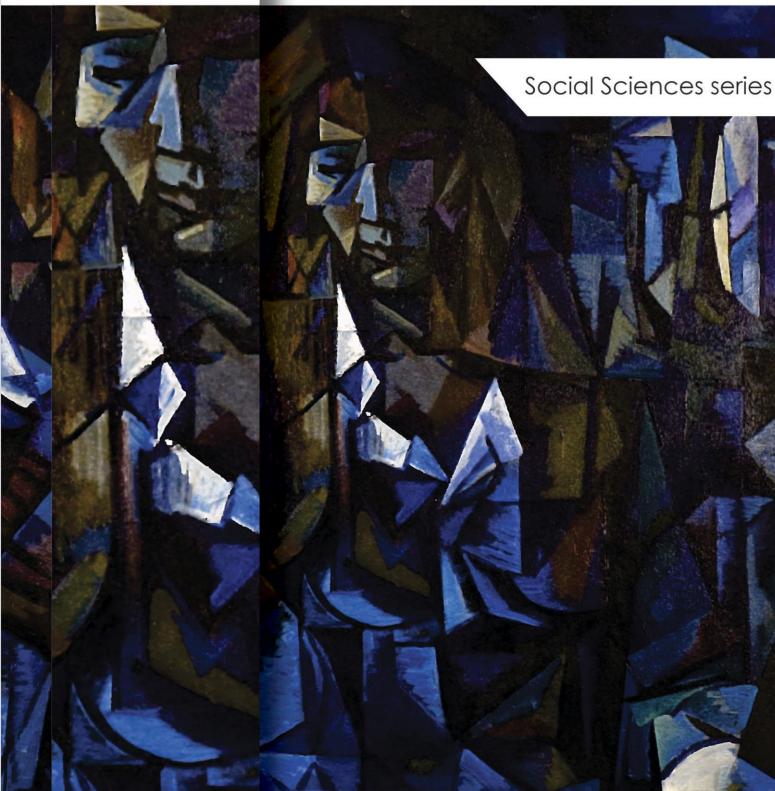
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SOME PROBLEMS OF ELECTORAL RIGHTS PROTECTION

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Abstract. The article is devoted to the problems of the protection of civil rights in the electoral legislation, the development of the electoral process, ways and means of protecting the rights and interests of citizens in the electoral system, as well as analysis of enforcement practices to resolve disputes about guarantees of the electoral rights of citizens.

Keywords: suffrage, legislative system, guarantee, electoral process, enforcement, protection of electoral rights.

The protection of human and civil rights undoubtedly remains one of the main functions of any modern democratic State. Depending on what kind of subjective composition we are talking about and what are the mechanisms for protecting these specific rights, various assessments of the effectiveness of the protection presented are given.

Speaking about the protection of electoral rights, it is necessary, first of all, to address the circle of subjects of electoral law. There is no single approach in the legal literature to the question of what is the full list of subjects of electoral law and participants in electoral processes. Without going into theoretical disputes on this issue, we note that the approach that the main subjects of electoral law and electoral processes are voters and the elected (candidates, parties and party blocs) is indisputable. It is also indisputable that the active participants in the electoral processes in the Republic of Armenia are proxies, observers, accredited media representatives, election commissions of various levels, members of election commissions, etc.

According to the RA Constitutional Law "Electoral Code of the Republic of Armenia" (hereinafter - the RA Electoral Code or the RA IC), the protection of electoral rights can be carried out in an administrative or judicial manner.

The Armenian electoral legislation has undergone many changes to ensure the protection of citizens' electoral rights.

Within the framework of this scientific article, I would like to turn to the established law enforcement practice for the protection of electoral rights in an administrative manner.

Turning to the issue under consideration, two groups of participants in the electoral law can be distinguished:

1) participants who usually do not apply for the protection of their electoral rights. This group mainly includes voters, election commissions, and often also elected.

It should be noted that the most significant obstacle to citizens exercising their right to vote for many years has been the entry of data about a citizen into the voter lists.

The current RA IC, in our opinion, quite clearly regulated the issues of compiling the list of voters. Thus, according to Article 10 of the RA IC, on the basis of the Register of Voters of the Republic of Armenia, a list of voters of the municipality by polling stations is compiled, which, according to Article 2 of the Electoral Code, includes persons who have the right to vote during the relevant elections.

At each election, a voter may be included in only one list of voters. During elections to the National Assembly, voters registered in another municipality, no later than 10 days before the voting day, submit to the head of the authorized body or its relevant subdivision (hereinafter referred to as the authorized body) an application for temporary withdrawal from the list of voters at the place of registration, indicating the address of the location on the day of voting.

The authorized body, within three days after receiving the application, temporarily removes the voter's data from the list of voters at the place of registration and adds them to the list of voters of the polling station at its location.

Voters who are not registered in the Republic of Armenia, in order to participate in voting during the elections to the National Assembly, not later than 10 days before the voting day, submit to the authorized body an application for temporary inclusion in the list of voters, indicating the address of their place of residence in the Republic of Armenia on the voting day. The authorized body, within three days after receiving the application, shall include the voter in the list of voters of the polling station at his location in the Republic of Armenia on the day of voting and provide him with a certificate of this. There are regulatory features concerning certain categories of voters, among which the RA IC includes members of precinct election commissions, police officers, military personnel, voters who are on inpatient treatment, and persons in penal institutions.

Over the past few years, the election commissions have not received applications from voters to protect their right to vote. Taking into account the fact that even on the day of voting, voters have the opportunity to be included in additional lists compiled on the day of voting, on the basis of a certificate issued by the passport and visa office, this kind of issues can be considered resolved.

So, within the framework of the extraordinary parliamentary elections of 2018, about 200 certificates were issued throughout the country on the inclusion of a citizen in additional voter lists compiled on the day of voting. In 2021, as part of the early parliamentary elections, this number turned out to be slightly higher, which was mainly due to the results of the 44-day war. Moreover, for the first time in the last 10 years, many voters were forced to restore their right to be included in the voter list in court. In our opinion, the problems that arose with the inclusion of citizens in the voter lists in this case occurred solely because of the imperfection and inconsistency of the work of the authorized body, which led to undistorted law enforcement practice.

These cases are rather exceptions confirming the rules. From this point of view, it can be stated that in recent years there has been extremely poor practice in Armenia to protect the electoral rights of citizens as voters (both administratively and in courts), which indicates that citizens do not encounter obstacles to the realization of their rights. The legal regulation on this issue is quite clear and definite, because, as it seems to us, we face the need to protect the rights of voters to the least extent.

2) As for the protection of the electoral rights of other subjects who often apply for the protection of their (and not only) electoral rights, which include observers, proxies, media representatives, public organizations that have accredited their observers, things are more complicated here.

Part 3 of Article 48 of the RA IC states:

"Resolutions, actions (inaction) election commissions may appeal:

1) everyone, if he considers that his subjective electoral right established by this Code has been violated or may be violated;

2) a trustee, if he considers that his right or the right of his principal established by this Code has been violated;

3) an observer or visitor, if he considers that his right established by this Code has been violated;

4) a representative of the mass media, if he considers that his right established by this Code has been violated;

5) an authorized representative of a party participating in the elections, if he considers that his right, established by this Code, or the right of his proxy party, or the right of a candidate included in the electoral list of the party, has been violated."

For certain categories of issues, the RA IC also refers to a specific subjective composition and designates a completely allotted time and procedure for appeal. For example, according to parts 9 and 11 of Article 48 of the RA IC, an application for invalidation or invalidation of the registration of the electoral list of a party participating in the elections and a candidate included in the electoral list of the party may be submitted only by the party participating in the elections, and only to the election commission that registered the given party, and at the same time the application must be submitted no later than 2 days before the voting day – before 18.00 hours. The Election Commission shall consider this application and adopt a resolution on it within 5 days after receiving the application, but no later than on the day preceding the vote - before 12.00 o'clock.

Thus, the RA IC determines on each specific issue:

1) the subjective composition of complainants,

2) the instance where you can file a complaint,

3) terms of appeal,

4) terms of consideration.

The most problematic in this regard in the framework of law enforcement practice in the election commissions in Armenia has become a huge number of applications from subjects of electoral law, whose rights in the circumstances specifically presented are not affected in any way.

For example, in Armenia, the practice of appealing decisions, actions (inaction) of precinct election commissions by public organizations that accredited observers at certain elections in order to protect the rights of observers is widespread, despite the fact that the observers themselves have no complaints.

Or appeal against decisions, actions (inaction) of precinct election commissions by observers in order to protect the rights of voters in the event that the voters themselves believe that there was no violation of their rights. In our opinion, in such situations we have to talk about the abuse of the right by the participants of the electoral right in the exercise of their right to appeal.

Issues of abuse of law within the framework of public law have recently increasingly attracted the attention of legal scholars. As it was said, this issue is also relevant from the point of view of legal regulation and law enforcement practice of the Republic of Armenia in the implementation of the right to appeal within the framework of the protection of electoral rights.

Consideration of applications and complaints in administrative bodies in the Republic of Armenia is regulated by the Law of the Republic of Armenia "On the Basics of Administrative Activity and Administrative Proceedings", according to which administrative proceedings are initiated on the basis of an application or on the initiative of an administrative body, and administrative proceedings based on an application or complaint are considered initiated from the moment the application or complaint is filed, except in cases when the application is returned or forwarded to the appropriate administrative body.

Part 1 of Article 47 of the RA Electoral Code states: "Administrative proceedings in the Central and District Election Commissions are carried out in accordance with the Law of the Republic of Armenia "On the Basics of Administrative Activity and Administrative Proceedings" with the specifics and within the time limits established by this Code.

The legal regulation of this issue, on the one hand, should ensure the inviolability of the protection of electoral rights, on the other hand, should provide for such mechanisms and procedures for the protection of electoral rights that will be feasible and effective.

The general rules for the protection of electoral rights provided for in Articles 47-49 of the RA IC, in our opinion, are capable, on the one hand, of ensuring adequate protection of electoral rights, on the other hand, are fully implemented within the framework of a systemic connection with other legal regulations provided for by the RA Electoral Code.

Problems arise only when we encounter abuse of the right, both on the part of election commissions and on the part of participants in the electoral process. So, for example, according to part 7 of Article 48 of the RA IC, according to applications received on the day of voting and after the day of voting, but no later than 2 days before the deadline set for summing up the results.

The central and district election commissions are responsible and adopt resolutions on them before summing up the election results, and the district election commissions during the elections to the National Assembly - one day before the deadline set for summing up the election results. Elections in the Republic of Armenia are held on Sundays. Applications and complaints on violations of the voting procedure can be submitted to the relevant district commission before 11.00 on Tuesday, and resolutions on them during the elections to the National Assembly must be adopted no later than Saturday, since the deadline for summarizing the election results is 7 days, that is, the Sunday following the voting day.

Despite the fact that only 4-5 days are allotted for the adoption of resolutions on complaints, and depending on the number of complaints filed, such a short period may be problematic, however, practice shows that even in cases where only one complaint is filed, the district commissions take decisions on them within the possible deadline or closer to it.

This situation causes adverse consequences for the complainants, as they have 3 days to appeal the decisions of the district commissions either to the CEC or to the administrative court. In this case, the decisions of the district commissions are appealed after the final generalization of the election results, and such decisions can no longer affect the election results, affect them, and, in fact, they can be considered irrelevant.

Thus, despite the fact that taking decisions on complaints on the last day of the deadline established by law, the commission acts lawfully, however, in our opinion, such legal regulation makes it possible for the district commission to abuse the right.

On the other hand, according to the established practice, complainants often file complaints about circumstances that are already set out in the register on their own initiative, that is, these circumstances will already be considered by the district commission, and these circumstances mainly do not concern the rights of the complainants themselves. Thus, it is possible to load election commissions so much as to put them in a hopeless situation.

Such exercise of the right to appeal, in our opinion, is an abuse of the right to appeal, in which the complainant is not trying to restore his violated rights or stop their possible violation, but only trying to create the impression that there were many violations during the voting or during the electoral process in general.

The RA IC provides for some features of administrative proceedings in election commissions. For example, only within the framework of administrative proceedings in election commissions can such a legal institution as refusal to initiate administrative proceedings be applied. According to part 1 of Article 49 of the RA IC:

"1. The application submitted to the election commissions must be signed by the applicant, include his name, surname, address of the applicant, the date of submission. The application may also include the applicant's phone number and email address. The application must define the applicant's claim and provide the applicant's reasons. The application must be accompanied by possible evidence.

If the application is submitted through a representative, a power of attorney issued in accordance with the procedure established by law must also be submitted.

A copy of the document (certificate of the established sample) certifying the status of the applicant must be submitted in the appendix to the applications submitted by the candidate, proxy, observer, representative of the mass media, member of the election commission, authorized representative.

Applications that do not include data about the applicant or include false data submitted with abuse of rights, applications filed by an unauthorized person, as well as applications filed in violation of the requirements established by paragraph two of this part, are not considered, administrative proceedings are not initiated on them, and election commissions issue a resolution on refusal to initiate administrative proceedings on them. In this case, the election commission has the right to carry out administrative proceedings on its own initiative."

This tool makes it possible to cope very effectively with a situation when applications and complaints are filed not to protect electoral rights, but to simulate the presence of many violations in order to influence the assessment of the quality of organized and conducted elections. However, it seems to us that this toolkit is not enough to effectively protect electoral rights, since in the shortest possible time provided for by the Electoral Code of the Republic of Armenia, within the framework of electoral processes, it is necessary to have time to consider all complaints and applications submitted by eligible persons in a timely manner, and speculation of such opportunities can put the Central and District election Commissions in a hopeless situation. Such a problem can become unsolvable.

As a result of the analysis of the RA electoral legislation and the law enforcement practice of election commissions, it can be concluded that the imperfection of legislative regulation can create fruitful ground for abuse of the right both by the administrative body (election commissions) and by the applicant.

In our opinion, both the law enforcement practice of election commissions in this matter and the electoral legislation should be reviewed.

To provide such a balanced legal regulation of the exercise of the right to appeal within the framework of the protection of electoral rights that:

- firstly, to exclude the possibility of non-fulfillment by election commissions of their powers aimed at the realization and protection of human rights;

- secondly, to ensure that the appeal process does not become an end in itself and does not set the sole purpose of "loading" the administrative body.

For these purposes, for example, it is necessary to legislate the requirement that an administrative body is obliged to initiate administrative proceedings on its own initiative, if an unpleasant administrative act is to be adopted as a result of its results and the administrative body has all the information necessary for this production. The current electoral legislation provides for a very wide discretion for election commissions in matters of initiating administrative proceedings on their own initiative. Or should the election commissions, if possible, consider applications and complaints within such a time frame to ensure that they can be appealed in a timely, effective and relevant manner, that is, not to bring the situation to the point that complaints about these decisions can be filed only after the final summary of the election results.

On the other hand, it is necessary to legislate mechanisms for declaring an application inadmissible if, on the same grounds and with the same requirement, the applicant has already exercised his right to appeal in some form, and also legislate the right of an administrative body not to consider such applications (complaints) by applying a legally established "filtering system".

In fairness, it should be noted that the RA IC states that administrative proceedings are not initiated on applications filed with abuse of law and a decision is made to refuse to initiate administrative proceedings. However, there is no such law enforcement practice in the activities of election commissions.

In foreign countries, in order to achieve the above-mentioned balance in the regulation of the right to appeal, the consolidation of legal regulation is practiced, in which the "proper" or "proper" realization of the right to appeal is achieved by widely informing citizens. For example, the Administrative Procedures Act of the Canton of Basel-Land (Switzerland) of 1988 establishes that in Switzerland an order has a clear designation that it is an order, contains a justification and explanation of the right of appeal, as well as a detailed explanation of the form, methods of appeal and the procedure for filing a complaint.

There are other ways and methods that can collectively provide a balanced legal regulation in which it is possible to exclude or minimize the possibility of abuse of the right both by the administrative body and by the applicant, and only in this way can effective protection of electoral rights be ensured.

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САЙЛАУ ҚҰҚЫҚТАРЫН ҚОРҒАУДЫҢ КЕЙБІР МӘСЕЛЕЛЕРІ

Түйін. Мақала сайлау заңнамасындағы азаматтық құқықтарды қорғау мәселелеріне, сайлау процесінің дамуына, сайлау жүйесінде азаматтардың құқықтары мен мүдделерін қорғаудың жолдары мен құралдарына, сондай-ақ дауларды шешудегі құқық қолдану тәжірибесін талдауға арналған. Сонымен қатар, азаматтардың сайлау құқықтарының кепілдіктеріне қатысты мәселелер қарастырылады.

Кілт сөздер: сайлау құқығы, заңнама жүйесі, кепілдіктер, сайлау процесі, құқық қолдану, сайлау құқықтарын қорғау.

НЕКОТОРЫЕ ПРОБЛЕМЫ ЗАЩИТЫ ИЗБИРАТЕЛЬНЫХ ПРАВ

Аннотация. Статья посвящена проблемам защиты гражданских прав в избирательном законодательстве, развитию избирательного процесса, способам и средствам защиты прав и интересов граждан в избирательной системе, а также анализу правоприменительной практики по разрешению споров о гарантии избирательных прав граждан.

Ключевые слова: избирательное право, система законодательства, гарантии, избирательный процесс, правоприменение, защита избирательных прав.