

Administrative and judicial procedure for consideration of complaints against decisions of election commissions in the Russian Federation: ordinary procedure and peculiarities

Speech by the Secretary of the Central Election Commission of the Russian Federation M. V. Grishina at the 28th ACEEEO annual conference "Judicial protection of electoral rights and the transparency of the elections" on 25-26 September 2019 in Ljubljana

In the Russian Federation, the Constitution of 1993 guarantees judicial protection of citizens' electoral rights. The Federal law provides for the possibility of appealing decisions of lower-level election commissions administratively (in the system of election commissions), or, if the applicant decides, in court. At the same time, the court's decision on the relevant issue has a priority.

In case of simultaneous appeal of the decision of the election commission to the higher-level election commission and in court, the higher-level election commission shall suspend consideration of the complaint until the court decision comes into legal force and can renew it only in the event of withdrawal of proceeding from the court.

In this regard, and taking into account the following features, this method of protection of rights cannot be considered as a complete alternative.

1. Code of administrative procedure of the Russian Federation of 2015 and interaction of the CEC of Russia with the Supreme Court of the Russian Federation

The adoption of the Code of Administrative Procedure of the Russian Federation¹ (hereinafter – the Code) in 2015 brought the consideration of electoral disputes to a new level. Now consideration of administrative claims is carried out in a specially regulated manner, as a rule, by judges who specialize in these issues. As a result, the quality of dispute resolution is improved.

The CEC of Russia constantly interacts with the Supreme Court in the course of summarizing judicial practice. Representatives of the CEC of Russia were officially included in the working group for the preparation of the Resolution of Plenum of the Supreme Court of the Russian Federation of 31 March 2011 No.

¹ The code of administrative procedure of the Russian Federation 08.03.2015, No. 21-FZ (ed. 27.12.2018) // Collected legislation of the Russian Federation. 2015. No. 10. Art. 1391.

5 (edited on 9 February 2012) "On practice of consideration by courts of cases on protection of electoral rights and the right to participate in referendum of citizens of the Russian Federation".²

With the participation of the CEC of Russia, thematic reviews of judicial practice on issues arising in the consideration of cases on the protection of electoral rights and the right to participate in the referendum of citizens of the Russian Federation in 2016³ and 2017⁴ were prepared.

According to part 7 of article 243 of the Code, the CEC of Russia via its representative can be invited by Court to participate in administrative case on protection of electoral rights and the right to participate in the referendum of citizens of the Russian Federation in order to give a conclusion on the case.

At the same time, the court decision is obligatory for the election commission of any level and cannot be subject to reassessment within consideration of the complaint on the question already considered by court.

2. Appeals against decisions of election commissions on refusal to register candidates (lists of candidates) for participation in elections as a category of cases

In practice, a significant number of cases considered by the courts in the field of protection of electoral rights are connected with appeals against refusals by election commissions to register candidates or lists of candidates.

According to the information of the Central Election Commission of the Russian Federation, 192 cases on protection of electoral rights were considered in the Supreme Court of the Russian Federation during the election campaigns on 8 September 2019. 57 of them (30 %) were related to appeals against decisions of election commissions to refuse to register candidates, lists of candidates.

In comparison: during the election campaigns for the elections of 9 September 2018, 116 cases were considered. 28 of them (24 %) were related to

² Resolution of the Plenum of the Supreme Court of 31.03.2011 № 5 "On the practice of review of court cases on the protection of electoral rights and the right to participate in the referendum of citizens of the Russian Federation" (ed. 09.02.2012) // Bulletin of the Supreme Court. 2011. No. 6.

³ "Review of judicial practice on issues arising in cases of protection of electoral rights and the right to participate in the referendum of citizens of the Russian Federation" (enacted by the Presidium of the Supreme Court of the Russian Federation 16.03.2016) [web resource] // Legal reference system Consultant Plus, 2019.

⁴ "Review of judicial practice on issues arising in cases of protection of electoral rights and the right to participate in the referendum of citizens of the Russian Federation" (enacted by the Presidium of the Supreme Court of the Russian Federation 20.12.2017) [web resource] // Legal reference system Consultant Plus, 2019.

appeals against decisions of election commissions to refuse to register candidates, lists of candidates.

Consideration of such complaints plays a central role and constitutes the biggest part of the work of the election commissions with complaints. For example, in 2019 the CEC of Russia considered 71 complaints against decisions of lower election commissions, and 70 of them were related to the refusal to register candidates or lists of candidates. About a third of complaints were granted.

3. Number of instances when appealing against decisions of election commissions on refusal to register candidates (lists of candidates)

An important difference between the administrative and judicial appeal procedures is that the consideration of a complaint by the CEC of Russia may be a third or fourth in the hierarchy of election commissions, depending on the level of elections in which the decision was made. In contrast, the judicial procedure provides for the right of a citizen to compulsory consideration of the complaint only in two instances: first and appeal.

In this regard, the consideration of complaints in the system of commissions can continue until the day of voting, and only the reduced terms of filing and consideration of complaints do not allow to go beyond the terms of the campaign in resolving issues of restoration of violated rights of candidates. There are other differences in the procedural and substantive components of the complaints procedure. At the same time, the law does not focus on these differences, although they directly follow from it. In this regard, applicants seeking protection of their electoral rights are sometimes not fully able to justify the reasons why they chose a particular method of appeal. It seems that the following should be taken into account in making this choice.

4. Terms of appeal against decisions of election commissions

The terms for appealing decisions to a higher-level election commission and to a court differ.

Thus, a complaint against the decision of the relevant election commission to refuse to register a candidate (list of candidates) may be filed to the higher election commission within ten days from the date of adoption of the appealed decision (paragraph 2 of article 78 67-FZ).

It is important to note that the day of the decision to refuse to register a candidate (list of candidates) is included in the specified period (paragraph 1 of Art. 11.1 67-FZ).

In case of filing an administrative claim to the court, the term is also ten days from the date of adoption of the appealed decision (part 4 of article 240 of the Code). However, the date of the decision of the commission is not included in the specified period. Thus, if the last day of the period falls on a weekend or holiday, then it is transferred to the next working day (part 2 of article 93 of the Code), in contrast to the consideration of complaints by commissions, where the terms refer to calendar days. In practice, there are cases when a citizen appeals against the decision to refuse to register him as a candidate on the day of the decision and after the completion of the consideration of the complaint in the election commission has time to file a claim for the same decision to court.

The term of appeal of the decision made as a result of consideration of the complaint in "the first" instance is five days and is calculated according to the above rules⁵.

Missed deadline for filing a complaint in this category of cases cannot be restored.

Taking into account the specifics of consideration of complaints in the system of election commissions, it is virtually impossible to send a complaint to the election commission by mail on the last day of the time frame. The election commission shall consider only those complaints that **were received** within the prescribed ten-day period. This contrasts the rules **established for the court** by the procedural legislation, which deem the complaint sent by mail on the day of expiration of the time frame as filed on time.⁶

In connection with this difference, in practice, there are cases when at the end of the consideration of the complaint in the election commission, it turns out

⁵ A special study was required to review the problem of calculating the terms of appeal in court against the decision of the higher-level commission, which canceled the appealed decision of the lower-level commission during the consideration and adopted a new decision on the merits. The court fixed a five-day period for appealing the decision. For example, by Decision of 15 August 2019 in case No. 3A-215/2019, the St. Petersburg city court noted that an appeal against the decision of the election commission adopted in accordance with paragraphs 6 and 7 of article 75 of the Federal law of 12 June 2002 No. 67-FZ "On basic guarantees of electoral rights and the right to participate in a referendum of citizens of the Russian Federation" may be filed during the election campaign within five days from the date of adoption of the appealed decision.

⁶ This legal position guided the Supreme Court of the Russian Federation when considering the appeal of the Moscow city Election Commission, overturning the decision of the Moscow city Court of 13 August 2019 to declare illegal the inaction of the Moscow city Election Commission, expressed in the evasion from the decision making in consideration of the complaint. (Determination of the Supreme Court of 22.08.2019 No. 5-APA19-122 [web resource]) // Legal reference system Consultant Plus, 2019.

that at the same time an administrative claim was sent to the Court by mail. Thus, in this case, the candidate has an opportunity to have his claims and arguments reviewed consequently and not alternatively.

At the same time, the candidate is refused the consideration of the complaint in essence in court if the term of the appeal of the decision of election commission on refusal to register has passed, and the higher level commission (or commissions) left (left) the appealed decision in force.⁷

5. Terms of consideration of complaints

Terms of consideration of complaints are the same both for courts and for election commissions and aim to ensure that disputes concerning the registration of the candidate or list of candidates were settled, not only in the first instance, but in appeal (and in the election commissions – in all instances) before election day.

Administrative claim on the protection of electoral rights and the complaint to the election commission received during the election campaign before polling day, are considered within five days from the date of receipt but not later than the day preceding voting day. The appeal received on the day before voting day is considered on the voting day while the appeal received on the day after the voting day is considered immediately. If the facts contained in the administrative claim or complaint to the election commission require additional verification, then they are considered no later than ten days after filing (part 1 of article 241 of the CAS of the Russian Federation; paragraph 4 of article 78 67-FZ).

6. Means of restoration of electoral rights

When considering complaints, the election commission may take one of the following decisions:

- a) dismiss the complaint;
- b) cancel the appealed decision in whole or in part and make a decision on merits;
- c) cancel the appealed decision in whole or in part, obliging the lower level commission to re-examine the issue and make a decision on the merits.

⁷ For example: The ruling of the Moscow city Court 12.08.2019 No. 3A-4599/2019 and 21.08.2019 No. 3A-4868/2019 [web resource] // Legal reference system Consultant Plus, 2019.

When challenging the decision of the election commission in court, in case of established violations of the legislation on elections when making the contested decision, the Court may satisfy the administrative claim in full or in part, recognizing the decision illegal, determining the method and deadline of restoration of violated rights and (or) elimination of the consequences of violations, or refuse to satisfy the administrative claim establishing that the contested decision, action (inaction) are legal.

The most difficult problem is to identify differences in the study of evidence within the procedural capabilities of the Court on the one hand and the election commissions – on the other.

Thus, when considering the issues of establishing the authenticity of signatures of voters in the signature lists in support of the nomination of candidates, lists of candidates, the higher level election commission checks only the validity of the conclusions made by the lower level commission on the basis of those documents and materials that are provided by law in order to detect signs of forgery during the collection of signatures. Such a document, in particular, is an expert opinion on the forgery of records in the signature list.

In some cases, however, candidates have resorted to collecting written or oral statements from voters whose signatures have been found to be inaccurate in order to prove the contrary. At the same time, the law does not establish methods of verification of the specified indications by election commissions.

Such evidence can be taken into account and accepted only during **the consideration of the complaint in court**, as pointed out by the Constitutional Court of the Russian Federation⁸.

As part of the **judicial procedure**, the Code considers the testimony of witnesses on an equal footing with other evidence and defines it as a witness reporting to the court orally or, possibly, in writing about the circumstances known to them that are important for the proper consideration and resolution of an administrative case (part 1 of article 69 of the Code).

For persons engaged in proving as witnesses a liability to prosecution is established for giving false testimony and refusal to testify, as one is warned by the court and gives a personal recognizance (part 9 of article 51 of the Code). (We are

⁸ In Ruling No. 1629-O-O of 8 December 2011, the Constitutional Court stated that the legislative provisions on elections do not establish (and cannot establish) evidentiary rules in civil proceedings, including proceedings on the protection of electoral rights and the right to participate in the referendum of citizens of the Russian Federation. Therefore, these statutes do not inhibit neither subpoena of witnesses nor their interrogation, nor committing other procedural actions for proving, or evaluation and verification of evidence, including the statement of petitions and the appointment of legal expertise] // Legal reference system Consultant Plus, 2019.

talking about the responsibility under Art. 307 of the Criminal Code "Willfully false testimony, expert opinion, specialist opinion or incorrect translation").

7. Exclusive jurisdiction of the courts

The legislation of the Russian Federation establishes the exclusive competence of the Courts on a number of important issues of protection of citizens' electoral rights.

Thus, the Court is the final authority in resolving controversial issues of inclusion of voters in the voters list. In order to resolve this issue quickly, the law provides for the work of the Courts on Election Day, which is a day off in Russia⁹.

Only judicial procedure of cancellation of the results of elections established by election commissions is provided if there are grounds stipulated by law.

In its Decision No. 1-P of 15 January 2002, the Constitutional Court of the Russian Federation stated that the principle of proportionality requires the use, in each case of violations, of electoral rights of an appropriate method of restoration or compensation, taking into account their specificity, due to the fact that, being individual, these rights are exercised in the election process, involving the identification of the general will of voters who took part in the vote. This, however, should not lead to the refusal to use compensatory mechanisms to eliminate the consequences of found violations, as well as exclude the responsibility of the subjects of the electoral process who committed these violations, including election commissions. The Court has the right to recognize repeated elections impossible for the purpose of restoration of the passive suffrage of the citizen. However, in any case, the negative consequences resulting from illegal actions (or inaction) of the election commissions, which have, in fact, public authority functions, should be compensated, and the good name of the citizen - restored.¹⁰

⁹ The Constitutional Court of the Russian Federation drew attention to the role of Courts in this matter in its Ruling No. 1794-O-O of 8 December 2011, in which it indicated that failure by citizens to comply with registration requirements should not entail consequences that would affect the content of their constitutional rights. If the citizen for some reason did not carry out the obligation of registration at the place of residence and, consequently, was not included in the voters list, he may apply to the Precinct Election Commission with a statement about his inclusion in the voters list. The PEC within 24 hours, and on the voting day, within two hours after the submission of application but not later than the end of the voting must check the submitted information and documents, including registration at the place of stay, and add him to the voters list or make the decision to reject the application specifying the reasons for such deviations. The decision of the PEC to refuse to included in the voters list may be appealed by a citizen to a higher level election commission or to a court, which must consider the complaint (application) within three days, or if three or less days remain before the day of voting - immediately. At the same time, if the PEC decides to satisfy the complaint (application), the relevant correction in the voters list must be made immediately. // Legal reference system Consultant Plus, 2019

¹⁰ Resolution of the Constitutional Court of the Russian Federation of 15.01.2002 № 1-P [web resource] // Legal reference system Consultant Plus, 2019.

8. Categorization of complaints by subject and subjects of the right to appeal

I would like to dwell on another important feature of the legal regulation of judicial protection of citizens' electoral rights. The Code defines the persons entitled to file an administrative claim in each of the types of cases.

For example, an administrative lawsuit against the decision on refusal to register candidate, list of candidates can be sent to Court by the election commission that registered a candidate, list of candidates, a candidate, an electoral association, towards which such a decision was rendered, a candidate registered at the same electoral district, electoral association with the list of candidates certified or registered in the same electoral district (part 10 of article 239 of the Code).

This situation is associated with the concept written in Code, according to which in case of appeals against actions of the election commission, procedural duty is imposed to substantiate with adequate evidence of legality and legitimacy of the appealed decisions or actions (inaction). The applicant shall be released from the obligation to prove the illegality of the appealed decisions or actions (inaction), but shall be obliged to prove the violation of their rights and freedoms by the relevant decision or action (inaction) of the election commission.

However, in the course of implementing this approach, gaps are periodically identified and they need to be corrected by amending the Code.

For example, in a ruling of the Constitutional Court of the Russian Federation dated 15 November 2018¹¹, the legislator was ordered to further regulate the procedure for appealing election results by electoral associations whose rights were violated at the stage of nomination of candidates. The relevant draft law, which provides for, inter alia, an operational procedure for the consideration of complaints against election commissions that impede the nomination and registration of candidates, is currently under consideration by the State Duma of the Federal Assembly of the Russian Federation.

¹¹ Decision of the Constitutional Court of the Russian Federation of 15 November 2018. N 42-P "On the case of check of constitutionality of part 15 of article 239 of the Code of administrative legal proceedings of the Russian Federation in connection with the complaint of regional office of political party "A Just Russia" in the city of St. Petersburg" [web resource] // Legal reference system Consultant Plus, 2019.

Thus, Russian legislation provides for a full-scale mechanism for the protection of citizens' electoral rights, both through electoral and judicial bodies. This mechanism is actively used and periodically improved.

In any electoral dispute the final word belongs to the court.

As for election commissions, they work under judicial control, strictly guided by the legal positions of the Constitutional Court of the Russian Federation and guided by the judicial practice of courts of general jurisdiction.