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THE RIGHT TO ENGAGE IN POLITICAL ACTIVITY

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In this article the author examines the evolution of «political activity», adjacent terms of it ("politics", "political resistance", "political neutrality", ect.), the content of their legal basis, which are causing widely disagreement nowadays, and a number of conclusions and recommendations were presented, which are aimed at the complex solution of the mentioned problems.

The relevance of the topic is dictated as well regarded to some gaps about the above mentioned terms in international legal documents and experience. Particularly, a material of research was the following questions: What are the reasons for the provided restrictions? Why are they needed? While, there is not enough reference to the issues regarding the concrete components of such restrictions.

In the framework of the scientific research it was, as possible, completely analyzed the legal basis of the terms, they were combined with the constitutional regulations and was discovered the legal content of each of them, the limits of the application, the features of the legal restrictions, due to the status of the subjects etc.

The research is aimed to solve two problems: a) in case of obvious gaps in legislation regarded to above mentioned terms, to propose possibly acceptable solutions in practice b) to clearly outline the main directions of the domestic law, that are needed to be improved.

Key words: *politics, political activity, political resistance, political neutrality, depoliticization, party, judicial branch, President of the Republic*

In line with geopolitical developments, there are inevitably clear tendencies to engage in political activity, to review the limitations of political neutrality. Reputable and well-known but politically neutral public servants inevitably accept the fact that, along with the introduction of electronic communication systems, it is not so much the materials on narrow professional jobs that are widely recognized than the more politically oriented speeches and information in general. On the other hand, the same public servants, being deprived of the opportunity to adequately respond to the unfair targeting of political forces, are trying to resort to alternative tools, but inevitably face the prohibition of unclear political neutrality, and the absence of legal certainty in this area make worsens the general state of the normal functioning of the government system. I think we're dealing with completely new manifestations of the clash of democracy and bureaucracy, which, perhaps, lead to the vulnerability of the principles of democracy. In this regard, the German theorist of the foundations of government, the philosopher Max Weber noted: "In fact, democracy needs the support

of the bureaucracy, at least in the formal sphere, whereas the bureaucracy does not need democracy"[1].

The boundaries and grounds of the principle of political neutrality concerning judges are also being significantly revised in all countries that to join the party does not consider a ban for judges. At the same time, there is activity among the judges, as the latter more often try to resist the illegal reactions of the political forces in their opinion, and therefore, by all possible means, including in the plane of scientific research, they are trying to justify the need to set guarantees of their most relaxed activities in relations with other branches of government[2]. Of course, the forces that have recently come to power in different countries, which do not have minimal experience in politics and statehood, do not particularly refrain from the attractiveness of using purely political actions in their relations with the judicial authorities.

To a large extent, I tend to explain these developments mainly by the modernization of the institution of accountability of the courts. Of course, this institute is an extremely important initiative in terms of guaranteeing the right to a fair trial and the fight against corruption in the judicial system, but we can't ignore that any influence inevitably leads to a certain reaction. Moreover, at least this reaction is not currently systematic and necessarily regulated, resulting in diverse interpretation situations, even disputes with mutual accusations, and so on.

However, the principle of depoliticization, on the one hand, contributes to the elimination of illegal influences on political processes through abuse of official position, and on the other hand, deprives the potential of well-required political and professional experience officials of an important opportunity to serve the public interest. Thus, this principle is distinguished by dual, often contradictory qualities, the need for harmonization of which has gained extremely relevant significance. At the same time, the attitude of the political forces towards this sector isn't united: the ruling political force tends to use the services of public officials limited by the principle of depoliticization in hidden ways while taking into account the same fact, opposition political forces seek to identify such manifestations and, if possible, exclude cooperation[3].

It is difficult not to agree with the authors who argue that the principle of depoliticization should not be an obstacle to the involvement of the best and most experienced specialists in the process of finding fundamental solutions to the political issues[4].

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[1] See **Weber M.,** (1947), The Theory of Social and Economic Organization (New York: Oxford University Press), p. 341.

[2] See **C. Pollitt & G. Bouckaert**, Public Management Reform: A Comparative Analysis, 2000, p. 24-25.

[3] See **Simon Baddeley and Kim James**, From Political Neutrality to Political Wisdom, Politics (1987)7(2), 30, p. 39.

[4] See **Simon Baddeley**, **Sand James**, K., (1987)18(1), "Owl, Fox, Donkey or Sheep: Political Skills for Managers", Management Education and Development, p. 15.

The study of international experience, as well as domestic law-making and law-enforcement activities, shows that this unacceptable situation was also facilitated by the fact that, in parallel with the lack of legal certainty, national legislation has gradually expanded the range of instruments of influence of political forces concerning truly independent and autonomous public officials, in particular, mechanisms for the appointment and election of prosecutors, judges and other officials have been introduced, which have made it clear that there is an opportunity to abuse the ruling political power. In essence, prevention of abuses would be possible if reliable structures and procedures for the separation and balance of powers were introduced under the same national legislation; whereas the ruling political forces don't show the necessary restraint to limit unacceptable influences. Unfortunately, in some cases, the opposite tendency is observed, when the ruling political forces give preference to the practice of making the judicial authority, the prosecutor's system, and law enforcement agencies as controlled as possible. In addition, these aspirations are masked by various legitimate explanations, such as the effectiveness of the fight against corruption, but as a result, the organizational and legal bases necessary for the normal functioning of the state system are further disrupted.

Legislation often uses terms that cause serious legal consequences, that even the approximate definition is simply absent. As a rule, the general perception in practical terms is that they are well-known terms that correspond to the principle of certainty of the legal regulation to the necessary extent, so there is no need to further discover their content.

Of course, many terms do not need to be clarified or interpreted in terms of content, they have been used in this or that branch of science in their universal meaning, in the sense presented by the rules of the purely explanatory dictionary. However, this doesn't apply at all to the term's everyday meaning which is not only universal, and it is accompanied by various interpretations, but also does not correspond to their professional perceptions. And from this perspective, the term "politics" is not an exception at all, which is evidenced by the existence of practically contradictory positions on the content of this term used in the legislation. In addition, it is not only about public criticism of this or that organization, a state body, or official, but also about the validity of terminating the powers of officials and imposing sanctions of other nature in some cases. Unfortunately, from the domestic law enforcement perspective, it is practically impossible to resort to a comprehensive analysis, as it is limited to public appeals containing accusations of circumventing the prohibition of political restraint of certain officials or public figures[5] (for example religious figures), or

[5] See, for example, the deputy of the National Assembly Maria Karapetyan on the alleged political statements of human rights defender Arman Tatoyan (https://www.youtube.com/watch ?v=ppDI12krc8w), or Secretary of the Security Council Armen Grigoryan (https://www.youtube. com/watch ?v=ppDI12krc8w) in the same way. The deputy of the National Assembly Artur Hovhannisyan claimed that the Chairman of the Supreme Judicial Council Ruben Vardazaryan voiced statements of a political nature (https://www.azatutyun.am/a/31131307.html), etc..

visible compulsion to write a statement on the release of civil servants[6].

Moreover, in the conditions of complete absence of legal certainty, guarantees of the independence of judges become especially vulnerable, since even the statements made by them to protect their rights and legitimate interests for various reasons are often perceived as violations of political restraint or political neutrality, with all the negative consequences that follow from this.

The term “policy”, not only in general but also in the legal aspect, cannot be unambiguously defined precisely for the reason that it is used in practice, as well as by legislation in different senses.

More commonly, it is most common when politics is defined as public administration, especially in the sense of elaborating and implementing internal and foreign policies by the government, or when it is interpreted as a political party activity with all its components. It should be noted that all possible manifestations of the term "politics" are comprehensively reflected in Bagrat Aghayan's "Explanatory Dictionary of Modern Armenian". "Politics, 1. The activity of the state power, party, or public group (class) in the field of domestic governance and foreign relations, is characterized by the class interests of that state (party, class). 2. The general political direction and nature of the solution of issues related to internal and external relations. 3. The general direction and nature of one's activity, mannerism, practice, behavior. 4. Political activity[7]". As we see, politics in different senses, particularly as a function of governance and as a purely political party activity, is also typical of general explanatory dictionaries. This, perhaps, makes it possible to adequately outline the content of the "policy" and related terms and to specify the rules of conduct accompanied by those terms.

One important observation in the context of international experience, concerning the principle of depoliticization, in the sources of public law of Western European countries, is limited mainly to the use of the term "political neutrality" and the term "political restraint" is rarely used[8]. Moreover, the definition of the term "political neutrality" is so broad that it also includes the components of the term "political restraint". From a law enforcement point of view, we think it is more acceptable to be satisfied with only "political neutrality, as as it is significantly closer to "political restraint" in terms of content and the use of both terms creates unnecessary complications in practice at the same time, especially since not only with legislation but also in the works of domestic researchers, their

[6] In this case, we consider the argument "presumptive", since it is based only on numerous assurances reflected in the press. Moreover, in some cases, such statements were also made by numerous civil servants who submitted applications for release from service.

[7] See Eduard Bagrat Aghayan, “Explanatory Dictionary of Modern Armenian”, “Hayastan” Publishing House, Yerevan, 1976, p. 1545.

[8] See, for example, **Simon Baddeley and Kim James**, “From political neutrality to political wisdom, Politics” (1987)7(2), 30, p. 35-36. **Richard Y. Schauffler**, “Judicial accountability in the US state courts Measuring court performances” Utrecht law Review, published bu igitur,p.112-113**,** judicial restraint, judicial restraint – Britannica online Encyclopedia, p. 3, etc.

clear definition is not given and it is inappropriate to reflect on it, which we will address below.

In this article, considering the purpose of the research, we do not consider it expedient to address the evolution of the term "politics" in a comprehensive way, as the issue is mostly related to the perception of this term in our time. The roots of politics, as a rule, are connected with the political thought of the cities of ancient Greece. In particular, the English Hellenist Moses Finlay noted that politics is a less common activity in the demodernist world, and it has mostly Greek origin, as a result of which the latter separated the Greeks from all[9]. By the way, in his famous monograph "Politics"[10], Aristotle understood that term with an obvious wide interpretation, including not only the policy of the state but also questions such as the problems of the family as a cell of the state, slavery, citizenship, the definition of the state, etc.

Above, we have already addressed the problem that the term "politics" is accompanied by several related terms in the legislation, each aimed at defining a rule of independent conduct on its own. In general, when applying restrictions to officials and other public figures, the following terms are most widely used: "politics", "political activity", "political restraint" and "political neutrality". Moreover, in practice, the problem becomes more complicated when it is necessary to distinguish from each other essentially almost identical terms (for example, "political restraint" or "political neutrality", etc.) and thus accurately qualify the act of the official.

From the perspective of providing the complexity of the research within the framework of the selected topic, we also need to fully reveal the essence of the principle of depoliticization. The problem is that this principle has two meanings: this principle prevents the political system from the possible illegal influence of influential officials elected or appointed by the ruling political force, on the other hand, it guarantees the independent, free activity of such officials, whose status is purely professional, has nothing to do with political processes and political positions. In other words, the reasonable application of the principle of depoliticization does not restrict the activities of public servants with special status, but makes it more unfettered and contributes to the necessary independence from political forces. On the other hand, when the mentioned principle is manifested with certain violations, then these public servants from various aspirations to be loyal to the ruling political force, which some authors even consider as "slavery"[11]. Political forces should not take advantage of the lack of legal certainty, try to unjustly limit the criticism voiced by public servants, accuse the Armenian Apostolic Holy Church of circumventing the principle of

[9] See L'invention de la politique, Flammarion, 1985, p. 89.

[10] See Aristotle “Politics”, translated by S.A. Zhebeleva, works in 4 volumes, T, 4, Thought, 1983, p. 376-644. Available at the following link: https://www.litres.ru/aristotel/politika-18979153/chitat-onlayn/.

[11] See **Simon Baddeley and Kim James**, “From political neutrality to political wisdom”, Politics (1987)7(2), 30, p. 37.

depoliticization, etc.

Additionally, the problem of preventing these and other unacceptable phenomena due to the absence of legal certainty also emphasizes the relevance of this research.

The analysis of the legal basis of the term "politics" and other related terms shows that not only each term should have different content from others, but the same term can be used with several meanings that are quite different from each other. In terms of identifying the meaning of the term, several factors play a key role: the nature and origin of the legal relationship, the status of the subject, the real motives of expression or action, the specifics of the legal grounds of restriction, etc. This is a very important problem because it refers to the establishment of rules of conduct accompanied by these terms, for the violation of which there are serious legal consequences.

To identify the term "politics" from a legal perspective, it is inevitably necessary to refer to its more common general meanings, since more or less they contain legal components. It should be noted that in the professional literature we can often find the interpretations of the term "political activity", but their comprehensive analysis shows that as a result, the problem of certainty is not solved, since the definitions equally use terms and concepts that need additional clarification, such as: "political relations", "political system", "political interests", "depoliticization", etc. In particular, when political activity is interpreted as a process aimed at forming political relations, it is inevitably necessary to address the question of what political relations are, in what sense are they viewed in the context of this or that expression?

Now let's look at the legal basis for the terms mentioned above and as a result of systematic analysis, let's try to identify their exact legal meaning and limits of application. I think that is limited to certain articles, it is impossible to fully identify the content of the norms enshrined in them if we do not consider them in the context of more general legal regulations.

So, at first, according to part 3 of Article 8 of the Constitution, in the context of the formation and expression of the political will of the people, it is exclusively emphasized the role of political parties. Of course, political will does not directly outline the boundaries and ways of political activity, but the mentioned norm has an initial meaning in the sense that the domestic legal system, also the Constitution, links political will with the political activities, which one of the most important components of the political system and suggests that political will is directly perceived as the target of a key activity of a political party with legitimate expectations in the process of forming public power. Electoral legislation retains the main role of the parties themselves in the elections of both national and local self-government bodies elections, as a result of which the term "party" is often considered as a synonym for the term "politics" and therefore the term "political activity" is mainly associated directly

with parties or some other concerning the party, with activities carried out following its interests or with the position "against".

The fact that membership in a political party is not at all by no means a necessary restriction for all non-political officials comes from the regulations of Article 46 of the Constitution, according to which only judges, prosecutors, and investigators cannot be members of the political party. The President of the Republic (part 5 of Article 124 of the Constitution) may not be a member of the political party during the exercise of his / her powers. In the case of the Human Rights Defender, members of the Central Electoral Commission, members of the Television and Radio Commission, members of the Audit Chamber, and members of the Board and Chairman of the Central Bank, the Constitution has been given preference to a wider range of restrictions. The latter, during the exercise of their powers, may not be members of any political party or engage in political activity in any other way. They must exercise political restraint in public speeches (Part 3 of Article 193 of the Constitution, part 5 of Article 195, part 5 of Article 197, part 5 of Article 199, and part 4 of Article 201).

Meanwhile, the introduction of a ban on party membership for employees of the Armed Forces, national security, police, and other paramilitary bodies left the Constitution at the discretion of the legislator. At the same time, the legislation currently prohibits membership in the political party in respect of these public servants.

It should be added that concerning judges, the Constitution was limited only to defining a ban on political activity (part 7 of Article 164 of the Constitution), although the constitutional law "Judicial Code of the Republic of Armenia" enshrines this restriction in a wider scope: "A judge may not be a member or a founder of any political party, hold a position in a political party, deliver speeches on behalf of the political party or otherwise engage in political activities. In public speeches and any other circumstances, a judge must exercise political restraint and neutrality" (part 1 of Article 4). The same rule of law also contains part 5 of Article 4 of the Constitutional Law " On the Constitutional Court". At the same time, in our opinion, such legislative regulation is problematic, because the Constitution only provides that details about the status of judges are defined by the law on the Constitutional Court and the Judicial Code, that is, it refers exclusively to details and not to establishing completely new rules of conduct. The mentioned legal regulation can be perceived as a record of the fact that the legislator does not restrict "engaging in political activity" from "political restraint" and "political neutrality", therefore the starting point is that in the present case political restraint and political neutrality are components of political activity. On the other hand, this kind of approach is problematic, because the content of constitutional norms concerning other officials shows that the Constitution separates political activity from political restraint and political neutrality and enshrines them as independent rules of

conduct.

Before we discover the content of the ban on engaging in political activities, note that the selection of the framework for the use of the ban is not considered so uniform. In particular, it is unclear for what reasons, for example, the Chairman of the Central Bank or members of the board of directors were prohibited from engaging in political activity when the Constitution considered it possible for employees of the most problematic part - the Armed Forces, National Security, police and other militarized bodies to leave this restriction at the discretion of Parliament.

However, a comprehensive analysis of the constitutional norms allows presenting systematically the two different meanings of the term "politics" and the expressions formed by it:

(1)First, the term "politics" is used exclusively in the sense of the function of the state, therefore, referring to the entire combination of the functions of the state, such as "public policy" (Articles 11 and 86), as well as activities in specific areas, such as "policy aimed at preserving the Armenian identity", "foreign policy," "domestic policy", "economic and financial policy", " territorial policy", " monetary policy", etc. (Articles 13, 19, 132, 146, 154).

When the term "politics" is enshrined as the main function of the state, it cannot be identical to the components of that term that characterize subjective concepts of public authority; In particular, it has nothing in common with the formation of political will, power, and attitudes toward political parties,

(2)Finally, the next, more problematic meaning of the term "politics" is already connected with the restriction of the specific behavior of certain officials. In particular, the ban on political activity with a number of its components, especially political restraint and the ban on party membership, is fixed. At the same time, although the "prohibition of political activity" is presented separately from the "political restraint", the substantive analysis indicates that in this case, they are interacting as a whole and part.

The basis for this conclusion is that "political restraint" in the same norm simply follows the "prohibition of political activity" and may be viewed as a private case of the ban. This conclusion is also indicated by the fact that in detailing the "prohibition of political activity" by constitutional and current laws imposes restrictions such as "political restraint," "political neutrality," and so on.

Thus, the subject of this study is the meaning of the term "politics" from the point of view of constitutional and legal regulation, according to which officials with a certain status are prohibited from engaging in specific political activities. And since the clear and exhaustive definition of this term is not given by any legislative norm, we consider it a problem, based on the above-mentioned legal regulations, to outline frameworks of the latter as clearly as possible.

First of all, it is necessary to accept the fundamental approach that political activity is mostly connected with political party activity since it is the parties that

are called not only to form the political will of the people, but also to express it. Moreover, the whole process of forming the constitutional bodies, especially the legislative and executive bodies of the authorities, is interconnected with the political activity of the parties. Perhaps, this is due to the constitutional regulation that prohibits members of the party for judges, prosecutors, and investigators and for employees of the armed forces, national security, police, and other militarized bodies, the authority to impose restrictions on the right to join the party is left to the discretion of the legislature. In other words, party activity itself is considered an independent component of political activity.

From this perspective, the starting point of the Constitution is that in the case of certain officials of the constitutional bodies envisaged by the Constitution, the prohibition on engaging in political activity was unconditionally accompanied by a ban on membership in any party.

It does not follow at all from the fact that political activity and the activity relates to the membership of the political party are entirely the same, and anyone who is not a member of the political party is principally deprived of the actual opportunity to engage directly in political activity. You can engage in political activities, not being a member of a party, but from this perspective, it is necessary to specify what kind of activity can be considered political, or for example, what kind of statement can be qualified as a violation of political restraint or a ban on political neutrality, etc.

Although the absence of party membership does not itself preclude political activity, however, apart from party membership, common and public activities, cannot be considered political if it has anything to do with the components of party activities and other similar issues within it. We think this is a reservation that has an initial value, for in the opposite case, whether any prideful criticism of public authority formed by a very personalized or specific political force can be qualified a priori as a violation of the prohibition of political restraint, which, unfortunately, we see in practice.

Additionally, it is impossible to distinguish between clearly shaped and consistently implemented positions on the framework of the relationship between other institutions concerning the activities of the parties, especially concerning public organizations. So on February 26, 1991, a law entitled "On Public-Political Organizations" was adopted, according to which public organizations were unfairly and unnecessary identified public organizations with political parties, structures that are completely different subjects of law in their essence and status. The main idea of this law was only to exclude the formation of governing bodies of parties operating in Armenia outside Armenia. This was a legitimate goal in itself, although to a greater extent it pursued the goal of weakening the ARF Dashnaktsutyun party, which has an oppositional position against the ruling party, and, if necessary, suspending its activities, which happened later. According to the law "On Public Organizations", adopted on Octo-

ber 22, 1996, it was only prohibited the participation of parties in the activities of youth NGOs (part 4 of Article 5), in other words, parties could freely participate in the activities of other public organizations. “The Law on Non-Governmental Organizations”, adopted on December 4, 2001, was prohibited to pursue a political goal (part 1 of Article 3), which means that a public organization, for example, could not express its support to this or that political force, etc. It should be noted that this restriction has already been removed on December 16, 2016, by the current law "On Public Organizations’.

Within the framework of the topic of research, we also consider it important to refer to the approaches common in practice, according to which spiritual servants are also obliged to refrain from political activity and observe the principle of depoliticization. This position applies when it comes mostly to spiritual servants of the Armenian Apostolic Holy Church. This wrong position is usually due to the misunderstanding of the provision of Article 17 of the Constitution, according to which religious organizations are separate from the state. We consider this approach unreasonable, for the following reasons. Firstly, the Armenian Apostolic Holy Church is not considered a religious organization in the sense defined in article 17 of the Constitution, as article 18 is enshrined that the Republic of Armenia recognizes the exclusive mission of the Armenian Apostolic Holy Church as a national church in the spiritual life of the Armenian people, in the development of their national culture and the preservation of national identity, and on that basis, the relations between the state and the Armenian Apostolic Holy Church may be regulated by law. It follows that the principle of separation of religious organizations and the state can not operate entirely when it comes to the Armenian Apostolic Holy Church. Additionally, there is no legal basis that would directly prohibit the political activity of spiritual servants or obliges the latter to maintain other components of the principle of depoliticization. In particular, the Constitutional law "On Political Parties" establishes only the following restriction: donations to political parties from religious organizations and organizations with their participation are not allowed (paragraph 1 of part 4 of Article 24).

Thus, from a purely legal point of view, the principle of depoliticization does not apply to caring spiritual servants, therefore we do not see the need to concern the legitimacy of purely abstract perceptions and purely emotional judgments. At the same time, there is another problem from the point of view of religious doctrine, for an adequate perception of which it should be compared with the mission enshrined in article 18 of the Constitution. Of course, the Armenian Church has never shown any noticeable activity towards political processes, which, we think, is dictated not only by the idea of implementing the mission provided by the Constitution but also by the nature of purely Christian doctrine.: a spiritual servant cannot have any personal expectation from political forces, cannot serve the interests of the latter or target them. The Armenian

Church responds and reacts only to the events that, in their essence, are crucial in terms of the protection of religion, the national interests, and the values of the country.

Let us systematically refer to the criteria that will enable us to determine in which case any activity, public statement, or attitude can be qualified as a violation of the prohibition of political activity, political restraint, or neutrality:

– political activity is not limited only to political party activities, especially by the party membership. Immediately, political activity can also be carried out outside the frameworks of political party activity, moreover, it can be both legal and illegal. The ban on political party membership does not itself preclude political activity, but in the event of such a ban, the official is not governed by any political force, but by national interests. Thus, according to part 5 of Article 124 of the Constitution, in the course of exercising his or her powers, the President of the Republic may not hold membership in any political party and according to part 3 of Article 123, In the course of exercising his or her powers, the President of the Republic shall be impartial and shall be guided exclusively by state-wide and nation-wide interests. Moreover, according to part 2 of Article 5 of the Law "On Public Service", the President of the Republic is a state political official,

– criticism of the authorities can be considered political only if it is confirmed that it pursued the goal of supporting or targeting any political force or party,

– assessment of political forces should be related in terms of their relationship with the authorities, and it's not essential the main motive for the behavior is personal expectations or subjective perceptions,

– judges are not empowered in any way to interconnect political processes with the circumstances of specific cases in their proceedings; they may refer to political processes only to the extent that they directly concern the judiciary and come from the need to preserve their independence,

– to qualify any behavior as political, it is necessary to refer to the behavior of political forces, in particular. If the behavior with certain political components is dictated not by purely subjective perceptions of a purely political force, but by the intention of maintaining its reputation, then it cannot be qualified as political,

– the criteria of depoliticization are not the same for all officials who are obliged to refrain from political activity, in particular, this is dictated by specific criteria: a) the need to protect their legitimate interests with legitimate ways; b) with the requirement to be guided by state and national interests; c) the behavior of political forces towards them or their system, etc.

Thus, it is possible to engage in politics on legitimate grounds and without having to make any statement or activity act concerning any political force. In this case, it is simply necessary that the attitude, positions, and all activities,

regardless of which political force they belong to, be dictated exclusively by state and national interests.

On the other hand, in all cases when an official, for example, such as judges, are not political officials, they are not authorized to engage in political activity, even in the pursuit of state and national interests.

Thus, any public activity, statement, or any other form of expression can be qualified only if the following political conditions exist: it is aimed at taking a public position on the advantages or disadvantages of any political force in the context of a direct or indirect assessment of the current political power, or support or facilitating the activities of any political force for the same reason, and they are not dictated by the motive of protecting their legitimate interests.

At the same time, all these questions can have complete, comprehensive answers only if in each specific situation we equally take into account the motives, the status of the official, the attitude of the political forces, etc.

The above mentioned also makes it possible to distinguish between the concepts of "political activity", "political restraint" and "political neutrality".

In particular, "political activity" implies an activity accompanied by the above-mentioned preconditions, which is directly related to either supporting a political force or lowering its rating, due to the political expectations of the person. Expectation may be expressed in various ways, both for participating in party activity and by expecting the support of political power.

The terms "political restraint" and "political neutrality" are almost identical in content. In general, perhaps, the fact that the latter can in no way relate to the above interpretation of the political activity. We think the legislator did not pay much attention to fixing the content of these terms in a more certain way, therefore, as a rule, he was satisfied with the general term "violation of the principle of depoliticization" (for example, part 3 of Article 4 of the Constitutional Law of the Republic of Armenia "Judicial Code of the Republic of Armenia"). We think that the concept of "violation of the principle of depoliticization " is not so justified, as it has obvious universal content and can equally be applied to all three restrictions, including political activity.

Referring to the peculiarities, in the case of "political restraint" we can emphasize the expressions in line with the above-mentioned preconditions, and in the case of "political neutrality", refrain from activities. For example, a violation of the prohibition on "political restraint" may be considered an expression uttered by a judge in which the latter, in the course of professional discussions, criticizing the draft of a legal act, associated its alleged disadvantages with the ideas of the author political force. An example of "political neutrality" may be that the prosecutor de facto initiates political persecution against representatives of any political force, outwardly denying the true motives of such selective behavior.

Of course, from the point of view of political party membership, imposing

bans on certain officials are incapable of serving the purpose of political neutrality and restraint. Finally, prosecutors and other officials of law enforcement agencies, etc, can serve the political ruling force not openly, including membership of a particular political party, but in numerous hidden ways, up to deliberately explicit criminal prosecutions against oppositions.

At the same time, it should be noted that in all legal systems where the term "political restraint" is absent, the latter can be fully included in its content with the concept of "political neutrality".

Above, we have already touched upon the legal basis of judges' political neutrality and the most significant issues of their improvement. At the same time, we consider it appropriate to note that in the context of the independence of the judicial authority, there are some nuances related to the depoliticization of judges. The problem is that in the case of judges, the dual nature of this principle manifests itself more acutely, in particular, the judge, trying to protect himself from unjustified criticism or unlawful statements addressed to him by other branches of power, is obliged to demonstrate behavior so that he does not embarrass himself of the opportunity to exercise full justice in specific cases, does not unnecessarily create grounds for recusal or self-recusal, etc.

Of course, from the point of view of the mentioned problem, a priority is put forward to the other branches of power, the latter is obliged to refrain from unlawful behavior when making expressions about judicial authority. "It is irresponsible when politicians make unbalanced critical comments and this causes a serious problem, because public belief and trust in the judicial authority may be violated unwittingly or intentionally. Such behavior is an encroachment on the Constitution of a democratic state, as well as an encroachment on the legitimacy of another branch of power. Such behavior also violates international standards"[12].

The Advisory Council of European Judges has qualified the participation of judges in political activities as the most serious issue. "Of course, judges are also citizens and should have the right to exercise their political rights, which are enjoyed by all citizens. However, because of the right to a fair trial and legitimate public expectations, judges should limit their impressions of engaging in public political activities"[13].

In general, we think that responding to the criticism of other branches of power by circumventing the above preconditions, with its positive aspects, is very problematic, since it is fraught with a decrease in public confidence in the judicial system.

It should be noted that in public perceptions, judges are not considered

[12] See "The position and relationship of the judicial authority in a democratic society with other branches of power", paragraph 52 of the opinion of the Advisory Council of European Judges No. 18 (2015).

[13] See "The professional conduct of judges, in particular, ethics, incompatible behavior with the position of judge, principles, and rules for the principles of impartiality", 30th paragraph 3 (2002) of the opinion of the Advisory Council of European Judges.

suitable subjects for political debates, in addition, they can not reveal specific cases that are just debatable, but not subject to the publication from the point of view of discussion, to announce subjective assessments, etc. Additionally, the political authorities initially have incomparably large human and technical resources to spread their positions, eventually, they can use the tribunes of the parliament and other state bodies, whereas the response of judges cannot include such broad frameworks. It does not follow that the judges should refrain from reacting to the unacceptable behavior of the political authorities at all, it is simply advisable to act with more reasonable and effective mechanisms. In particular, it will be more reasonable if that responsibility directly assumes the Supreme Judicial Council, which has the appropriate potential, not to be satisfied with merely conducting disciplinary proceedings on the statements of a judge trying to protect his interests.

It should be added that the requirement of political neutrality of judges operates almost to the same standards, while the national legislation of individual countries does not prohibit membership in a political party as well as participation in public debates. Thus, referring to the mentioned situation, the Advisory Council of European Judges stated: "…. It is necessary to maintain a balance between freedom of expression and the requirement of the neutrality of judges. Although the membership of judges in a political party and their participation in public debates on key issues cannot be prohibited, it is necessary for them to refrain at least the political activities that may question their independence or jeopardize the circumstances of impartiality"[14].

Thus, devoting the final part of the study to a more relevant and urgent problem, the limits of political restraint and neutrality of judges, we consider it necessary to state that the judicial authority is deprived of material and legal opportunities to respond adequately to other branches of power, therefore, effective restrictions and higher requirements for responsibility should also be established for these branches of government, to exclude, if possible, the desire to abuse these opportunities. Practical life shows that political leaders unfairly address the judicial authority not only by purely critical but also with clearly obvious offensive speeches, including calls to blocking the buildings of the courts, so our observation is also based on the perspective of events in practical life.

The concern, at least, is the relatively passive involvement of judges not only in the legislative process but also in the discussion of draft legislation directly related to the judicial authority. In this area, however, judges have an incomparably broad right to express their opinions and to participate fully in the debates. In this case, the problem is not only the lack of necessary traditions but also the lack of appropriate organizational and legal tools.

Summarizing the positions on the issues related to the prohibition of

[14] See "The professional conduct of judges, in particular, ethics, incompatible behavior with the position of judge, principles, and rules for the principles of impartiality", 33 paragraph 3 (2002) of the opinion of the Advisory Council of European Judges.

political activity, particularly based on the reservations we have reflected, we find it advisable to accept it, that restrictions, in general, in the use of judicial regulations, should be adopted that political neutrality does not intrinsically imply an obligation to abstain from any political behavior unconditionally. Anyway, to avoid unnecessary disagreements, as a result of preventing unfair harassment on officials and ensuring a more predictable and high-quality public service, is to have legislation consonant with the principles of certainty, which is what our conclusions are aimed at.

In the case of legal imperfection and a vulnerable political and legal culture, we can have an unacceptable situation where simply any criticism of the authorities is merely qualified as a circumvention of political neutrality or restraint, with all the unacceptable consequences that follow from this, and the implementation of political persecution is ignored.

ԳԵՎՈՐԳ ԴԱՆԻԵԼՅԱՆ – *Քաղաքական գործունեությամբ զբաղվելու արգելքը* – Հոդվածում հեղինակը հետազոտում է «քաղաքականություն», «քաղաքական գործունեություն», «քաղաքական չեզոքություն» և այլ եզրույթների էվոլյուցիան, որոնք ներկայումս տեղիք են տվել լուրջ տարաձայնությունների և օրենսդրորեն բավարար չափով որոշակիացված չեն։ Անդրադարձ է կատարված նաև այդ եզրույթների բովանդակությանը, դրանց իրավական հիմքերին, որոնց արդյունքներով արվել են մի շարք եզրահանգումներ և առաջարկություններ՝ ուղղված հիշյալ հարցադրումների ամբողջական լուծմանը։ Թեմայի արդիականությունը պայմանավորված է նաև միջազգային փորձի, ինչպես նաև իրավական փաստերի տեսանկյունից գոյություն ունեցող (ստորջրյա) խութերով։ Մասնավորապես, հետազոտության առարկա են դարձել այնպիսի հարցեր, որոնք վերաբերում են սահմանափակումների անհրաժեշտությանը, դրանց բովանդակությանը և կիրառման ճանապարհներին։ Գիտական հետազոտության շրջանակներում հնարավորինս ամբողջական վերլուծվել են հիշյալ եզրույթների օրենսդրական հիմքերը, որոնք համադրվել են սահմանադրահիրավական կարգավորումների հետ, բացահայտվել են դրանցից յուրաքանչյուրի իրավական բովանդակությունը, կիրառման սահմանները, ինչպես նաև առանձնահատկությունները՝ պայմանավորված կոնկրետ սուբյեկտի կարգավիճակով։ Հետզոտության նպատակն է լուծել երկու հիմնախնդիր՝ ա) առաջադրել հնարավորինս գործնական դիրքորոշումներ օրենսդրական բացերի լրացման և հաղթահարման վերաբերյալ, բ) հատուկ ուրվագծել հայրենական օրենսդրությամբ ամրագրված դրույթների բարելավման ուղիները։

Բանալի բառեր – *քաղաքականություն, քաղաքական գործունեություն, քաղաքական զսպվածություն, քաղաքական չեզոքություն, ապաքաղաքականություն, կուսակցություն, դատական իշխանություն, հանրապետության նախագահ*

ГЕВОРГ ДАНИЕЛЯН – *Запрет на занятие политической деятельностью.* – В статье автором исследуется эволюция понятия «политическая деятель-

ность» и смежных терминов («политика», «политическая деятельность», «политический нейтралитет» и пр.), вызывающих сегодня серьезные разногласия и недостаточно конкретизированных на законодательном уровне, а также содержание их правовой базы, представлен целый ряд заключений и предложений, направленных на комплексное решение указанных вопросов.

Актуальность темы продиктована также некоторыми «подводными камнями» в области международного опыта и соответствующих правовых документов с позиции указанных правовых понятий, в частности, предметом исследования в них стали вопросы о том, по каким соображениям должны предусматриваться ограничения, для чего таковые нужны, в то время как вопросы о том, какие конкретные составляющие содержатся в указанных ограничениях, рассматриваются в недостаточной мере.

В рамках научного исследования по возможности в целостной форме проанализированы законодательные основы названых терминов, они сопоставлены с конституционным регулированием, раскрыто правовое содержание каждого из них, границы применения, особенности законодательных ограничений, обусловленных статусом субъектов и т.д.

Пожалуй, данное исследование направлено на решение двух проблем: а) предложить практически возможные и приемлемые решения в условиях явных законодательных пробелов в отношении указанных терминов; б) четко начертить базовые направления совершенствования отечественного законодательства.

Ключевые слова: *политика, политическая деятельность, политическая сдержанность, политический нейтралитет, деполитизация, партия, судебная власть, Президент Республики*