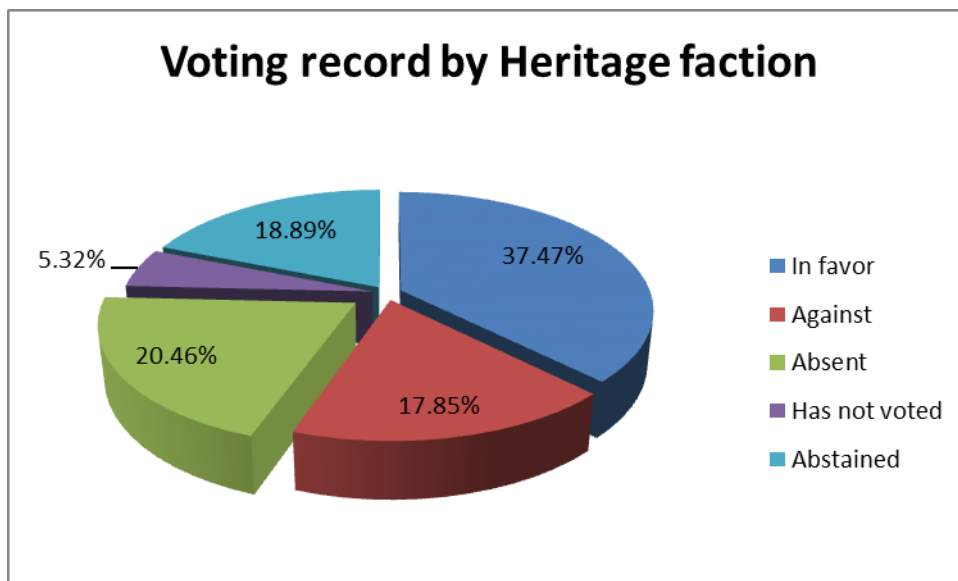
The list of top ten most visited pages (*Deputies* section of the *parliamentmonitoring.am* website) has only Artsvik Minasyan's page from ARF.

Heritage faction

During the 3rd session of the RA National Assembly of the 5th convocation no legislative initiative from the Heritage faction has been adopted. Only one draft law proposing amendments to the Electoral Code was discussed due to the fact that it was recognized as a priority by the faction. The draft did not pass the vote by deputies. The initiative to set

up an ad-hoc committee inquiring into the issue of Teghut did not make the agenda again due to not passing the vote by deputies.

The Heritage has 4 legislative initiatives in circulation, with their inclusion on the agenda postponed for up to 1 year.



According to *parliamentmonitoring.am* website statistics during the 3rd session:

Among the **Heritage** faction deputies Zaruhi Postanjyan has asked questions the most, 10 times. Also, Ruben Hakobyan and Zaruhi Postanjyan have given most of the speeches, 8 times. They are the deputies who have voted in favour the most in the faction, 87 times. Ruben Hakobyan has not voted the most, 30 times, Aleksandr Arzumanyan has abstained the most, 61 times, Tevan Poghosyan has voted against the most, 47 times. The Heritage deputy with the most absences is Zaruhi Postanjyan, 72 instances.

The lists of top ten deputies who have been absent the most, voted in favour, asked questions and given speeches in the parliament do not have any Heritage members.

The list of top ten deputies who have voted against the most has 3 Heritage representatives, and the list of top ten deputies who have abstained the most has 1 Heritage member.

The list of top ten most visited pages (in the *Deputies* section of the *parliamentmonitoring.am* website) does not have any Heritage faction members.

NA OVERSIGHT

The agenda of the 3rd session of the NA of the 5th convocation was unprecedented in that it was full of questions that fell within the scope of the oversight function of the parliament, that is 4 programs, 3 reports, 2 papers and 1 communication. More than half of this 10 documents provoked lengthy and heated discussions in the parliament. In reality,

around half of the time in the plenary sittings of the 3rd session was dedicated to hearing/approving/taking into consideration the programs/reports/communications and the other half to the adoption of 95 laws, with most of them going through more than one reading.

In this context the question that becomes pressing is what legal background and tools are created for the effective implementation of the oversight function of the parliament. The answer remains unchanged: for the time being the oversight by the National Assembly is basically a formality, since for the most part the procedures for presentation of reports-communications imply merely a mandate for the parliament to “take into consideration”.

In fewer cases, when the National Assembly is equipped with significant oversight levers (approval of the government program, budget performance...), the parliament’s political majority cancels out this opportunity with its conduct, demonstrating constant and unconditional trust towards the executive.

The 3rd session also recorded the parliament’s careless attitude towards the confused sequence of issues presented by the Government. The NA first approved the Government program, then discussed the budget performance report for the previous year, and then was extremely surprised by the facts published in the report on inefficient spending of budgetary funds presented by the Control Chamber.

We will present the issues selected in the scope of the NA oversight function according to the chronology of their discussion in the parliament.

Communication by CEC

The RA Electoral Code states that following the publication of results of the nationwide elections the chair of the Central Electoral Commission, within 3 months, presents a communication to the National Assembly regarding the organization and conduct of parliamentary elections, analysis of the violations of the Electoral Code and recommended legislative amendments.

The communication on 2012 NA elections was presented to the parliament in March of 2013 with a considerable delay. This fact was stood out especially since the communication on the parliamentary elections was being presented after another nationwide election, the RA presidential elections. In addition, the NA Rules of Procedure do not imply any discussion of the CEC communication at all. This was something that the political minority in the parliament was inclined to do. Within the procedure the opposition tried to prove that this

communication needed to be discussed according to Article 55 of the Rules of Procedure when the presentation and Q&A is followed by speeches, and the majority insisted that the communication must be concluded with a Q&A session.

The CEC chair read out the communication, assessing the organization and conduct of parliamentary elections as satisfactory and based on certain criteria even high, made a number of recommendations to improve the electoral legislation, including getting rid of the practice of stamping the IDs of the voters.

The majority has so far not come up with legislative initiatives as a follow-up to the recommendations by the CEC Chair.

Reports by the Human Rights Defender

The law on Human Rights Defender states that every year in the course of the NA spring session the Defender presents a report in the plenary session of the RA parliament concerning the work performed in the previous year and violations of human rights and freedoms in the country.

For the first time the HR Defender presented to the parliament two reports at once, for 2011 and 2012, that were drafted based on a new format and logic. If the previous reports of the defender presented the state of human rights based on specific rights, this time they were presented according to state offices.

Note: In 2011-2012 the work and affiliation to human rights protection of respectively 26 and 22 departments was reviewed. In 2011 145 systemic issues were noted, 70 of which were solved already over the next year and the rest were included in 2012 report noting 148 systemic issues. Unlike the 2011 report, the 2012 report does not present the work of the National Security Service, Central Electoral Commission, National Commission on Television and Radio.

Overall, the parliament, did not agree with the approaches employed for the report believing that such a structure shifted the focus from the human rights. In response to the voiced criticism the NA and the HR defender agreed to include also the violations by specific rights.

The reports were taken into consideration, and the issues raised and the facts recorded in the reports have not received any response so far.

Program of the Government

The government shall submit its programme to the National Assembly within a twenty-day period following its formation. The issue of approving the Government programme by the National Assembly shall be discussed on a priority basis and shall be put to vote within a five-day period upon its submission. The decision on approving the Government programme shall be passed by a majority of votes of the total number of deputies of the National Assembly

RA Constitution, Article 24

During the four-day sessions of May 20-23 the Government submitted its program to the NA. In fact, this was the presentation of already the 3rd program by the Government formed in 2008 and with mostly maintained make-up to the parliament, which had basically maintained its make-up since 2007. At the same time, as required by the Constitution, the Government had to submit programs twice within the past year, after the 2012 parliamentary and 2013 presidential elections.

This fact initially took the intrigue away from the program to be presented and the proportion of voting results could be predicted. The substance of the program and style, targets and goals were retained almost in full.

The 2012 and 2013 programs of the RA Government share a conceptual base. The next 5 years are expected to record a 5-7% annual GDP growth. According to different estimates by experts the potential of Armenia's GDP in within this range, so the program is based on the idea of securing an average and not a high growth rate.

From the expert review

Observation. *The 60-page program is predominantly declarative including all the areas of public and political life and concepts characteristic of declarations such as “implementing” (27 mentions), “strengthening” (19 mentions), “contributing” (17 mentions), “reducing” (16 mentions), “expanding” (15 mentions), promoting (8 mentions), etc.*

It is only the 2nd chapter of the program that contains certain figures and data that makes the document somewhat concrete.

Note: The Government pledges to secure a 5-7% annual GDP growth, at least double the minimum wages level, raise the fertility rate to 1.8, ensure access of at least 90 % of 5-6 year old children to preschool education , to raise the average work-based (insurance) pension to 125 % in relation to the poverty line, ensure poverty reduction by 8-10 %, create over 100 thousand new jobs, ensure the increase in the state revenue collection level in the amount of 0.3 - 0.4 % annually in relation to the GDP.

The Prime Minister announced that in putting together the Government program the election platforms of the RA President, RPA and RoLP were taken as a basis and the priority for the Government was going to be the issues of poverty and unemployment reduction, migration, strengthening of democratic institutions.

The opposition criticized the lack of clarity and ambition of the program and at the same time questioned its feasibility stating that the Government did not have or had not pointed out its ideas regarding the concrete measures to attain even these extremely modest goals. The political majority responded to the criticism by the opposition aggressively, for the most part in a not substantive and personalized manner.

So the heated and lengthy parliamentary discussions of the formally new, but in reality not so new program presented to the parliament by the newly formed but in fact not new Government again did not lead to the formation of adequate public perception regarding the key directions and outcomes of the Government's work with the help of the NA political majority in the coming years.

Performance report on the Budget 2012

The National Assembly shall oversee the State Budget performance, as well as the use of loans and credits received from foreign states and international organisations.

RA Constitution, Article 77

The Budget performance reports is one of those documents presented to the NA for discussion that entitles the parliament to raise the question of the vote of no confidence towards the Government. The law on NA Rules of Procedure states that at the end of the procedure set for the budget report the Prime Minister or the head of the authorized body of the financial sector may propose a vote on the NA draft decision on approving the annual budget performance report or raise the question of the vote of no confidence to the Government regarding the approval of the annual budget performance report.

The parliament discussed and approved the RA 2012 state budget performance report in the four-day session of June 10-13. The decision was adopted with 66 votes in favor, 36 against and 1 abstaining. Only the coalition parties voted in favor.

Note: In the 2012 state budget the planned revenue was 944.9 billion drams and the actual revenue totaled around 946.2 billion drams. The indicator for the previous year was exceeded by 7.4%. The program indicator was attained by 100.14%. The planned state budget expenditures were around 1,077.2 billion drams, whereas the actual expenditures totaled 1,006.1 billion drams securing a program performance indicator of 93.4%.

According to the Government underspending is due to “saving of funds planned for certain programs, as well as due to deferred payments associated with procurement in the scope of certain programs. The deviation is partially due to the performance of programs implemented with foreign assistance (60.6%)”.

In 2012 compared with the previous year the RA State Budget expenditures have increased by 2%.

The RA 2012 state budget was performed with a 59.9 billion dram deficit making up 45.3% of 132.2 billion drams planned for the program. The deviation, as explained by the Government is due to the expenditure performance.

The discussion of the budget performance report followed the logic of discussions of economic documents presented by the executive. 4 non-coalition factions of the NA criticized it leaving the task of supporting it only to the RPA and RoLP. What came under criticism was not so much the figures in the performance report, but rather the inconsistency of the socio-economic state of the country and the presented figures, as well as pursued economic policy as a whole.

Report by the Control Chamber

As per Article 101 of the NA Rules of Procedure, the Control Chamber presents the annual report for the discussion in the parliament no later than within 3 months following the end of the budgetary year and it is discussed before the end of the given regular session. The deputies discuss it without passing any documents.

The parliament discussed the 2012 report by the CoC on June 13, the last day of the last four-day sitting of the spring session. The discussion continued also during the extraordinary session that started on June 17.

The discussion of the CoC report was perhaps the most heated and contentious one over the entire spring session. The findings of the report sparked strong criticism by not only the opposition but also the political majority.

In 2012 as a result of the performed checks and oversight the Control Chamber, like in the previous years, recorded a great number of cases of inefficient spending of budgetary funds, violations and poor performance, noted that the violations were general and of systemic nature. As far as corruption is concerned, the sectors with the highest risk as per the Control Chamber continue to be the construction and procurement sectors.

The monetary value of the damages to the budget, unlike in the previous years, was not disclosed from the NA floor. The head of the Control Chamber only noted, that the budget had 701 billion drams earmarked for construction and procurement.

***From the report:** In the construction sector the payments for the work not performed are a common occurrence, as are the artificial rise in prices, use of low-quality options of planned high-quality materials and goods, performance of imperfect technical supervision. In the procurement sector the oversight continues to reveal procurement processes organized on a not competitive, inefficient, not transparent, not public and discriminatory basis.*

The Control Chamber has only taken action regarding one case from many violations recorded sending the materials to the Prosecutor's office. Based on the materials pertaining to the "Criminal Justice program implementation office" state institution of the RA Ministry of Justice a criminal charge was filed.

NA oversight function. Ups and downs and lack of clarity

(expert review)

The 3rd, spring session of the National Assembly of the 5th convocation was different in terms of performance of the oversight function of the parliament in that the parliament addressed the annual reports and work programs presented to it by a number of state bodies. With the exception of the performance report of the last year's State budget, in all other cases the parliament was constrained by the limited authority to solely take them into consideration, which minimizes the efficiency of exercise of the NA oversight function, since it denies the parliament the opportunity to influence the work of the executive and judicial authorities and take a legal-political stance.

Perhaps it is due to the underestimation of this function that the reports continue to be discussed with procedural violations, when they are overdue, which reached its extreme in this session. Particularly, the Defender of Human Rights presented the 2011 and 2012 reports to the parliament at the same time. Although this gave an opportunity to compare the overall state of human rights and freedoms over two years, the presentation of the 2011 report one year past due, did not make it possible to draw appropriate conclusions in the right time and address the recorded violations ahead of 2012.

In May, 2013 the Parliament took into consideration not only the performance report of the Central Bank on the 2012 monetary policy action plan, but also the plan itself. In fact, it was adopted in parallel with the report on its performance whereas the plan had been on the agenda of the parliament since April, 2012.

In reality, the 2012 State budget annual performance report and the 2012 report on the work of the Control Chamber as well were adopted not so much with procedural violations, but with broken logical sequence. Logically the parliament had to first discuss the Control Chamber report on the spending of budgetary funds. The reason is not because it was included on the NA agenda earlier, but since it would make it possible to compare the assessment of the efficiency of spending of public funds with the picture presented by the Government. However, it was put up for discussion after the 2012 budget performance report, and the political majority did everything to ignore the attempts by the parliamentary minority to informally discuss the violations and appropriations revealed in the CoC report which was already in the possession of the deputies in the course of the budget performance discussion process.

Simultaneously, the exercise of the oversight function by the parliament took new, at times controversial forms in this session, which can later lead to legislative revisions offering vague prospects for the time being.

First, although the discussion on the 2012 budget performance report itself was not anyhow different from the discussions of the previous years the fact that the NA leadership put it up for discussion before the CoC performance report demonstrated that the parliamentary majority sought to ensure that it did not create even minor problems for the newly formed Government, freeing it from the need to answer sharp questions and to face potentially serious public resonance.

Second, unlike the previous sessions, the presentations on nearly all reports and programs were accompanied with the unprecedented active involvement of the political majority. Although all in all it was driven by the tactics to “suffocate” the criticism by opposition with this active engagement, in a way it promoted debate environment and culture.

Third, the 2011 and 2012 reports by the Human Rights Defender compared favourably with the previous ones in that they were well-rounded. They covered not only civil freedoms, electoral rights and legal relations of the citizens with the systems of law enforcement and justice, which served as a base for the previous reports, but also reviewed the civil rights within the social, political, economic sectors and public services rendered. The methodology employed in the research was the review according to state bodies. This facilitated identification of the source of the recorded violations and the scope of those in charge. Perhaps for this reason it was hotly discussed and received serious political support from the parliamentary opposition. Although it contains direct and indirect recommendations to solve most of the noted issues through legislative amendments, the noticeably restrained attitude of the political majority towards the human rights issue, the lack of motivation and the inadequacy of resources of the parliamentary opposition on the other hand has not driven to an agenda for legislative amendments. Consequently, the reports are mostly not followed up and given the indifference of the parliament end up with the executive reacting.

Fourth, the 2012 report on the performance of the Control Chamber, its discussions in the parliament and especially the developments that followed presented a condensed picture of the real potential of the oversight function of the NA, as an independent branch of the government, as well as public and political expectations from it. Content-wise this report was not much different from similar CoC documents of the previous years. They were ignored upon taking into consideration in the NA, despite the existence and abundance of facts attesting to misappropriations of budgetary funds and corruption. However the latest CoC report stirred very heated discussions and sharp criticism of the Government, with the parliamentary majority being especially active and motivated. This kind of active involvement was unnatural first of all because, it was not supportive of the executive or even neutral, but was markedly critical, which was inconsistent with the behaviour demonstrated in the past during similar reports and legislative initiatives. Especially since only a few days earlier the

NA majority had without any problems approved the 2012 State budget performance report by the Government.

The statement of the CoC head regarding the high risk associated with around 700 billion drams in the expenditures of the Budget was received by the Government as an accusation of mismanagement and appropriation of these funds. It criticized the CoC for stepping outside its purview and voicing political statements and opinions. The NA-Government debate flowed into CoC-Government confrontation, in which the president of the Republic interfered holding a consultation meeting on the issues of efficient management of budgetary funds, strengthening control over state programs under way and lowering the corruption risks.

Report by the Control Chamber and especially the events unfolding around it set forth both positive and negative tendencies. First, for the first time the NA actually demonstrated an adequate level of independence guided not by the principle of integrity of the government, but of separation and checks and balances of the branches of government. In this sense, the NA Chairperson's step of forwarding the CoC report to the Prosecutor's General Office by which he moved the issue from the political field into the legal one, was telling. However, the differentiated approach towards one particular report raised serious doubts that what happened could be associated with conflict of personal or group interests, and desire to turn the parliamentary discussions into an arena for speculations.

On the other hand the consultation meeting held by the RA President made it obvious that a political decision was made regarding the amendments to be made to the legislation on the Control Chamber. In essence, this is one of those unique cases, when the exercise of levers of oversight by the NA leads to such a consequence. However, the issue is the nature of these future changes. Will they seek to limit the mechanisms and formats of discussion of the CoC studies and reports by the Control Chamber in the parliament or the opposite? The criticism by the RA President of the conduct and statements by the Head of the Control Chamber, as well as of the NA political majority, the attitude of denial by the Government do not leave rooms for optimistic expectations in this sense. If the legislative amendments are of a restrictive nature, the dependence of the parliament on the executive can turn from de facto to de jure, and the oversight function can become a mere formality. In this sense, disagreements and political processes triggered by the CoC report during the session can be characterized as a display of landmark positional battle between two branches of the government.

NA LEGISLATIVE ACTIVITY

During the 3rd session of the RA National Assembly of the 5th convocation 95 laws were adopted: 5 were mother laws, the rest were amendments and additions to the operating laws.

The Government was the author of 79 laws adopted, (10 of them the Government has recognized as urgent), 15 were authored by the NA deputies, 1 was a joint draft. Around 1/3 of the laws (31) were adopted over the extraordinary session. 2nd and 3rd readings of nearly half of them were arranged in a 24-hour setting. Out of 95 laws the parliament has adopted 21 through a special procedure.

Around half of the adopted laws, 42 concerned the socio-economic sector, 27-state and legal matters, 8-defense and internal affairs, 7-the education, 6-regional administration and local self-government, 2-healthcare, 3-human rights.

As mentioned in the *NA Oversight* section, the National Assembly has discussed 10 programs, reports and a communication in the 3rd session, dedicating to this nearly half of the time of the session. This has impacted the legislative work of the parliament. According to the *parliamentmonitoring.am* statistics around half of the laws in the 3rd session were passed without motivated discussion (no questions or speeches). At the same time, the discussion of the report of the Control Chamber, for instance, nearly set a record in terms of questions in the parliament. Several sittings were dedicated to the discussion of programs and reports whereas many laws were often discussed and adopted over a single sitting.

Below are the monitoring results for some of the laws adopted in the spring session. Through 3 packages we have reviewed the legislative measures intended to improve the areas of defense and human rights, budgetary system and business environment. We have also looked at how these matters are covered in the political platforms and compared the programmatic approaches and positions expressed in the votes.

ALTERNATIVE SERVICE

On May 2, 2013 the parliament adopted the legislative package proposing amendments and additions to the RA Laws on Alternative Service and on Putting into effect the RA Criminal Code, with 65 votes in favor, 2 against and 26 abstaining.

The coalition factions as well as present ANC and Heritage faction deputies voted in favour of the package. PAP abstained, ARF did not participate in the vote. One RPA deputy and one Heritage deputy voted against.

Rationale for amendments. According to the Government the legislative amendments were driven by the commitments to the Council of Europe. The Law on Alternative Service was adopted in 2003, but was actually not in effect. This was due to certain legislative clauses that were in conflict with the European requirements for alternative service. As a result,

the European Court of Human rights has issued many rulings against the Republic of Armenia in relation to criminal charges filed against citizens who due to their religious convictions had refused alternative military and labor services.

Note: Throughout 2012 the European Court of Human Rights (ECHR) has issued several rulings against the Republic of Armenia regarding the claims by the members of "Jehovah's Witnesses" religious organization. According to the rulings on "Bukharatyan vs Armenia" and "Tsaturyan vs Armenia" cases Armenia has to pay each of them 10.000 euros. These individuals were sentenced to time in prison for their refusal of the term military service. In relation to these cases the ECHR had acknowledged a violation of Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights (ECHR). On November 27, 2012 the European Court of Human Rights granted 17 applications by Jehovah's Witnesses in relation to "Khachatryan and others vs Armenia" case. According to the mentioned ruling Armenia has to pay each of them 6000 euros, as well as 10.000 euros for general litigation fees, which totals 112.000 euros.

The substance of the amendments: The introduced amendments draw a line between alternative military service and alternative labor service based on the idea whether the convictions of the individual go against serving in the military in general or simply carrying and using arms. Determination of the type of service is delegated to the Republican Commission on alternative service. If in the past this structure was made up of the military, which was one of the most contentious clauses in the law, as a result of the amendments the commission will consist of the representatives of the public administration offices overseeing the areas of territorial administration, healthcare, labor and social affairs, education and science, police and defense as well as of the RA Government representatives of the coordination office for ethnic minorities and religious affairs. The determination of procedures for the commission to receive, review applications and issue decisions as well as for appeal rests with the Government.

The terms of alternative service are reduced. The term of alternative military service is set at 30 months versus former 36, and for alternative labor service at 36 months versus former 42 months.

The individuals who have avoided military service due to religious convictions or views and have served time in prison from the moment of assuming a duty to take up alternative

service til the adoption of the operating RA Law on Alternative Service and those who have been arraigned for the same reasons after adoption of the law are considered to have no conviction record. And those who are at this point serving their sentence on the same grounds are given the opportunity to take up alternative service, with its type to be determined by the above-mentioned commission.

Alternative service: The silence of the election platforms

The discussions on the package in the NA plenary session were held in an unusual environment. The parliament adopted this package in fact being against it.

Although it was authored by the Government which has the backing of the political majority, it was met with opposition by that very parliamentary majority. The opposition represented by ANC, ARF and Heritage factions, as well as the self-proclaimed “alternative” PAP faction, practically did not participate in the discussions although it was directly related to two key sectors at once: the national security, defense capability and honoring the fundamental human rights and freedoms. The majority demonstrated an inconsistent approach during the discussion and the vote, showing that although they did not agree to it since such amendments went against their outlook, they had no way to avoid it and has to assume the political responsibility for it.

In the platforms of the parliamentary forces the issue of alternative service is not covered neither from the perspective of defense and armed forces nor freedom of conscience, faith and convictions. If the issues related to the army are somewhat structured in the platforms, section on human rights, specifically civil rights are either not included or is so dissolved in the points concerning other sectors, that is not measurable.

The **PAP** declares the life and dignity of the soldier a highest value, however does not state anything on the alternative service. Neither does it view the issue within the human rights domain. Although the party considers the respect for human rights as one of the anchors of public administration it avoids the issue of the freedom of conscience and religious convictions.

During the vote in the first reading the PAP almost in full supported the package, while in the second reading it mostly abstained. The inconsistency was possibly due to the fact that its indirect suggestion to limit the reductions planned for the alternative service was declined.

The **ANC** in its over dozen sector-specific programs published in the pre-election period does not address neither the issues of the army nor the protection of civil human rights. The faction associates the protection of human rights primarily with institutional reforms

in the area of justice. In the vote on the package the ANC exhibited a divided approach. Part of the faction voted in favor, the other one abstained. Not assuming full responsibility for the adoption of the package, the faction, basically demonstrated loyalty towards its adoption.

The **ARF**, coming from its national conservative position and highly prioritizing state safety and defense capabilities, assumed a position of avoidance, not participating in the vote. It is hard to say whether it was done in order to sabotage the adoption of the package, or to avoid its responsibility to vote, since during the discussions the faction has not raised any questions and has not come up with a united position. As for programmatic statements, the party looks at the army and defense sector in the context of raising combat capability, improving the moral and psychological environment and ensuring statutory relations in the army, while ignoring the existence of alternative service and related issues. As regards the civil human right the only thing mentioned is guaranteeing the right to expression and pluralism.

The **Heritage** is the only parliamentary force which has cursorily addressed the alternative service in its program stating the need for changes, not clarifying though what kind. In the context of sector-specific priorities the party states the need to boost the morale of soldiers and officers, strengthen civil oversight towards the army and armed forces, as well as raise its combat capability. The programmatic point regarding amendments in the legislation on alternative service suggested that the faction would at least participate in the discussions around the draft by the Government, thus determining the extent to which the proposed solutions and amendments were in line with the party expectations. The faction has demonstrated a divided approach in the vote. The deputies representing the Heritage party have abstained, representatives of Free Democrats have voted in favor. Formally speaking this position contradicts the logic of the platform while content-wise it is hard to appraise.

The priorities outlined in the **RoLP** election platform are the modernisation of armed forces, ensuring social guarantees for the military, increasing civil oversight towards the sector. However, unlike the others the RoLP also addresses the protection of rights of common soldiers in its platform, which can be indirectly associated with the rights of those performing alternative military service given that it concerns those citizens, who are ready to take up military service without carrying arms. In this sense the moderately critical position demonstrated in the parliamentary discussions by the RoLP members towards the presented package can be considered inconsistent with this programmatic point, while the voting can be regarded as consistent. RoLP in full has voted in favor.

The **RPA** platform pivots on the concept of securing safety for the country and its citizens. The issue of alternative service has been completely circumvented, which perhaps comes

from the party's conservative world view and ideology. But as a political majority the RPA could not avoid the responsibility of adopting the law due to rulings regularly issued by the European Court of Human Rights and the pressure from international organizations. However it is worthy of note that in the platform of the political force representing the government the issue of human rights is not really of systemic nature.

Program budgeting

Amendments made to the RA Law on the Budgetary system of the Republic of Armenia resolve the issue on institutional or macro levels, however on micro level the issues are numerous and subjective, because at the end of the day the aggregate efficiency of public expenditures management hinges on the financial management skills of each beneficiary of the budgetary funds.

*From the expert review
(See the full review in the appendix)*

On April 30, 2013 the parliament adopted the legislative package proposing additions and amendments to the RA Laws on the Budgetary system of the Republic of Armenia and on the Treasury System, with 74 votes in favor, 3 against and 29 abstaining.

The coalition factions and ARF have voted in favor of the package. PAP has abstained, the rest of the factions have voted independently.

The substance of the amendments: The legislative amendments lay the legal groundwork for the introduction of the program budgeting. The Government plans to make a transition from a “line-item” budget by economic classification to the program one. The transition will happen in stages. The new system will be partially introduced from 2016, and fully from 2018. The program budgeting focuses not on the allocations from the budget, which has been the case up til now, but their final outcome, and the performance of the planned programs is brought into focus.

Rationale for amendments. The transition to program budgeting, as explained by the executive, will raise the clarity of expenditure planning and management efficiency, allowing us to correctly assess the budget performance.

From the reasons stated in the package: For years the assessment of the public expenditure management system has been based on indicators of required, allocated and used resources

for the respective program (although in the recent years a number of non-financial indicators were also employed). These indicators and their combination have not drawn a complete picture of program aims, proposed ways to achieve them, anticipated outcomes and the overall economic and social efficiency of the program. In the course of preparation and implementation of budgetary programs the format of their presentation has to reflect not so much the structure of program expenditures, but rather the planned (actual) outcomes of the program.

Program budgeting: in favor with no programmatic grounding

This was one of those unique legislative initiatives that were adopted in an environment of mutual understanding. The passive attitude demonstrated by the opposition in the discussion showed that both the concept of program budgeting and the proposed mechanism for its introduction were acceptable. However, in their election platforms some of the factions have not at all prioritized the issue of budgeting, as a framework for efficient management and planning of public funds.

The **RPA** was the most active faction during the discussion of the legislative package and without this level of involvement the political and public significance of the package would have gone unnoticed. However the election platform of the political majority does not contain any mention of the budgetary system and, more specifically the need to shift to program budgeting. At the same time, the RPA had dedicated an entire chapter to this sector in its 2007 program. Therefore, the fact that the RPA voted in favor of the legislative package should not be viewed in terms of its compliance with the programmatic approaches, but in the context of supporting the initiative of the Government backed by it.

In its election platform the **RoLP** has not mentioned the need to shift to program budgeting model either, which stand out even more given the party's fundamental position to develop the socio-economic sectors based on concepts, programs and strategies. The program budgeting is the key element laying the groundwork for implementation of such a policy. The constructive approach of RoLP demonstrated in the adoption of the legislative package was perhaps due to the inclination to fill this gap in the program. No wonder that in the discussions the RoLP stated that the switch to a new budgetary model was driven by the need to ensure the essential connection between the mid-term and long-term expenditure programs and financial planning by the state.

The **Heritage** platform does not address the revision of budgetary policy either, although the platform is entirely anchored in the revision of tax policy and the transparency of state budget receipts and expenditures. The faction was moderately indifferent to the legislative package (only one deputy from the faction participated in the discussions, emphasizing the

need to set quality criteria for determining the efficiency of expenditures). Internal faction disagreements have also determined the controversial voting picture.

In the **PAP** election platform there is no direct statement regarding the shift to program budgeting either. Certain programmatic points tacitly address budgetary policy components regarding the accountability and transparency of revenues and expenditures and budget performance oversight, which are of general nature. The key feature of the program budgeting, that is the principle of program-oriented and result-oriented financial management, has been, in essence overlooked by PAP. The PAP hardly participated in the discussion of the package, and exhibited a politicized approach in the vote. The faction in full voted in favor of the package in the first reading, but abstained in the second reading. The faction had announced earlier that it was going to abstain in the vote on all initiatives by the Government, since the executive did not issue favorable conclusions for their drafts.

The **ANC faction** demonstrated an inconsistent behavior regarding the issue. In the “100 steps” program of the bloc the idea of administering public expenditures through a program budgeting model and minimizing the line-item or, by ANC definition, “cost-estimate” financing is clearly stated. However, during the vote on the package the ANC members mostly opposed it or abstained. With no grounds cited, such conduct can only be explained by internal dividing lines emerged in the ANC, which gradually make it impossible to adopt united positions within the faction.

For the **ARF** the shift to program budgeting model is essential as clearly formulated in its election platform. The ARF sets forth the issue of employing this model not only for state, but also community budgets in order to ensure uniformity. The discussions made it clear that the party also looked at this transition from the perspective of improving oversight mechanisms by the opposition towards the performance of the budget and annual programs of the Government and raising the accountability and responsibility of the political majority. During both the first and second readings the ARF voted in favor of the package, first of all since it stemmed from their own election platform.

License cuts

National Center for Legislative Regulation of the RA government staff, which is also figuratively known as the “regulatory guillotine”, was founded in 2011 based on a governmental decision. The center seeks to simplify legal acts that contain regulation and reduce the mechanisms and business processes prescribed by them. Today Armenia has 26,000 operating legal acts containing regulation. Over the two years of work the Center plans to reduce at least 30% of the regulations and simplify 20%-30% of them.

During the 3rd session the National Assembly has discussed and passed two legislative packages concerning the public services sector and developed within the “regulatory guillotine” policy.

The law proposing amendments and additions to the Law on Electronic Communication (with related 2 laws) was adopted on April 4 with 77 votes in favor, 2 against and 29 abstaining and the Law on Energy Sector (with related 3 draft laws) was adopted in an extraordinary session on June 19, with 70 votes in favor, 8 against and 15 abstaining.

The substance and rationale for the amendments: The first legislative package proposed eliminating the two of the basic licenses operating in the electronic communication sector, and simplifying the procedure for issuance of one of the compound licenses stating that it was to be removed as well in 2015. According to the reasoning by the Government lifting the requirement for mentioned three licenses will cut 12 business processes related to the issuance of licenses, extension of the term, new registration, change of the place of business and receiving copies.

The second legislative package proposed cutting 8 of 19 licenses operating in the energy sector. In this regard as well the rationale of the executive was that the removal of licenses will cut around a dozen of business processes.

During the discussions on the packages the RPA deputies were noticeably active. The passive attitude of the parliamentary opposition was perhaps driven by the absence of serious objections to the envisaged amendments.

The “regulatory guillotine” in the platforms

In the election platforms the majority of the parliamentary forces have not covered in a clear and structured manner the issue of cutting the bureaucratic red tape, as an anticorruption tool and a means to raise the efficiency of the governmental system and business activities.

The line of the Government is reflected in the **RPA** program priorities: they stress the need for elimination of duplicate functions and reduction in inspection bodies. The packages aim to cut the number of licenses, although for the time being they do not lead to a notable reduction in the range of licensing authorities.

Unlike its coalition partner the **RoLP** views the issue in its platform as a fight against corruption, within reducing the “risks of abuse and potential embezzlement”. Simplification of bureaucratic administration of services, as a mechanism for management efficiency and economy of funds, is not stressed in the program. Though being in favor of the packages, the faction’s modest participation in the discussions did not make clear the extent to which it considered the proposed amendments to be a mechanism for implementations of the programmatic aims.

In its program the **PAP** elaborates on the concept of creating a favorable environment that is required for the development of small and medium entrepreneurship through “easing oversight and government intervention regimes”. The “regulatory guillotine” policy in this sense is consistent with the logic of the party platform. Nevertheless, the PAP has abstained in the votes on both packages actually sacrificing programmatic aims for the political move declared against the Government.

The **ARF** views the reduction in the intervention of state authorities as an opportunity for simplification of doing business and expansion of business capacities. The program focuses on the need to replace the administrative law mechanism of licensing with civil law mechanisms leaving the government only with the oversight function towards the products of the business entities. The discussions did not clarify how the Federation saw the transition to civil law relations in the context of the new sector-specific regulations.

For the **ANC** the proposed amendments were acceptable as they were almost fully in line with the programmatic clauses of the bloc. In the “100 steps” this political force prioritizes ruling out the duplicate functions and more critically the combination of functions of the ordering and executing parties in the public administration system. The ANC, however, attaches more importance to the issue of optimization maintaining that as a result of the revisions the government machine shall be reduced by 1.5 times, instead the salaries shall increase by 2.2. The “guillotine” policy does not view the issue of cutting the public administration staff as a priority at this point.

The **Heritage** platform has distinct anti-corruption focus whereas the issues of decreasing the bureaucratic administration are not covered in the program in structured manner or even on declarative level. The faction has almost never participated in the discussions on the packages, has not raised questions and given speeches preferring the active involvement in other political processes in this period.

During the 3rd session of the RA National Assembly of the 5th convocation only two legislative initiatives by the opposition factions were discussed. The draft law by the Heritage faction on making amendments and additions to the RA Electoral Code, and ANC faction’s initiative to set up an NA ad-hoc committee inquiring into the

Heritage: the Electoral Code

In March, 2013 the Heritage put into circulation the draft law on making amendments and additions to the RA Electoral Code. The Government and the lead committee, the standing committee on State and Legal affairs did not issue a favorable conclusion regarding the draft, but the faction used the opportunity provided by the NA Rules of Procedure, declared the draft a priority and on May 20 it was included on the agenda of the NA four-day sessions.

The Heritage proposed stipulating in the Electoral Code that the signed voters' lists should be published immediately upon the closure of precinct centers, and they could be photocopied, photographed and videotaped. The authors insisted that this would raise public trust towards the election processes. However, according to the majority the amendment was inconsistent with the position of the Venice Commission and the RA Constitution, which states that the elections in Armenia are held by secret ballot.

With 43 votes in favor (ANC, ARF, PAP, Heritage), 64 against (RPA, RoLP) and 1 abstaining the draft was not adopted.

ANC. March 1 Commission

The initiative of the ANC faction "to set up an ad-hoc committee of the RA National Assembly inquiring into the reasonableness and legality of measures and action taken by the RA Police, Special Investigation Service and RA Prosecutor's general office with regard to the case of murder of ten people or causing death, firearm and other bodily injuries to civilians, police and the military on March 1-2, 2008 in Yerevan", went through a few stages before it reached the parliamentary chamber. The draft law was put into circulation in November, 2010. In December its inclusion on the sessions agenda was postponed for up to 1 year in the Standing committee on State and Legal affairs. The proposal came from the majority which promised to vote in favour of the draft if the discussion on it was held after the presidential elections, if the political qualifications were removed from the draft, and finally if it stated that the conclusion of the commission was going to be that of the commission only and not of the National Assembly. The ANC accepted this suggestions, the committee issued a favorable conclusion in 2013 regarding the draft and it was included on the agenda of the four-day session. However, in the plenary session it turned out that the majority had prepared new suggestions so that it would support the draft. The key difference in opinions, over which the RPA and ANC did not reach an agreement,

concerned the interrogators and investigators who had participated or participated in the proceedings of the criminal case. RPA maintained that they provide explanations to the commission on their own initiative, the ANC was against. The vote on the draft was postponed for 2 weeks, but the parties did not find a compromise.

With 47 votes in favor (ANC, ARF, PAP, Heritage), 56 against (RPA, RoLP) and 2 abstaining the draft was not adopted.

NA ETHICS COMMITTEE

According to the NA Rules of Procedure the Ethics Committee based on an application by any person:

- a) submits a conclusion on violation of the provisions of Part 1 of Article 65 of the Constitution by the deputy to the National Assembly;
- b) makes a decision whether the deputy has violated the ethics rules;
- c) makes a decision on the failure by a deputy to fulfil the requirement stated in Clause 3 of Article 6.2 of the NA Rules of Procedure regarding making a statement on conflict of interest.

The young NA committee on Ethics went on a winter break leaving the review of 3 applications admitted for proceedings. The decisions to be made during the spring session in relation to these cases were going to be crucial in terms of the reputation of the committee.

In the 3rd session of the RA National Assembly of the 5th convocation the ad-hoc Committee on Ethics has issued decisions on 3 applications admitted for proceedings in 2012 and dismissed the review of the application received from the “Center for Strategic Projects” NGO. It concerned a video recording associated with PAP deputy Mikayel Melkumyan, claiming that the deputy is engaged in entrepreneurial activity. It has declined the application by the ARF faction leader Armen Rustamyan regarding the 83 deputies who had not attended the extraordinary session of November 21, 2012 and based on the application by the Transparency International has decided that the RPA member Mher Sedrakyan has broken the ethics rules (the deputy had threatened to break the jaw of the journalist who had asked him a question in the parliament).

During the 3^d session of the National Assembly of the 5th convocation the Ethics ad-hoc Committee has held 14 sittings, received 6 applications, with only 1 admitted for proceedings. The committee has not admitted for proceedings 5 applications and has issued an unfavorable conclusion regarding the only 1 admitted.

3 applications were received from citizens. Two of them were declined by the committee without review, the other one requesting the committee to review the conduct of the RPA deputy Naira Karapetyan from the ethical perspective (authored by Armine Tutunjyan, director of the House of Moscow) was rejected upon review.

The Ethics Committee has received 3 letters from NGOs: one from Women's Resource Center, two from Transparency International. The committee has not admitted for proceedings any of these applications. One of them concerned RPA deputy Hayk Babukhanyan, the second Samvel Aleksanyan, the third those deputies in the National Assembly, who have hired their relatives to work as their aides.

Productivity of the Ethics Committee: Expert opinion

In the period under review the monitoring of the overall work of the NA Ethics committee allows us to point out certain tendencies.

- The committee loses its key oversight function of conflict of interest, whereas one of the primary aims for which it was set up was to regulate this very field. The evidence was the decision on dismissing the case based on the application regarding PAP faction deputy Mikayel Melkumyan's engagement in entrepreneurship. The committee found that the recording presented by the "Center for Strategic Projects" NGO, in which Melkumyan confesses to be personally engaged in entrepreneurship, specifically real estate business, was not sufficient evidence. The decision of the committee issued for this case sets a precedent in terms of providing indirect guarantees to the deputies who are engaged in entrepreneurship since if they do not admit to this fact in writing they are protected against discovering the truth by any other means and against prospects of facing any responsibility for it.
- We see a tendency to narrow down as much as possible the evidence base for violation of ethics and turning it into a formality, thus restricting the cases and causes of application to the NA Ethics Committee. Apart from Melkumyan's case, when the committee declined the presented recording as evidence, it also declined the application by Transparency International to review from the perspective of violation of ethics the fact that the NA deputy Samvel Aleksanyan had given instructions outside his functions

and authority to precinct electoral commission members and proxies during the presidential elections in one of the electoral precincts of 07 district. The application letter was supported by video material. The committee rejected it explaining that the video material was not relevant to the statements presented in the letter.

- The practice of ignoring the presented grounds or questioning their appropriateness as evidence lowers the level of public trust towards the committee and creates preconceptions regarding the soundness of applying to it. During the 3rd session the number of applications received from the public sector, that is citizens and NGOs has decreased by half. During the fall session the committee received 13 applications, and 6 applications in the spring session. Most of the applications submitted were either not admitted for proceedings or declined upon review.
- The work of the committee tends to be led by political interests and agreements. At the beginning of the year the Ethics committee decided that non-attendance of the extraordinary session of November 21, 2012 by 83 deputies representing the political majority is not a violation of ethics rules. The position of the PAP representative was crucial in the vote. Around a week later the committee dismissed the above-mentioned case regarding the PAP member Mikayel Melkumyan. This coincidence raised doubts that this was a product of a political agreement between the majority and self-proclaimed “alternative” PAP as quid pro quo.

Consequently, the NA opposition factions discuss whether their participation in the Ethics Committee is advisable. It is no coincidence that the committee issued its decision on the most recent case regarding Naira Karapetyan without ANC and ARF representatives.

THE ISSUE OF NON-ATTENDANCE IN THE NATIONAL ASSEMBLY

One of the key features of the 3rd session of the RA National Assembly of the 5th convocation was the increased attention of the NA leadership to the issue of absences of deputies from plenary sessions and votes. After the opposition factions boycotted the NA special session convened for the re-elected RA President to take office, the NA Chairperson, Hovik Abrahamyan paid unprecedented attention to the issue of absences from sittings. As instructed by him the NA staff started publishing the statistics of cases of unjustified non-attendance of deputies by months and sittings. Based on this the deputies who had been absent without excuse were subjected to disciplinary penalties, in the shape of partial or full non-payment of the salary.

The increased attention to the issue of non-attendance was perhaps also due to the decision of April 16 by the Constitutional Court.

The CC ruling on the issue of non-attendance by deputies

Over the past 17 years the Constitutional Court has reviewed only 4 cases initiated and submitted by the NA deputies.

On November 21, 2012 48 deputies representing the ANC, ARF, PAP and Heritage factions of the National Assembly initiated an extraordinary session, which did not take place due to the boycott by the parliamentary majority and not securing quorum. 34 of the deputies who had initiated an extraordinary sitting submitted an application to the RA Constitutional Court on December 12, contesting the constitutionality of Clause 4 of Article 44 of the NA Rules of Procedure. The applicants stated that the mentioned Article of the Rules of Procedure is in conflict with Articles 70 and 71 of the Constitution.

An extraordinary session or sitting of the National Assembly shall be convened by the Chairperson of the National Assembly, at the initiative of the President of the Republic, at least one third of the total number of deputies, or the Government. The extraordinary session or sitting shall be held according to the agenda and within the terms defined by the initiator.

RA constitution, Article 70.

NA sitting is quorate, if more than half of the total number of deputies are duly registered(quorum is secured).

Law on NA Rules of Procedure, Article 44, Point 4

According to the applicants the mentioned constitutional power is to give an opportunity to 1/3 of the deputies, that is the parliamentary minority, to convene an NA extraordinary sitting or session with preferred timeline and agenda. However, the mentioned clause of the NA Rules of Procedure negates this opportunity, turning it subject to the will or desire of the majority in the National Assembly.

On April 16, 2013 the Constitutional Court recognized the disputed clauses as in compliance with the Constitution, instead 4 other clauses of the NA Rules of Procedure, which were not being disputed by the deputies were recognized inconsistent with the Constitution and void. According to the CC the mentioned 4 clauses and the subject matter of the dispute were, as a system, interrelated.

The legal substance of the CC decision. Expert view

The decision by the Constitutional Court states that the issue of protection of the parliamentary minority rights is relevant, but it is not determined by the disputed clause. It has noted that one of the constitutional guarantees for the protection of the parliamentary minority rights, is recognizing at least 1/3 of the total number of deputies as a constitutional entity and vesting the latter with the initiative to convene an NA extraordinary session or a sitting.

Disclosing the legal-constitutional substance of the disputed clauses of the law the CC has noted that **no deputy has the right to be absent without valid excuse from the NA sittings and avoid fulfilling the constitutional requirement to perform his/her duties on a permanent basis. As per the CC, the RA legislation does not state any legal grounds for not attending the NA sessions** due to political reasons. Except for the exhaustive list set by law, all other instances of absence are without valid excuse and as set by Article 67 of the Constitution must lead to equivalent legal consequences, that is the ending of the mandate.

The powers of a deputy shall end in cases of expiry of the term of powers of the National Assembly, dissolution of the National Assembly, violation of the conditions of the first part of Article 65, loss of the citizenship of the Republic of Armenia, non-attendance, without good cause, of more than half of the votings in the course of one regular session, being sentenced to imprisonment, declared as having no active legal capacity, and resignation.

The procedure by which the powers of deputies end shall be defined by the law on the Rules of Procedure of the National

RA constitution, Article 67

Regardless of whether the extraordinary sitting or the session were convened by the RA President, 1/3 of the deputies or by the Government, all the deputies **have the duty** to attend the NA sittings. Any departure from this principle will result in inaction by the

deputy and the NA, arising legal consequences, including the end of the deputy's mandate.

Apart from the grounds for absence with valid excuse stated by law, Article 99 of the NA Rules of Procedures entitles the NA to make a decision on whether the absences are with or without valid excuse. This essentially turns into a majority rule.

The Court has concluded that the **term “end”** stated in Article 67 of the Constitution is in the constitutional law domain and the consequence arises by the power of law, **when the fact exists**. NA can only **“take into consideration”** the existence of the legal fact and the consequence arising from it, not having the authority to stop the validity of the constitutional norm through a vote and in practice modify the **term “ending” to read “termination”**.

This way, the Constitution has not vested the NA with the authority to **terminate** the mandate of the deputy for absences without excuse from over half of the votes taken during one regular session, especially based on a decision, as stated in the NA Rules of Procedure.

According to the CC ruling the NA has the responsibility to make amendments and additions to the NA Rules of Procedure bringing it into compliance with the Constitution and the legal positions stated in the ruling of the Court.

Specifically, Parts 4-8 of Article 99 have to allow for such legal regulation under which taking into consideration the **legally significant fact, as stated by law**, a record is written stating that the mandate has **ended** (ex jure) **by the power of law**.

In addition, the Constitutional Court, referring to international documents, has outlined its approach stating that the rules of procedure of the parliaments should be formulated in such a manner so as to “...make it harder for the simple majority to ignore the rightful aims of the political minority groups”.

This adjustment, as per the CC, will make it harder for the simple political majority to ignore the right of the groups representing the political minority to initiate an extraordinary sitting or a session with the agenda set by them.

The political substance and implications of the CC decision

Oddly enough the decision of the Constitutional Court did not merit the attention of the National Assembly and the political forces forming it. The parliamentarians showed no interest either in the discussion of the application (it was discussed only with the

representative of the plaintiff Gagik Jhangiryan and the defendant Davit Harutyunyan attending), or the decision of the court.

During the spring session neither the parliamentary majority nor the opposition demonstrated any initiative to make amendments to the NA Rules of Procedure. If the reluctance of the political majority can be explained by the inconvenience of losing a serious lever with regard to the minority, the indifference of the opposition is hard to explain, since the logic of the CC decision and the corresponding new regulations to be introduced were intended for the NA political majority to give up the lever of politicizing the issue of absences and determining the fate of the deputy at their discretion.

In the history of the Armenian parliamentarism there has been a single case, when the deputy's mandate was terminated on the grounds of absence without valid excuse from over half of the votes during one regular session. On October 9, 2001 National Assembly decided to terminate Vano Siradeghyan's mandate, which was clearly politically motivated.

However, at least two facts render the potential positive impact of the CC decision unpromising. First, the decision whether the absence was with valid excuse or not, except for the cases stated in the Constitution, rests with the NA chairperson, who enjoys the support of the political majority. Clause 1.1 of Article 6 and sub-clauses «b» and «c» of clause 3 of Article 99 of the NA Rules of Procedure furnish the NA Chairperson with extensive opportunities to act at his own discretion and preference in this matter. This was distinctly seen especially after the opposition factions boycotted the NA special session convened for the re-elected RA President to take office. The NA Chairperson qualified the absence of 36 deputies boycotting the session as lacking valid excuse and deductions from their salaries ensued (12460 drams from each). Though the statement on boycotting was not made during the NA four-day sessions, as stated in the NA Rules of Procedure, the discontented deputies announced that the punishment was applied wrongfully.

According to Article 6, Part 1, Clause 1.1 of the NA Rules of Procedure the deputy receives no salary for the days of absences without valid excuse from the sittings of the National Assembly, as well as of the committees, sub-committees and working groups of which s/he is a member, or from the parliamentary hearings held by the committees of the National Assembly of which s/he is a member.

According to the information provided by the Public Relations and Media Department of the RA NA in March-April of 2013 deductions were made from the salaries of 76 deputies who have failed to attend without valid excuse the National Assembly sessions, committee sessions and parliamentary hearings in the amount of 2,466,300 drams. Among the “penalized” deputies 25 were from the RPA faction, 28 from PAP, 7 from ANC, 5 from RoLP , 5 from ARF, 4 from Heritage faction. Salaries of independent deputies were deducted as well.

On the other hand, the deputies had applied to the CC to review not the matter of non-attendance, but to contest the constitutionality of restrictions in exercising their right to convene an extraordinary sitting or a session. The cases of absence that can lead to the loss of deputy’s status, concern not the attendance of the NA plenary sessions, sessions of the NA standing committees and parliamentary hearings, but the participation in the votes.

Legislation does not clearly draw a line between absences from the votes and sittings which also leaves room for discretionary approach. For instance, there is a deeply rooted practice in the National Assembly when deputies register to secure quorum and render the sitting quorate, but in reality do not attend the sittings. However, they promptly mobilize during the votes on draft laws and for that very purpose these votes are held for grouped drafts at the discretion of the NA leadership. How is such mode of operation consistent with the disciplinary rules? These absences are considered to have a valid excuse only stating that the registered deputies can work and follow the course of the sitting from their offices whereas most of them are simply physically not in the NA. For this reason the attendance of NA sessions for many deputies means participation in the vote, turning the law-making work into the mechanical task of “pushing buttons”.

Absences from the NA plenary and committee sessions fall within the realm of disciplinary rules, that only imply making deductions from the salaries. However, the absences without valid excuse have established the wrong practice in the parliament of voting on someone else’s behalf, which is associated with perpetrating an official fraud and is a far more serious violation, than simply not attending the sessions.

It is clear that the application of disciplinary penalties towards the deputies who have broken the rules, which the NA Chairperson has pushed for, is intended to raise the deputies’ awareness of their job responsibilities, regardless of the fact that such an approach can also have a political underpinning. However, in certain cases it is hard to

comment on how the NA chairperson determines whether the absences of deputies are with or without valid excuse. For instance, how compatible are the deputy's right to hold meetings and receptions with citizens and the duty to attend NA sittings and the work of the committee? Is it correct to consider unjustified the non-attendance of NA sittings while the deputy meets with the electorate of his/her precinct, in other words while performing their *ex-officio* function of representation? If these are not disciplinary violations, how can we rule out the possibility that this way the deputies will claim that the absences have a valid excuse, whereas in reality they are due to personal reasons.

In any case, it is obvious, that the issue of non-attendance of deputies, particularly when it comes to determining whether the absence is with or without valid excuse, is not clearly regulated in the NA which leaves room for differentiated, discriminatory approach. Possibly, the blatant indifference demonstrated by the deputies towards the issues is due to their desire to hold on to the opportunity to freely interpret the existing ambiguities if needed. Such an expectation however deprives others of the moral right to demand impartiality from the Chairperson of the NA.