Constitutional Court of Montenegro adjudicating through its President prof. dr Milan Marković and judges - Miodrag Iličković, Desanka Lopičić, Miraš Radović and Fetija Međedović on the basis of provisions of Article 149, paragraph 1, line 7 of the Constitution of Montenegro and Article 32, paragraph 7 of the Law on the Constitutional Court of Montenegro (»Official Gazette of Montenegro« No. 64/08, 46/13 and 51/12), at its session dated 14 November 2013, passed its

**DECISION**

The constitutional complaint filed by Pozitivna Crna Gora, its list election list “Srcem za Cetinje” is **ACCEPTED** and the Decision of the State Election Commission No. 601/2 dated 12 November 2013 which rejected complaint No.19-1231/2013 dated 11 November 2013 is thereby **REVOKED**.

This Decision shall be published in the »Official Gazette of Montenegro«.

**Statement of the reasons**

 1. Political party Pozitivna Crna Gora – its electoral list “Srcem za Cetinje”, filed a constitutional complaint to this court against the Decision of the State Election Commission, as quoted in the dictum, whereby the Commission thereof rejected their complaint against the Conclusion of the Election Commission of the Royal Capital Cetinje No. 01-14/13-88 dated 10 November 2013 on the basis of the lack of jurisdiction.

 1.1. The complaint indicated to the fact: that the contested decision is illegal and unconstitutional because the complainant’s was deprived of the right to legal remedy from the provision of Article 20 of the Constitution, and of the right to file a complaint as stipulated in Article 108, paragraph 2 of the Law on the Election of Councilors and Members of Parliament; that the Conclusion of the municipal election commission decided on the rights of the applicant and applicant’s statutory interest to appoint their authorized representatives to polling boards and that this right should protected; that exercise of other rights ensuing from the provision of Article 10 of the Law on Election of Councilors and Members of Parliament, inter alia entails right of voters to be appointed by their electoral lists for members of polling boards in compliance with the provision of Article 36, paragraph 3 of the Law; that the State Election Commission by its decision acted in contravention to the provisions of Article 32, paragraph 1, lines 1, 2 and 3 of the quoted law and it, consequently, entitled municipal commissions to pass conclusions in future which can for example reject proposals of all parties submitting electoral lists to appoint authorized representatives to polling boards or do any other infringement on the rights stipulated by this law; that the State Election Commission declared no jurisdiction over deciding about complaints to decisions of municipal election commission whereby it lost its purpose as for delivering on its statutory competences to control the enforcement of the law, make sure the elections are conducted in compliance with the law (…) and that by rejecting the competence to examine/review the decisions of municipal election commission it gives those acts finality without statutory grounds.

2. The contested decision of the State Election Commission rejected the complaint of the applicant against the Conclusion of the election commission of the royal capital Cetinje, No. 01-14/13-88 dated 10 November 2013 due to the lack of competence.

2.1. The statement of the reasons of the Decision reads that the concrete case is not the case of violation of electoral right but the case of the appointment of authorised representatives to polling board, which does not fall within the remit of the Commission and that is why they decided as stated in the dictum.

3. The Constitutional Court considered the contested decision and relevant documents submitted to the court and established that the complaint was lodged in timely manner, that it is admissible and founded and that the conditions are in place for the Constitutional Court to approve the constitutional complaint that will revoke the contested Decision of the State Election Commission.

4. For deciding about the concrete case, the Court found legally relevant the following provisions of the following legislation:

*The Constitution of Montenegro:*

*“Article 16, item 1*

*The law, in accordance with the Constitution, shall regulate:*

*1) the manner of exercise of human rights and liberties, when this is necessary for their*

*exercise;*

*Article 149, paragraph 1, line 7.*

 *The Constitutional Court shall decide about:*

*7) Electoral disputes and disputes related to the referendum, which are not the responsibility of other courts;”*

*Law on the Constitutional Court of Montenegro**(»Official Gazette of Montenegro«, No. 64/08, 46/13 and 51/13):*

*“Article 76*

*The proceeding of deciding on the violation of right during elections for the Members of Parliament and councilors shall be initiated by filing an appeal against the ruling of the competent electoral commission dismissing or rejecting the complaint against the decision.*

*The appeal referred to in paragraph 1 of this article shall be filed within 24 hours from the hour*

*the ruling was received.*

*Article 77*

*The appeal may be filed by a voter, a candidate for a Member of Parliament or a councilor, as well as by the party/group that submitted the electoral list.*

*The appeal shall contain grounds for and evidence of violation of the right during elections.*

*Article 79*

*The Constitutional Court shall render the decision on the appeal referred to in article 78 of this*

*Law within 48 hours from the hour the appeal was received.”*

 *Law on the Election of Councilors and Members of Parliament (»Official Gazette of the Republic of Montenegro«, No. 4/98, 17/98, 14/00, 9/01, 41/02, 46/02, 48/06 and »Official Gezette of Montenegro«, No. 46/11):*

*“Article 19**.*

*Election commissions shall be appointed after the constitution of a newly elected parliament for the term of office of four years, while polling boards shall be appointed for each election of councillors and Member of Parliament.*

*Article 32**, paragraph 1, lines. 1, 2 and 3*

*The Republican Election Commission shall :*

*(1) see that the election be conducted legally and the provisions of this Law are uniformly*

 *implemented;*

*(2) monitor and offer professional advice on the implementation of this Law;*

*(3) co-ordinate the work of the Municipal Election Commissions, give instructions with regard to the*

 *implementation of this Law, and supervise their work;*

*Article 35**, paragraph 1*

*Polling Boards are composed of: the chairman, four permanent members and one authorized*

*representative of each of the submitters of electoral lists;*

*Article36**.*

*On the day of rendering the decision on the proclamation of the electoral list, the Municipal Election Commission shall pass a decision on which of the submitters of the electoral lists have fulfilled the conditions for appointing their representatives in the extended composition of the Polling Boards.*

*The Municipal Election Commission shall submit to the submitters of the electoral list the decision on whether it has fulfilled the conditions for appointing a representative in the extended composition of the Polling Board within 24 (twenty four) hours of setting up the polling station.*

 *A submitter of an electoral list shall appoint its authorised representative in the extended composition of the Polling board and notify the Municipal Election Commission of this, and the Municipal Election Commission shall, not later than 24 (twenty four) hours of the delivery of such notification, render a decision stating*

*the names of persons becoming the members of the extended composition of the Polling Board.*

 *An authorised representative participates in the work of the Commission and makes valid decisions as from five days prior to the polling day.*

*Article 107*

 *Every elector, candidate and submitter of the electoral list have the right to lodge a complaint to the competent election commission for reasons of the infringement of the electoral rights during the election.*

*The complaint referred to in paragraph 1 of this Article shall be lodged within 72 (seventy two) hours of the hour at which the decision was made or the act performed.*

*The complaint referred to in paragraph 1 of this Article is lodged directly to the competent election commission.*

*Article 108, paragraph 2*

*A complaint against a decision, act or failure of the municipal Election Commission shall be lodged to*

*the Republican Election Commission.*

*Article 109*

*The competent election commission shall render a decision within 24 (twenty four hours) of the hour of receipt of the complaint and shall deliver it to the submitter of the complaint.*

*If the competent election commission finds that the complaint is justified, it shall annul the decision or the act.*

*If the competent election commission fails to render a decision on the complaint within the terms set down by this Law, the complaint shall be deemed justified.*

*Article 110*

*Against the decision of the competent election commission by which the complaint has been rejected or refused, a complaint may be lodged to the Republican Election Commission.*

*A complaint may be lodged to the Constitutional Court of Montenegro against the decision of the Republican Election Commission rejecting or refusing the complaint.*”

5. It ensues from the quoted provisions of the Constitution that the laws in compliance with the Constitution define the way in which freedoms and rights of citizens are exercised, voting right included, and as such this right is exercised at elections and, consequently, they regulate the protection of that right, too. The Law on the Election of Councilors and Members of Parliament regulates, inter alia, the manner in which voting right is exercised in the procedure for the election of councilors to municipal assemlblies, assembly of capital city, to the assemblies of urban muncipalities and the royal capital and for the election of members of the Parliament of Montenegro; it also regulates which bodies are in charge of conducting elections and other issues relevant for the amdinistration of elections. The procedure of administering election is a strictly formal procedure where all participants in the procedure thereof are obliged to respect and directly abide by rules and terms for administering certain electoral activity as prescribed by that law.

5.1. Further, the Law also stipulates as it is that the polling board is an *ad hoc* body for administering elections and as such it is appointed for each respective election of councillors or members of parliament and it is composed of its president and four members in its permanent sitting and one authorised representative each from submitters of electoral lists (Article 35, paragraph 1). The Law prescribes, inter alia, the way in which the voting right is protected in relation to the procedure of electing councilors and members of parliament, which based on the principle of the concentration of some electoral activities is subject to strict formal rules of electoral procedure. The legal protection in this procedure, the Constitutional Court finds, can be invoked against all decisions, conclusions or other acts, documents, official files, statements, official documents, actions etc.

5.3. Election dispute, in that sense, refers to the examination by competent bodies of all violations of the rules of electoral procedure from the moment of calling for election to the moment of confirmation of the seats won at elections. The Constitutional Court finds that the protection of electoral-voting right represents the right to file objection or complaint to competent bodies and courts and it applies to all stages of elections including also the issues pertaining to the appointment of the bodies for administering election procedure which are also entrusted with appointment of nominees of submitters of electoral lists for the authorized representatives to the extended formation of the polling board, as prescribed in the provision of Article 35, paragraph 1 of the Law.

5.4. Namely, the submitters of electoral lists eligible to nominate their authorized representatives to the extended formation of the polling board are entitled to appoint their authorized representative each and they are to notify municipal election commission of that and within 24 hours the commission has to send notices listing the names of each and every person appointed into the extended polling board (Article 36 of the Law). The Court finds that, in compliance with Article 108, paragraph 2 of the Law, submitters of election lists are entitled to submit a complaint to competent body – State Election Commission if they think that an act-conclusion of municipal election commission violated their right to nominate a representative to the extended formation of electoral board in the election process.

6. Starting from the quoted constitutional and legal provisions and the facts of the case, the Constitutional Court finds that, by rejecting the complaint as inadmissible due to its lack of jurisdiction, the State Election Commission deprived the complainant of the right to protection of voting right in the procedure for establishing the list of nominees to be appointed representatives to the extended polling board for the election of the councilors in the assembly of the Royal capital Cetinje.

6.1. Constitutional Court of Montenegro finds that the contested decision of the State Election Commission was legally unfounded and the complaint legally founded; the State Election Commission shall decide about the applicant’s complaint within the time prescribed by the law.

7. On the basis of the reasons listed hereinabove, the Court decided as set forth in the dictum of this decision.

The order on publishing the Decision herein is based on the provisions of Article 151, paragraph 2 and Article 34, paragraph 2 of the Law on the Constitutional Court of Montenegro.

U-VI No. 9/13 CONSTITUTIONAL COURT OF MONTENEGRO ,

14 November, 2013 PRESIDENT

P o d g o r i c a Professor dr Milan Marković