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PROTECTION OF ELECTORAL RIGHTS IN SERBIA: NEW OPTIONS, A STEP FORWARD OR A STEP BACK?¹

INTRODUCTION

In a dominant representative democracy, the right to vote is considered a fundamental political right that enables citizens to participate in establishing political power. Citizens who hold sovereignty exercise their political participation by electing representatives, thereby establishing the legitimacy of the government. Electoral rights are guaranteed by the constitution, contributing to their increased protection level. Protecting electoral rights ensures that elections are fair and that the representative body reflects the people's will. The protection of the electoral rights can be accomplished legally and politically, taking into account the political nature of this right. The article focuses on legal protection solutions provided by the Serbian Constitution, electoral law, and the corresponding procedural laws protecting electoral rights. The discussion on the protection of electoral right focuses the models of electoral law protections presented in the new electoral legislation adopted in 2022. This involves researching the role and importance of several different bodies, primarily the electoral commission and courts. The examination of the institutional

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guarantees for the protection of electoral rights should answer the questions of what legal possibilities exist for protection of the electoral rights and what their effects are.

Such a systematized work structure should answer the following questions: What are the legal possibilities for the protection of electoral rights, and what are the effects of the protections in Serbia's legal system? The paper also scrutinizes the practice of competent authorities in protecting electoral rights. In order to provide a complete picture of the protection of electoral rights, the reports of the competent authorities that oversee the electoral process, as well as the authentic texts of the law, were utilized.

The real challenge was to observe the mechanisms for the protection of electoral rights and the resolution of electoral disputes in Serbia in the conditions of a tense political situation between early parliamentary elections held in April 2022 and early parliamentary and local elections held in December 2023, followed by various aggravating and political elements from abroad that accompanied this process.

ELECTORAL RIGHTS

General, equal, direct and secret electoral rights are the foundation for democratic constitutions of political orders. The electoral right is considered the most crucial political right, and elections have become the most significant and extensive way for citizens to participate in political decision-making in a country. Election law is inevitably connected to the electoral process and, thus, to democracy.

The electoral right can be observed as a fundamental political right and an element of an electoral system. The electoral right, as a political right, is inseparable from democracy. The protection of electoral rights is defined by the following important goals: the protection of the fundamental rights guaranteed by the Constitution and the protection of the legitimacy of the electoral process to ensure the smooth functioning of the representative body, which is the central body in the State. The electoral right is a fundamental political right that allows for participation in exercising power, but it is also seen as a boundary that the government should not cross.

It is possible to highlight certain specificities of electoral rights during the election compared to other political rights. Specifically, the right to vote in full capacity is pointed out. Because there is a certain periodicity in the exercise of this right compared to the others, elections must be held frequently to ensure that the government's authority reflects the people's will.

The multidimensionality of electoral law was presented above featured, and it encompasses several specific rights like the active and passive right to vote, the right to be registered in the voter's list, the right to run for office, and the right to be informed about elections. To fully exercise electoral rights, which comprise round off a complex set of distinctive and multifaceted rights, one must ensure specific preconditions, such as party pluralism, the freedom of political association, freedom of thought, freedom of expression, and freedom of speech. Recognizing citizens' right to vote is not enough; providing them with information about how and where they can vote and why it is essential is necessary. Therefore, the right to vote can only be exercised when associated with a certain amount of voter education.

NORMATIVE FRAMEWORK FOR ELECTORAL RIGHTS IN SERBIA

The Serbian Constitution (2006) acknowledges the basic principles of the electoral system. It does not specify the type of electoral system but implicitly defines the proportional electoral system. Universal suffrage, equal suffrage, free suffrage, secret suffrage and direct suffrage are the principles of the electoral system outlined in the Constitution. These principles are common denominators of each electoral system. They represent a specific aspect of European constitutional heritage, namely the, "European electoral heritage" [Nastić, 2016b: 127]. Furthermore, the Constitution of Serbia regulates the period in which elections must be announced and completed, which is not practised in comparative constitutional law [Pajvančić, Marinković, 2022: 11]. The constitutional provisions that govern the deadlines for announcing and holding elections are not precise. Elections for MPs must be called by the President of the Republic 90 days before the end of the term of office of the National Assembly so that the elections can be finished within 60 days.²

Electoral rights, as basic political rights, are contained in the second part of the Constitution within the human rights and freedoms catalogue. Every citizen of age and working ability of the Republic of Serbia has the right to vote and to be elected. Suffrage is universal and equal for all. The elections are free and direct, and voting is carried out in person by secret ballot. Election right is protected by the law and in accordance with the law.³ Voting for MPs and standing as an MP in parliamentary (and local elections) is permitted for a person

² Article 101 para. 1 the Constitution of Serbia.

³ Article 52 the Constitution of Serbia.

who is partially deprived of legal capacity only if a court has determined that they cannot exercise their right to vote under the decision on partial deprivation of legal capacity.⁴ This solution is based on an individual approach and judicial procedural exercise of electoral rights. The automatic exclusion of these individuals from voter registration is no longer the case. The grading of legal capacity, which is known in the Family Law and the Law on Non-Litigation Procedures, has been transferred to the field of electoral law. Considering legal capacity separately from voting capacity is in line with modern trends. This solution in electoral law broadened the basis for enforcing voting rights, and the ODHIR recommendation was modified to ensure that legislation should be harmonized with the goals of the UN Convention on the Rights of Persons with Disabilities by removing all restrictions on the right to vote based on intellectual disabilities or psychosocial disabilities [OSCE ODHIR, 2020].

When we talk about the conditions for enjoying the right to vote, we should remember that the electoral law does not prescribe residency as such. However, inclusion in the unified voter list is possible based on residence. In circumstances where the voter's permanent address has been deleted from the register of permanent residence for any reason, this is particularly problematic, as it has the direct effect of being deleted from the voter list. In addition to the decades-long problem with insufficiently updated voter lists, this circumstance also caused concerns about the accuracy of the voter list, resulting in the unjustifiable disenfranchisement of certain voters.⁵

LEGAL REMEDIES FOR THE PROTECTION OF ELECTORAL RIGHT AND THE ROLE OF ELECTORAL COMMISSIONS

In the Serbian legal system, the protection of electoral rights is, “in the hands of The electoral administration and courts” [Vučetić, 2015: 149]. The Constitutional Court has subsidiary jurisdiction to resolve election disputes which are not within the jurisdiction of other bodies. The Constitutional Court can also decide on constitutional appeals and appeals against the Assembly's decision to confirm the mandate. The jurisdiction and activities of the Constitutional Court are not subject to regulation by election law but by the Law on

⁴ Article 3 The Law on the Election of Members of Parliament. An identical provision is contained in Art. 3 of the Law on the Election of the President of the Republic and Art. 3 of the Law on Local Elections.

⁵ These irregularities and shortcomings in the election process are pointed out in the report of the International Election Observation Mission in the Republic of Serbia regarding the early parliamentary election in 2022.

the Constitutional Court. Since no modifications were made to this section, it will not be covered in this paper.

Elections for MPs are conducted by three-level electoral administration: the Republic Electoral Commission (REC), local electoral commissions and polling boards.⁶ With the introduction of local electoral commissions, as a middle-level administration, Serbia has fulfilled one of the oldest recommendations of the OSCE/ODHIR, dating back to 2020. The electoral commission and polling boards conduct local elections.⁷ The new election legislation retains the central competence of REC in conducting elections at the republic level. The primary responsibility for implementing local elections still lies with the electoral commission (city or municipal) with no interference from the REC.

The protection of electoral rights has been a separate chapter in the electoral legislation, but the structure of legal remedies has now been modified. In a broader sense, the provisions of the law, which determine the results of voting at the polling station, are important because they constitute some new legal means. These provisions will also be evaluated. Furthermore, there are now discrepancies in the solutions provided in the Law on the Election of Members of Parliament and the Law on Local Elections for protecting electoral rights.

Legal remedies in elections, represented by the new Law on the Election of MPs, include requests for the annulment of voting at the polling station, complaints, and appeals. The request for annulment of voting at the polling station is a new legal remedy, and the right to submit it is available to the submitter of the declared electoral list and the voter. The scope of this right is more extensive when it comes to the submitter of the proclaimed electoral list than it is regarding voters. This right may only be exercised by a voter at the polling station where he/she is registered on the voter's list when the polling board has unreasonably prevented him/her from voting⁸ or his/her right to free and secret voting was violated.⁹ The submitter of the proclaimed electoral list has a wide range of options and can request a review due to irregularities during the conduct of the election. The local electoral commission decides on requests for annulment of voting at the polling station, and the Republic Electoral Commission (REC) decides on the requests for annulment of voting at polling stations

⁶ Article 7 Law on the Elections of Members of Parliament.

⁷ Article 9 the Law on Local Elections.

⁸ For example, if the electoral board does not allow the voter to vote, even though the voter is registered in the extract from the voter list at the polling station.

⁹ For example, insisting that voters vote against their beliefs, influencing members of the electoral board or third parties on their choice, or requiring voters to say who they voted for publicly and recording how they voted.

abroad.¹⁰ The deadline for deciding on the request is 72 hours after receiving and publishing its decision on the website. In the event that the request for annulment of voting is incomprehensible or incomplete, the body responsible for deciding on its request shall issue a decision dismissing it.¹¹ This legal remedy is exclusively focused on voting as the most critical stage in the election process and, it cannot be used in other phases [Vučetić, 2022: 407].

The Law strictly prescribes the content of the request; it opens the possibility that the Local Electoral Commission can reject the request for strictly formal reasons (such as missing the ID number or even phone number), even though the voter is completely unjustifiably prevented from voting at the polling station. The electoral commission does not recognize ordering the removal of formal deficiencies in the legal remedy to make meritorious judgment. In current practice, the most common reasons why a voter can submit a request are if it is recorded that he/she has already voted and if the boarding committee refuses to allow him/her because his/her last name is not the same in the personal document but the other data (ID number) is the same.

In the new Electoral Law, the complaint and the appeal are retained as legal means of protecting electoral rights, but with significant modifications. The complaint regulations are structured to include general rules on the right to the complaint (Art. 150), the content of the complaint (Art. 151), the deadline for filing a complaint (Art. 152), and the jurisdiction to decide on the complaint (Art. 153). Regarding the right to complain, a distinction is made between the submitter of the proclaimed electoral list and other authorized complaints. The submitter of the proclaimed electors list can file a complaint against the decisions made, actions taken or failure to make a decision or take action in elections (unless otherwise stipulated by the law). This Law allows a political party, a parliamentary group, a submitter of the electoral list, a candidate for Member of Parliament, a voter or a person whose name appears on the electoral list or submitter of the list to file a complaint.

Since the content of the complaint is now subject to legal regulation, and in that sense, the rule that it is devoid of any formalities and that it is sufficient to contain an allegation or irregularities no longer applies. The REC will reject a complaint that is either incomprehensible or incomplete. The REC's approval of the objection will result in the annulment of the election's decision, that is, the action taken during the election.

¹⁰ The content of the request for annulment must be comprehensible and contain everything necessary to enable action upon it. This requirement is specifically defined by the Law on the Election of the MPs (Art. 149).

¹¹ Article 149 Law on the Election of the Members of Parliament.

A significant novelty is that the deadline for filling out the complaint has been extended to 72 hours from the announcement of the decision, which is the taking of an action that the applicant considers improper. The competence of the REC to decide on objections is retained but within an extended period of 72 hours. By this deadline, the REC must publish its decision on the objection on its website. It has significant importance in publishing the decisions of the electoral commissions and implicitly in terms of protecting electoral rights. A new solution should help the electoral commission work more transparently while the deadline for submitting objections has been extended.

The REC's approval of the objection will result in the annulment of the elections's decision, that is, the action taken during the election. The REC is entitled to decide in full jurisdiction, and instead of challenging and cancelling it, it can make another one. Similarly, when it finds that the decision on the request for annulment voting at the polling station should be annulled, the REC can decide on the merits of that request if the nature of the matter allows it and if the established factual situation provides a reliable basis for it. The three categories of complaints can be sent to the REC regarding the election process. Before the election, complaints are submitted concerning the candidacy process and electoral list determination for registered parties or objections related to the composition of working groups and electoral committees.¹² Objections related to irregularities at the polling stations election day fall under the second category.¹³ The third concerns the post-election activities of the REC.¹⁴

New legislation has narrowed the voter's right to submit complaints and has two groups of rights that differ in how voters can use instruments to protect their electoral rights. The first group consists of instruments that the voter can use regardless of the polling station where they were entered in the extract from the voter list.¹⁵ The second group consists of instruments that the voter can use,

¹² Complaints against the decision on the nomination of a member/deputy member of the local electoral commission in the extended composition (Art. 31), complaints against the decision on the appointment of a member/deputy member of the polling board (Art. 40), complaint against the decision denying a representative of the proclaimed electoral list or a representative of the observers the right to oversee the printing of ballot papers (Art. 49), complaint against decisions on the electoral list (Art. 79), and complaint against the collective electoral list (Art. 84).

¹³ Complaint against the decision granting the request for sample control of the result protocols with the REC (Art. 112), the complaint against the decision ex officio annulling voting at the polling station (Art. 116).

¹⁴ Complaint against the consolidated report on voting results (Art. 119), the complaint against the general report on the election results (Art. 121).

¹⁵ These are complaints sent to the REC against the decision on the nomination of a member and deputy member of the REC in an expanded composition, a decision on the nomination of a member /deputy member of the LEC in an expanded composition and a decision rejecting a proposal for the appointment of a member deputy

provided that they are entered in the extract from the voter list at the polling station where they exercise their right.¹⁶

Considering the importance of the REC and its role in the electoral process and the protection of electoral rights, the question arises about the nature of the organisation and the procedural rules it applies in its work. In the true sense, the REC is not an administrative body; but more like *a sui generis* administrative body. On the other hand, the acts passed are considered administrative acts, so when deciding on complaints, the REC accordingly applies the provisions of the law governing administrative procedures. Therefore, in protecting electoral rights, the basic principles of the administrative procedure applied: the principle of legality, evidence evaluation, and independence in decision-making. The election procedure does not begin when a party requests it but rather when the appropriate authority announces the election, which is their responsibility. Unlike in the general administrative procedure, voters, political organizations, and submitters of the proclaimed electoral list can be considered a party in an election procedure before the electoral commission. As submissions in this procedure, there are proposals for a candidate list and confirmation of electoral rights for each candidate on the electoral list.

Most of the complaints were submitted due to procedural problems, i.e. non-compliance with procedures, omissions related to the organization and implementation of voting, sealing of the ballot box, and inadequate filling of the control sheet. Objections were also filed due to illegal decisions or actions by the electoral authorities and irregular voting outside the polling station. One group of proceedings was initiated due to parallel records of voters, photographs of the voting process, the so-called Bulgarian train and “electoral migration”. Although much has been done to increase transparency in the election commission’s work, there are numerous things that could be improved. The Republic Electoral Commission has published all filed legal remedies and decisions made upon them on its website. However, this does not prevent local electoral commissions from having different practices regarding identical requests.¹⁷ The website has become the primary delivery

¹⁶ These are the request for annulment of voting at the polling station, the complaint against the decision rejecting the request for annulment of voting, the complaints against the REC decision ex officio annulling voting at a polling station and a complaint against a summary report on the results of voting.

¹⁷ The first example which illustrates this is related to the interpretation of objections to the record of the work of the electoral commission. The new forms stipulate that, along with the minutes of work of the polling board, as a key document that proves the activities carried out at the polling station and the quality of the election day, they can submit comments from the polling board members. These comments can contain statements about all irregularities, about the fact that they are significant for the course or results of the vote and are submitted as an attachment

channel for the acts of the Electoral Commission's activities, and this decision has led to increased transparency and effectiveness in the electoral process [Vučetić, 2022: 404].

The REC instruction did not leave the possibility of submitting requests, objections or appeals electronically, which would significantly speed up the decision-making process and facilitate communication between the various parties involved in the procedure. The elections commission's lack of consistency in evidence consideration and understanding of the legal procedures and organization make proving irregularities in the election process extremely difficult. Petitioners frequently attempt to demonstrate irregularities by relying only on the election board's record or by submitting a statement from a member of the election board or local commission along with the record. The practice has shown that in order to justify the adoption of requests or objections more is needed than merely referring to the minutes or submitting evidence or irregularities that were not included in the minutes. Public hearings, face-to-face meetings between the disputants, or the performance of evidentiary actions are not necessary for the current procedures due to local legal tradition and the application of the Law on Administrative Disputes [Orestijević, 2022: 88]. The reason for this activity is the need for election activities to take place quickly, efficiently, and without delay. Electoral commissions that decide on requests and objections do not have an investigative commission or the ability to initiate *ex officio* procedures for protecting electoral rights. However, they use the records of the electoral commissions as a basis for decision-making [Orestijević, 2022: 88]. The analysis shows that the established system does not allow for easy and straightforward proof of irregularities, even though the deadline has been significantly extended. The primary issue is that the commission members prioritize political interests in their work.

After the elections held on 17 December 2023, the REC received several complaints from voters for its inaction about the election's conduct. The objections state that the REC should have taken action to prevent the authorities from misusing budget funds to buy mass votes. The objections raised the issue of so-called phantom voters and who coordinates the transportation of voters (from Republika Srpska) to the polling station. Namely, the specific form of gerrymandering regarding the organized migration of voters came to the fore in

to the minutes. Some local electoral commissions misinterpreted these remarks as a request to cancel the vote and dismissed them as being made by unauthorized persons or incomplete. One LEC did not even consider them part of the selected material. A similar finding is also applicable to the records of the observer's work; some ignored this document, while others interpreted it as a basis for initiating proceedings. In the same way, some LECs forwarded the objections to the REC for decision, and some rejected them as impermissible.

the December elections.¹⁸ The REC was requested to annul the election process as a whole due to all the above. When deciding on these objections, the REC stated that the voter has the right to object only if the Law stipulates it.¹⁹ It was concluded that the complaint related to the fact that the REC did not take actions permitted by law to prevent the occurrences pointed out by the complainant does not belong to the specified circle of cases prescribed by law in which the voter has the right to file a complaint under the electoral rights protection procedure during the conduct of elections for members of parliaments.²⁰

The legal means of protecting electoral rights in local elections are complaints and appeals. There is no provision for requesting to annul voting at the polling station. The general rules for objections are the same as those in the Law on the Election of Members of Parliament. The deadline for filing a complaint and deciding on it is 72 hours as well. The election commission's decision can be appealed to a higher court, which is a considerable novelty.

The REC is not competent to decide on the complaint related to the implementation of the procedure for the election of councillors in the assembly of the local government unit, given that it does not have the authority to conduct those elections. However, every decision made by the local electoral commission

¹⁸ It refers to the coordinated behaviours of voters who temporarily change their residence in order to influence the voting results in a local government unit where they do not live. See more: CRTA Preliminary Statement on Organized Voter Migration Ahead of the December 17, 2023 Elections in Serbia.

¹⁹ This is possible in the following cases:

1) against a decision on the appointment of a member/deputy member of the REC in the extended composition (Art. 23 para. 2 Law on MPs),

2) against the decision on the appointment of a member/deputy member of the local electoral commission in the extended composition (Art. 31 para. 2 Law on MPs),

3) against a decision on the appointment of a member/deputy member of the polling board in the standing composition and the extended composition (Art. 40 para. 2 and para. 3 Law on MPs),

4) against a decision proclaiming the electoral list (Art. 79 para. 2 Law on MPs),

5) against the decision stating *ex officio* that the voting results can not be established at the polling station (Art. 115 para. 4 Law on MPs),

6) against a decision *ex officio* annulling voting at the polling station (Art. 116 para. 4 Law on MPs),

7) against a consolidated report on voting results and against a consolidated report on the results of voting abroad (Art. 119. para. 6 and 7 Law on MPs),

8) against the general report on the election results (art. 121 para. 4 Law on MPs),

9) because no decision or action has been taken within the period prescribed by law or a by law of the REC (Art. 152 para. 4 Law on MPs),

10) against a decision under which a request for annulment of voting at the polling station was dismissed or rejected with the REC (Art. 154 para. 1 Law on MPs),

11) because a decision on the request for annulment of voting at the polling station has not been made within the prescribed time limit (Art. 154 para. 2 Law on MPs).

²⁰ Decision of the REC rejecting the objection no. 013-1762/23 from 18.12.2023.

(city election commission or municipal election commission) must be submitted without delay to the Republic Electoral Commission in written and electronic form. The REC has oversight powers over LECs and can *ex officio* annul its decisions on calling parliamentary and presidential elections, but not in local elections. One should remember that the REC has no oversight powers regarding local elections. The simultaneous holding of parliamentary and local elections, in a situation where there are different legal means of protection of electoral rights, requires the applicant to state precisely whether the objection refers to the election of councillors or the election of deputies.

I would like to draw attention to certain decisions regarding local elections. The City of Belgrade Election Commission has received several voters' complaints regarding the election lists. The voters stated in the complaints that they were informed that their names were on the list of voters who supported a specific electoral list, but they never supported it. The City Election Commission of Belgrade has stated in its decisions that it cannot determine the authenticity of signatures unless they are certified by law. The determination of the truth or falsity of a document can be demanded by a lawsuit in civil proceedings, and the existence of a criminal offence can be determined in criminal procedure, but that issue cannot be considered and determined in the election procedure. Even though the citizens submitted objections stating their disapproval of the candidate list, it did not lead to the electoral list announcement being rejected, as they had met the necessary conditions.

Namely, the Election Commission should be the first line of control over elections, which stems from its functioning as determined by the electoral law [Nastić, 2016a: 170]. Considering its dominant political composition, it is apparent that political arguments are usually prioritised over legal ones, making it susceptible to a variety of irregularities. The Electoral Commission's control system is only activated when a complaint comes from an authorized person; it cannot function officially. The Law only recognises *ex officio* annulment of voting at the polling station by the electoral commission.²¹

²¹ The electoral commission shall *ex officio* issue a decision annulling the voting at a polling station if it establishes that:

- 1) the number of ballot papers in the ballot box is greater than the number of voters who turned out;
- 2) the polling board allowed a person who is not registered in the excerpt from the electoral roll to vote;
- 3) there is no control list in the ballot box, or that the control list was not completed or that it was not signed by the first voter and at least one member of the polling board;
- 4) the sum of the number of unused ballot papers and the number of ballot papers in the ballot box is greater than the number of ballot papers received by the polling board (Art. 116 Law on MPs and Art. 56 Law on Local Elections).

JUDICIAL PROTECTION OF ELECTORAL RIGHTS

Judicial protection of electoral rights is activated only after complaints against the decisions of the electoral commission are filed. It can be said that the Electoral Commission followed the involvement of the courts. The Administrative Court can hear an appeal against a REC decision to accept or reject a complaint within 72 hours of the decision being published on the website. An appeal may be filed within 72 hours following the expiration of the deadline by which the decision on the complaint should have been made.

A submitter of the proclaimed electoral list, a submitter of the electoral list, a political party, a parliamentary group, a candidate for an MP, a voter and a person whose name is in the name of the electoral list or the submitter of the electoral list may file an appeal with the Administrative Court within 72 hours following the publication of the decision on the website if the approval of the complaint results in direct violation of the legal interests.²² Approval of the appeal will result in annulment of the election decision or action. The Administrative Court can decide on the merits of the appeal if the nature of the matter allows and if the facts provide a reliable basis for the appeal. The Administrative Court's decision, which determined the appeal's merits, will replace the annulled decision completely. The appeal procedure decision is final, and no extraordinary legal remedies available under administrative dispute law can be sought against it. In the event that Administrative Court grants approval for the appeal and cancels the decision made during the election or the action taken, the appropriate decision must be taken, or the appropriate action taken by ten days after receiving the decision from the REC.²³ The law governing administrative disputes should be applied accordingly to the decision on the appeal against the REC regarding the complaint. The Law on Administrative Disputes states that administrative disputes must be initiated through a lawsuit, despite the initial action in this electronic administrative dispute being an appeal. An election administrative dispute can be initiated by a voter, the political party, the submitter of the electoral list, the parliamentary groups, or a candidate for an MP.

The primary issue that arises when dealing with election disputes in this manner is whether the courts will decide if the election commission's contested decisions are legal or will have complete jurisdiction in an election dispute. In the event that a challenged administrative act needs to be annulled, the Court will resolve the administrative matter with a verdict based on the nature of the matter and the established factual situations, as stated in the Law on

²² Article 156 of the Law on the Election of Members of Parliament.

²³ Article 158 of the Law on the Election of Members of Parliament.

Administrative Disputes. All aspects of the annulled act will then be replaced by this judgment (dispute of full jurisdiction).

Bearing in mind the previous practice of the election enforcement body, which was characterized by an almost complete absence of evidence, this means that the party has the opportunity to become familiar with the factual situation established by the election commission only after receiving the decision. In such cases, resolving the election dispute as a dispute of full jurisdiction is fully justified. In addition, the decisions of the electoral commission are often, “politically” motivated, which is a consequence of its “political”, i.e. expanded composition and the action of the Administrative Court of Serbia as a court of full jurisdiction, which should contribute to the impartial resolution of electoral rights.

Regarding judicial protection of electoral rights, the Law on Local Elections in 2022 provides the key novelty, which introduces the jurisdiction of higher courts to resolve disputes in local elections. If the electoral commission denies a complaint, a submitter of the proclaimed electoral list, a submitter of the electoral list, a political party, a councillor’s group, a candidate for councillor, a voter and a person whose name is on the electoral list or the submitter of an electoral list, may file an appeal with the higher court in whose territorial jurisdiction the Assembly is based. The deadline would be within 72 hours following the publication of that decision on the website if their legal interests were directly violated by the fact that the complaint was granted.²⁴ If the appeal is accepted, the Higher Court will annul either the decision made during the election or any actions taken during it. When the Higher Court determines that the decision against which the appeal was filed should be annulled, it can make a decision on the merits of the appeal if there is sufficient information to support it and the matter is suitable for it. The annulled decision will be replaced by the High Court’s decision on the merits of the appeal. The appeal procedure’s final decision cannot be challenged with any extraordinary legal remedies under administrative dispute law. Should the Court grant the appeal and annul the decision made during the election or the action taken in the conduct of the election, the electoral commission must make the appropriate decision, or the appropriate action, within ten days of receiving the related decision of the Higher Court.²⁵

These, “historically problematic solutions” [Vučetić, Milenković, 2020: 1033] are being reintroduced due to the need to ensure greater efficiency in decision-making regarding electoral disputes, and this competence was

²⁴ Article 85 Law on Local Elections.

²⁵ Article 87 Law on Local Elections.

distributed among 25 Higher Courts instead of the three divisions of the Administrative Court. The positive aspects of such a solution should especially come to the fore when conducting local elections in regular terms. However, introducing such a significant change with several provisions in the Law on Local Elections, not taking into account the fact that administrative matters are not tried in Higher Courts, significantly increases the likelihood of recurring problems that Serbia has experienced in the first decade of the modern multiparty system, particularly those that followed the local elections in 1996 [Rakić Vodinelić et al., 1996]. Higher court judges today, just like municipal judges in the past, lack the competency to resolve administrative disputes. The Law on Organization of Court stipulates that courts are divided into general courts (including higher courts) and courts of special jurisdiction (Administrative Court). The judges of general courts usually act in civil, criminal, and labor matters. The Administrative Court, which is typically composed of three judges, decides administrative disputes according to the Law on Administrative Disputes. It should be noted that the Law on Organization of Courts, which took effect in February 2023, does not specify this new jurisdiction of the higher court. Thus, it continues to be governed by the electoral law as a *lex specialis*. There was no change to the Court of Rules Procedure either. In many higher courts, the president appoints a panel of three judges to make decisions regarding electoral issues. Therefore, this change is opposite to all other changes in the legal regime to protect electoral rights because its goal was greater effectiveness and not legal certainty. It violated the principle of dividing jurisdiction matters into general and special matters because special matters were transformed into the jurisdiction of the court of general jurisdiction.

The protection of electoral rights in the proceedings before the courts is further weakened due to the courts refusing to decide on the appellant's requests for reimbursement of the costs of the proceedings. The reimbursement of costs is not regulated by election law or the law on administrative disputes, but it refers to the provisions of the Law on Litigation. The Court believes that determining the costs of the electoral law protection procedure is not possible by applying the Law on Civil Procedure because that law only applies to procedural issues not regulated by the Law on Administrative Disputes but not to issues related to the application of the electoral law. The Administrative Court stated that passing judgments in a dispute with full jurisdiction requires that the act contested by the appeal be annulled.²⁶

²⁶ Decision of the Administrative Court No. 21 Už 12/23 from 3 December 2023.

The Administrative Court upheld all seven REC decisions that were appealed to it before the election day.²⁷ The Court made timely and reasoned decisions that were published. Although oral public hearings are required by law, the Administrative Court opted for written submissions in appeals, which limited the transparency of the decision-making process and was against international good practice, leaving previous ODHIR recommendations unaddressed.²⁸

CONCLUSION

The new electoral legislation introduced significant innovations in protecting electoral rights. A step forward represents the solutions that expanded the basis for enjoying the right to vote, introducing a middle level of administration, extending the deadlines for declaring legal remedies, and increasing the transparency of the election commissions. The Law on the Election of MPs introduced a three-stage system for the protection of electoral rights. However, the Law on Local Elections maintained a two-stage system, which can create confusion among voters in the conditions of simultaneous local and parliamentary (or presidential) elections. New legal remedies are provided to voters through the electoral process. However, they cannot challenge the legal conduct of the elections as a whole in the proceedings before the authorities responsible for its lawful conduct (such as the REC). The competent authorities left unanswered serious complaints about significant defects in the conduct of the elections, referring to formal defects of complaints and appeals or declaring them incompetent. These authorities provide only strict formal protection of electoral rights without recognizing their essence and their importance in a democratic society.

Numerous legal means of protecting electoral rights can eventually be positively evaluated at the micro level. However, at the macro level, there still needs to be adequate legal means that will protect the equal and free electoral rights of all citizens. The lack of a democratic political culture, insufficient knowledge of electoral rules, dilapidated judiciary system, and lack of accountability towards voters from the electoral administration remain the main obstacles in implementing of electoral rules.

²⁷ International Election Observation Mission, 17 December 2023.

²⁸ *Ibidem*.

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- Decision of the Administrative Court No. 21 Už 12/23 from 3.12.2023.

Summary

The paper focuses on analyzing the innovations in the current Serbian electoral legislation, which was established in 2022. The aim is to evaluate whether recently enacted electoral laws contribute to establishing a higher degree of democracy and transparency in electing the members of Parliament and councillors of assemblies of local government units. The analysis encompasses the sections of electoral legislation that relate to electoral rights, their protection, and the role of electoral commissions and courts. The basis for enjoying the right to vote has been broadened by amending the electoral law. The election administration’s structures were enhanced by the

introduction of local electoral commissions, which served as a middle level. The two-tier system for protecting electoral rights has been upgraded by introducing a new legal tool: a request for annulment of voting at the polling board. The effectiveness of new legal mechanisms that protect electoral rights and the practice of the electoral commission and courts in their conduct are given special attention.

Keywords: electoral rights, electoral commission, court, complaint

OCHRONA PRAW WYBORCZYCH W SERBII: NOWE MOŻLIWOŚCI, KROK DO PRZODU CZY KROK WSTECZ? (streszczenie)

Artykuł koncentruje się na analizie innowacji w obowiązującym serbskim ustawodawstwie wyborczym, które zostało uchwalone w 2022 r. Celem artykułu jest ocena, czy niedawno uchwalona ordynacja wyborcza przyczynia się do zapewnienia wyższego stopnia demokracji i przejrzystości w wyborze parlamentarzystów i radnych rad jednostek samorządu terytorialnego. Analizie poddano te działy prawa wyborczego, które dotyczą praw wyborczych, ich ochrony oraz roli komisji wyborczych i sądów. W drodze nowelizacji ordynacji wyborczej poszerzono podstawę korzystania z prawa wyborczego. Wzmocniono struktury administracji wyborczej poprzez wprowadzenie lokalnych komisji wyborczych, które pełniły funkcję szczebla średniego. Dwustopniowy system ochrony praw wyborczych został unowocześniony poprzez wprowadzenie nowego narzędzia prawnego: wniosku o unieważnienie głosowania w komisji wyborczej. Szczególną uwagę zwraca się na skuteczność nowych mechanizmów prawnych chroniących prawa wyborcze oraz praktykę komisji wyborczych i sądów w ich postępowaniu.

Słowa kluczowe: prawa wyborcze, komisja wyborcza, sąd, skarga