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## **Administrative court and the settlement of regional and municipal election disputes in Cameroon**

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### **Abstract**

True democracy can only be achieved through democratic elections which is a characteristic of a multiparty system. Election is the process through which a person or persons are chosen to occupy vacant positions. Elections in Cameroon are managed by Elections Cameroon (ELECAM). ELECAM is an independent election body with an independent board known as the Electoral Board (EB) and an executive department known as the General Directorate of Elections (GDE). Just like any other human endeavour, conflicts are bound to occur in the course of conducting an election. There are institutions which have been put in place to settle election disputes in Cameroon. The competent institution depends on the kind of election. In the case of Presidential and Legislative elections, the competent institution is the Constitutional Council and in the case of Regional and Municipal elections the competent institution is the Administrative Court. Law No. 2006/022 of 29 December 2006 establishes the organization and functioning of the Administrative Courts in Cameroon and these courts have a pivotal role to play election disputes in the country. By virtue of Sections 194(1) and Section 267(1) of the Electoral Code, any elector, candidate or the state representative or government election officer may request the total or partial cancellation of the election operation in the region or council concerned by simple application before the competent administrative court. In order to secure the effectiveness of the Administrative Courts in resolving election disputes in Cameroon, I strongly recommend the independence of the judiciary.

**Keywords:** administrative court, settlement, election disputes

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### **Introduction**

The Black's Law dictionary<sup>[1]</sup> defines the term 'election' "as the exercise of a choice...the process of selecting a person to occupy an office (usually a public office)... According to Roger Gibbins<sup>[2]</sup>, election is the formal process of selecting a person for public office or of accepting or rejecting a political proposition by voting. Elections management in Cameroon is placed under ELECAM. ELECAM is an independent body whose headquarter is in Yaoundé. ELECAM conducts elections with the help of other bodies or institutions. These institutions assist ELECAM in performing its tasks. Elections Cameroon is an independent electoral body with an independent board known as the Electoral Board (EB) and an executive department known as the General Directorate of Elections (GDE)<sup>[3]</sup>. The Electoral Board is the legislative and supervisory organ of ELECAM and is the main policy making body of the institution. The General Directorate of Elections on the other hand, is the executive unit and is charged with implementing the decisions of the Electoral Board and managing the poll<sup>[4]</sup>. In Cameroon, we have presidential, legislative, regional and municipal elections which are all managed by ELECAM. In case of any electoral dispute, the competent electoral judge depends on the type of election.

In case of electoral disputes emanating from presidential and legislative elections, the competent electoral judge is the Constitutional Judge; that is, it is the Constitutional Council that is competent to hear and determine presidential and legislative electoral disputes. This was clearly seen in the 2018 presidential elections where the Constitutional Council entertained complaints from parties like Social Democratic Front (SDF) whose presidential candidate was Joshua Osih and Cameroon

Renaissance Movement (MRC) led by Maurice Kamto. In the case of regional and municipal elections, the competent electoral judge is the Administrative Judge. It is the Administrative Court that is competent to entertain disputes emanating from the conduct of regional and municipal elections. This therefore means that the Administrative Court has a pivotal role to play in the settlement of regional and municipal electoral disputes in Cameroon. Within the meaning of Article 40 of the Constitution of Cameroon of 18<sup>th</sup> January 1996, the Administrative Courts are inferior courts in matters of administrative disputes. They are competent to hear at first instance, the litigation of regional and municipal elections and, ultimately, all administrative disputes<sup>[5]</sup>. Section 185(1) of the Electoral Code is to the effect that the council branch of Elections Cameroon shall, within 5 (five) days following the submission, ensure that the list of candidates conforms with the provisions of the Electoral Law and subsection (2) provides that in any case, it shall, within the time limit referred to in subsection (1), forward to the Director-General of Elections all nomination papers received, including any observations. This means that where a candidate's name does not appear on the electoral register, the candidate can petition ELECAM to insert the name or where ELECAM rejects a candidate, the candidate can petition for the name to be added. Section 186 of the code therefore provides that "After submission of lists no withdrawal of candidates or modification of the nomination of candidates shall be allowed." Once the lists have been published, the decision to accept or reject a list of candidates may be challenged before the competent Administrative Court by a candidate, the representative of the list concerned or of any other list or by an

elector whose name appear on the electoral register of the council concerned <sup>[6]</sup>.

### Persons who can file petitions before the administrative court

In the case of disputes emanating from regional elections, Section 267(1) of the Electoral Code <sup>[7]</sup> is to the effect that any elector, candidate or the state representative in the region may request the total or partial cancellation of the election operation in the region concerned by simple application to the court with jurisdiction. This provision has not made mention of the word 'Administrative Court' but simply uses the word 'court'. Since the code uses the word 'court' and not 'council', it only means that it is the Administrative Court that has the competence to entertain electoral disputes emanating from regional elections. And so those who can file matters to the Administrative Courts when it concerns regional elections are any elector, candidate or the state representative in the region.

Section 255 of the Electoral Code is to the effect that any regional councillor who, for reasons previous to his election, finds himself in a situation of ineligibility and/or incompatibility provided for under this law <sup>[8]</sup> shall be declared to have resigned automatically by an order of the Minister in Charge of Local and Regional Authorities and that this order may be challenged before the competent Administrative Court. By virtue of Section 259 of the same code, any decision to accept or reject a candidature or list of candidates may be challenged by the candidate concerned, any representative of a list concerned and/or any other list, and any other member of the Electoral College.

In the case of municipal elections, Section 194(1) of the code provides that any elector, candidate or person acting in the capacity of a government election officer may petition for the cancellation of elections in the council concerned before the competent administrative court. Disputes shall be a simple petition filed within 5 (five) days following the proclamation of results by the Council Supervisory Commission.

In the case of *Union Nationale pour la Démocratie et le Progrès (UNDP) vs. Elections Cameroon (ELECAM), Social Democratic Front (SDF) and Mbella Elive John* <sup>[9]</sup>, Manyi Mbu Joy suing by attorney for *Union Nationale pour la Démocratie et le Progrès* (the petitioner), prayed the court to disqualify Mr. Mbella Elive John a candidate nominated by the Social Democratic Front (SDF) party and retained by ELECAM to compete in the February 9<sup>th</sup> 2020 Municipal elections. The court rejected the petition for lack of capacity. That is, the petitioner lacked the capacity to file the petition before the court. This is because the petitioner did not fall under any of the category of persons provided for in Section 189(1) of the Electoral Code who have *locus standi* to sue. The court stated that "*On a more serious note, it would appear petitioners were in fact on a frolic of their own to this court knowing quite well that they cannot sue in such matter because they lack the capacity to do so.*" The court cited Section 189(1) of the Electoral Code to support its decision. This provision states that "*The decision to accept or reject a list of candidates may be challenged before the competent administrative court by a candidate, the representative of the list concerned or of any other list or by an elector whose name appear on the electoral register of the council concerned.*"

### Time Limit to file

Section 267(2) of the Electoral Code <sup>[10]</sup>, provide that the application must be lodged within 5 (five) days of the date when the results were announced. In case of acceptance or rejection of a candidate or a list, the petition shall be lodged with the competent administrative court, within no more than 5 (five) days of the notification of the rejection or acceptance decision. In the case of *Itoe Totoh Harrison vs. Elections Cameroon (ELECAM)* <sup>[11]</sup> the Administrative Court of the South West Region rejected a petition filed by Mr. Itoe Totoh after five days. The court held that "*Disputes or complaints shall be filed by simple petition within five (5) days following publication of the lists of candidates. Considering that the last day to receive pre-electoral litigations from parties was on the 14/12/2019; considering that petitioner filed their petition on 15/12/2019 at the hours of the 11:59am of the day, and by so doing had forfeited their right of having this action being heard...therefore his petition was time barred and consequently is declared inadmissible*".

In the case of *Motanga Andrew Monjimba vs. Elections Cameroon (ELECAM) and Social Democratic Front (SDF)* <sup>[12]</sup>, the court held that "*Considering that Section 189(1) of the Electoral Code provide that when the lists of candidates to participate in council election is published by Elections Cameroon the candidates have 5 days within which to seize the administrative courts for any disputes as from the date of publication; considering that for the municipal elections of February 2020, the list of candidates was published in Resolution No. 020/ELECAM /CE of the 09/12/2019 by Elections Cameroon Board; considering that 5 days after the publication of the list of candidates was on the 14/12/2019, all petitions filed on the 15/12/2019 were filed out of time; considering that the petition herein was filed on the 15/12/2019, it therefore was filed out of time and therefore is time barred; from this analysis, the petition is declared inadmissible.*" This therefore means that submitting the petition within the stipulated timeframe is one of the conditions *sine qua non* for the admissibility of election petitions before the court. And thus the court stated in the case of *Tonje Lifanje Gabriel (CPDM) vs. Elections Cameroon (ELECAM) and National Union for Democracy and Progress (UNDP)* <sup>[13]</sup> that, "*The petition was filed within the time-limit prescribed by law and therefore admissible in its form.*" In this case, Mr. Tonje Lifanje Gabriel member and candidate for the Cameroon Peoples Democratic Party (CPDM) competing under Idenau Constituency for the February 9<sup>th</sup> 2020 Municipal election prayed the Administrative Court to disqualify the list of the National Union for Democracy and Progress (UNDP) in the Idenau which was retained by ELECAM based on the fact that it contained candidates who were not members of the party. Their argument was therefore hinged on Section 184 of the Electoral Code which provides that "The following shall be rejected : - incomplete lists; - lists not containing the documents and items referred to in this law ; - lists including candidates who are not members of the party concerned." Considering the fact that the petition was filed within time, it was admitted, and on the merits, it was founded and consequently the list of the National Union for Democracy and Progress (UNDP) in Idenau constituency for February 9<sup>th</sup> 2020 Municipal elections was rejected.

The court seized of the application shall make a ruling within 40 (forty) days. Its decision can be challenged. The decisions of the Administrative Court are challenged before the Administrative

Bench of the Supreme Court. This therefore means that once the competent Administrative Court renders its decision, any party dissatisfied with the decision can appeal against it before the Administrative Bench of the Supreme Court.

Section 260(1) of the code further provides that during the election campaign, all complaints in respect of the colour, acronym or symbol chosen by a candidate or list of candidates shall be lodged with the competent administrative court no more than 3 (three) days of the date of publication of candidatures or of the cognizance of the allegations. The competent administrative court shall give a ruling within 4 (four) days after the petition was lodged.

#### **The effects of the decision of the administrative court**

Regional and Municipal councillors whose election is challenged shall remain in office pending a final decision. Where cancellation of all or part of the election is final, electors shall be convened within no more than 60 (sixty) days of such cancellation. Only the lists of candidates that took part in the general elections shall be allowed to participate in the by-elections <sup>[14]</sup>.

#### **Conclusion**

Tracing the evolution of Administrative justice in Cameroon leads us to make a distinction between the period from the colonial era to the constitutional reform of 1996 and that dating from 1996 to the present <sup>[15]</sup>. In 1996, through the establishment of the Constitution, Administrative Courts were created in each region and these courts are competent to hear election disputes. Election management in Cameroon is placed under the control of ELECAM but when it comes to election disputes, the competent court to hear complaints coming from the election of regional and municipal councillors is the Administrative Court. Administrative Courts are therefore lower courts in matters of administrative litigation; the courts deal in the first instance with election disputes.

#### **Recommendation**

One of the main problems we have in this country is the independence of the judiciary. The executive has a lot of influence on the judiciary and so I strongly recommend that for justice to be administered effectively in the country there should be a strict respect of the separation of power in the country. Judicial independence is an important part of a good separation of powers system as an independent judiciary is indispensable to enhancing executive respect for the rule of law. In light of the problems encountered by the judiciary in Cameroon, to secure the effectiveness of the Administrative Courts in resolving election disputes will depend on the independence of the judiciary and the extent of its authority to secure enforcement of court orders.

For any country to have democracy, its political structures must be based on a multiparty system without ideological disqualifiers. Its elections must be free, frequent, and fair in order to ensure the consent of the governed. Its judiciary must be independent, and must apply the rule of law in an equitable and impartial manner. Elections in Cameroon are always known to be manipulated. The present election management in Cameroon is placed under ELECAM which most if not all Cameroonians believe is not independent. This is because officials of ELECAM are appointed by the President of the Republic; Head of State. And so in order

for ELECAM to be independent, I strongly recommend that the officials be appointed by the Parliament of the country.

#### **References**

1. Bryan A. Garner, *Black's Law Dictionary*, USA, Thomson Reuters, 2009. 9<sup>th</sup> edition, p.595.
2. Roger Gibbens, election, encyclopedia Britannica, Inc, 2008.
3. Law No. 2012/001 of 19 April relating to the Electoral Code, Section 8 provides that "Elections Cameroon shall perform its duties through the following organs: The Electoral Board (EB); The General Directorate of Elections (GDE)."
4. *Ibid*, Section 22 provides that "The General Directorate of Elections shall be responsible for the preparation and material organization of election and referendum operations, under the supervision of the Electoral Board."
5. Rodrigue NTOUAL AMOUGOU, *Droit Tribunaux administratifs locaux et accès à la justice administrative en Cameroun*, Cas de la région de l'Est, Université catholique-Afrique Centrale, 2015.
6. Section 189(1), Law N°. 2012/001 of 19 April relating to the Electoral Code.
7. *Ibid*.
8. Law N°. 2012/001 of 19 April relating to the Electoral Code, Section 253 provides "(1) Heads of administrative units and/or their assistants may not stand for election into regional councils during their tenure of office. (2) The incompatibility cited in sub-section (1) above shall be equally be applicable, under the same conditions and during their tenure to: - police, gendarmerie and prison administration officials; - regional administration officials and employees; - servicemen and servicewomen; - judicial and legal officers; - civil servants and public employees having to take cognizance of the finances or accounts of the region concerned."
9. SWAC/EL/005/2019 of December 2019. Judgment N°.017/2019 of 18<sup>th</sup> December 2019.
10. Law No. 2012/001 of 19<sup>th</sup> April relating to the Electoral Code in Cameroon.
11. SWAC/EL/013/2019 of December 2019. Judgment N°. 026/2019 of 20<sup>th</sup> December 2019.
12. SWAC/EL/015/2019 of December 2019. Judgment No.029/2019 of 20<sup>th</sup> December 2019.
13. SWAC/EL/009/2019 of December 2019. Judgment N°.019/2019 of December 2019.
14. Sections 195 and 268 of the Law No. 2012/001 of 19<sup>th</sup> April relating to the Electoral Code in Cameroon.
15. Dr. Gatsi Eric Tazo, *Administrative Litigation Notes*, Faculty of Laws and Political Science-University of Buea, 2021.