

THE PROTECTION OF THE ELECTORAL RIGHT IN THE PROCEEDING OF CONSTITUTIONAL COURT

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Summary: Electoral right is a fundamental political right, which allows the most direct participation of citizens in decision making. Determining the composition of the legislature, voters indirectly take part in the creation of the government. Electoral right is a sustainable part of democracy. Free and fair elections need to be “milestone” of every state intended to be qualified as a democratic. That is why the protection of electoral right determines the following objectives: protect the fundamental, constitutionally guarantee right and provide legitimacy to the electoral process. The protection of electoral right implies actuating of different organs: electoral commission, courts, constitutional court and the Parliament. The inclusion of constitutional courts stems from their special role. The constitutional court is an institution of the highest authority, which enjoys the highest level of independence. The Constitutional Court of Serbia, directly or indirectly, has been in many ways involved in the protection of the electoral right. The Constitutional Court has subsidiary jurisdiction in the resolution of electoral disputes, which means that it resolves electoral disputes that are not within the purview of the courts. However, this jurisdiction is marginalized in practice, especially because there is no clear division of powers between the Constitutional and the Administrative Court. Since there is a possibility of using a constitutional appeal, the subjective component in the electoral process is undoubtedly protected. But, this is not the case with the objective component, which concerns the protection of the electoral process as a whole. However, in the past, the Constitutional Court improved the protection of the electoral right by engaging itself in the judicial review. Acting as a “negative” legislator, the Constitutional Court of Serbia has encored very positive changes in the legislation and has favourable effect on the protection of the electoral rights. The Constitutional Court is often called upon to provide protection of the electoral right in the proceedings on constitutional complaints. Also, it took the opportunity to declare certain attitudes of Administrative Court and to adjust them under constitutional interpretation of electoral law.