EQUALITY OF POLITICAL RIGHTS IN MONTENEGRO IN THE LIGHT OF CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

Dagmara Rajska, PhD

"Support to the National Institutions in Preventing Discrimination in Montenegro" (PREDIM)

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INTRODUCTION

"Strasbourg case law emphasizes the role of Article 3 of Protocol No. 1 to the Convention and treats free elections as a condition of the existence of "effective political democracy" which is – in the light of the Preamble – one of the fundamental values which indicates the functioning and application of the rights enshrined in the Convention. Democracy constitutes a fundamental element of the "European public order" and the rights guaranteed by Article 3 of Protocol No. 1 have key meaning for creating and maintaining real democracy based on the principle of the rule of law. Only this background permits the realisation of pluralism, tolerance and opening as the axiological fundament of a legal system of rights and freedoms as guaranteed by the Convention." (Prof. L. Garlicki, „Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności", Volume II, C.H. Beck 2011, Warsaw p. 566).

Political equality means that all citizens, prisoners included, even if they are unequal socially or financially have identical voting rights and they should be treated equally under the law. In the same way, restrictions of electoral rights, in conformity with the principle of proportionality, are not completely excluded. It is for example the case for people with mental disability.

Political rights involve the right to vote in parliamentary, presidential and European elections ("active rights") and to stand as a candidate in these elections ("passive rights") (Article 3 of Protocol No.1). Political rights also involve the right to form a political party or association and the eventual possibility to dissolve such a party or association for different reasons (Article 11).

Article 3 of Protocol No. 1, as well as other provisions of the European Convention on Human Rights has to be examined in the light of its Article 14. For this reason, the legislator has to establish the electoral system in

accordance with the general principle of the law of the prohibition of discrimination (see also: Guide on Article 3 of Protocol No. 1 to the European Convention on Human Rights, Right to free elections, Jurisconsult's Directorate, ECHR, May 2016).

PART I – EQUALITY OF POLITICAL RIGHTS IN THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

The European Convention on Human Rights was signed on 4 November 1950 in Rome. In the framework of this Convention, the European Court of Human Rights (ECHR) and the European Commission of Human Rights were established. Since 1 November 1988, the European Court of Human Rights has become an international permanent court. If a State has recognized a right to lodge an individual complaint, the Court is competent to deal with individual complaints raising allegations of human rights violations, including allegations of discriminatory treatment in conjunction with other substantive rights protected by the Convention. Article 14 of the Convention requires: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

In 2000, Protocol 12 to the Convention was adopted. It establishes the general prohibition of discrimination: 1. "The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. 2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

Although the proposal was not taken up, it recognized the advances in attitudes that there have been towards discrimination in this particular field. These advances have been reflected in the Strasbourg jurisprudence, which has undergone a significant evolution over the last decade.

Article 3 of Protocol No. 1 to the European Convention on Human Rights established a right to free elections: "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions, which will ensure the free expression of the opinion of the people in the choice of the legislature."

In the case law of the European Court of Human Rights, there is a distinction between active electoral rights, which consist of a right to participate in an election as a voter and passive electoral rights, which are the rights to stand as a candidate for election.

The right to stand as a candidate has a lesser degree of protection than the right to participate as a voter.

The right to vote is sometimes unduly restricted by a State for different reasons.

I Right to free elections

1. Restriction on the right to vote

Restrictions on the right to vote are acceptable (on grounds of age, citizenship or residency) if the eventual exclusion of groups or categories of voters pursue the legitimate aim of Article 3 of Protocol No. 1. (*Hirst v. the United Kingdom*, no. 74025/01, § 62). The burden of proof that these restrictions were necessary lies on the State (*Tănase v. Moldova*, no. 7/08).

a) Restriction on the right to vote because of citizenship or national origin

The right to vote depends on citizenship and the fact that foreigners, even those who reside permanently in a State, do not have the right to vote as

compatible with Article 3 of Protocol No. 1, Article 14 and Article 16 of the Convention on the restriction of the political activities of aliens. At the same time, political rights cannot be restricted because of national origin.

Example:
- In *Aziz v. Cyprus (no. 69949/01)*, the applicant did not have the right to vote because he was a member of the Turkish-Cypriot Community, which was excluded from the Greek-Cypriot electoral roll. States have a wide margin of appreciation in establishing rules of parliamentary elections. However, the origin of the applicant cannot be considered as a reasonable and objective ground preventing him from voting in parliamentary elections. Therefore, the Court found a violation of Article 14 in conjunction with Article 3 of Protocol No. 1 to the Convention.

b) Right to vote for citizens living abroad

The fact that a person lives abroad can justify the argument that they are less interested in national elections and they have a smaller impact on the electoral lists and programmes; it is more difficult to carry out a political campaign from abroad and the impact of legislation acts only on persons living in the concerned State.

Examples:
- In *Sitaropoulos and Giakoumopoulos v. Greece (no. 42202/07)*, the Court also examined a situation concerning expatriates not living in their country of origin. Two Greek applicants living in France were prevented from voting during the 2007 parliamentary elections in Greece. In the case of *Shindler v. the United Kingdom (no. 19840/09),* it was a British national residing outside of the United Kingdom and deprived of the right to vote in the British parliamentary elections. For this reason, in both above-mentioned cases, the applicants complained to the European Court of Human Rights, which found that the restrictions of the electoral rights of the applicants were in the

margin of appreciation of the State and they did not amount to a violation of Article 3 of Protocol No. 1 to the Convention.

2. Eligibility

a) Formal conditions of eligibility

The right to free elections is a fundamental right. The right to stand in the elections can be restricted by formal requirements established by national laws and based for example on age, residency, prior conduct, national origin or knowledge of the language, which is necessary for the exercising of the mandate.

Examples:
- In *Podkolzina v. Latvia (no. 46726/99)*, the applicant stood in the parliamentary elections in Latvia, but her name was struck out of the list of candidates. The authorities decided that the candidate did not speak the national language fluently, which is a *sine qua non* condition for standing in elections in Latvia. Taking into consideration the fact that the applicant had been issued with a valid certificate of linguistic competence and the validity of this certificate was not contested by the Latvian authorities, the Court considered that the exclusion of the applicant from parliamentary elections based on the lack of sufficient knowledge of the language was deprived of any objective ground. The European Court of Human Rights found a violation of Article 3 of Protocol No. 1 of the Convention.

The situation is different if an electoral deposit establishes a restriction in electoral rights because a candidate cannot afford to pay the full amount of the deposit. In the case of *Sukhovetskyy v. Ukraine (no. 13716/02)*, the applicant could not afford to pay the electoral deposit of €218.10, the amount higher than the applicant's annual income. As a consequence, his name was struck out of the list of candidates. The European Court of Human Rights found that the fee has the legitimate aim of discouraging frivolous

candidates, and the amount of the required electoral deposit cannot be considered as excessive, because it is one of the lowest in Europe. Therefore, there was no violation of Article 3 of Protocol No. 1 to the Convention.

- In the case of *Krasnov and Skrutanov v. Russia (no. 17864/04)*, in regard to the second applicant, the Court found that providing false information on a candidate's membership in the Communist Party which resulted in the ineligibility of the candidate is a breach of the right to stand in elections. This conclusion was justified by the fact that this lack of information didn't prevent the voters from forming the misconceptions about the candidate's political views.

b) Disqualification due to prior conduct or affiliations

The restriction of the right to stand in elections can be as a result of the fact that the candidate has criminal records or was engaged in the activities of the authorities under a totalitarian regime. The person can also be ineligible because he/she is a member of another chamber of the parliament or of the parliament of another State.

Examples:
- In *Etxeberria and Others v. Spain (no. 35579/03),* the Court found that the cancellation of the candidacy of electoral groups in territorial elections on the grounds that they were carrying out the activities of parties that had been declared illegal owing to their links with a terrorist organisation was not a violation of Article 3 of Protocol No. 1 to the Convention. The restriction had been proportionate to the legitimate aim pursued and, in the absence of any element of arbitrariness, had not infringed the free expression of the opinion of the people.

- In *Paksas v. Lithuania* (*no. 34932/04*), the Court decided that the permanent ineligibility of the impeached President to stand for election to parliamentary office is in breach of Article 3 of Protocol No. 1 to the

Convention. The restrictions on the electoral rights of the person who had abused a public position or whose conduct had threatened to undermine the rule of law or democratic foundations are not in breach of Article 3 of Protocol No. 1 to the Convention. However, as it was a constitutional and unlimited time ban, the Court concluded a violation of Article 3 of Protocol No. 1.

- In *Ždanoka v. Latvia* (*no. 58278/00*), the Court found that the disqualification as a parliamentary candidate of the former leading member of the Soviet-era Communist party did not result in a breach of Article 3 of Protocol No.1. In this case, the Court referred to the principle of subsidiarity and found that the national authorities are better placed to assess the difficulties faced in establishing and safeguarding the democratic order.

c) Disqualification based on national origin

The disqualification to stand in elections based on race or origin is prohibited by the European Convention on Human Rights. However, there is no obstacle to exclude candidates who are not nationals of the State in which the elections are held.

Examples:
- In *Sejdić and Finci v. Bosnia and Herzegovina (nos. 27996/06 and 34836/06)*, the applicants did not have the right to vote in parliamentary and presidential elections because of their Roma and Jewish origins. The Constitution of Bosnia and Herzegovina divided people into two groups: "constituent people", a group including Bosniacs, Croats and Serbs and "others" including Roma, Jews, and national ethnic minorities or persons not declaring affiliation to any ethnic group. Given that this continued ineligibility of certain applicants lacked any reasonable and objective justification, it amounted to a violation of Article 14 in conjunction with Article 3 of Protocol No. 1 and Article 1 of Protocol No. 12 to the Convention.

- In the case of *Tănase v. Moldova (7/08)*, the Court examined the obligation of a Member of the Moldovan Parliament who held other nationalities, and was told to renounce them in order to have a right to execute the mandate. The Court did not accept the argument that the measure had been necessary to protect national laws, institutions and security. Taking into account that the restrictions on electoral rights should not have the effect of excluding a group of people from political life in the country, the Court found a violation of Article 3 of Protocol No. 1 to the Convention.

3. Voting irregularities

Article 3 of Protocol No. 1 to the Convention formulates *expressis verbis* four conditions imposed on elections under ECHR standards: elections must be free, democratic and secret, and they should be organised at regular intervals. The electoral organs should function in a transparent, impartial and independent manner, free from political manipulation. The national authorities should examine every electoral allegation raised by the voters.

Examples:
- In *Kovach v. Ukraine (no. 39424/02)*, the Court found that the arbitrary invalidation of votes obtained by the leading candidate in several electoral divisions of a parliamentary constituency, resulting in victory for his opponent, was a violation of Article 3 of Protocol No. 1. The Court also found in *Namat Aliyev v. Azerbaijan* (*no. 18705/06*), that a failure by the domestic authorities to adequately investigate complaints of electoral irregularities was a violation of Article 3 of Protocol No. 1.

- In case of *Riza and Others v. Bulgaria* (*no. 48555/10*) the results of elections in several polling stations were cancelled without possibility to hold new elections. The Court found violation of Article 3 of Protocol No. 1.

4. Electoral system

States establish electoral systems according to their traditions, culture and circumstances. Article 3 of Protocol No. 1 does not require proportional political representation. The principle is that everyone should have an equal chance to cast a vote under an electoral system.

Examples:
- In *Yumak and Sadak v. Turkey (no. 10226/03),* the requirement for political parties to obtain at least 10% of the vote in national elections in order to be represented in Parliament was not considered as a violation of Article 3 of Protocol No. 1 to the Convention. However, if any party did not obtain the minimum representative criterion and as a consequence is refused direct public funding, the difference of treatment with other parties receiving funding is considered as reasonably proportionate to the legitimate aim of strengthening democratic pluralism while avoiding fragmentation of the candidate lists (*Özgürlük Ve Dayanişma Partisi v. Turkey (no.7819/03)*).

- The case of *Grosaru v. Romania (no. 78039/01)* concerned the post-election dispute concerning parliamentary representation of a national minority. Within the seats for the minority granted in accordance with national law, a candidate who obtained the most number of votes was elected in the elections. However, he was deprived of his seat and the seat was allocated to another candidate by the central electoral office. The lack of clarity of electoral law and the absence of sufficient guarantees in obtaining the impartial remedy resulted in violation of Article 3 of Protocol No. 1 to the Convention.

In many European countries, the candidates in parliamentary elections are selected from "closed lists". Voters vote for a party, which obtains a certain number of seats in parliamentary elections. This party establishes the order of candidates on the electoral list. As a consequence, voters cannot vote directly for their preferred candidate. In the case of *Saccomanno and Others*

v. Italy (no. 11583/08), the Court confirmed "the wide margin of appreciation enjoyed by States in this regard and the need to assess the electoral legislation in this regard". Therefore, the application was rejected as inadmissible.

5. Media coverage of elections

The unequal coverage of parliamentary elections in the national media can be examined in the framework of the right to free elections. Article 3 of Protocol No. 1 does not grant equal coverage by the broadcasting media or any coverage at all.

Examples:
- In *Communist Party of Russia and Others v. Russia (no. 29400/05)*, the Court did not find a violation of Article 3 of Protocol No. 1 to the Convention, because it considered that the opposition parties had a minimum access to TV coverage, which was sufficient to consider that the elections were free.

- The case of *Sema Timurhan v. Turkey (no. 28882/07*) concerning the right to vote directly for an independent candidate in elections is actually pending before the European Court of Human Rights (see also: *Baskin Oran v. Turkey, nos. 28882/07 and 37920/07).*

6. Prisoners' right to vote

States have a wide margin of appreciation as regards the right of prisoners to vote. The right to vote is not absolute and it can be restricted, but this restriction of the right to free elections can be imposed only in certain situations. This restriction or deprivation of the right of prisoners to vote has a legitimate aim. It aims to prevent criminality, and strengthen civil responsibility and the rule of law.

As regards prisoners' rights, the Court found that there was a breach of Article 3 of Protocol No. 1 to the Convention in a case where the applicants had been deprived of their right to vote in elections (for example national parliamentary elections or European elections) regardless of the length of their sentence, of the nature or gravity of their offence or of their individual circumstances. For example, the European Court of Human Rights found that prisoners can lose the right to vote in accordance with Article 3 of Protocol No. 1 to the Convention when they are convicted of certain offences against the State or the judicial system, or sentenced to at least three years' imprisonment (*Scoppola (No. 3) v. Italy (no. 126/05*).

Example:
- In *Hirst v. the United Kingdom* (No. 2) (*no. 74025/01*), the general exclusion of convicted prisoners from voting in parliamentary and local elections was in breach of Article 3 of Protocol No. 1 to the Convention. As the United Kingdom has not amended the legislation imposing the blanket ban on voting in national or European elections for convicted prisoners, the European Court of Human Rights delivered a pilot judgment – *Greens and M.T. v. the United Kingdom (nos. 60041/08 and 60054/08)* – in which, under Article 46 of the Convention, the United Kingdom was required to introduce legislative proposals to amend the electoral legislation concerned within six months of the *Greens and M.T.* judgment in order to achieve compliance with the *Hirst (No. 2)* judgment. On 24 September 2013, the Court decided not to further adjourn the proceedings and to proceed with 2000 pending cases.

On 10 February 2015, the Court examined 1015 complaints of prisoners deprived *in blanco* of the right to vote and in all of these cases found a violation of the right to vote in elections (*McHugh and Others v. the United Kingdom, no. 51987/08*).

The problem of prisoners' electoral rights is broad and also concerns other countries: Austria (*Frodl v. Austria, no. 20201/04*), Turkey (*Söyler v. Turkey*

(no. 29411/07), Murat Vural v. Turkey (no. 9540/07)), Russia (*Anchugov and Gladkov v. Russia, no. 11157/04)*, and Bulgaria (*Kulinski and Sabev v. Bulgaria (no. 63849/09*).

II. Political parties and associations

1. General rules

Article 11 of the European Convention on Human Rights enshrines the freedom of assembly and association, including political parties, which play a primordial role in democratic society, democracy being regarded as a fundamental feature of the Convention system and pluralism a precondition of that democracy.

Article 11 of the Convention states that: "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

The Court stated that restrictions on these fundamental freedoms of political parties could be imposed only in exceptional situations: "(…) Exceptions set out in Article 11 are, where political parties are concerned, to be construed strictly; only convincing and compelling reasons can justify restrictions on such parties' freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, the Contracting States have only

a limited margin of appreciation" (*Refah Partisi (The Welfare Party) and Others v. Turkey*, nos. 41340/98, 41342/98, 41343/98, and 41344/98), § 100).

The Court defined when a political party might initiate changes to the legislation:

"A political party may campaign for a change in the law or the legal and constitutional structures of the State on two conditions: firstly, the means used to that end must in every respect be legal and democratic, and secondly, the change proposed must itself be compatible with fundamental democratic principles. It necessarily follows that a political party whose leaders incite to violence or put forward a policy which does not comply with one or more of the rules of democracy or which is aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy cannot lay claim to the Convention's protection against penalties imposed on those grounds" (*Yazar and Others* v. Turkey, nos. 22723/93, 22724/93 and 22725/93, § 49).

2. Dissolution of political parties or associations

The dissolution of a political party or association is not always in breach of Article 11 of the Convention.

The Court found that the dissolution or prohibition of a political party only because of its communist name (*United Communist Party of Turkey and Others v. Turkey, no. 19392/92*) or because its programme refers to the Kurdish nation (*Socialist Party and Others v. Turkey, no. 21237/93*) or an unreasonably justified call for the use of violence by the party (*Freedom and Democracy Party v. Turkey, no. 23885/94*) is in breach of Article 11 of the Convention.

The dissolution of a political party by the Constitutional Court can be compatible with the European Convention on Human Rights. In the above-

mentioned case, *Refah Partisi (The Welfare Party) and Others v. Turkey (nos. 41340/98, 41342/98, 41343/98, and 41344/98),* the Constitutional Court declared that the dissolution of the party because of public unconstitutional declarations made by party leaders was not in breach of Article 11 of the Convention. The Court made a similar conclusion in the case of *Herri Batasuna and Batasuna v. Spain*, (*nos. 25803/04 and 25817/04*) the dissolution of a political party that had the qualities of a terrorist organisation. However, in the case of *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania (no. 46626/99),* as regards the refusal to register a political party for seeking to establish a society founded on communist doctrine, the Court found a violation of Article 11 of the Convention, because the allegations were not justified.

Finally, the political association dissolved for organising a protest throughout Hungary calling for the defence of ethnic Hungarians against so-called "Gipsy" criminality, is not in breach of Article 11. The State is entitled to take preventive measures to protect democracy against associations if there is a threat to third-person rights (*Vona v. Hungary (no. 35943/10)*).

PART II - NATIONAL RULES AND EXPERIENCE AS REGARDS EQUALITY OF POLITICAL RIGHTS IN MONTENEGRO

I Montenegrin legislation strengthening political rights equality and national Ombudsperson competencies in this area

The European Convention on Human Rights has been binding since the ratification of the Convention by Montenegro in 2004. The European Social Charter has had legal force and effect since its entry into force in Montenegro in 2010. Since 29 June 2012, Montenegro has been negotiating its accession to the European Union; it is therefore obligated to implement the legal rules of the organisation in order to become a Member State.

Ratified international legal instruments form an integral part of the Montenegrin internal legal system and they have supremacy over national legislation in the case of a difference in regulating relations, according to Article 9 of the Constitution of 19 October 2007.

The Ombudsperson institution, the so-called Protector of human rights and liberties of Montenegro, was established in Article 81 of the Constitution of 19 October 2007. The competencies of the Protector are further detailed in the Law on the Protector of Human Rights and Freedoms passed on 10 July 2003 (available at http://www.ombudsman.co.me/propisi/eng/Law_on_Protector.pdf, visited on 14 October 2016).

The Law on the prohibition of discrimination was adopted on 27 July 2010, and amended in April 2014 (available at http://www.legislationline.org/topics/country/57/topic/84, visited 14 October 2016). According to this Law,

the Protector of Human Rights and Freedoms of Montenegro is competent to act on complaints relating to discriminatory treatment committed by an authority, business entity, entrepreneur, natural or legal person, and can undertake measures and actions to eliminate discrimination and protect the rights of a discriminated person, if the court proceedings have not been initiated. The protector is further charged with providing advice to the complainant in this field; conciliating between parties; alerting the public about the appearances of severe discrimination; collecting data and keeping records of cases of discrimination and, finally, promoting equality and submitting reports to the Parliament of Montenegro on the activities conducted regarding protection from discrimination and promotion of equality.

For cases involving discrimination, the Ombudsperson analyses whether or not there is indeed evidence of discrimination. If there is *a priori* appearance of discrimination concerning more than one person, the Ombudsperson gets involved or initiates court proceedings with the consent of the complainants. The following groups are the most concerned by discrimination: persons with disabilities, women, LGBT persons as well as Roma and other minorities. The Ombudsperson has intervened successfully in many cases.

Discrimination may also result from the actions of public institutions. The Ombudsperson receives his legal personality from the State. In this situation he cannot initiate judicial proceedings against the national authorities, he can only get involved in it. In the past two years, the Ombudsperson has been involved in four such cases.

The Ombudsperson takes a case in charge *ex officio* or following a complaint by anyone who believes that his/her rights and freedoms have been violated (Article 28 of the Law). In the case of violations of the rights of a child, his/her parents, guardians or legal representatives may file the complaint (Article 30 of the Law).

The Ombudsperson refers complainants to the relevant institutions and provides legal advice. The Ombudsperson does not follow the cases of those persons referred to other institutions, as s/he does not have such jurisdiction. Point 2 of Article 21 of the Law on prohibition of discrimination forms the legal basis for the Ombudsperson to provide information to the complainant about his/her rights and duties, as well as about possibilities of court and other protection. It should be noted that the ombudsperson's obligation to provide legal advice is not established by the Law on the Protector of Human Rights and Freedoms and should be limited to cases involving discrimination.

According to Article 18 of the Law, the Protector may initiate the adoption of laws, other regulations and general acts for the purpose of harmonization with internationally recognized standards in the area of human rights and freedoms. The relevant authority shall be obliged to make a statement about this initiative. If he deems it necessary for the protection and promotion of human rights and freedoms, the Protector can recommend a legal proposal, other regulation or general act.

The Ombudsperson may initiate a proceeding before the Constitutional Court for the assessment of conformity of laws with the Constitution and confirmed and published international treaties or the conformity of other regulations and general acts with the Constitution and laws (Article 19 of the Law).

II Montenegrin case law on political rights equality case law and practice

Montenegro is a parliamentary republic in which the President and the Parliament are chosen by a majority of votes. In the last elections (2014), 850 irregularities and 100 criminal complaints were reported by organisations dealing with the electoral process. The institutions examining the complaints

rejected all of them without any reasoning. At the same time, human rights activists and journalists were attacked in Montenegro.

Political rights equality is important in all aspects of life, for example in the area of employment. The Protector intervened in the case of *N.M. v. the Centre for Social Work Rozaje* after he had been addressed by N.M. who pointed out that he had been discriminated against and his right to equality in employment had been breached by an action of the director of the Centre for Social Work Rozaje. The applicant and Dz. K. applied for a position as a psychologist and they were both offered jobs. However, the applicant claimed that he had been discriminated against on the basis of his political affiliation in respect of Dz.K. The applicant was dismissed by the director of the Centre following irregularities stated by the inspector of work. Dz.K. continued to maintain employee status even after pointing out irregularities by the relevant inspections. Both of the employees did not comply with the statutory work requirements at the Centre. The applicant pointed to the unequal and unprofessional conduct of the inspector who executed the inspection and ordered various measures in the same legal and factual circumstances of both candidates. In addition, the inspection stated that the rules of the competition were not respected by the Centre.

CONCLUSIONS

Political rights are broadly protected by the European Convention on Human Rights, but the specific guarantees are established in Article 14 and Article 3 of Protocol No. 1 to the Convention and its Protocol No. 12. Article 11 of the Convention guarantees freedom of association of political parties and associations.

The analysed case law of the European Court of Human Rights has a direct and deep impact on the national legal reality. If the European Court of Human Rights finds a violation of the rights protected by the Convention, the judgment is implemented by a legislative amendment (general measures) or by modification of the case law, for example by reopening the proceedings (individual measures).

Firstly, there is a right to free elections. The European Court of Human Rights examined a large scope of the rights as regards restrictions of the right to free elections (*Aziz v. Cyprus*, *Sejdić and Finci v. Bosnia and Herzegovina*); the conditions of eligibility of candidates standing in elections (*Paksas v. Lithuania*); the right to parliamentary representation of national minorities (*Grosaru v. Romania*); or prisoners' rights to vote (*Hirst v. the United Kingdom (No. 2)*). Finally, the study was focused on the freedom of assembly and association and compatibility of the dissolution of political parties, or association with the Convention (*Refah Partisi (The Welfare Party) and Others v. Turkey).*

The European Convention on Human Rights (2004) and the European Social Charter (2010) are binding for Montenegro. Montenegro must implement EU rules in order to become a Member of the European Union. According to the Law on the prohibition of discrimination (2010), the Protector of Human Rights and Freedoms of Montenegro is competent to act on complaints relating to discriminatory treatment and to get involved in or to initiate court proceedings, initiate the adoption of laws, and proceed before

the Constitutional Court for the assessment of conformity of laws with the Constitution. In Montenegro, according to antidiscrimination groups, the most concerned are: persons with disabilities, women, LGBT persons as well as Roma and other minorities.

The established national legal instruments are in accordance with international human rights treaties. However, there is a problem of statistics and reporting as regards breaches of the principle of political equality in Montenegro. The standards need to be implemented in the case law and legal practice.

Furthermore, concerning the 2014 elections, there were 850 irregularities and 100 criminal complaints reported by organisations dealing with the electoral process. There are also cases of discrimination in employment because of political affiliation, in which the Ombudsperson has intervened successfully, for example *N.M. v. the Centre for Social Work Rozaje.* There are no judgments of the European Court of Human Rights which have been delivered against Montenegro.

The Montenegrin authorities should follow the judgements delivered by the Court against other States to comply in the future with the established international human rights standards. The Venise Commission documents are also valuable in the matter of elections. It prepares the Codes of good practice on elections, on referendums and on political parties and Opinions, mostly joint ones with OSCE/ODIHR on electoral legislation, which are very valuable in enforcing the independence and transparency of electoral system. The Code of Good Practice in Electoral Matters was adopted by the Venice Commission at its 51st and 52nd sessions (Venice, 5-6 July and 18-19 October 2002) (CDL-AD(2002)023rev2-e). The Interpretative Declaration of the code of good practice in electoral matters on the publication of lists of voters having participated in elections was adopted by the Council for Democratic Elections at its 56th meeting (Venice, 13 October 2016) and by

the Venice Commission at its 108th Plenary Session (Venice, 14-15 October 2016).