

***THE PECULARITIES OF THE JUDICIAL PROTECTION  
OF THE ELECTORAL RIGHT***

The system of the judicial protection of the electoral right in Armenia has been amended essentially during the recent years. It has become more precise and comprehensive and the scope of the competences of different institutions of the judicial power has become more certain.

First of all it refers to the 2005 Constitutional amendments, when Article 100 Point 3 of the Constitution, according to which the Constitutional Court was authorized to solve **disputes, regarding the results of the elections** of the President of the Republic and Deputies, was revised.

By Article 100, Point 3.1 of the present Constitution is stipulated new provision, according to which the Constitutional Court shall, in conformity with the procedure defined by law resolve all **disputes arising from decisions adopted** with regard to the elections of the President of the Republic and Deputies.

An important role in the issue of the judicial protection of the electoral right was preserved to the Administrative Court, functioning in the Republic of Armenia since 2008. Simultaneously, by Article 145 of the RA Administrative Procedure Code, adopted on November 28, 2007, it was determined, that the cases on challenging the lawfulness of administrative acts regarding the electoral lists of the candidates and parties, the registration of the candidates included in the lists, their non-registration, invalidation of the registration are considered on merits by the Administrative Court, collegially in a five-judges panel. The cases on challenging the lawfulness of the normative decisions of the Central Electoral Commission are also being considered by a same procedure.

It is also necessary to mention, that according to Article 150 of the RA Administrative Procedure Code in the cases regarding the protection of the electoral right **the judicial acts of the Administrative Court, resolving the case on merits, are final, not subject to appeal and come into force from the moment of its publication.**

Taking into account the judicial procedural peculiarities of the judicial protection of the electoral right as well as the system of jurisdiction, several articles of the RA Electoral Code, envisage that the particular electoral disputes are considered and resolved by the procedure

prescribed by the Administrative Procedure Code. Particularly, according to Article 12 of the RA Electoral Code: “Disputes concerning inaccuracies in the lists of electors may be appealed against in the manner and within the time limits prescribed by the Administrative Procedure Code of the Republic of Armenia”. The cases on clarification of the voters’ lists are considered by the first instance courts of general jurisdiction of the place of residence (forum domicilii) of the respondent according to the procedure prescribed by the Administrative Procedure Code (Article 145, Part 1, Point 2 of the Administrative Procedure Code).

Article 118 of the Electoral Code determines “The decision of a constituency electoral commission on rejecting or declaring as invalid the registration of a candidate for deputy may be appealed to the Administrative Court of the Republic of Armenia in the manner and within time frames prescribed by the Administrative Procedure Code of the Republic of Armenia”. And according to Article 112 Part 1 “The decision of the Central Electoral Commission on rejecting or declaring as invalid the registration of an electoral list of a political party or a candidate included therein may be appealed against to the Administrative Court of the Republic of Armenia in the manner and within time limits prescribed by the Administrative Procedure Code of the Republic of Armenia”.

According to Article 113 Part 2 of the RA Electoral Code “The registration of a candidate included in the electoral list of a political party shall be repealed, if an application on recusal has been filed, the provision of Article 18 Part 8 of this Code has been violated, based on the judgment of the court and the provisions of Article 26 of this Code have been violated, based on the judgment of the court”. And Article 18 Part 8 of the Code, particularly determines that “In the case of the violation of the established procedure for election campaigns which can have an essential impact on the results of the election, by candidates or political parties, the commission which has registered the candidate or the electoral list of a political party, the commission shall file a claim before a court for repealing the registration of the candidate or the electoral list of the political party”.

In its turn Article 46 of Code determines “The decisions, actions (inactions) (excluding the decisions on the results of the statewide elections) of the Central Electoral Commission can be appealed in the Administrative Court”. Meanwhile, according to the same article the

applications for declaring the registration of a candidate or an electoral list of a political party or an individual candidate from that list invalid may be submitted till the ballot day.

It is obvious that not only the frames of the judicial authorities are clarified here, but it is also emphasized in what procedure and time limits those issues may be considered and resolved.

It follows from the abovementioned, that for the effective protection of the electoral right the following are required;

- a) to know precisely the frames of jurisdiction of each judicial institution,
- b) to take into account, that each institution is competent to perform only such acts for which it is authorized by Constitution or the laws;
- c) to make necessary steps for the protection of the right at the court, having jurisdiction on that issue **in the time limits and procedure prescribed by the law;**
- d) to take into account, that the RA Constitutional Court is not a superior court for the other courts, but it is implementing the specific authorities exclusively delegated to it by the Constitution.

The RA Constitutional Court is not authorized to take for the consideration all the issues, which firstly shall be taken into consideration and resolved by the RA Administrative Court, decisions of which, as it was stated above, are final and not subject to appeal.

It also important to take into account, that according to Article 74 Part 8 of the RA Electoral Code “On the fifth day after the voting day, the constituency electoral commission shall - based on the protocol on constituency voting results, court judgments, decisions made as a result of discussing motions received by the commission, and the adopted decision on the violations registered on the voting day in the record books of precinct electoral commissions summarize the election results and adopt a decision thereon”

In its turn Article 75 Part 6 of the Code determines, that “On the seventh day after the voting day, the Central Electoral Commission shall – based on the protocol on voting results, court judgments, decisions made as a result of discussing motions received by the commission, adopted decisions of constituency electoral commissions on the violations registered on the

voting day in the record books of precinct electoral commissions, and the decisions on voting results — summarize the election results and adopt a decision thereon.”

Taking into consideration these legislative provisions, as well as the requirements of Article 100, Point 3.1 of the RA Constitution, Article 74 of the RA Law on the Constitutional Court, the task of the Constitutional Court while dealing with the disputes regarding the decision of the Central Electoral Commission is to find out whether the following items have been taken into account with the necessary legal preciseness during the adoption of the respective decision.

- a. The protocol on the results of the elections, which has been made by the procedure prescribed by the law;
- b. the verdicts on the issues which are in the frames of competence of the Administrative Court;
- c. the decisions made as a result of discussing motions received by the commission;
- d. the decisions of constituency electoral commissions on the violations registered on the voting day in the record books of precinct electoral commissions;
- e. the decisions made on the results of the voting.

**In the cases of disputes concerning with the decision of the constituency electoral commission**, the Constitutional Court shall find out whether the following items have been duly taken into account during the adoption of the respective decision.

- a. the protocol on the results of the elections in the respective electoral constituency,
- b. the judgments of the court,
- c. the decisions made as a result of discussing motions received by the commission
- d. the decisions of constituency electoral commissions on the violations registered on the voting day in the record books of precinct electoral commissions.

The examination and evaluation of these two groups of documents in terms of being drawn up in compliance with the requirements of the law as well as being duly taken into consideration during the adoption of the final decision are the task of the Constitutional Court.

The task of the Constitutional Court is also to evaluate, taking into account all the abovementioned, how lawful is the decision adopted by a respective electoral commission regarding the results of elections.

**The confidence** towards the results of the elections is mostly connected with fact, how the electoral commissions implement the requirements of Articles 45-47 of the RA Electoral Code and how fundamental and objective are the decisions made as a result of discussing motions received by the commission, as well as the decisions adopted on the violations registered on the voting day in the record books of precinct electoral commissions.

The electoral commissions of all the levels shall pay a special attention to them, and the actions and inactions of the latter ones, as it was mentioned, may be appealed at the Administrative Court by the procedure and time limits defined by the law.

The procedure and peculiarities of the cases on the protection of the electoral right at the Administrative Court are clearly defined by Chapter 25, Articles 143-150 of the RA Administrative Procedure Code.

The peculiarities of the consideration and solution of the disputes over the decisions made on the basis of the results of the elections at the Constitutional Court are prescribed by Article 74 of the RA Law on the Constitutional Court.

**THE LEGAL-ADVISORY SERVICE  
OF THE STAFF  
OF THE RA CONSTITUTIONAL  
COURT**