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Maja Nastić*

 <https://orcid.org/0000-0002-5545-6318>

LOCAL ELECTIONS IN SERBIA. A CRITICAL OVERVIEW¹

INTRODUCTION

Local elections are a type of electoral process by which representative bodies in local self-government units are elected. Because of their differences in size, scope and bias, the factors that shape electoral politics in most local elections are very different from those in presidential or state elections. Local elections could be viewed as being of less importance and political relevance [Miller 1988]. Local elections should be a pillar of the local community. In local elections, citizens elect representatives in local assemblies who will make decisions on their behalf on issues of local importance. Local political parties, groups of citizens or political parties functioning on the national level can compete in local elections. A smaller number of actors participate in local elections and their nature is different.

In Serbia, parliamentary, presidential, provincial and local elections are conducted. The focus of this article will be local elections, as a type of electoral process by which representative bodies in local self-government units are elected.

Local self-government in Serbia has a tradition of two centuries. However, it has been the subject of changes that took place in parallel with constitutional changes and changes in the political system. The Serbian Constitution (2006)

* Associate professor, Chair for Public Law, Faculty of Law, University of Niš, Republic of Serbia, maja@prafak.ni.ac.rs

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determines the right of citizens to local self-government, which they exercise directly or through their freely elected representatives.² It is a form of realization of one of the basic principles of the Constitution that state power is restricted by the right of citizens to local self-government. The right of citizens to local self-government can only be subjected to the supervision of constitutionality and legality.³

Our starting point is that local elections are a “reflection of national elections” [Jovanović 2020: 23]. Voters in local elections mainly express support or distrust of the national government. Local policies and local parties are not relevant to voters’ decisions. They do not have the opportunity to choose those candidates who are most capable of solving the problems in the local community. The main participants in the local elections are exponents of political parties operating at the national level. Therefore, voters are guided primarily by the political affiliation of the proposed candidates. Local and national elections are not isolated processes, nor do they take place completely autonomously. Voters are unable to differentiate behaviour at the local and national levels; their behaviour in local elections is only a reflection of electoral behaviour at parliamentary or presidential elections. As such, a trend of “nationalization of local elections” can be identified. There are several reasons for this. We will highlight the following: a proportional electoral system, a closed and blocked list of candidates, and the nature of the representative mandate, as well as the fact that the local elections are never held separately from the national elections. Therefore, local elections cannot be used as a barometer of public support for government and parties between general elections [Prosser 2015: 274].

CONSTITUTIONAL AND LEGAL FRAMEWORK

We begin with an analysis of the election rules contained in the Constitution. Namely, Article 2 stipulates that sovereignty is vested in citizens who exercise it through referendums, people’s initiative and freely elected representatives. No state body, political organization, group or individual must usurp sovereignty from the citizens, nor establish government against the freely expressed will of the citizens. The rule of law is a fundamental prerequisite for the Constitution which is based on inalienable human rights. The rule of law should be exercised through free and direct elections, constitutional guarantees of human and minority rights, separation of power, independent judiciary. and the observance of Constitution and Law by the authorities. Electoral right is a funda-

² Article 176 Constitution of Serbia.

³ Article 12 Constitution of Serbia.

mental political right, which allows the most direct participation of citizens in decision-making. It is included in the second part of the Constitution, within the catalogue of human rights and freedoms. Every citizen of age and working ability of the Republic of Serbia has the right to vote and be elected. Suffrage is universal and equal for all; elections are free and direct and voting is carried out by secret ballot in person. In the context of local elections, it should be mentioned that the Constitution of Serbia recognizes the right of citizens to local self-government. Citizens, as titular of the right to local self-government, exercise the right directly and through their freely elected representatives. Local self-government units are municipalities, towns and the City of Belgrade.

The basic principles of electoral systems are general and equal suffrage, free and direct elections, and secret and personal voting. The principle of universal suffrage is a key element of modern democracies. The contemporary meaning of this principle implies that the right to vote cannot be limited by conditions such as race, gender, language, religion, ethnic origin and political affiliation. However, the right to vote may be determined by citizenship, residence and legal capacity. These restrictions are reasonable and do not affect the universality of voting rights, as they ensure the genuine and authentic participation of citizens in political life [Tanchev 2005: 19]. General suffrage in the context of local elections means that the right to elect a councillor as a full-age citizen of the Republic of Serbia with business capacity and domicile in the territory of the local self-government unit where he/she exercises his/her suffrage. Moreover, a full-age citizen of the Republic of Serbia with business capacity and domicile in the territory of the local self-government unit where he/she was nominated for a councillor, is eligible to be elected as a councillor. People deprived of business capacity are automatically ineligible to vote. The blanket restriction on the suffrage rights of persons declared mentally incompetent should be removed or decided on a case-by-case basis by the court, depending on specific circumstances [OSCE/ODHIR Report, 2016]. In relation to convicts, there is no restriction regarding their right to vote.

Equal suffrage is an expression of the equality of citizens and relies directly on the principle of universal suffrage. This principle should ensure that citizens have their votes counted equally, i.e. the weight of the votes of all with the right to vote is equal [Nohlen 1992: 26]. Equal suffrage means that every voter has an identical influence on the formation of the municipal or city assembly. The principle of equal suffrage is protected by special rules of the electoral procedure which prohibit one voter from receiving more than one ballot paper or voting more than once at the polling station. The principle of equality is especially important when creating constituencies because these appear to be the most easily manipulated and most often abused elements of the electoral system. This type of manipulation cannot be used because the whole municipality or city is a single constituency.

The principle of free elections implies that citizens have the opportunity to form their political opinion freely and without coercion, and to choose one of the offered options. No one may be prevented or compelled to vote or be required to declare how he or she voted or why they did not vote. Secret voting, as a generally accepted standard for expressing the will of voters, is determined by the Constitution of Serbia. Secret voting is contrary to all forms of open or public voting. It is the only rational model for exercising universal and equal suffrage. The secrecy of voting is an important aspect of voter freedom. Its purpose is to protect voters from the pressure they may face if others find out how they voted. Secret voting ensures two essential elements in the electoral procedure: voter independence and honesty [Tanchev 2005: 74]. However, in practice, there are problems with the implementation of this constitutional principle. Therefore, the OSCE/ODHIR monitoring mission suggested that the authorities could consider reviewing the design of the voting screen and polling station layout, to ensure the secrecy of the vote.

With regard to the manner of exercising the right to vote, we should keep in mind two possibilities: direct and indirect voting. Direct elections are a form of the electoral system in which voters, using their voting rights, directly and personally, elect their representative bodies. Citizens of the local community elect their representatives in the local bodies by direct elections.

The basic principles of the electoral system are determined by the Constitution, but their elaboration is left to the electoral law. Electoral legislation regulates those areas that the constitution has delegated to the law or has not regulated itself. Electoral legislation may be codified in a single act, which regulates the whole electoral matter, or it may be subject to the regulation of several laws. The importance of the issues that regulate the election legislation is the reason why in some countries these laws have the character of a qualified law; they passed through a special procedure or by qualified majority. In terms of how the electoral matter is systematized, we can distinguish two types of states: those that have a single electoral law, which applies to all elections, and those that have separate electoral legislation for each electoral institution. Electoral legislation in Serbia is not homogenous and it is contained in several legislative acts. The Act on the Election of Members of Parliament is the basic legislative act which regulates the matter of parliamentary elections. Presidential and local elections are regulated by separate legislative acts, which (along with the Act on the Unified Register of Voters) regulate the substantive and procedural framework of Serbian electoral law. However, the Law on the Election of Members of Parliament is the central election law and can be applied when it comes to local elections. The Law on the Election of Members of Parliament can be viewed as a general law (*lex generalis*), while the Law on Local Elections is a special law (*lex specialis*). The Law on Local Elections regulates the election and termination of the mandate of councillors of local self-government units. The citizens elect councillors based

on free, universal and equal suffrage. They exercise their right directly, by secret vote. No one shall be entitled, on any grounds whatsoever, to prevent or force a citizen to vote, hold him/her to account for having voted, or require him/her to state for whom he/she has voted or why he/she has not voted.

ELECTORAL SYSTEM

With regard to the types of electoral system of local self-government, starting from the renewal of the multi-party system and the first local elections in 1992 until today, three electoral models have been applied. In the local elections, held in 1992 and 1996, councillors were elected according to a two-round majority electoral system. Municipalities had from 25 to 70 councillors, and the Assembly of the City of Belgrade had 110 councillors. Councillors were elected in single-member constituencies with approximately the same number of votes. Candidates could be nominated by political parties, coalitions of political parties and groups of citizens. Each candidate had to be supported by the signatures of at least 30 voters in the constituency. The electoral rules were contained in the Law on Territorial Organization of the Republic of Serbia and Local Self-Government. First-past-the post-voting (“winner takes all”) was also used in the local elections held in 2000.

After three electoral cycles, and along with the transformation of the system of local self-government, the electoral system was also changed. The majority system was abandoned and the proportional electoral system was introduced at the elections held in 2004. The main characteristics of this electoral system concerned the municipality or city as one constituency, Hare-Niemeyer’s distribution formula, a blocked list, and a legal electoral threshold of 3% of valid votes. The list of candidates has to be supported by the signatures of 30 voters per candidate or 200 signatures of voters in the municipality or city as a whole. The law stipulated that 30% of candidates have to be from the underrepresented gender. For the first time, direct elections were held for mayors. This was abandoned in the local elections held in 2008 when citizens only directly elected councillors in local self-government units. This electoral cycle brought other novelties. The proportional system was still in use, but the D’Hondt method was applied and the electoral threshold was increased to 5%. These rules were applied at the local elections held on 2012 and 2016. The D’Hondt formula in proportional representation systems leads to less proportional results than the Hare-Niemeyer formula. Moreover, it tends to increase the advantage for electoral lists that gained most votes in comparison with those with fewer votes. This formula is also the choice of the legislator for parliamentary elections.

Local elections were held for the last time recently, on June 21 2020, in the complex epidemiological circumstances caused by coronavirus. The President of the National Parliament called local elections for 26 April 2020. On 16 March, the election process was suspended and a state of emergency was declared due to the COVID-19 pandemic. The state of emergency was lifted on 6 May, and the election process resumed on 11 May, with the new election date set for 21 June. These were the first elections held in Europe and Eurasia following the wave of election postponements in response to COVID-19.

However, it is even more dangerous that the election rules changed only two months before the elections, precisely on May 11. Besides, these amendments came into force immediately, instead of eight days from their date of publication in the Official Gazette. It was presented that these changes were made for especially justified reasons. This violated the well-known democratic practice of not changing the election law in the election year, in particular not immediately before elections. Legal amendments included lowering the electoral threshold from 5% to 3% for candidate lists to obtain seats in local assemblies. The reducing of the electoral threshold could be viewed as an opportunity for smaller and local political parties and a group of citizens to have councillors in local parliaments. At the same time, it aimed to reduce the effect of the opposition boycott of the elections, which had been announced earlier.

There must be at least 40% of the underrepresented gender on the electoral list. Among every five candidates on the list according to their order (the first five seats, the next five seats and so on until the end of the list), there must be at least two candidates who belong to the less represented gender on the list.⁴ If the electoral list is not in compliance with these requirements, the electoral list shall be deemed to include shortcomings which prevent its proclamation. The mandate is distributed by dividing the total number of votes won by each list by the numbers ranging from one to the number corresponding to the amount of councillors to be elected to the assembly of the local self-government unit. The resulting quotients obtained in such a way are sorted by size, taking into account the number of the biggest quotients that corresponds to the number of councillors being elected to the assembly of the local self-government unit. Each electoral list shall be assigned the number of mandates that corresponds to the number of quotients assorted to the given list. Regarding the previous rule about the threshold, it should be mentioned that in communities with less than 40 councillors, the list of the candidates should obtain at least 4 or 4,5% to get a mandate. Although the threshold is lower, applying the mentioned system of distribution of mandate, there is no mandate that could be distributed.

⁴ Article 20 Law on Local Elections.

Candidates for councillors may be nominated by the registered political parties, and coalitions of registered parties, as well as by groups of citizens whose electoral lists are supported by the signatures of at least 30 voters per nomination for each candidate on the electoral list. The submitter's list should include at least one-third of the overall number of councillors to be elected. The Law on Local Elections stipulates that in local self-government units with less than 20,000 voters, electoral lists (in their entirety) should be supported by the signatures of at least 200 voters. The electoral list should be submitted to the Electoral Commission no later than 15 days prior to the date scheduled for elections.

The Law on Local Elections, like the Law on the Elections of Representatives, does not regulate the procedure of appointing candidates, leaving it to party organization and agreement. The absence of such rules and their regulation by party statutes has affected the development and strengthening of oligarchic tendencies in the organization and functioning of political parties.

In local self-government units with a mixed ethnic composition, national minorities should be proportionally represented in the assemblies of local self-government units, in accordance with the Constitution and the Law on Local Elections. Affirmative action measures are applied when it comes to the lists of national minorities. A political party of a national minority is a party in which the Electoral Commission has established that its main objective is to represent and advocate the interests of the national minority and to protect and improve the rights of the national minority, in accordance with international legal standards. The Electoral Commission may also request an opinion from the competent National Council of the national minority on whether the submitter of the electoral list is a national minority political party or a coalition of national minority political parties. The submitter of the electoral list may have the status of a national minority political party only if, according to the latest census, members of the national minority they represent live in the territory of the local self-government unit.⁵ Political parties of national minorities and the coalition of political parties participate in the distribution of mandates even if they have won less than 3% of the total number of votes cast, so that when the highest quotients system is applied to the distribution of the mandates, the quotients of all electoral lists of national minority political parties shall increase by 35%.

The Electoral Commission allocates the mandates by applying the system of the largest quotient. Mandates are distributed by dividing the total number of votes obtained by each list by numbers from one to the number corresponding to the number of councillors elected into the assembly of the local self-government unit. The resulting quotients obtained in this way are sorted by size, taking into account the number of the largest quotients that corresponds to the number of councillors being

⁵ Article 40 Law on Local Elections.

elected to the assembly of the local self-government unit. Each electoral list shall be assigned the number of mandates that corresponds to the number of quotients assorted to the given list. The Law on Local Elections regulates the situation when two or more electoral lists obtain the same quotients on the basis of which one mandate is to be assigned and there are no more unassigned mandates. In that case, the mandate should be assigned to the list with the largest number of votes won.

The electoral system applied now in local elections is identical to the system applied in parliamentary elections: the proportional system with the closed and blocked electoral system. The application of these rules led to the depersonalization of candidates and councillors. Candidates for councillors are primarily exponents of political parties, which diminishes their responsibility towards voters. This has led to the absolute dominance of central party committees over local communities. Party committees often play a central role in nominating mayors. The consequences of this type of candidate process are the passivity of party branches or constant divisions and fractionalization. Representatives of local self-government, councillors in the city assembly and mayors, do not show autonomy in relation to state bodies and party leaders. Groups of citizens are present, but sporadically, and they do not develop into relevant electoral actors.

With regard to territorial representation, as a component of descriptive democracy, it is viewed in terms of the distribution of seats in local parliament and the share of the population inhabiting a space of local self-government. Territorial representation is observed under the circumstances of the single constituency, which has been used in Serbia on the local level, as well on the central level. This type of proportional electoral system enables the best representation of political ideas and interests, but the territorial representation is completely deformed. This system affects the overrepresentation of urban areas and the underrepresentation of rural and suburban ones.

“Nationalization of local elections” is further emphasized because local elections do not take place independently of other elections held at the republic level. The first local elections were held on May 31, 1992. At the same time, elections for members of the Federal Assembly of Yugoslavia took place. The next local elections were held on November 3, 1996, at the same time as the federal parliamentary elections. Then, on September 24, 2000, local elections were held together with the presidential elections and parliamentary federal elections. On May 11 2008, local elections were held simultaneously with the parliamentary elections and elections for deputies in the Assembly of the Autonomous Province of Vojvodina. The same situation was maintained in the next two election cycles, 2016 and 2020. When local and other elections of general importance, such as parliamentary or presidential elections, were held simultaneously topics of national importance were prioritized. Local issues, and thus local elections, are overshadowed by topics of national importance and national elections.

Table 1. Electoral systems applied in local elections in the period 1992–2020

Year	Electoral system	Other elections that held at the same time
1992	Majority-two round; turnout threshold: 50% in the first round	Federal parliamentary elections
1996	Majority-two round; turnout threshold: 50% in the first round	Federal parliamentary elections
2000	Majority-relative majority	Presidential elections Federal parliamentary elections
2004	Proportional; one constituency; electoral threshold 3%; closed and blocked electoral list; Hare-Niemayer formula	
2008	Proportional; one constituency; electoral threshold 5%, natural threshold for minority lists; closed and blocked electoral list; D'Hondt formula	Parliamentary elections
2012	Proportional; one constituency, election threshold 5%, natural threshold for national minorities	Parliamentary elections Presidential elections
2016	Proportional; one constituency, electoral threshold 5%, list of national minorities-natural threshold; closed and blocked list; D'Hondt formula	Parliamentary elections
2020	Proportional; one constituency, electoral threshold 3%, list of national minorities 3% (implementation of special rules); closed and blocked list; D'Hondt formula	Parliamentary elections

Source: own elaboration.

THE NATURE OF POLITICAL REPRESENTATION OF COUNCILLORS

The right of the councillor to represent citizens in the assembly of the local self-government unit is not limited by the Constitution, nor does the Constitution provide for the possibility of restricting the right to vote exercised in direct election to the assembly of local self-government. The councillor has the constitutionally guaranteed freedom to represent those who elected him/her.

The free mandate of peoples' representatives is one of the basic principles on which modern democracy and the rule of law are based. The provisions of the Law on Local Elections (article 47) regulated the institute of contracts between candidates for councillors, or for councillors and submitters of electoral lists. Based on this contract, the submitter of the electoral list acquires the right to freely dispose of the mandate of councillor, including the right to resign from the position of councillor in the assembly of the local self-government unit on behalf of the councillors. The submitter of the electoral list could freely dispose of the mandate of councillor. In addition, the disputed provision of the Law on Local Elections regulated the institute of "blank resignations": in short, the candidate for councillor with a blank resignation transfers the authority to resign to the submitters of the electoral list. The submitter of the electoral list independently decides whether and when he/she will exercise the authority to resign on behalf of the councillors. The institute of blank resignations was introduced in the form of a contract. It completely transformed the nature of the mandate, turning it from a public law institute into an ordinary contract. The connection between councillors and the political party was given a contractual character, which destroyed the idea of representation in the essential sense. With the intervention of the Constitutional Court, the institute of blank resignations was also abolished.⁶ The councillor's mandate will terminate if he/she resigns; but a councillor may resign verbally in the session of the assembly of the local self-government unit, and in between two sessions, he/she may tender his resignation in an officially verified written statement. The councillor is also entitled to withdraw his resignation until the assembly ascertains the termination of his/her mandate.⁷ However, the influence of political parties remains crucial in the performance of the councillor functions, although they cannot formally have a councillor mandate.

The relationship between the councillors and political parties is further emphasised by the blocked electoral list, which introduced the elements of indirect elections. Namely, the role of the voters was reduced to the acceptance of a pre-determined electoral list composed by political parties. Citizens could only vote for the entire list, but they do not know who will finally represent them, because the nominators (political parties) make the final list of elected representatives among the proposed candidates. This provision of the Law on Local Elections was subject to constitutional review. The Constitutional Court of Serbia declared this legal provision contrary to the Constitution because it introduced a kind of indirect election of representatives.⁸ That is, the submitters of the electoral list, after voting, appear to be intermediaries between the voters and their representatives. Local representatives were not given the mandate in the order

⁶ Constitutional Court Decision IUz 52/2008, 21 April 2010, Official Gazette RS, 34/10.

⁷ Article 46 Law on Local Elections.

⁸ Constitutional Court Decision IUz 52/2008.

in which they were proposed on the list. Instead of this, they received the mandate after the “election” by the submitter of the electoral list. The Constitutional Court emphasized that the Constitution explicitly stipulated that citizens are holders of sovereignty; the status of councillor can be acquired only by direct elections by citizens. For these reasons, the Constitutional Court found that the disputed provision of the Law on Local Elections (art. 43 para. 1) violated the constitutional principles of representation and free and direct elections. The Constitutional Court found that this law provision was not in accordance with the Constitution’s guaranteed right of citizens to local self-government since citizens exercise their right through their freely elected representatives. After this intervention by the Constitutional Court, the provisions of the Law on Local Elections were changed, so that the mandates are now distributed according to the ordered listed.

CONCLUSION

The importance of local elections in our legal system is not sufficiently recognized. These elections cannot be considered a pillar of the local community. The electoral rules applied at the local level follow the system functioning in the parliamentary elections. They could be viewed as second-order-national elections [Clark, Krebs 2012]. The proportional electoral system with the application of electoral lists makes the citizens elect only a political party, whose headquarters will give the final word regarding who will be elected as the local representative. Local elections are not elections in which citizens have the opportunity to elect their representatives, who will be able to lead local politics independently, without being under the influence of the party headquarters from the capital. The closed and blocked list leads to the depersonalization of councillors and their distance from the citizens. Candidates for councillors are not competing for the good of the voters, but for the favour of the party leadership. The insufficiently expressed initiative that comes from the local environment is to improve the lives of citizens in a given environment, without seeking party-state support from Belgrade. There are rare cases of local parties who will indicate their position regarding the topics that are directly related to the lives of citizens in their communities. But they do not have sufficient councillors to implement their local policies. From time to time, they can draw attention to some important local issues. In sum, local elections are heavily influenced by, and constitute a reflection of, national policy.

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Summary

In this essay, the author analyzes local elections as a type of electoral process in which citizens elect representatives in local assemblies. Although local elections have a long tradition, as does local self-government in Serbia, they cannot be viewed as a pillar of local community. The author's starting point is that local elections are a “reflection of national elections”. The factors that contribute to this are: a proportional electoral system, a closed and blocked list of candidates, and the nature of the political representation of councillors, as well as the fact that local elections are never held separately from national elections.

Keywords: local elections, local self-government, Constitution, election law.

WYBORY LOKALNE W SERBII. SPOJRZENIE KRYTYCZNE (streszczenie)

W eseju autorka analizuje wybory lokalne jako rodzaj procesu wyborczego, w którym obywatele wybierają przedstawicieli do lokalnych zgromadzeń. Chociaż takie wybory mają długą tradycję, podobnie jak samorząd lokalny w Serbii, nie można postrzegać ich jako filaru lokalnej społeczności. Punktem wyjścia dla autorki jest to, że wybory lokalne są „odbiciem wyborów

krajowych”. Przyczyniają się do tego: proporcjonalny system wyborczy, zamknięta i zblokowana lista kandydatów, charakter politycznej reprezentacji radnych, a także fakt, że wybory lokalne nigdy nie odbywają się oddzielnie od wyborów krajowych.

Słowa kluczowe: wybory lokalne, samorząd lokalny, konstytucja, prawo wyborcze.