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Open Society Foundations-Armenia

Monitoring of the National Assembly

5th Convocation | 9th session | report #8

(February 1, 2016-June 30, 2016)

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INTRODUCTION

Mandate NGO presents the findings of the monitoring of the work performed by the NA of the 5th convocation in the 9th session. The summary was prepared by putting together the journalistic observations, expert analytical reviews and data generated by the statistical petition of the *parliamentmonitoring.am* website.

The first section brings together the general tendencies and indicators of the parliament's performance during the 9th session and presents information on legislative initiatives by NA factions and their level of engagement.

The *Legislation* section covers the distinctive features of the legislative process over the spring session and the monitoring results concerning several of the legislative packages adopted. The *NA Oversight* section looks into the functions of oversight by the NA. The communications/reports presented over the session were reviewed against procedures set by law and from the perspective of effectiveness of parliamentary discussions.

During the 9th session the National Assembly discussed, passed in 3 readings and amended the new Electoral Code. The report presents the monitoring results of the parliamentary discussions over the draft assessing the role and involvement of the NA in the process.

The results of the work performed by the Ethics Committee set up in the National Assembly of the 5th convocation are summed up as well. We also looked into the practice of parliamentary hearings from the perspective of its effectiveness and impact.

5th CONVOCATION OF THE NA, 9th SESSION

Session in figures

During the 9th session of the National Assembly of the 5th convocation 6 four-day and 3 extraordinary sittings were held. Following the end of the session another 2 extraordinary sessions were convened (on June 13 and June 27). All the extraordinary sittings were initiated by the government.

112 laws were adopted with 6 of them being “mother” laws and 106 amendments and additions to the operating laws. Only 5 of the adopted laws are authored by NA deputies and the remaining 107 by the government.

Only 36 out of 112 laws were adopted over the regular sittings. The 2/3 of the laws were discussed and adopted over extraordinary sittings (36) and the extraordinary session (38).

The majority of the adopted laws referred to the economic (41) and state-legal affairs (41), 10 amendments were made to the health sector, 10 to the social sector and 8 to the defense area legislation.

The NA ratified 31 international treaties. 20 of those, including the agreement on establishing a united system of air defense, were adopted over extraordinary sittings/sessions.

Over the extraordinary session of May 25 the parliament passed in the 3rd reading and in full the new Electoral Code. During the extraordinary session held one month later the code was amended.

At the start of the session the parliament held a secret ballot and elected the 4th Human Rights Defender.

Over the 9th session the NA approved the performance report on the state budget of 2015, discussed and took into consideration the annual work plans of the Commission on the Protection of Economic competition and Public Services Regulatory Commissions of 2016, reports of the Central Bank and the Control Chamber for 2015, the communication of the National Commission on Television and Radio regarding its work in 2015.

Around 240 questions included on the agenda of the 9th session of the NA was not discussed and about 90 circulated drafts are not on the agenda of the session yet.

Noteworthy facts of the session

Legislation

- The tendency noted in the previous sessions continued in the 9th session as well: compared to the regular sittings/sessions nearly twice as many laws were adopted over the extraordinary ones. 2/3 of the 112 laws (74) were discussed and adopted through an extraordinary procedure. More than half of the 31 agreements ratified over the session (21) were also adopted during the extraordinary sessions/sittings.
- Nearly all the laws arousing public interest, such as the Electoral Code (mother law and amendments), Tax Code (first reading), air defense agreement, Budget 2016 performance report, change in the government structure, were adopted over the extraordinary sittings/sessions.
- During the session, in July, based on the political agreement between the ruling power and the opposition the Electoral Code adopted only a month earlier was amended. The amendments were adopted conditionally, which is unprecedented in legislative practice. They will take force if the required funding becomes available.
- During the session the NA unanimously adopted the draft by Heritage faction deputy Zaruhi Postanjyan proposing amendments to the NA Rules of Procedure. This is the only draft law authored by the deputy adopted over the convocation. (Under the new law the deputies voting on behalf of others shall be considered violators and disciplinary measures shall be applied against them).
- One case was noted during the session when the law was declined in a vote. Having past 2 readings the draft providing Hrazdan-Cement osjc tax benefits did not pass the 3rd reading. A week later without any changes the draft law, re-submitted to the parliament by the government passed 3 readings.

Committees

- During the session the committee on state and legal affairs held the most sittings (12) among the NA 12 standing committees, followed by the one on economic affairs (8). 7 sittings were held by the defense and financial-credit committees each. 2 of the committees, namely on human rights and agricultural issues held 3 sittings each. The standing committee on European integration did not hold any sittings over the session.
- During the session only 7 out of NA 12 standing committees organized parliamentary hearings. 5 committees did not hold any hearings in violation of the requirement set in

the law on the NA Rules of Procedure to organize at least one hearing during each session. These are the committees on territorial administration and local self-government, economic, financial-credit, foreign relations and European integration issues. In the previous session 7 committees had failed to meet this requirement of the Rules of procedure.

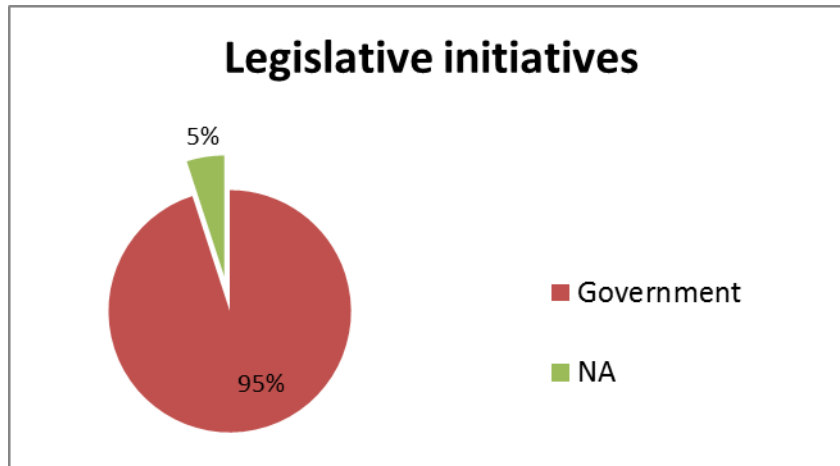
- Due to constitutional amendments the committee on state and legal affairs was given a new authority. The committee will now perform the function of nominating a candidate for the defender of human rights. The opposition however believed it would be more advisable to leave this to the committee on human rights.
- In comparison with the previous sessions the ad-hoc Ethics Committee improved its performance in the 9th session. It received 4 petitions (more by 3 compared with the 8th session), held 10 sittings and issued 10 decisions. 2 of the decisions of the committee stated a violation of the ethics rules by the deputy, another dismissed the case admitted for review and one more declined to review the petition. All the other decisions were procedural.

Factions

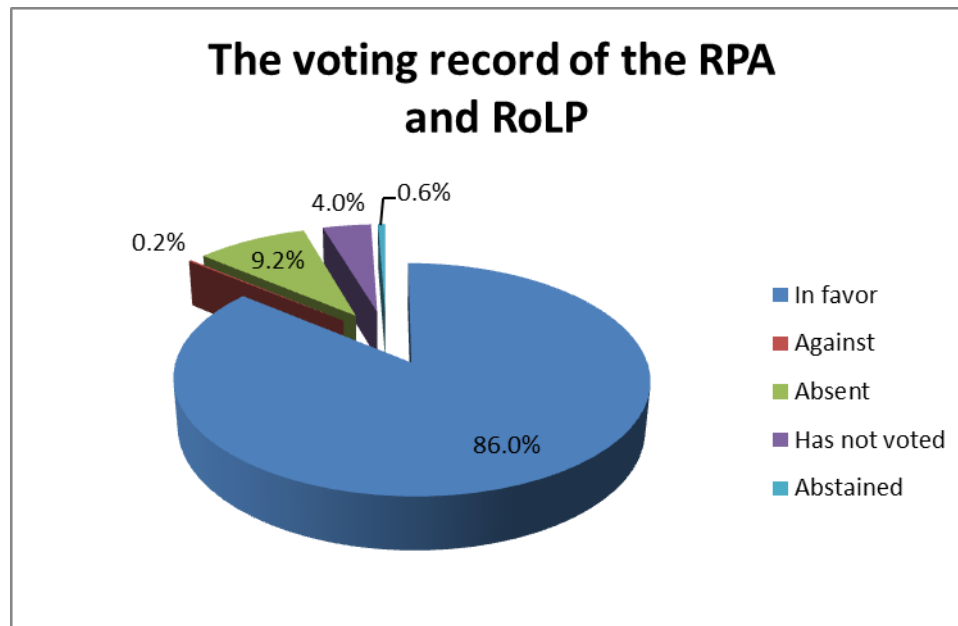
- During the session the Armenian Revolutionary Federation left the opposition and joined the ruling coalition assuming posts in the government.
- Artsvik Minasyan, appointed Minister of Economy was replaced with Karen Shakhmuradyan in ARF faction.
- At the end of the session Manvel Badeyan elected from precinct #22 through a majoritarian vote was appointed Ambassador of the Republic of Armenia in Kuwait. His mandate will remain vacant till the next elections. The existing legislative regulations do not allow holding of a new election in precincts through a majoritarian vote before the next National Assembly elections.

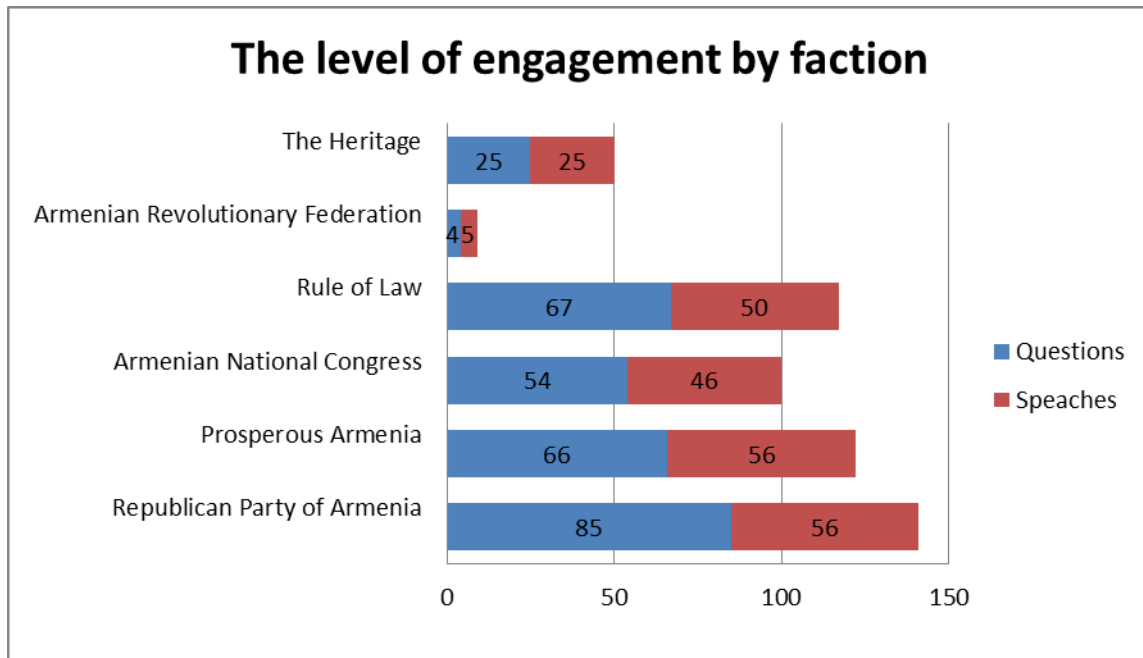
Tendencies or behind the figures

- The level of proactiveness of the parliament in law-making work has decreased compared to the previous session. In the NA 9th session the NA-Government ratio with regard to legislative initiatives was 5/95 whereas in the previous session it was 7/93.



- In the 9th session the parliamentary majority maintained the track record of its votes taken over all of the previous sessions: votes in favor make up around 90 % of all the votes with votes against not even reaching the 1% line and concern initiatives by the opposition only.





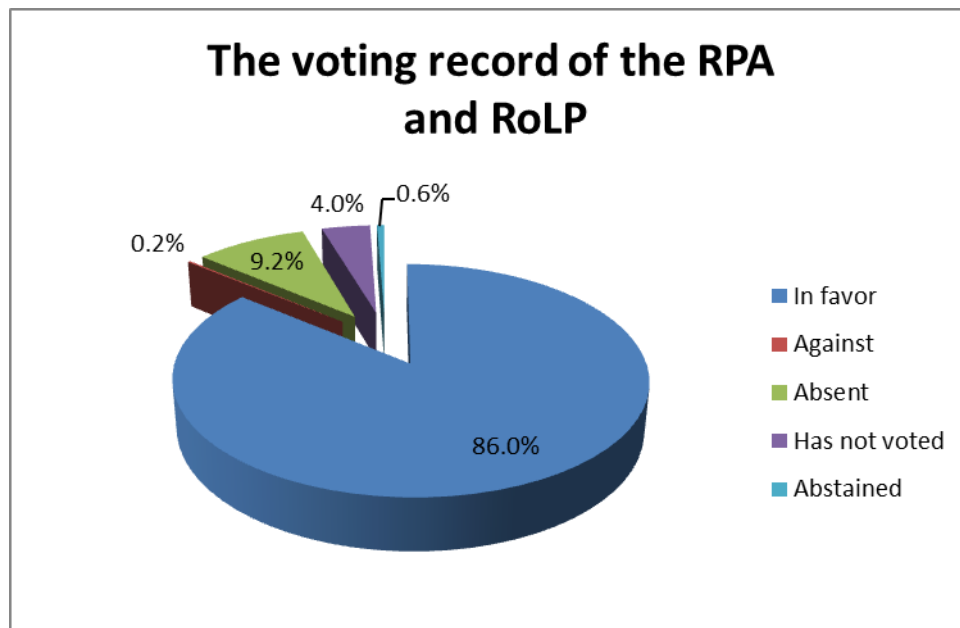
- Based on the statistics of questions and speeches the highest figure in the period reviewed belongs to the Republican and PAP factions (141 questions and speeches) and PAP (122 questions and speeches) and ARF has the lowest number (9 questions and speeches). However, if we adjust these numbers based on the size of the factions, it will turn out that on average each deputy from RPA, the largest NA faction and from ARF asked questions or made speeches twice, from the PAP 6, from the ANC 9, from the Heritage 12 and from the RoLP 23 times.
- Compared with the previous session the overall level of engagement of the parliament has declined: over the legislative discussions during the 9th session 563 questions and speeches in total were presented compared with 694 in the previous session.
- The number of “silent” deputies is stable: Like in the previous sessions, in the 9th one as well over half of the deputies, 77, did not participate in the discussion of the draft laws compared with 67 in the previous session, In RPA 53 out of 69 deputies neither asked questions or made speeches and in PAP 24 out of 33.
- According to ParliamentMonitoring.am statistics the faction voting in favor the most during the 9th session is the RPA and the one with the most votes “against” is the Heritage. The RoLP has the most “abstained” votes (ARF had the most in the previous one) and the PAP did not vote and was absent the most.

- According to *parliamentmonitoring.am* website statistics: Gagik Tsarukyan, the top absentee of the 9th session now shares the first place with RPA member Ashot Aghababyan, also having 110 absences from votes. They did not attend any sitting during the session. PAP faction member Hayk Khachatryan was absent 105 times and RPA member Artur Gevorgyan was absent 103 times.
- There are 7 deputies who voted in favor the most, all from RPA. They have voted in favor of all but 1 draft discussed during the session. Hrant Bagratyan from ANC voted against the most and Levon Dokholyan has the most “abstained” votes. The deputy who “did not vote” the most is PAP member Vahan Karapetyan. The most active deputy with the highest number of questions and speeches is Mikayel Melkumyan from PAP faction.

NA FACTIONS

Proactiveness, level of engagement

Republican faction



During the 9th session of the National Assembly of the 5th convocation 5 legislative initiatives by the RPA were adopted with all of them authored together with other factions. One of the drafts, on amending the law on Value Added Tax, was submitted jointly with the government.

The RPA has 9 legislative initiatives that are circulated but not included on the agenda. Only 1 of them is authored in the 9th session. The NA greater agenda has 31 drafts authored by RPA deputies with only 1 of them submitted in the 9th session.

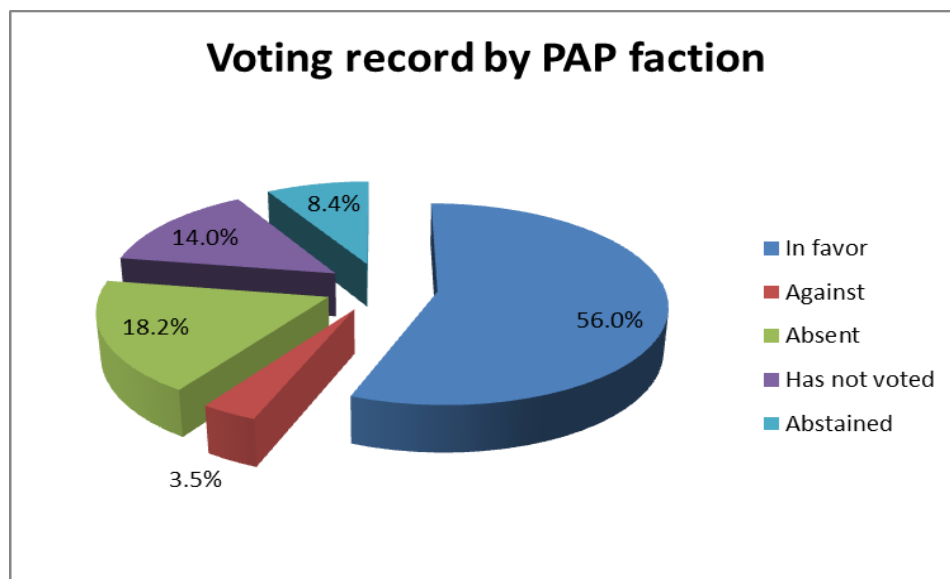
The inclusion on the session agenda of 2 drafts authored by RPA was postponed for up to 1 year:

According to parliamentmonitoring.am website statistics:

During the 9th session the RPA factions deputy with the most questions asked (14) and speeches made (10) is Khosrov Harutyunyan. 7 deputies from the faction voted in favor the most (110). 8 RPA members have 109 votes in favor. The deputy with the most votes against is Karen Karapetyan (4) and the one who did not vote the most is Arman Sahakyan (52). 3 RPA members have abstained 2 times.

The list of top ten deputies voting in favor the most **over the 5th convocation** is made up exclusively of Republicans, with Razmik Zohrabyan heading the list. The RPA is not represented in the lists of top ten deputies voting against and abstaining the most. Ashot Aghababyan is the only one from RPA in the list of top ten absentees. Khosrov Harutyunyan is in the list of top ten most active deputies.

Prosperous Armenia faction



During the 9th session of the National Assembly of the 5th convocation 3 of the adopted draft laws were written jointly with PAP faction deputies.

Another 6 draft laws authored by PAP members are included in the NA greater agenda (all submitted in the previous sessions). 17 drafts by the faction deputies are put into circulation but are not included on the agenda yet. 10 of them were written by the faction deputies during the 9th session.

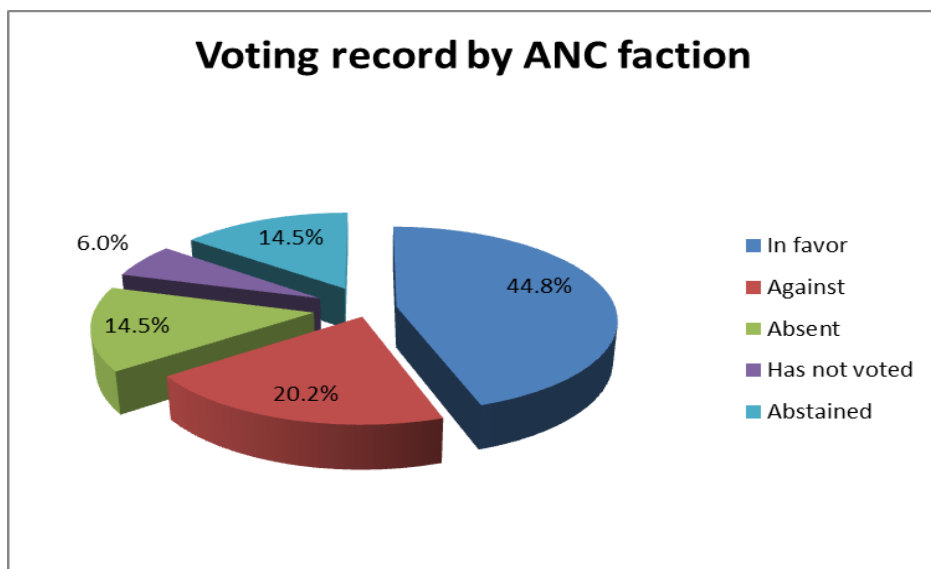
The inclusion of 10 drafts authored by PAP on the session agenda was postponed for up to 1 year. 4 drafts (authored by Tigran Urikhanyan) were not included on the session agenda as a result of the vote taken by the deputies.

According to parliamentmonitoring.am website statistics:

during the 9th session Mikayel Melkumyan is the PAP deputy with the most speeches made (19) and questions asked (23). The deputy with who voted in favor the most is Bazmaser Arakelyan (109), the one who voted against the most is Tigran Urikhanyan (18) and Elinar Vardanyan abstained the most (29 times). The deputy who did not vote the most is Vahan Karapetyan (60 times). The top absentee is Gagik Tsarukyan (110 times).

Gagik Tsarukyan heads the list of top ten absentees **over the 5th convocation**. This list has another 4 PAP deputies. The list of top ten deputies who voted in favor the most contains no PAP member. Tigran Urikhanyan is the only one from the faction included in the list of top ten deputies who voted against the most. The list of top ten deputies with the most "abstained" votes has 3 PAP members. In the list of top ten most active deputies the PAP is represented by Mikayel Melkumyan.

Armenian National Congress faction



During the 9th session of the National Assembly of the 5th convocation no draft authored by ANC faction deputies was discussed.

The ANC has 4 legislative initiatives included in the greater agenda of the National Assembly: 1 is authored jointly with the other forces, 3 are authored by Hrant Bagratyan. The drafts were written in the previous session with one improved during the 9th session.

9 legislative initiatives by the faction were circulated, with only 4 of them written in the 9th session.

The inclusion on the session agenda of 3 drafts by ANC faction was postponed for up to 1 year.

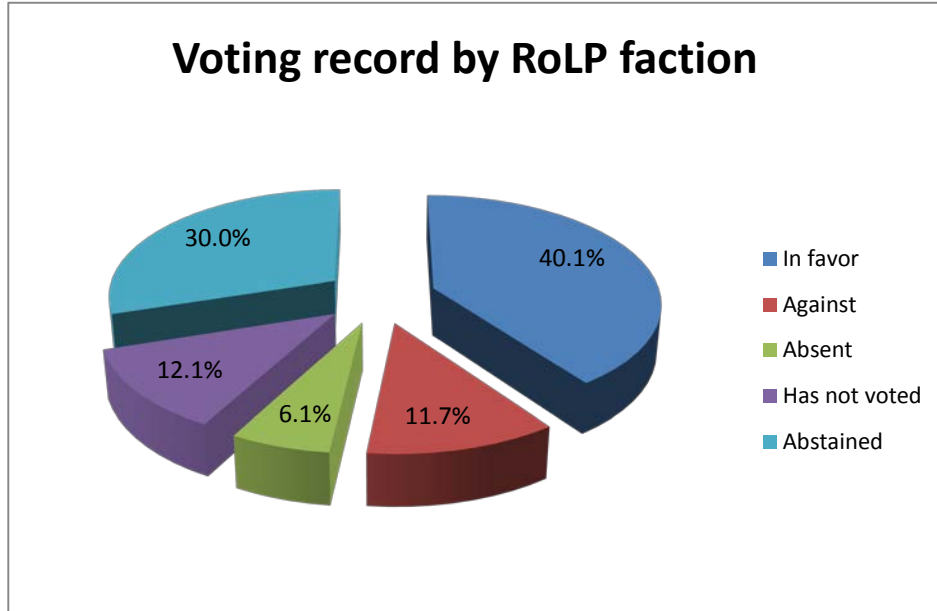
The inclusion on the session agenda of the draft by ANC faction member Hrant Bagratyan on Recognizing the Republic of Artsakh was declined in a vote taken by deputies.

According to parliamentmonitoring.am website statistics:

During the 9th session the ANC faction deputy who voted in favor the most (78) is Lyudmila Sargsyan and Hrant Bagratyan voted against the most (46). Gagik Jhangiryan has the most “abstained” votes (24). He is also the faction deputy who did not vote the most (11). Aram Manukyan made speeches (15) and was absent the most (40), Nikol Pashinyan asked questions the most (14 times).

The list of top ten deputies with the most votes in favor **over the 5th convocation** does not have ANC faction deputies. The list of top ten absentees has only Hrant Bagratyan from the ANC. Nikol Pashinyan voted against the most. This list has another 4 deputies from the ANC faction. Lyudmila Sargsyan abstained the most and the list of top ten most active deputies include 3 ANC members.

Rule of Law faction



During the 9th session of the National Assembly of the 5th convocation no draft by the RoLP was discussed. The only draft adopted that bears the signature of the RoLP member was written jointly with other factions. In the mentioned period the faction authored only 4 legislative initiatives, which were put into circulation but are not included on the session agenda yet. The RoLP has another 10 draft put into circulation which were authored in the previous sessions.

The NA greater agenda included 4 drafts by the faction, with one written jointly with other factions and all of them authored during the previous sessions.

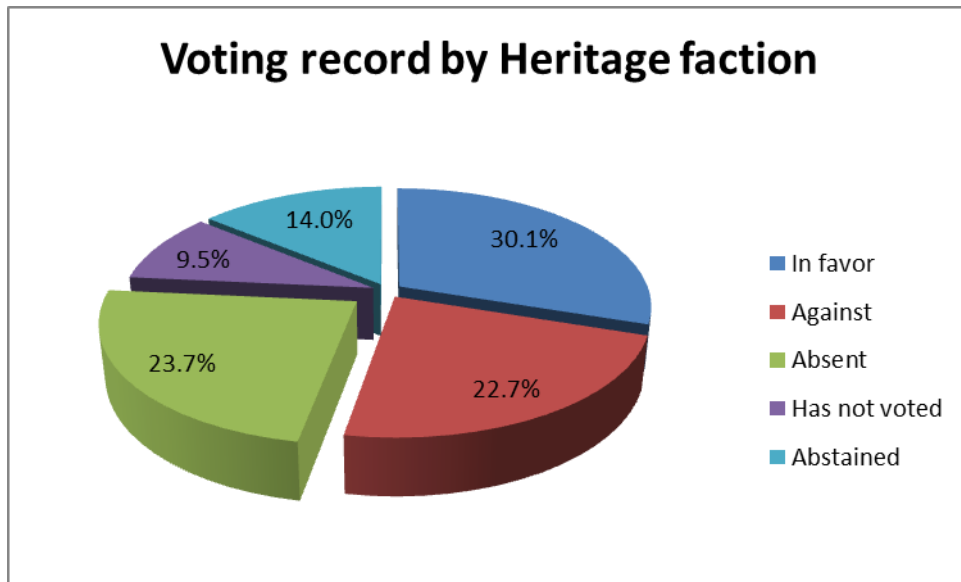
The inclusion of 8 drafts authored by the RoLP on the session agenda was postponed for up to 1 year.

According to parliamentmonitoring.am website statistics:

During the 9th session the RoLP faction deputy who voted in favor the most (51) is Mher Shahgeldyan. Heghine Bisharyan voted against (16) and asked questions (24) the most. Levon Dokholyan abstained the most (40). Hovhannes Margaryan did not vote (37), was absent (12) and made speeches the most (17).

The RoLP is not represented in the list of top ten absentee of the parliament, and the lists of deputies who voted in favor and against the most **over the 5th convocation**. The list of top ten deputies with the most "abstained" votes has only 1 faction member. The list of top ten most active deputies is headed by Hovhannes Margaryan. Heghine Bisharyan is also on that list.

Heritage faction



During the 9th session of the National Assembly of the 5th convocation the only draft by the opposition that was adopted was authored by Heritage deputies.

The faction has 9 legislative initiatives put into circulation. 7 of them were authored by Tevan Poghosyan (5 of the in the 9th session), 1 is authored by Zaruhi Postanjyan and for another one the faction is the co-author.

9 drafts by the Heritage are in the NA greater agenda. 5 are authored by Tevan Poghosyan, 2 by Zaruhi Postanjyan and for the other 2 the faction is a co-author. All the drafts were written during the previous sessions.

The inclusion of 6 drafts authored by the Heritage faction on the session agenda was postponed for up to 1 year.

The inclusion of 2 drafts authored by Zaruhi Postanjyan on the session agenda was declined in a vote taken by deputies. One of them was a draft statement on development of the Republic of Armenia and the other one was a draft law on recognizing the Republic of Artsakh.

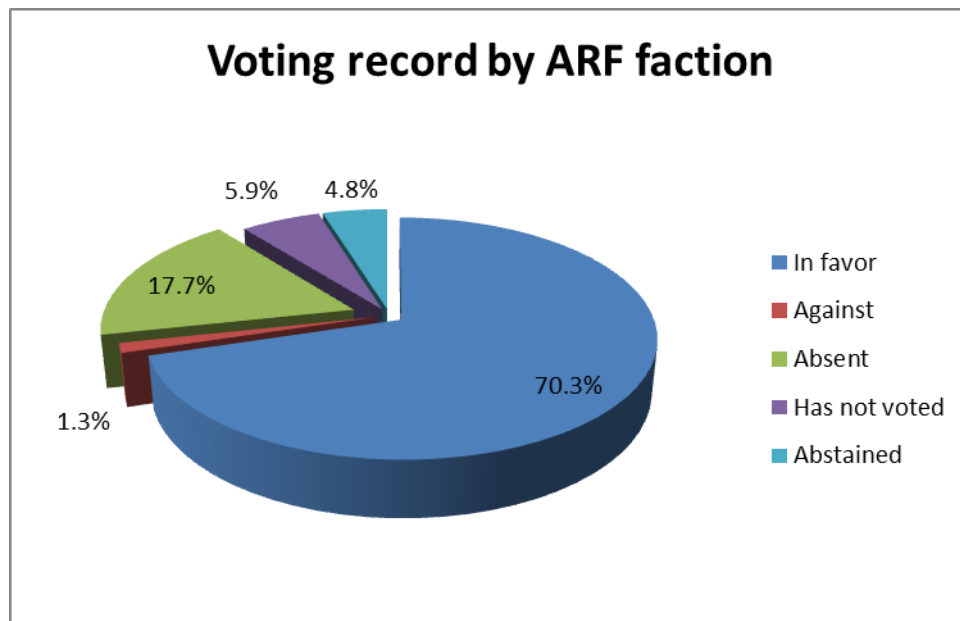
According to parliamentmonitoring.am website statistics:

During the 9th session the Heritage deputy with the most questions asked (11) and speeches made (11) is Tevan Poghosyan. Aleksandr Arzumanyan voted in favor the most (51). The 3 of

the faction members, Zaruhi Postanjyan, Aleksandr Arzumanyan and Tevan Poghosyan have an equal number of votes against, 31 and Rubik Hakobyan voted against only 8 times.

The Heritage is not represented in the list of top ten deputies who voted in favor the most **over the 5th convocation**. The list of top ten absentees has only Zaruhi Postanjyan from Heritage. All 4 members of the faction are on the list of top ten deputies with the most votes against. Aleksandr Arzumanyan is the only one in the list on top ten deputies who abstained the most.

Armenian Revolutionary Federation faction



During the 9th session of the National Assembly of the 5th convocation no draft by ARF was discussed. The faction did not come up with any legislative during the session. It joined the RPA's initiative to amend the decision regarding the procedure for nominating a candidate for the Defender of Human Rights in the NA.

Th faction has only 2 drafts from the previous session included in the NA greater agenda, 1 of them authored jointly with other factions. The ARF does not have any initiative circulated but not included on the agenda.

According to *parliamentmonitoring.am* website statistics:

During the 9th session ARF faction deputy voting in favor the most is Mikayel Manukyan (92 times), Aghvan Vardanyan voted against (3) and abstained (8) the most, also being the deputy with the most questions asked (3). Armen Rustamyan did not vote (20) and made speeches the most (3). The top absentee from ARF faction was Armen Babayan (59 times).

The list of top ten absentees of the parliament **over the 5th convocation** has Armen Babayan from ARF. The lists of top ten deputies voting in favor and against the most do not have ARF deputies. The ARF is not represented in the list of top ten most active deputies either. The top 3 positions of the list of deputies with the most "abstained" votes belong to ARF deputies.

NA LEGISLATIVE WORK

During the 9th session of the National Assembly of the 5th convocation 112 laws were adopted with 6 of them being "mother" laws and 106 amendments and additions to the operating laws. Only 5 of the adopted laws are authored by NA deputies and the remaining 107 by the government.

Only 36 out of 112 laws were adopted over the regular sittings. The 2/3 of the laws were discussed and adopted over extraordinary sittings (36) and the extraordinary session (38).

The majority of the adopted laws referred to the economic (41) and state-legal affairs (41), 10 amendments were made to the health sector, 10 to the social sector and 8 to the defense area legislation.

The 9th session saw nearly all the negative points, if not worse, that have already become par for the course for the parliament's legislative work. The NA formally performed its fundamental constitutional function only by adhering to the procedure of adoption of the laws. So the performance of the function of legislative policy drafting, political impact and proactiveness was mostly a formality.

The disengagement of the parliament from the standpoint of legislative initiatives

If during the NA 8th session the Government/NA ratio of legislative initiatives was 93/7, the 9th session recorded a more polarized figure-95/5. This shift demonstrates that the government has practically fully assumed the function of framing the laws that merit the discussion of the NA. Parliament has passed it over to the executive pushing back the discussions over the vast majority of the draft laws by deputies. It also exhibited considerable lack of involvement in

writing and circulating drafts. **All the factions together have 56 draft laws in the NA greater agenda that are not included on the agenda of the four-day sittings.**

As a rule, the draft laws authored by the NA political minority were not included on the agenda of the session or four-day sittings or postponed which mostly explains the low level of engagement of the minority in law-making work. On the other hand, the NA oppositional factions did not exercise the opportunity granted by the NA Rules of Procedure to consider their drafts left out of the agenda to be extraordinary and hold discussions on them through a special procedure in the plenary sitting. **During the 9th session no question was considered extraordinary by the oppositional factions and discussed.**

The NA political majority surrendered its law-making role to the executive limiting itself to the status of a discussing and voting body. In this session as well the parliamentary majority acted in full agreement with the government. This was manifested in the number of “against” and “abstained” votes by the RPA faction, not exceeding 1% of the total votes. This implies that the government ensures the preferred legislative solutions in the parliament without any obstacles.

Government claiming the ownership in initiating extraordinary sessions and sitting

The statistics of the 9th session demonstrates that towards the end of the mandate of the parliament of the 5th convocation the continued practice of effectively passing on to the government the authority of the NA to convene extraordinary sittings/sessions became par for the course.

Two facts attest to this. Just like in the previous session, the RA government was the initiator of all extraordinary sittings and sessions held in the 9th session, and 66% of the law and 65% of the international agreements presented to NA for ratification were discussed and adopted over these extraordinary sittings and sessions. Secondly, No NA deputy or faction requested holding an extraordinary sitting over an event or an issue. **Moreover, nearly all the laws arousing public interest-Electoral Code (mother law and amendments), Tax Code (first reading), air defense agreement, Budget 2016 performance report, changes in the government structure, were adopted over the extraordinary sittings and sessions.**

The practice of rushed adoption of the laws

The government continues the practice of hasty submission to the parliament of the draft laws that spark public reaction and strong differences of opinion. Thus it exploits the authority to convene extraordinary sittings and sessions, to declare the draft laws urgent and to set the order of discussion of questions as they prefer.

On April 4, 2016 the National Assembly, based on the grounds for urgency presented by the government the draft law on exempting “Hrazdan-Cement” ojsc from penalties accrued for tax and mandatory social insurance payments, made the decision to hold the 2nd reading of the draft within 24 hours of the first one. The draft law passed first reading on April 6 and the second one on April 7. The vote on the draft in the 3rd reading on April 26 did not take place due to lack of quorum.

Without any content-based changes the draft was once again presented to the parliament on May 10, over the NA extraordinary sitting initiated by the government. The draft law granting “Hrazdan-Cement” tax benefits was once again discussed through a special procedure, adopted in 3rd reading and in full with 88 votes in favor, 16 against and 6 abstaining.

The government proposed a 24-hour discussion procedure for nearly half of the laws adopted over the session. Around 50 out of 112 laws were discussed through this procedure.

The vulnerability of the grounds to consider the draft laws urgent.

The abundance of the draft laws considered urgent has made the government's working style of not providing proper grounds and convincing arguments more obvious.

Specifically, the amendment to the law on the structure of the government of the Republic of Armenia was justified with only one factor, that is, “the need for political cooperation”. No elaboration followed as to who is cooperating and how. In reality the government left it to the parliament to figure out what cooperation they meant.

Note: The draft law proposing amendments to the Law on the structure of the government of the Republic of Armenia was discussed in two readings over the extraordinary sitting initiated by the government on February 19. The draft was adopted with 71 votes in favor, 17 against and 1 abstained. RPA, ARF factions and PAP in part voted in favor.

The issue emerged due to the arrangements over establishment of a political partnership made between the RPA, the political majority and the oppositional ARF. Based on them the political cooperation agreement was signed on February 24, that is 5 days after the adoption of the mentioned law. Under the agreement the ARF was given the posts of the ministers of territorial administration and development, education and science, economy, as well as the posts of Aragatsotn and Shirak marzpets. The political decision on dividing the Ministry of Territorial Administration and Emergency Situations, which necessitated an amendment to the law, was made in the context of the arrangements on seats redistribution as a result of this very political cooperation.

Only 15 months prior to this amendment, on November 17, 2014, the same law was amended with an opposite logic which was initiated by the government and backed by the NA majority. Ministries of territorial administration and emergency situations had merged into the Ministry of territorial administration and emergency situations, whereas the amendment “sought to create a more efficient system of government”.

The reasoning behind the amendments made to the new Electoral Code over the NA extraordinary session convened by the government on June 27 also raises questions. They will be applied upon adoption only once the funding needed for the introduction of the mechanisms prompted by amendments is secured from international donor organizations. This approach essentially means that the obligation of the state to raise the transparency and the reliability of the elections hinges on foreign financing.

Examples show that such generalized justification can be applied to any draft law in finding its adoption urgent. They also demonstrate the NA majority’s biased support for this working style and the attitude of inevitability of the adoption of draft laws.

The parliamentary majority basically encourages the practice of adoption of the laws without proper grounds and in a rushed manner as well as introduction of legislative amendments with the opposite logic of addressing the issue, adoption of the declined drafts without any changes as

requested by the executive, since it never requires the government to offer explanations. Because of this working style of the government the NA political forces do not determine their approaches to the draft laws based on their programmatic or ideological positions but rather act based on what is right for the moment.

Adoption of a new Electoral Code: the role and the influence of the parliament

The pivotal document discussed and adopted in the 9th session of the NA of the 5th convocation was the new Electoral Code with an accompanying package proposing amendments and additions to 12 laws. The adoption of the new code was important due to several factors:

- The Clause 1 of Article 210 of the new Constitution adopted in a referendum of December 6, 2015 states that the Electoral Code is brought into compliance with the Constitution and is effective from June 1, 2016. Clause 2 of Article 103 of the Constitution states that as a constitutional law it is adopted by at least 3/5s of the total votes of the deputies. This means that the adoption of the draft Electoral Code and related package in the set timeline was prompted not so much by the political aims or public expectations in terms of revision of the electoral system, but was rather an imperative requirement under the Constitution.
- The change to the parliamentary system of government, removal of the majoritarian electoral system in the way it operates, formation of the stable political majority in the NA and the fulfilment of other new constitutional requirements had necessitated the creation of a new type of electoral system. This significantly increased the socio-political interest towards the initiative as well as the motivation of the participating entities to get actively involved in the process of elaboration of the code.
- the final reports on the constitutional referendum held on December 6, 2015 by PACE observer team and OSCE/ODIHR expert team, as well as the joint opinion on the draft Electoral Code by the European Commission for Democracy through Law of the CoE (hereafter Venice commission) and OSCE/ODIHR talk about the need to adopt the new Electoral Code in the environment of broad socio-political support. Specifically, the OSCE/ODIHR report states in this regard: "Reform of electoral legislation should be carried out in an inclusive manner and all stakeholders are encouraged to make every reasonable effort to build broad consensus over the reform, taking into account all relevant previous OSCE/ODIHR recommendations"

So the existence or lack of a socio-political consensus over the draft had turned into legitimacy criteria for the Electoral Code and its adoption. Now the authorities were bound by it to enter into maximally intensive and public negotiations with the civil society, the parliamentary and non-parliamentary political forces.

The observation of the process of adoption of the Electoral Code reveals several key features of the parliament's engagement, political impact and role:

The effectiveness of the parliament's engagement and content-specific impact

The draft was officially published on March 2, 2016 on the official website of the government. (Before this, the draft had been already published on the website of the Venice commission). In the process of working on the package the NA was involved from March 9, when it was officially sent to the parliament. The draft passed the 3rd reading and was adopted in full on May 25, which means that the parliament was involved for around 3,5 months.

The discussions on the package proceeded in two directions. The discussions were held in the NA committee on state and legal affairs, parliamentary hearings, NA four-day sittings and the NA extraordinary session. In parallel, it was discussed in a so-called “4+4+4” trilateral format set up in the parliament representing the political majority, political minority and the civil society. Its main aim was to reach public-political consensus before the final adoption. With this approach the political majority and the government sought to formally secure noticeably broad socio-political engagement constantly expressing their willingness to take part in any discussion and negotiations in a format that would be acceptable for all stakeholders. These two-level discussions led to significant changes in the draft Electoral Code especially between the first and second readings. However, the overwhelming majority of the changes were not essential with many of them being technical and organizational. This caused the obvious discontent of the NA political minority with the package presented for the vote in the 3rd reading. It was essentially adopted without expected public-political agreement and support, which was admitted also by the NA political majority despite the fact that 102 out of 131 deputies voted in favor of the

package. Upon adoption of the draft the government and the NA political majority expressed their readiness to revisit the newly adopted code, before the 2017 parliamentary elections if common ground is found with the minority over the provisions not yet agreed upon and key suggestions.

This confirms that despite the numerous mechanisms employed to ensure broad socio-political involvement before the adoption of the document, the influence of the non-ruling parliamentary forces on the process of improving the legislative package was insignificant and less effective during the session.

The inconsistent approach of the parliamentary forces

All the political forces in the NA submitted recommendations regarding the draft Electoral Code and accompanying package, both before and after its circulation in the parliament. Some of the recommendations are technical or suggest editing while others are content-based and systemic.

On March 22 a group of NGOs published 5 key recommendations seeking to improve the draft Electoral Code and reach broad agreement and support which were backed by the parliamentary minority. These recommendations became the main topic for discussion in the “4+4+4” format. Here they are:

- making the signed and completed lists of voters public,
- cleaning the voters’ lists,
- holding the NA elections exclusively through proportional electoral system ruling out the use of territorial lists and rankings,
- video recording the entire process of voting and counting at the polling stations
- using an identification system of voters based on fingerprints or introducing a finger-inking procedure.

The political majority and the government, basically turned down 3 of these demands: making the signed and completed lists of voters public, cleaning the voters’ lists and holding of NA elections exclusively through proportional electoral system ruling out the use of territorial lists and rankings. The adoption of the other suggestions will be contingent upon introduction of necessary technical means and availability of required funding.

All the non-ruling forces in the NA with the exception of the Heritage faction saw the adoption of these recommendations as a prerequisite. Despite the fact that the demands serving as criteria

for consensus were not accepted as the authors expected, the package passed 3 readings in the NA and was adopted given the loyalty of the non-ruling.

Deputies representing all factions with the exception of RoLP voted in favor of the package in the 3rd reading and in full.

Partial consensus or consensus contingent on financing

On June 16, after the end of the 9th session, as a result of the negotiations resumed in the “4+4+4” format the NA 5 factions-the RPA, ARF, RoLP, ANC and PAP signed a joint statement regarding “Consensus on setting organizational and technical mechanisms in the Electoral Code to ensure the legitimacy of the electoral process”. It declared that agreement was reached to amend the Electoral Code and included certain mutually agreed clauses. This implies introducing a fingerprint-based electronic registration system, providing the voters with a newly designed ID cards, videotaping the entire process of voting and counting at the polling stations as well as arranging live broadcast, providing proxies access to the signed voters’ lists by issuing a reference. The agreed upon points concern 4 out of 5 key recommendations presented by NGOs and the NA political minority and discussed in the “4+4+4” format.

The adoption of a joint statement can be considered unprecedented in the sense of cooperation between the NA political majority and minority in the context of electoral reform. The amendments to be made as well as the actions ensuring their operation are to be viewed in their entirety. Failure to realize one of them cancels the compromise increasing the responsibility of the government and the NA majority when it comes to their implementation.

On June 27, over the NA extraordinary session initiated by the government the draft proposing amendments and additions to the Electoral Code, worked out as a result of political consensus, was adopted. Some of the amendments such as the work of the observers, timelines for submissions of complaints, access to signed voters’ lists, become effective 10 days after the adoption of the law. Others, concerning acquisition and operation of technical devices, will according to the draft, take force if the required financing is available. The draft was adopted with 101 votes in favor, 5 against and 2 abstained.

The voting results, however, are not sufficient to state that the amendments were adopted in complete consensus.

The consensus between the NA majority and minority is not on the code in its entirety but only with regard to mechanisms for oversight to ensure legitimacy of the electoral process, which was also noted in the statement. It specifically clarifies that “the agreement does not imply consensus on the entire Electoral Code.”

The sides did not reach consensus on one of the key suggestion-demands out of 5 presented, that is holding NA elections only through a proportional electoral system. The NA minority and representatives of the civil society viewed the introduction of the mechanism to elect through territorial lists and rankings as concealed preservation of the majoritarian electoral system. The failure to secure an agreement on such a key and problematic point undermines the agreement reached.

Even though the parliamentary forces note that the consensus was reached as a result of negotiations in “4+4+4” format, the civil society which presented the package of 5 recommendations and initially participated in the discussions did not join the statement. The NGOs explained their position of not joining the political agreement in a separate statement, viewing the steps taken as insufficient to introduce radical reform in the electoral system.

From the statement by NGOs

We believe that the “concessions” by the representatives of the ruling power collectively and individually are not able to ensure transparency and a higher level of control over the electoral process and raise public trust to any extent. Moreover, severe restrictions on public oversight introduced along with the electronic system question the true aim of proposed electronic and other innovations and the integrity behind their use.

....The suggestion of holding state-wide elections by simple proportional lists was entirely declined virtually continuing the practice of interfering with the formation and expression of the citizens’ will through election bribes and intimidations by neighborhood/district/regional criminal figures and criminal-oligarchic clans as well as securing seats in the highest representative body of the state through falsifications of the election results.

.... the draft Electoral Code does not address the key issue, that is the restoration of public trust towards electoral system and holding free and fair elections, jeopardizing the process and outcome of all potential elections and the legitimacy of formation of the state and local authorities.

The feedback from the civil society shows that the agreements reached over the Electoral Code reflect only the political and not the *socio*-political agreement. So, the public mistrust towards the code and the upcoming elections persists.

The issue of electoral reform in the election programs.

Despite the fact that the adoption of the new Electoral Code was required under the amended Constitution, it is noteworthy to see how the need for electoral system reform was presented in the election programs of the parliamentary forces.

The review of election programs reveals an important pattern: the political forces that represented the ruling power in the time before the 2012 elections, did not elaborate on the issues of overall improvement of the electoral system and raising of public trust towards it. Judging from the election program for **RPA**, the political majority, no issues existed in the area

of elections. Electoral system issues are not anyhow reflected in the RPA program. It can be inferred that the political majority is quite content with the existing system and the legislation serving as the basis its operation. Consequently, the electoral system reforms became relevant for the RPA not in the context of raising public trust but solely as a constitutional requirement to form an electoral system which is in line with the parliamentary system of government.

The program of the **PAP** which was part of the ruling coalition prior to 2012 elections presents the same picture. For the party the issues of development of democratic institutions and human rights protection system and establishment of the rule of law are directly linked to efficient public administration system and not necessarily the organization of open, transparent and democratic elections. The PAP program contains nothing about the need to improve the electoral system and introduce reforms or to ensure the exercise of the citizen's electoral rights.

Another member of the former coalition, **the RoLP** does mention in its program the issue of holding free, fair and transparent elections of state and local bodies of self-government and formation of legitimate and accountable leadership viewing it as a means to ensure national security and social welfare. However, it does not elaborate on the ways to ensure free expression of voters' will and protection of person's vote.

Conversely, the Heritage, ANC and ARF approaches are systemic. Both **Heritage** and the **ANC** programmatic approaches are consistent with the 5 suggestions-demands that became pivotal in the discussions over the Electoral Code. The Heritage sets forth issues of holding the National Assembly elections exclusively through the proportional electoral system, making the voters' lists public, forming politically balanced electoral commissions, setting strict punishment for crimes against the electoral rights, elimination of the opportunity to influence the results of the elections, implementation of public oversight of the work of the electoral commissions. **The ANC** calls for radical changes in the Electoral Code stressing the importance of cleaning voters' lists to eliminate those citizens who permanently reside outside the country, the full implementation of the proportional electoral system, inking the voters' fingers, installation of video cameras at the polling stations, making the signed lists of the voters public.

The ARF views the amendments to the Electoral Code from its key position of transition to the parliamentary system of government. The key points are cutting the number of deputies, preventing falsification of the results of the voting and double voting, making the signed voters' lists accessible and also getting rid of immunity of the deputies. The ARF election program does not make it clear how acceptable is the use of territorial lists or rankings in the context of proportional electoral system.

PARLIAMENTARY HEARINGS

Impact and effectiveness

Parliamentary hearings ensure public participation and influence on the NA's legislative work. The aim is to engage the expert circles and the civil society in framing of the draft laws that regulate issues of public significance and to ensure the communication between them and the public authorities.

By law the NA President and the standing committees have the authority to hold parliamentary hearings. Under the NA Rules of Procedure the standing committees shall hold at least one hearing during the session concerning the issues in their scope. The committees are free not only to choose the issues to be discussed and set the procedure for the hearings, including whether they are going to be public or behind closed doors, but also to initiate joint hearings.

Also, by the NA Rules of Procedure the NA President is entitled to initiate hearings and determine the way they will be held. The NA President exercised this authority neither in the 9th nor in the previous sessions.

Note: During the 9th session of the National Assembly of the 5th convocation only 7 out of NA 12 standing committees followed the legislative requirement to organize at least one hearing during each session: the committee on state and legal affairs (1), the committee on defense, national security and internal affairs (1), the committee on Healthcare, Maternity and Childhood (2), the committee on Science, Education, Culture, Youth and Sport (1), Committee on Agriculture and Environment (1), Committee on Protection of Human Rights and Public Affairs (1), Committee on Social Affairs (1 hearing jointly with the committee on healthcare).

5 committees did not hold any hearings: the standing committees on territorial administration and local self-government, economic, financial-credit, foreign relations and European integration issues. In the previous session 7 committees had failed to meet this requirement of the Rules of procedure.

The observation of the hearings shows that during the NA 9th session as well the NA committees remained inconsistent and careless when it came to the legislative requirement to hold at least one hearing. The ratio of committees which held and failed to hold hearings during the session (7/5 respectively) follows the tendency noted in the 7th (8/4) and the 8th (5/7) sessions. Even

though the legislative requirement to hold at least one hearing is imperative, failure to perform this function leads to no legal consequences, which perhaps explains the inconsistent approach of the committees.

Driven by the need to provide information to the deputies on April war and Karabakh negotiation process, the relevant committee held 3 discussions in the 9th session, all behind closed doors, attended by defense and security experts, the Minister and the deputy Minister of Defense.

However, NA did not come up with a similar initiative in the wake of the seizure of the Police Patrol-guard service regiment on July 17 by a group of armed people and the aggravated situation, despite the fact that the emerged crisis directly dealt with issues of national security. Only 12 days later the oppositional deputy Nikol Pashinyan came up with the initiative to collect signatures for convening an extraordinary session of the NA concerning the current situation. But only 19 deputies joined it instead of the required 44. With such an indifference towards the crisis hitting the country and failure to exercise its right to come up with a political statement regarding the current situation, the parliament, as a political institution, confirmed its disengagement from socio-political processes.

Note: The topic of the hearings organized by the standing committee on State and Legal Affairs was the new draft Electoral Code. They were followed by discussions of the draft in the plenary sittings.

The hearings on the draft law on Drugs held by the NA committee on Healthcare, Maternity and Childhood were also followed by the discussion and adoption of the draft by the National Assembly. The committee on health issues held the 2nd hearing jointly with the committee on social issues. It concerned the 2016-18 national program to improve the demographic situation.

The parliamentary hearings organized by the standing committee on Protection of Human Rights and Public Affairs discussed the draft of the new law on NGOs authored by the government. It received the favorable conclusion of the committee and was included on the session agenda.

The topic of the hearings held by the committee on Education and Science was the work of the state science committee under the Ministry of Education and Science and its projects in the long run.

The hearings organized by the standing committee on Agriculture and Environment concerned the legislative regulation for keeping wild animals in captive and semi-captive conditions.

The legislative and law-enforcement issues in ensuring road traffic safety were discussed during the hearings held by the committee on defense, national security and internal affairs.

From the standpoint of urgency and presumptive impact the topics of the hearings held present a mixed picture as in the previous session. Some of them were called for and were important, such as the electoral code, draft laws on drugs and NGOs. In other cases, despite the importance of the topics, the committees did not initially clarify the specific aims and objectives for organizing the hearings. Without these clarifications the hearings turn into a platform for mere exchange of information, and a simplistic activity of informing the NA of the current situation and issues.

The measurability of the impact and effectiveness of the hearings in practice remains problematic. No criteria are in place to determine the extent to which professional remarks and recommendations voiced during the hearings are taken into account in the course of improvement of the draft laws.

Upon study of the information available on the hearings held it becomes clear that the committees generally do not go beyond providing initial notification on holding the hearings. Although they mention the aims as well, these are extremely general and do not take account of the context of the pursued objectives. This makes it impossible to view the outcomes of the hearings against the aims and determine the extent to which the targets are achieved.

Clause 6 of Article 32 of the Law on NA Rules of Procedure states that materials outlining the outcomes of the hearings (transcripts of speeches, recommendations, conclusions, notes and other information) can be prepared. They can be published on the NA official website at the proposal of the committee and upon the consent of the President of the National Assembly. This is the only legislative framework measuring the outcomes of the hearings. The 9th session saw two such cases. The NA committee on healthcare, maternity and childhood published a *short*

overview following the hearings held on the draft law on Drugs and accompanying laws. It presented the course of the hearings, the key points of the reports, the scope of issues covered. The standing committee on Agriculture and Environment also published similar short summaries on the course of the hearings regarding the legislative regulation for “Keeping wild animals in captive and semi-captive conditions and existing weaknesses”.

These summaries are for the purpose of information and published in the format of short overviews focusing mostly on the presented report rather than on the recommendations and their feedback from the committee and the competent authorities. However the fact that the committees have started attaching importance to the presentation of the results of the hearings is a step forward.

THE ETHICS COMMITTEE

In the 9th session the Ethics committee received 4 petitions (3 more than in the 8th session), held 10 sittings and issued 10 decisions. 2 of the decisions of the committee stated a violation of the ethics rules by the deputy, another dismissed the case admitted for review and one more admitted the case for review and at the same time suspended it since a court procedure was underway regarding the case. (The petitioner, the attorney of the detained editor of *analitik.am* website requested to review the statements by NA deputy Tigran Urikhanyan directed at his defendant.) All the other decisions were procedural.

With 4 cases, 10 sittings and 10 decisions issued the Ethics committee of the 9th session compares favorably with the other sessions. In the previous 3 sessions the ethics committee had admitted 2 cases for review and held 4 sittings altogether.

The committee received 2 out of 4 petitions from NGOs, the third petitioner was a journalist and the fourth one an attorney. This public proactiveness prompting the committee to hold sittings saves it from becoming completely incompetent with its work lacking purpose, such as in the 6th session. The committee had not reviewed any petitions, had not held any sittings and therefore had issued no decisions.

In the 9th session the committee did not receive any petitions from the deputies either. This shows that the traditional attitude toward the committee and the ethics rules set by the NA

Rules of Procedure persists. They are not perceived as intended and do not serve as self-regulating mechanisms for work and interpersonal relations. So during the heated discussions of the draft proposing amendments and additions to the new Electoral Code and the new draft Tax Code proposed by the government certain deputies acted in violation of the ethical norms which would merit the attention and feedback of the committee.

The Ethics committee did not really make efforts to raise its institutional role exhibiting double conduct during the session.

Note: The Ethics committee issued a favorable decision in response to the petition by journalist Lilit Lalayan regarding 7 deputies at once: RPA members Spartak Melikyan, Hamlet Harutyunyan, Sedrak Saroyan, Arakel Movsisyan, Karen Saribekyan, PAP members Arshak Mkhitaryan and Bazmaser Arakelyan. During the votes taken at the end of the 7th session they had voted for their absent colleagues. Based on the video material published on pastinfo.am website, the journalist had asked the committee to give their feedback on the conduct of the deputies as per the ethics norms set in the NA Rules of Procedure.

The decision of the committee stated that the 7 deputies had violated Clause 5 of Article 61 of the Rules of procedure, stating that the deputy personally votes in favor, against, abstains or opts out of the voting as set in Clause 3 of Article 99.

The committee ruled that along with violation of this clause, the deputies also violated the ethics rules set in Clause 2 of Article 6.1 of the Rules of procedure. It requires to respect and obey the law, observe the procedure for the sittings of the National Assembly and its committees.

In the second part of the same decision the committee proposed to the President of the National Assembly to discuss the draft law on amending the Rules of Procedure of the National Assembly in the upcoming four-day sittings. It would consider the deputy voting on behalf of someone else as a violator as well, legally allowing the chairperson of the sitting to apply disciplinary measures against the deputy. The committee had proposed taking the toughest disciplinary measure against deputies registering or voting on behalf of someone else stated in Article 45 of the Rules of procedure suspending for 6 days the deputy's right to be in the NA plenary during the sittings.

The draft proposing amendments to the NA Rules of Procedure passed the first reading in November of 2013. Heritage faction deputies Zaruhi Postanjyan, Tevan Poghosyan and Rubik Hakobyan are the authors. The draft was on the agenda of the NA four-day sittings for over 2 years, but was not included on the list of questions to be discussed.

Following the ruling of the ethics committee and a request to the NA President the draft was discussed on March 15 and was adopted with 102 votes in favor, carried unanimously.

This was the very first time for the decision of the Ethics committee to prompt the NA to amend the law. The context was the pressing issue of elimination of the illicit practice of voting for somebody else. This is an interesting and effective way of turning the decision of the committee into a specific result. This can serve as a precedent and strengthen the influence of the committee and its conclusions.

However when reviewing the case regarding the NA deputy Shushan Petrosyan the Ethics committee was guided by the principle of political comradery.

Note: Vanadzor office of the Helsinki Citizens' Assembly had presented a petition to the Ethics committee regarding NA deputy Shushan Petrosyan. Based on the publication of “Haykakan Zhamanak” daily the office asked that Shushan Petrosyan be found in breach of the rules. As stated in the publication, in response to facebook user Gayane Shahinyan’s posts on the Army and the Minister of Defense she had written: “Listen, you, I'll take your eyes out and react as you like. You brat, I say it again, I'll take your eyes out.”

Unlike the 7 deputies who were found to have violated the rules Shushan Petrosyan exercised the opportunity offered by the Rules of procedure and presented her explanation on the matter to the committee.

The committee concluded that Shushan Petrosyan's statements directed at facebook user Gayane Shahinyan did not present a real threat, were made to tell her off, and were emotional and on interpersonal level. Therefore citing Article 24.2 of the Law on the NA Rules of Procedure the committee responded that it did not have the authority to rule whether there was insult involved or not. The petition admitted for review was dismissed.

Interestingly, the committee had specifically noted that Facebook user Gayane Shahinyan did not personally seek to file a petition with the ethics committee and this had contributed to the decision of the committee to dismiss the case. However, the NA Rules of Procedure do not state the requirement to receive the petition necessarily from the “injured party” in order to review the case.

Curiously, over the 8th session the committee, in connection with an almost identical case involving statements by another RPA member Arakel Movsisyan had ruled that the deputy had violated the rules of ethics. With such a precedent on hand the fact that the committee found it outside its scope of authority to rule whether Shushan Petrosyan’s statements contained an insult or not goes in contrast with the committee's ruling on Arakel Movsisyan's case.

Note: The Ethics committee received the 3rd petition from Media and Law, Association of Journalists and Association of Free Journalists NGOs. It concerned the RPA member Mher Sedrakyan. Referring to the video entitled “I will talk to a decent journalist” which was posted on a1plus.am website the authors asked the committee to consider Mher Sedrakyan a violator for swearing at the journalists.

The discussion of the petition took longer, since the committee was not sure that swear words were heard in the video recording. Mher Sedrakyan also offered the committee his clarifications. He explained that he had not sworn at the journalists, rather he had only muttered “who would call you a human...” (Armenian idiomatic expression used.)

The committee did not find the claim of the applicant that Mher Sedrakyan had sworn at the journalist fully confirmed. However it ruled that the deputy had violated the ethics norms nonetheless since he had not been respectful “towards the people who the deputy interacts with while exercising the mandate” (NA Rules of Procedure, Article 6.1, Part 2, clause (h))

This is the second time that the ethics committee states that Mher Sedrakyan has violated the ethics rules to be observed by a deputy. Over the previous sessions the committee issued 3 such decisions regarding Arakel Movsisyan.

The fact that multiple decisions were issued regarding the same deputy shows that the decisions of the Ethics committee carry little or no influence. This is mainly due to the imperfect mechanisms of disciplinary action based on the conclusions and decisions of the Ethics committee. Clearly, presenting the decisions from the NA floor or publishing them on the NA website alone do not affect the deputies involved, do not compel them to watch their conduct and are not perceived as appropriate measures of denunciation.