

Administrative and Electoral Law in Ecuador and Argentina

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The Argentinean and Ecuadorian Electoral Law comprises a branch of the Administrative Law and this is part of the Public Law, it is intended to make a comparative analysis between the institutions of public law in electoral matters existing in both nations; National Electoral Chamber of Argentina and the National Electoral Council and Electoral Disputes Tribunal of Ecuador, the application of the electoral resources in these legislations, establishing similarities and differences between these electoral systems for a better study, highlighting that the electoral law in Ecuador is a new matter of law that was born by the need to have independent electoral bodies of the executive powers and that the electoral justice constitutes a specialized justice compared to other bodies of the systems of administration of justice.

Keywords: law, administrative, electoral, regulation

INTRODUCTION

The purpose of this academic paper is to carry out a comparative study of the Argentinean and Ecuadorian legislation on administrative electoral matters, since Electoral Law is a branch of Administrative Law, which at the same time is part of Public Law. The sources of the Administrative Law will be established, the legal dispositions referring to the electoral entities and the organization of the electoral and contentious processes are contained in the Constitution and secondary norms. A comparative analysis of the institutions of public law in electoral matters existing in Argentina (National Electoral Chamber) and Ecuador (National Electoral Council - Electoral Disputes Tribunal) will be made, as well as the implementation of electoral resources in these legislations, in this way similarities and differences between these electoral systems can be established for a better study of them. Finally we must emphasize that the electoral law is a new matter of law that was born exactly from the need to have electoral bodies that are independent of the executive powers and that the electoral justice is constituted in a specialized justice in front of the other bodies of the administration of justice systems.

ADMINISTRATIVE LAW SOURCES

Among the sources of Administrative Law^{1,2} we have:

- The Constitution as the supreme law regulating the administrative organization of the state
- Administrative laws, which are legal rules subordinate to the Constitution approved by the Legislative Branch that regulate the public sector and its different institutions, determining the administrative procedure.

- Executive decrees, which are essentially administrative acts reserved solely to the President, as the head of the Executive Branch.
- Regulations are the set of provisions intended to regulate a law.
- Bylaws are legal tools with the force of law that regulate the specific activities of a given entity.
- Ordinances are sectional rules with the force of law that regulate the functions of the decentralized autonomous governments.
- Agreements are administrative acts of the President of the Republic or State Ministers of a general nature.
- Resolutions are procedures adopted by officials in use of their hierarchical powers.
- Instructions and circulars are technical rules that determine the fulfillment of established provisions, addressed to officials and employees of the administration for a correct application of rules of a higher legal category.
- Administrative manuals are orderly and systematic documents that contain instructions regarding the organization and operation, procedures to be followed within the administrative institutions to improve the efficiency and execution of work.
- Administrative customs are previous or precedent acts or facts that are formally regulated in a legal regulation.
- Case law refers to the rulings and judgements issued by the different judicial bodies for the administration of justice in the administrative area.
- The scientific doctrine refers to the opinions, criteria and comments of lawyers regarding the different administrative problems, which are useful for a better understanding and enlightenment of the legal regulations

ELECTORAL BODIES IN ARGENTINA

The National Electoral Chamber³ created in 1962 by Decree 7.163/62 is the highest enforcement authority of the electoral political legislation, it is composed of three judges and two secretaries, it is part of the national electoral justice, it has national authority, it is composed of 24 federal courts of first instance with jurisdiction in each of the electoral districts of the country (23 provinces and the city of Buenos Aires). It has regulatory, operational and supervisory powers over the National Voters Registry and jurisdictional functions, among which we have:

- National Voters Registry.
- Citizenship Charter Registry.
- Registry of voters residing abroad.
- Registry of voters deprived of liberty and disqualified.
- Registry of offenders of the duty to vote.
- National Registry of Political Parties.
- National Registry of Members of Political Parties.
- Registry of Opinion Surveys and Polls Companies.
- Public Registry of Applicants for Bureau Authorities.
- National Registry of Electoral Divisions.
- Registry of Delegates of the National Electoral Court.
- The Accounting Auditing Body.

Its case law has the force of a plenary decision and is binding on all judges of first instance and national electoral boards.

The National Electoral Chamber has the following special powers⁴:

- To direct and supervise the operation of the National Voters Registry and the districts.
- To direct and supervise the operation of the National Registry of Members of Political Parties and districts.
- To establish the rules to which the formation and operation of the General Registries, of Districts, of Citizenship Charters, of Disqualified Persons, of Electoral Misdemeanors, of

Judgments suspended due to immunities, of names, symbols, emblems and identification numbers of the political parties and the standard characteristics of the membership cards to be kept and maintained by the Federal Electoral Justice shall be subject.

- To organize a body of auditors and accountants responsible for verifying the accounting status of the parties and the fulfillment of the pertinent legal provisions.
- To implement a media auditing system.
- Likewise, being the highest authority in electoral matters, it shall also know the following:
- The level of appeal of final resolutions in matters initiated before the national judges of first instance with electoral competence.
- Cases involving the excusal of the judges of the Chamber and of the national judges of the first federal instance with electoral competence.

The national federal judges of first instance⁵ with electoral competence shall hear the following ex officio or at the request of a party:

- In the first and only instance, trials on electoral offenses provided for in the electoral law.
- In all matters concerning electoral offenses, the application of the Electoral Law, the Organic Law of Political Parties and complementary and regulatory provisions; the foundation, constitution, organization, operation, expiration and extinction of political parties in its district.

ARGENTINE ELECTORAL LAW

Retrieved from URL: ⁶https://www.electoral.gob.ar/nuevo_legislacion/index.php

- Law 19.945 National Electoral Code.
- Law 22.847 Number of National Deputies to be elected.
- Law 24.007 Registry of Voters residing abroad.
- Law 25.188 Law on Ethics in the Public Service.
- Law 25.858 Voters deprived of liberty
- Law 26.774 Law on Argentine Citizenship
- Law 27.120 Election of MERCOSUR Parliamentarians
- Law 27.337 Mandatory Presidential Debate
- Law 26.571 Law on Democratization of Political Participation.
- Law 23.298 Organic Law of Political Parties
- Law 26.215 Law on Financing of Political Parties.
- Law 27.504 Amendments to the Political Party Financing Law
- Law 19.108 Organization of National Electoral Justice
- Law 15.262 Simultaneity Law.
- Law 27.412 Gender Parity in Areas of Political Representation.
- Law 346 Citizenship Law
- Law 16.596 Citizenship and Naturalization Law
- Law 26.485 Law on comprehensive protection to prevent, punish and eradicate violence against women in the environments in which they develop their interpersonal relationships.
- Law 13.010 Promulgation of the Women's Vote.
- Law 17.671 Law for the Identification, Registry and Classification of the National Human Potential
- Law 26.743 on Gender Identity.
- Law 24.747 on Popular Legislative Initiative
- Law 25.432 Binding and Non-binding Popular Consultation
- Law 20.972 Presidential Acephalia
- Decrees, Resolutions and Agreements.

ELECTORAL BODIES OF ECUADOR

The 1946 Constitution created the Supreme Electoral Court as an autonomous agency of the Executive Power to be in charge of organizing, controlling and supervising the vote, an entity that lasted until 2008, since elections were previously organized by the Ministry of Government.

The 2008 Constitution of Ecuador,⁷ approved by referendum in September of the same year, created the Electoral Function made up of two bodies: National Electoral Council and Electoral Disputes Tribunal.

The National Electoral Council is constituted by five main and alternate members, whose term of office is six years and is partially renewed every three years. One of its main functions is the organization of the electoral process, the registration of political parties and movements and the control of electoral expenses.

The Electoral Disputes Tribunal is integrated by 5 main and alternate judges, whose term of office is 6 years, partially renewed every three years, its constitutional functions in addition to those established by law are:

- To hear and determine the electoral appeals against the acts of the National Electoral Council, of the decentralized institutions and the litigious acts of the political organizations.
- To sanction for non-compliance with the rules on financing, advertising, electoral expenses and violations of electoral rules.

The rulings and resolutions of the Electoral Disputes Tribunal represent electoral case law and shall be of last instance and shall be immediately enforceable.

ECUADORIAN ELECTORAL LEGISLATION

The electoral regulations^{8,9} in force in Ecuador are as follows:

- Organic Electoral and Political Organizations Law of the Republic of Ecuador, Democracy Code.
- Organic Code of Territorial Coordination, Decentralization and Autonomy (COOTAD).
- Organic Law of the Board of Citizen Participation and Social Control.
- Organic Law of Citizen Participation.
- Electoral Promotion Regulations.
- Regulation for Control, Advertising and Control of Electoral Expenses.
- Regulations of Procedures of the Electoral Disputes Tribunal.
- Regulations for Procedural Activities of the Electoral Disputes Tribunal
- Regulations on Individuals and Legal Entities that carry out Electoral Forecasts.
- Regulations for the organization and preparation of the passive electoral registry and its claim in administrative proceedings.
- Regulations for the organization, preparation and dissemination of the electoral registry and its claim in administrative courts.
- Regulations for the registration and qualification of nominations for popular elections
- Regulations for the internal democracy of political organizations.
- Regulations for changes of electoral domicile and operation of areas of attention.
- Regulations for the creation and/or updating of urban and rural electoral zones.
- Regulations for the creation, updating and closing of electoral areas abroad.
- Regulations for the formation of electoral alliances.
- Regulations for the removal of information from the database of political organizations that did not fulfill their registration process and those that were cancelled.
- Regulations for the approval of the status change of national political movements to political parties.
- Regulations of the advisory councils of political organizations.
- Regulations for the audit of political organizations in electoral processes.
- Instructions for the registration and suffrage of voters in the vote at home process.
- Bylaws of the Legal Regime of the Administration of the Executive Function.

- Organic Bylaws of Organizational Management by Processes.

PROCEDURE IN ELECTORAL MATTERS IN ARGENTINA

The National Electoral Code of Argentina¹⁰ establishes the following procedure. The electoral partisan procedure shall be summary, verbal and acted in double instance. The evidence will be offered at the first presentation and will be given at the hearing.

In the contentious procedure in the first instance, once the case has been initiated, the parties will be notified within five working days. Once this term has expired, the federal judge will summon a hearing within five working days, under penalty of being held with the party that participates, and the resolution must be issued within ten working days. The public prosecutor shall rule at the hearing or within three business days after the hearing. These terms are peremptory; the federal courts may shorten them in emergency cases. The incompetence and lack of legal capacity of the appellant must be resolved beforehand.

In the second instance, any final or deciding judgement or resolution may be appealed within five working days before the National Electoral Chamber. The appeal shall be granted in relation and to the devolutive effect only, except when fulfillment of the judgment could cause permanent damage, in which case it shall be granted in both effects. The appeal includes the appeal for annulment.

The appeal shall be substantiated before the federal judge with electoral competence, and the petition supporting the appeal shall be sent to the appealed party for a period of five days. When the appeal is filed before the federal judge with electoral competence, the interested parties shall establish domicile in the jurisdiction of the Federal Capital.

Failing this, the National Electoral Chamber may summon the party to do so within five working days, under penalty of having it filed in its courts of law. Once the proceedings have been received, the Chamber, as a measure to improve the provision, may order the admission of evidence not rendered in the first instance or other evidentiary proceedings, as well as oral subpoenas. Once the evidence has been produced or the oral hearing has taken place, as the case may be, the federal prosecutor of the second instance will be heard, and after the prosecutor's report has been added, the case will be submitted to the court in order to issue a judgement. The term to file a complaint for denied appeal shall be five (5) days.

The clarification of the final judgment may be filed in both instances within twenty-four hours of notification and must be resolved in the first instance within forty-eight hours. The filing of the clarification shall terminate the term for the appeal.

Once the annulment of a final judgment or resolution that decides an article has been declared null and void, the Chamber shall order that the case be transferred to the legal substitute, so that he/she may issue a new pronouncement in accordance with the law.

The National Electoral Chamber of Argentina provides for the following cases that may be subject to trial¹¹ in the federal electoral courts, which include:

- Direct Appeal
- Appeal of Complaint
- Challenging Party Intervention.
- Judicial Intervention to Political Group.
- Annulment of Internal Party Elections.
- Nullity of party body meeting.
- List of Members.
- Suspension of Membership.
- Party Authority Acts.
- Acts of Promoting Authority or Attorney-in-Fact
- Acts of party body.
- Termination of the Party's Legal Entity.
- Merger of Political Parties.
- Registration or Modification of Party Identification Attributes.

- Modification-Adaptation of the Party Charter.
- Re-acquisition of the Political Personality.
- Recognition of Electoral Alliance.
- Confederation recognition.
- District Party Recognition.
- Recognition of National Party.
- Public Contributions and Advertising Spaces.
- Electoral Offenses

ELECTORAL PROCEDURE IN ECUADOR

The Rules of Procedure of the Electoral Disputes Tribunal of Ecuador¹² establishes the following means of challenge or appeals that are within its competence and knowledge, among which we have:

- Subjective dispute electoral appeal
- Complaint action
- Exceptional review appeal
- Electoral Offenses
- Consultations for the removal of authorities of decentralized autonomous governments
- Horizontal and vertical appeals regarding its judgments, orders and resolutions.

The subjective dispute electoral appeal is filed against resolutions or acts of the electoral administration for decisions where the participation rights of citizens, candidates or political organizations are violated, for internal conflicts or litigious matters of the political organizations; for resolutions adopted by their governing bodies, when they disregard a particular right or violate a protected legal right; for exclusion or refusal of inclusion in the electoral registry or error in the same of a citizen; for arithmetical errors in numerical results in an election.

The complaint action is granted to citizens and political subjects when their subjective rights are considered to be harmed by the actions or lack of response of an electoral servant.

The exceptional appeal for review may be filed when the resolution of the National Electoral Council or judgment of the Electoral Disputes Tribunal has an evident error of fact and law verified and justified; if documents of transcendental value, ignored when the resolution of the National Electoral Council or judgment of the Electoral Disputes Tribunal was issued, subsequently appear; if the documents that served as a fundamental basis for issuing a judgment or resolution have been declared null and void by an enforceable judicial decision; if by an enforceable judicial decision it is established that in order to issue the resolution of the National Electoral Council or judgment of the Electoral Disputes Tribunal that is the subject matter of the review, a crime was committed by public officials or employees who intervened in such act.

Electoral offenses are unlawful behaviors that affect the rights of participation or undermine the principles of transparency, security and certainty of the electoral process, which involve the breach of electoral functions or violate the provisions legitimately issued by the electoral authority. These offenses are minor, serious, very serious, violations of electoral expenditure rules and special offenses of the media and companies of electoral processes.

Consultations on the removal of the authorities of the decentralized autonomous governments shall be resolved by the Plenary of the Electoral Disputes Tribunal on the basis of the file submitted by the secretary of the decentralized autonomous government.

The vertical appeal concerning its judgments, orders and resolutions is the request made by the procedural parties to the Plenary of the Electoral Disputes Tribunal to revoke or reform the judgment of instance or the order that ends the case.

Horizontal appeals (clarification and amplification) concerning its judgments, orders and resolutions are intended to clarify those points that are unclear or that generate doubts about the content of the judgment and to resolve any issue that has been ignored in the judgment.

CONCLUSIONS

This way we have made an analysis of the electoral justice bodies and the electoral legislation, we can establish that both bodies are specialized. In the case of the Argentinean electoral justice, the National Electoral Chamber and federal electoral courts are specialized branches of the Judicial Power of the Argentinean Nation, while the Electoral Disputes Tribunal is an independent autonomous entity of the Judicial Function of Ecuador.

Argentina's electoral justice was established in 1962, while the electoral justice dates back to 2008, which means that Argentina has more experience in the case of electoral justice.

The judgments and resolutions of the electoral justice are subject to appeal and constitute electoral case law.

The electoral legal regulations in Argentina are numerous in different laws, regulations, resolutions and agreements, while in Ecuador the legal regulations are contained in the Code of Democracy and the instructions and regulations approved by the National Electoral Council and the Electoral Disputes Tribunal.

Unlike Argentina, where the electoral procedure is ruled by law, in Ecuador a regulation governs the procedure.

It is important to emphasize that in both cases the electoral justice system is independent from the Executive Function to avoid risks of electoral fraud and that all decisions are in compliance with the regulations in force, and progress must be made in the specialization of electoral justice. In this way and through this research work, I hope to have made a contribution to legal science.

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