

CRIMINAL LAW PROTECTION OF THE ELECTORAL RIGHTS IN THE CONTEMPORARY SERBIAN CRIMINAL LEGISLATION

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Free and fair elections, as well as electoral rights which are closely related to them, are considered to be one of the keystone elements of the contemporary democratic societies. Democracy as a value is highly important to every national and EU legislation. It can be promoted and safeguarded through several mechanisms, but the most important parts of its protection undeniably are free elections and legality and transparency in the field of electoral rights as a part of a wider concept of political rights.

Electoral rights enjoy a complex system of protection that includes constitutional, administrative, misdemeanor and criminal law protection.

Due to its importance for the overall political system of the state, understood in the context of freedom of expression of citizens' will, freedom of activity and prevention of violations and abuses of electoral rights, the legal framework for the protection of electoral rights also includes their criminal law protection.

In the paper, the author tries to point out the general characteristics of the conception of the criminal law protection of electoral rights in the legislation of the Republic of Serbia by using dominantly the normative method, the method of generalizing abstraction and other methods of formal logic, accompanied by the classic analysis of certain criminal offences from this category.

In the conclusion, it is underlined that criminal law has to be regarded only as a last resort within the complete system of protection of electoral rights, but with the strong role in a processes of achieving the desired degree of crime prevention, as an overall objective of criminal law protection of democratic elections.

KEYWORDS: criminal law protection of electoral rights, democracy, free and fair elections, electoral rights.

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Introduction

Recognizing the importance of fair and free elections for a democratic society, the paper analyzes the criminal protection mechanisms of precisely these qualities of citizens' electoral rights. Elections themselves cannot represent a guarantee of democracy, but must be provided with high-quality and efficient legal regulation, followed by the strictest instruments of state reaction to behavior in this field that has the quality of criminal behavior. In the wider concept, the system of electoral justice can be recognized as a system of mechanisms for ensuring that actions and procedures employed in the electoral processes are consistent with the nationally, regionally and internationally relevant documents and laws in assuring certain general and overall objectives for the prevention of electoral disputes. This system represents a key instrument of the rule of law. At the same time, it represents the ultimate guarantee of respect for the democratic principle of holding free, fair and genuine elections. The general objectives of the electoral justice system are to prevent and identify electoral irregularities, while providing the means and mechanisms to rectify these irregularities and punish the perpetrators (Orozco-Henriquez, 2010, p. 5). Criminal law within this system of mechanisms has the character of *ultima ratio*, but also the importance of the most powerful instrument in the state's reaction to the abuse of electoral rights.¹

How it is conceived, what it entails and how wide a protection zone is covered by the criminal law protection of democratic elections and the related electoral rights of citizens are the starting research questions in this paper. The issues of the application of criminal law are inextricably linked with issues of interpretation of provisions of national legislation. The issue of electoral rights, in the broader sense of their criminal law protection, is based on understanding the essence of the norm and its basic direction. The normative analysis of the criminal offences against electoral rights² therefore represents the pivot of their applicability. It refers to the efforts providing this category of political rights with the strongest form of legal protection - criminal law protection. The analysis of the legal features of criminal acts can therefore be viewed in a strictly linguistic sense, but also in a teleological sense³. From a teleological point of view, the

¹ Criminal law, in general, as the *ultima ratio societatis*, is an instrument of the state's reaction to criminality, and as such it is based on the legal-dogmatic principles of its own exceptionality, subsidiarity and fragmentation (Bodrožić, 2020).

² Electoral criminal offences can be defined as an unlawful or wrongful conduct involving acts or omissions that are subject to criminal punishment and/or administrative penalty, for which Penalties for criminal offences committed in electoral processes are generally imposed by a criminal court (Orozco-Henriquez, 2010, pp. 12-15).

³ About the peculiarities of the linguistic formatting of legal norms, as well as about the peculiarities of the legal language, which must be precise and clear so that the addressee of the norm could understand it adequately before applying it see more (Radojković - Ilić, 2024; *Nomotehnika i pravničko rasuđivanje*, 2016, pp. 25-34).

place and role of criminal law in this area, which is necessarily fragmentary and accessory, should be determined. The aforementioned should also answer the questions of whether and to what extent the criminal law standards from the relevant international documents, which proclaim and protect the electoral rights and electoral will of citizens, have been accepted as prerogatives of democracy.

Therefore, the main purpose of this paper is to provide a scientifically based analysis of the normative characteristics of crimes against electoral rights in the contemporary Serbian criminal law.

The paper consists of introductory considerations, in which the basic research question, methodological framework and structure of the work are indicated, followed by two main parts of the article - general characteristics of criminal acts against electoral rights and the analysis of particular selected, individual incriminations.

The paper will apply the dominantly normative method and methods of formal logic, with the ultimate goal of answering the basic research question in the paper: whether and in what way, in the context of the legislative techniques used, the most popular electoral rights are protected from the strongest forms of their violation or endangerment.

In the conclusion, it is underlined that criminal law has to be regarded only as a last resort within the complete system of protection of electoral rights, but with the strong role in a processes of achieving the desired degree of crime prevention, as an overall objective of criminal law protection of democratic elections.

General characteristics of the criminal law protection of electoral rights

Electoral rights represent the basic human rights and freedoms of the first generation. They refer to the political rights and freedoms guaranteed by the Constitution of the Republic of Serbia, Art. 52 (*Constitution of the Republic of Serbia*, 2006) providing constitutional assurance of citizens' right to vote. Free elections represent the assumption of the democratic nature of the constitutional order of the state as a whole, and are related to the legitimacy or lack of legitimacy of the government.⁴

Electoral rights imply a system composed of several key elements. They include active and passive suffrage, the right to stand for election, and the right to recall elected representatives. Active suffrage implies the right of every citizen to elect representatives to representative bodies. Passive suffrage implies the right of every citizen to be elected as a representative to representative bodies. The basis for exercising the right

⁴ The election procedure is regulated by a set of legal regulations that regulate the subject of electoral law. Electoral law includes "a set of rights and duties of participants in elections, as well as all regulations that govern elections" (Pajvančić, 2001, p. 24).

to vote is also a special right - the right to stand for election, which is understood as the right of a citizen to be proposed as a candidate for representative bodies. The right to recall elected representatives derives from the previous electoral rights, which implies that citizens can, due to dissatisfaction with the work of elected representatives, withdraw the previously given trust and recall their representatives (Đorđević and Bodrožić, 2024, p.75)

Electoral rights are guaranteed at the international level by a series of regulations, the most important of which are the European Convention for the Protection of Human Rights and Fundamental Freedoms (*Law on the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms*, 2015) and the International Covenant on Civil and Political Rights (*Law on the Ratification of the International Covenant on Civil and Political Rights*, 1971).⁵

At the level of national sources, electoral rights first appear as a constitutional category. Art. 52 of the Constitution of the Republic of Serbia stipulates that every adult citizen of the Republic of Serbia has the right to vote and to be elected. The right to vote is defined as universal and equal, elections as free and direct, and voting as secret and personal. The same provision establishes the legal protection of electoral rights in accordance with the law.

The laws that more closely regulate the electoral system as a whole are the Law on the Election of the President of the Republic,⁶ the Law on the Election of Members of Parliament⁷, the Law on Referendum and People's Initiative⁸, and others⁹.

⁵ For example Art. 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms guarantees the right to free elections in such a way that the High Contracting Parties are obliged to hold free elections through a secret ballot at appropriate time intervals, under conditions that ensure free expression of the people's choice in the election of legislative bodies, and Art. 25 of the International Covenant on Civil and Political Rights stipulates that every citizen has the right and opportunity, without any discrimination and unfounded limitations: (a) to take part in the conduct of public affairs directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) to have access, on general terms of equality, to public services in their country (*Legal Protection of Electoral Rights within the Criminal Justice System*, 2024:9).

⁶ *Law on the Election of the President of the Republic* (2009), Official Gazette of RS, nos. 111/07 and 104/09 - other law.

⁷ *Law on the Elections of Members of Parliament* (2020), Official Gazette of RS, nos. 35/00, 57/03 - CC, 72/03 - other law, 18/04, 85/05 - other law, 101/05 - other law, 104/09 - other law, 28/11 - CC, 36/11, 12/20 and 68/20.

⁸ *Law on the Referendum and the people's initiative*, (2021), Official Gazette of RS, nos. 111/21 and 119/21.

⁹ *Law on the Unified Electoral Roll* (2011), Official Gazette of RS, nos. 104/09 and 99/11; *Law on Local Elections* (2020), Official Gazette of RS, nos. 129/07, 34/10 - US, 54/11, 12/20, 16/20 - Authentic Interpretation and 68/20; *Law on Administrative Disputes* (2019), Official Gazette of RS, no. 111/09; *Law on Financing Political Activities* (2019), Official Gazette of RS, nos. 43/11, 123/14 and 88/19, etc.

Electoral rights enjoy a complex system of protection that includes constitutional, administrative, misdemeanor, and criminal law protection.¹⁰

Due to its importance for the overall political system of the state, understood in the context of the freedom of expression of citizens' will, freedom of activity and the prevention and elimination of violations and abuse of electoral rights, the legal framework for the protection of electoral rights also includes their criminal law protection.

Criminal law protection of electoral rights is not comprehensive.¹¹ It is markedly fragmented and represents an adequate mechanism for protecting only the most significant goods and values related to the electoral process from the attacks that contain the highest degree of social danger. Criminal law protects the active and passive right of citizens to vote, the lawful implementation of regulations on elections, referendums or the declaration of the recall of elected representatives, in the context of their regularity in cases of the use of coercion, fraudulent activities, forgery or bribery.

Criminal offences against electoral rights are provided for under *Chapter XV of the Criminal Code (CC)*¹², in Articles 154-162. There are nine incriminations, namely:

1. Violation of the Right to Run in Elections, Art. 154,
2. Violation of the right to vote, Art. 155,
3. Giving and Accepting Bribes in connection with Voting, Art. 156,
4. Abuse of the right to vote, Art. 157,
5. Compiling of Inaccurate Voters' Lists, Art. 158,
6. Prevention of Voting, Art. 159,
7. Violation of the secrecy of voting, Art. 160,
8. Ballot and Election Fraud, Art. 161 and
9. Destroying of Documentation on Voting, Art. 162.

¹⁰ Electoral rights, as the rights with the importance of the constitutional rights, enjoy the high level of the legal protection. As Karličić stipulates, there are three types or levels of legal protection. The first and basic type of legal protection involves remedies during the election procedure, a legal procedure *sui generis*, to which the rules of administrative procedure are applied accordingly, i.e. subsidiarily. The second level of protection is judicial protection before administrative courts based on appeals by authorized entities participating in the election. The third type of legal protection is the penal protection which takes place in two ways - through criminal law and misdemeanour law protection of electoral rights (Karličić, 2023, pp. 204-221).

¹¹ Protection of electoral rights is crucial for the establishment of a legal framework that contributes to implementation of democratic elections. Therefore, not only must there be mechanisms for effective remedies to protect electoral rights, but there should be sufficient criminal or administrative penalties to prevent violations of the law and electoral rights (*Guidelines for Reviewing a Legal Framework for Elections*, 2018, p.72).

¹² *Criminal Code* (2024), Official Gazette of RS, no. 85/2005, 88/2005 - corrected, 107/2005 - corrected, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019 and 94/2024.

The general protected object of this chapter of criminal offences refers to electoral rights. The concept of elections and referendums is defined in the provisions of Art. 112, paragraphs 13 and 14 of the CC. This is an authentic interpretation given by the legislator in a single common provision entitled - Meaning of Terms for the Purpose of this Code. Elections are the elections for the Assembly of Serbia, the President of the Republic of Serbia, local self-government organs and other elections called and conducted pursuant to the Constitution and law (*Constitution of the Republic of Serbia*, 2006, Art. 112, para. 13). A referendum is a declaration of citizens to decide upon issues determined by the Constitution and law (*Constitution of the Republic of Serbia*, 2006, Art. 112, para. 14).

The perpetrator of most criminal offences may be a person who has appropriate functions in the conduct of the election process or referendum, or other persons who perform duties related to elections or voting. Criminal offences may be committed by any individual.

The subjective characteristic of all criminal acts is intent.

All criminal offences under this chapter are prosecuted *ex officio* (Karličić, 2023; Simonović, 2010, p. 248).

Although the Serbian criminal legislation has been in the process of continuous, even too frequent changes since 2006 (Bodrožić, 2020; Bodrožić, 2022, pp. 109-112), in the context of one systemic regulation, this group of criminal offences was not subject to amendment, except in the context of their addition during the adoption of the CC, which compared to the previous regulations introduced two new incriminations into this group of criminal offences - Giving and Accepting Bribes in connection with Voting, Art. 156 and Compiling of Inaccurate Voters' Lists, Art. 158.

Criminal offences are defined in the way to correspond to the emerging forms of unlawful practice in the preparation, organization and conduct of elections. In this sense, no objections can be raised in the context of negative criminal-political tendencies, excessive tightening of repression or punishment, in punishing in the pre-zone of endangering the protected value (Bodrožić, 2020; Bodrožić and Milošević, 2023).

Classification of the chapter

The internal classification of the chapter on criminal offences against electoral rights can be made with regard to the object of the commission of a criminal act, i.e. whether the commission is directed towards the violation or endangerment of

the aforementioned rights.¹³ Thus, criminal offences against the right to stand for election and vote, criminal offences of obstruction of voting and criminal offences of falsification of voting results can be differentiated.

a) Criminal offences against the right to stand for election and vote

1. Violation of the Right to Run in Elections,
2. Violation of the right to vote,
3. Giving and Accepting Bribes in connection with Voting,
4. Abuse of the right to vote
5. Compiling of Inaccurate Voters' Lists

b) Criminal offences of obstruction of voting

1. Prevention of Voting
2. Violation of the secrecy of voting

c) Criminal acts of falsification of voting results

1. Ballot and Election Fraud
2. Destroying of Documentation on Voting

Selected incriminations

Violation of the Right to Vote (Article 155)

The criminal offence of violation of the right to vote has a basic and a more serious form. The basic form of the criminal offence is provided for in paragraph 1, and is committed by a person who, with the intention of preventing another person from exercising the right to vote, unlawfully fails to register another person on the voter list, deletes him or her from the voter list, or otherwise unlawfully prevents or hinders him or her from voting.

¹³ The grouping of criminal offences, which is generally accepted in modern criminal law, is not always entirely precise, because many criminal offences are by their nature governed by multiple group protective objects, in which case their classification into a specific group of criminal offences is made according to the assessment of which of the multiple protective objects is of greater importance for a specific criminal offence. Within some of these groups of criminal offences, or chapters in a special part of the CC, it is possible to carry out a further, narrower classification and systematization of criminal offences, which is done in the theory of criminal law, but which is not common in criminal codes, and this is not the case in our CC either (Đorđević and Bodrožić, 2024, pp. 7-9). However, within the group of criminal acts against electoral rights, from the very names of the incriminations, a group protective object is unequivocally recognizable, and the internal systematics is given at the theoretical level.

The commission of the criminal act is determined alternatively. It can be accomplished by not registering another person on the voter list, deleting another person from the voter list, or preventing or hindering another person from voting.

Failure to register another person on the voter list is done by omission. Deletion from the voter list is done by positive action, while preventing and hindering another person from voting can be done in various ways, such as confiscating personal documents required for voting, preventing or hindering access to a polling station, or through fraudulent activities aimed at preventing or hindering another person from voting. The first two of the three alternatively envisaged acts of execution must be carried out unlawfully, while the third is carried out in an unlawful manner. These are methods that are in conflict with the relevant regulations.

The consequence of a criminal offence is to prevent or hinder another person from exercising their right to vote. The criminal offence is, therefore, completed when another person is unlawfully prevented or hindered from voting.

In relation to the defined commission of a criminal act, the perpetrator of the basic form may be the person who has the possibility of not entering another person in the voter list or of deleting him from it, or any person.

Since specific intent is a subjective characteristic of the basic form of this criminal offence, the presumed form of guilt is direct intent. The intent implies denying another the right to vote, but the intention does not have to be realized (Delić, 2023, p. 106).

Alternatively, a fine or imprisonment of up to one year is possible.

A more serious form is provided for in paragraph 2. It criminalizes electoral coercion aimed at causing another person to exercise or not to exercise the right to vote or to vote for or against a specific candidate or proposal in an election, recall vote or referendum.

Electoral coercion consists of the use of force and threats aimed at violating the freedom of choice when voting.¹⁴ Therefore, there must be a causal link between the force and threat and the exercise or non-exercise of the right to vote, or the vote for or against a particular candidate or proposal.

¹⁴ As it is a specific form of coercion, it coincides with the criminal offence of coercion from art. 135 of the Criminal Code and it will only be apparent and it will only be a criminal offence from art. 156. Here the specialty relationship between the two mentioned criminal offences is in question - *lex specialis derogat lege generali* (Stojanović, 2020, p.548). Coercion has the character of a general criminal offence, since there are a number of criminal offences that contain force and threat as their specific characteristics, as well as certain additional circumstances. If these additional circumstances are not present, the act will be qualified as coercion. In other cases, it refers to the relationship of specialty (Milošević, 2022, p.50)

The definition of elections and referendums should be understood in the sense of the provisions of Art. 112, paragraphs 13 and 14 of the CC.

The criminal offence is considered completed when, due to the use of force or threat, a person is forced to vote or not to vote, or to vote for or against a specific candidate or proposal in an election, recall vote, or referendum.

Any person can be the perpetrator of a serious crime.

On the subjective level, intent is required for the existence of a serious crime.

The penalty is imprisonment ranging from three months to three years.

If a criminal offence is committed against more than one person, it will present a real concurrence of criminal offences (Stojanović, 2022, p. 75).

Giving and Accepting Bribes in connection with Voting (Art. 156)

This criminal offence has two basic and one aggravated form. It incriminates active and passive electoral bribery and represents a kind of special form of the criminal offences of accepting and giving bribes (Art. 367 and Art. 368 of the CC)¹⁵.

¹⁵ Although this crime has similarities with soliciting and accepting bribes and bribery, there are very clear differences between them. They differ primarily according to the person to whom the bribe is given, the purpose of the bribe, as well as the perpetrator of the act, that is, the person requesting the bribe. Taking into account the differences, the question can be raised whether the very name of the part corresponds to the acts of giving and receiving bribes, where the activities are related to an official in connection with the performance of official duties, while in the case of the analyzed incrimination from Art. 156, the bribery - a gift, reward or other benefit can be offered, promised or given to any person (Lazarević, 2011, pp. 567-568). As an example: Soliciting and Accepting Bribes (Art. 367)

(1) An official who, directly or indirectly, solicits or accepts a gift or other benefit, or promise of a gift or other benefit for himself or another to perform an official act within his competence or in relation to his competence that should not be performed or not to perform an official act that should be performed, shall be punished with imprisonment of two to twelve years. (2) An official who, directly or indirectly, solicits or accepts a gift or other benefit or a promise of a gift or benefit for himself or another to perform an official act within his competence or in relation to his competence that he is obliged to perform or not to perform an official act that should not be performed, shall be punished with imprisonment of two to eight years. (3) An official who commits the offence specified in paragraphs 1 and 2 of this Article in respect of uncovering of a criminal offence, instigating or conducting criminal proceedings, pronouncement or enforcement of criminal sanction, shall be punished with imprisonment of three to fifteen years. (4) An official who after performing or failure to perform an official act specified in paragraphs 1, 2 and 3 of this Article solicits or accepts a gift or other benefit in relation thereto, shall be punished with imprisonment of three months to three years. (5) A foreign official who commits the offence specified in paragraphs 1 through 4 of this Article shall be punished with the penalty prescribed for that offence. (6) A responsible officer in an institution or other entity not involved in pursuit of an economic activity, and who commits the offence specified in paragraphs 1, 2 and 4 of this Article shall be punished with penalty prescribed for that offence. (7) The received gift or material gain shall be seized. Bribery (Art. 368)

The act of committing the first basic form, referred to in paragraph 1 of this article, incriminates active electoral bribery. It is defined as offering, giving, promising a reward, gift or other benefit to another person to vote or not to vote in an election or referendum, or to vote in favor of or against a specific person or proposal. There are three different groups of acts: offering a bribe, giving a bribe and promising a bribe. A bribe is a reward, gift or some other benefit, which does not have to be exclusively a material benefit.

The act is completed at the moment of undertaking any of the alternatively listed activities defined as criminal offences.

The perpetrator of the first basic form can be any person.

The presumed form of guilt in the first basic form is intent, which must include awareness of the purpose for which the bribe is being given.

Alternatively, prescribed sentence is a fine or imprisonment of up to three years.

The second basic form is provided for in para. 2. It incriminates passive electoral bribery.

It consists of requesting or receiving a bribe. The term bribe implies a gift or some other benefit.

The commission of crime involves requesting or receiving a gift or any other benefit with the same purpose as in the first paragraph.

The penalty provided is identical to that in paragraph 1.

Paragraph 3 provides for a qualified form of this criminal offence. It implies the personal status of the perpetrator of the criminal offence as a qualifying circumstance that gives the offence a more serious form. This refers to the status of a person who has certain powers in the voting process.

(1) Whoever makes or offers a gift or other benefit to an official or another person, to within his/her official competence or in relation to his/her competence perform an official act that should not be performed or not to perform an official act that should be performed, or who acts as intermediary in such bribing of an official, shall be punished with imprisonment of six months to five years. (2) Whoever makes or offers a gift or other benefit to an official or another person to, within his official competence or in relation to his competence, perform an official act that he/she is obliged to perform or not to perform an official act that he/she may not perform or who acts as intermediary in such bribing of an official, shall be punished with imprisonment of up to three years. (3) Provisions of paragraphs 1 and 2 of this Article shall apply also when a bribe is given, offered or promised to a foreign official. (4) The offender specified in paragraphs 1 through 3 of this Article who reports the offence before becoming aware that it has been detected, may be remitted from punishment. (5) Provisions of paragraphs 1, 2 and 4 of this Article shall apply also when a bribe is given, offered or promised to a responsible officer in an institution or other entity not involved in pursuit of an economic activity. (6) (Deleted).

This refers to members of the electoral committee or another person who performs certain duties related to voting.

A particularity of this form of criminal offence is the specific time of taking action, which must be taken in the performance of duties related to voting.

This criminal offence is also characterized by the mandatory application of the security measure of confiscation of objects intended or used for the commission of this criminal offence, which is provided for in paragraph 4 of this article.

Abuse of the right to vote (Art. 157)

The criminal offence of the abuse of the right to vote criminalizes activities that involve violating the rules that are a prerequisite for the regularity of elections and referendums. These rules stipulate that no one may vote on behalf of another person, and that each person has the right to vote once, i.e. using one ballot paper.

The criminal offence has two forms, basic and aggravated.

In the basic form, which is provided for in paragraph 1, three forms of the commission of criminal acts are alternatively defined by the law: voting instead of another person under his name, voting more than once in the same election, and using more than one ballot paper.

Voting on behalf of another person is most typically done through false representation by the person voting on behalf of another person under their name, or in another manner that involves misleading the members of the polling station committee. For the existence of this criminal offence, it is irrelevant whether the perpetrator has voted with the consent of the person on whose behalf he has taken the action of voting, whether he has met the conditions for access to voting, and whether he has had some form of support and assistance when taking the action.

Voting multiple times in a single ballot is most often undertaken by misleading members of the polling station committee who, in order to prevent multiple voting by one person, also use techno-preventive measures, such as invisible electoral ink.

Voting by using multiple ballots most often involves fraudulent activities that the perpetrator undertakes in order to obtain a larger number of ballots. For this form to exist, it is not important how the perpetrator obtained multiple ballots.

This is an active type of the criminal offence, which is completed by simply undertaking one of three alternatively defined criminal activities.

The essence of a criminal offence is also characterized by a specific time and place of committing the criminal action, which must be committed during an election or referendum, therefore at a precisely specified time and in a precisely specified place.

The term elections and referendums should be understood in the sense of Art. 112, paragraphs 13 and 14 of the CC.

The perpetrator of this form can be any person, but unlike the first three crimes referred to in this chapter, in which the voter appears as a passive subject, in this criminal offence the voter appears in the role of an active subject, i.e. a person who abuses the right to vote (Simonović, 2010, p. 251).

The form of guilt is intent.

The penalties for the basic form are a fine or imprisonment of up to one year.

The more serious form is provided for in paragraph 3, and exists in a situation where a member of the polling station committee enables another person to commit the basic form of this criminal offence.

Essentially, this is a criminalization of assisting in multiple voting or voting on behalf of another person. Enabling involves classic acts of assistance, which in this more serious form of the criminal offence are raised to the rank of the commission of the crime.

The actions that can constitute this form of criminal offence are numerous, but they are aimed at enabling the abuse of the right to vote by a person who votes illegally (voting instead of another person under their name, voting more than once in the same election, or using more than one ballot).

The perpetrator of a more serious form can only be a member of the electoral committee, so it is a *delicta propria*, i.e. for the existence of a more serious form, a special characteristic of the perpetrator is required.

As a form of guilt, intent is required.

Prescribed sentence is a fine or alternatively a prison sentence of up to two years.

Ballot and Election Fraud (Art. 161)

The criminal offence Ballot and Election Fraud incriminates activities contrary to the rules on the conduct of elections and referendums by a member of an election or referendum administration or another person performing duties related to voting. It is a specific type of the so-called crime and abuse of power (Ignjatović, 2021, p. 129).

The term Electoral Management Body includes the Republic Election Commission and polling stations.

The lawful work of the aforementioned persons ensures the conduct of legitimate elections determining the electoral will of voters, which is a prerequisite for a democratic state.

Activities contrary to the above, which aim to modify election results in order to misrepresent the will of citizens, are highly socially dangerous and require criminalization. This is the criminalization of electoral fraud.

The electoral will of citizens presents the specific object of protection of the criminal offence of falsifying citizens'¹⁶ results, while the immediate object of the action is ballots or votes. The legislator uses the noun in the plural, but the *ratio legis norme* implies that the offence exists even when the activity from the legal description of the criminal offence is undertaken in relation to one ballot or vote (Delić, 2023, p. 108).

This criminal offence has only one form.

The commission of criminal act is alternatively defined and may consist of altering the number of ballots or publishing false voting results. Changing the number of ballots may be undertaken in any of the following alternative ways. The first method can be done by adding or subtracting ballots or votes during the count (e.g. by adding subsequently completed ballots to the ballot box, destroying or concealing regular ballots).

The second method may consist of changing the number of ballots or votes in another way (e.g. by making regular ballots invalid), while the third method may involve publishing false voting results, consisting of numerous activities in publishing voting results that differ from the actual results.

This is a classic type of *delicta propria* criminal offence, since the perpetrator can only be a member of the election or referendum administration or another person performing duties related to voting.

This criminal offence can only be committed with intent.

The penalty is a fine, alternatively with imprisonment from six months to five years.

Concluding remarks

Even though this article does not cover the statistical data, because its main selected approach projected in the introductory remarks is generally oriented towards and grounded within the dogmatic and normative method of the research, some general relevant conclusions on the character of the criminal law protection of the electoral rights in the contemporary criminal legislation of the Republic of Serbia can be given.

¹⁶ This type of criminalization of a specific category of criminal behavior that Chambliss defines as state criminality as a type of criminal offence committed by officials as representatives of the state in the performance of their duties is also recognized as state criminality that can appear in several forms, of which falsification of the results of the survey, according to M. O'Brien and M. Yar, appears as an act of public officials aimed at exercising political control over the state and its apparatus (Chambliss, 1989, according to Ignjatović, 2021, p. 129).

Criminal law is just one of the mechanisms of a state response within the broader system of electoral justice. Observed in the mentioned context, it is also an indispensable instrument in the field of suppression and prevention of the violations of and threats to this special category of political rights. As the issues of the application of criminal law are inseparable from the issues of its interpretation, the normative analysis of criminal acts against electoral rights is the only mechanism for finding the *ratio legis* of this category of delict.

Criminal acts against electoral rights in modern Serbian criminal law represent a clear, precisely limited and coherent whole, which places criminal law protection at the level of its principled compliance with the principles of legitimacy and legality.

There are nine crimes in this chapter, neither too few nor too many. They correspond to the so far detected forms of criminal behavior in this area.

The criminal zone is precisely and adequately set, and the norms in a certain sense represent a clear specialization of certain more common criminal acts from the national legislation. The language is clear and precise, which corresponds to the nomotechnics recommended in the modern drafting of legal regulations.

Despite continuous changes in modern Serbian criminal legislation which, as already mentioned, are characterized by the term continuous criminal law interventionism, these criminal acts remained relatively independent of the mentioned dynamics, and represent a stable group of criminal acts possessing a higher potential for inducing and controlling the desired behavior of individuals. In this area, neither criminalization nor a shift of the center of gravity of the criminal zone to the pre-zone of endangerment of the protected property was observed. It refers to a relatively rational system of norms, which do not show the shortcomings of criminalization in the form of early stages of endangerment of the object of protection.

However, it should not be expected too much from the criminal law in this field. It should be implemented as a rational system of legal regulations and part of a wider system of electoral legislation.

Criminal law in this area should be used more often and more effectively, not only for the sake of general prevention, but also for the purpose of increasing the efficiency of this segment of the criminal justice system, which only through application and influence on the wider socio-cultural and overall political context of the Republic of Serbia can achieve the desired level of crime prevention in the area of elections and electoral rights.

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