

Bosnia And Herzegovina And Diversity Management: The Case Of The House Of Peoples

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Abstract: *In the case of Bosnia and Herzegovina, the authors show how the consequences of a specific institutional design can affect the legitimacy of the political system, leading to the instability of democracy and the inefficiency of the system of government. Bosnia and Herzegovina is a typical example of a plural or divided society, with strong and separate ethnic, religious, cultural and political entities, Bosniaks, Serbs and Croats. This key fact of separate political organization distinguishes Bosnian society from most modern pluralistic societies, which are heterogeneous but not plural. Therefore, constitutional needs, interests and requirements are special and different from relatively homogeneous societies. In divided societies, institutional design significantly influences a very important issue of representativeness. Thus, bicameralism as a secondary feature of federalism is a key mechanism for fragmented societies because it influences the consolidation of democracy through diversity management. This paper analyzes the role and performance of the second house in the political system of Bosnia and Herzegovina, and its representation of specifics, in this case the representation of the national interests of the three constituent peoples, Bosniak, Serb and Croat.*

Keywords: *Bosnia and Herzegovina, democracy, two-chamber Parliament, Upper House of the Parliament*

I. Introduction

All legislatures are faced with three main issues: connecting and presenting citizens, overseeing and controlling the executive branch and creating policies (Kreppel, 2013:123-125). Distinctions between reciprocally legislatures is internal organizational structure and dichotomous sorting on the one and two chamber systems. This is related to the federalism – unitarism dimension, respectively to the power sharing inherent in a consensual model of democracy, as opposed to the concentration of power in the majority model (Lijphart, 2014:172). Whether the legislature of one or two chamber system is not only a technical issue of institutional design, it is also a reflection of the society structure and the understanding of democracy itself. Advocates of two – chamber systems are inclined to claim that the second legislative chamber strike a balance by defending individual and collective interests from a possible forcible majority in the first chamber (Hague, Harrop, 2009:265). Two chambers legislatures are most commonly found in larger countries, in all federations, and in some unitary states. The most powerful deviating case is China, which has slightly less than 1 billion and 400 million inhabitants and has one chamber legislature.

The role of two chamber legislature is clear. The lower house represents the general interests, while the second or upper house represents special interests, constituent territorial communities, special social groups or different other areas of interest. Two chamber legislatures most often appear in large states and federal ones. There is no federal state without two chamber system. Through second chamber federations allow equal representation of federal units, respectively different social segments, so second chambers have the role of maintaining the balance, but also the role of corrective interventions in relation to the first chamber. Within the difference between the first and second chamber the advocate of the consensual forms of democracy Arend Lijphart, finds three less important and three significant differences. The three less important differences are that the first chambers are usually fewer than the second, exception is a British House of Lords, today there are 784 representatives compared to 649 of the first chamber (UK ..., 2019), the mandates are usually longer in the first than in second chamber, while the third less important difference is the gradual selection of second chambers.

For example, a third of the American, Argentine and Indian second chamber are elected every other year, a third of the French second chamber being renewed every three years, representatives of the Austrian, German and Swiss second chamber are elected in a graduated manner, but not at regular intervals, while half of the Argentinean second chamber representatives are elected every other year. Three significant distinctive features, according to Lijphart, are: formal authority, democratic legitimacy and choice for the second chamber with different methods for the over representation of a particular minority. Within formal constitutional powers, second chambers are usually subordinated to the first ones, which also depends on their election methods. All the first chambers are directly elected by voters while most members of the second chambers are indirectly elected, usually by lower level legislatures or appointed, such as senators in Canada, some Irish senators, representatives in the House of Lords, and similar. Second chambers which are not directly elected do not have democratic legitimacy and real political influence. Therefore, based on the first two criteria, formal powers and democratic legitimacy, the two chamber legislatures are classified as symmetrical or asymmetrical. Symmetric chambers have equal or moderately unequal constitutional powers and democratic legitimacy, and asymmetric do not. Third most significant difference between one and two chamber system is the election mode with different methods which need to overcome certain minorities. In that case, first and second chamber by their structure can be called – non congruent. The highest over representation level appears when the representation of states, provinces or cantons is the same regardless of the population of federal units. For example, Switzerland and the United States have two representatives by country or canton, Argentina has three provincial representatives, and Australia has 12 representatives per country. The German Bundesrat and the Canadian Senate are examples of federal chambers in which fewer segments are over represented. In the Austrian Bundesrat, which is an exception, the representation is proportional to the population. (Lijphart, 2014:174-180). In Bosnia and Herzegovina, second chamber (on the state legislature level) of the Parliamentary Assembly represents constitutive peoples, Bosniaks, Serbs and Croats and representatives are selected indirectly.

II. Society structure and emergence of the political system

In Bosnia and Herzegovina, the basic structural fact is a plural or divided society, with strong ethnic, religious and cultural ensembles located in the sphere of separate political organizations. This key fact of a separate political organization distinguishes Bosnian-Herzegovinian society as well as all other plural societies from most modern pluralist societies, which are heterogeneous, but not pluralistic (Rabushka, Shepsle, 1972:20-21). The definition of plural society among the first was given by John Sydenham Furnivall: „It is in the strictest sense a medley, for they mix but do not combine. Each group holds by its own religion, its own culture and language, its ideas and ways” (Furnivall, 1948:304). Alvin Rabushka and Kenneth A. Shepsle developed the contemporary theory of plural society: „A society is plural if it is culturally diverse and if its cultural sections are organized into cohesive political sections. The identification of a plural society, then, becomes a matter of observation Politically organized cultural sections, communally based political parties, the partitioning of major social groups (e.g., labor unions) into culturally homogeneous subgroups, and political appeals emphasizing primordial sentiments serve as unambiguous indicators of a plural society.” (Rabushka, Shepsle:21). In general, the consequences of concrete institutional choices affect the stability, efficiency and legitimacy of the political system, while in divided societies, institutional design affects the question of representativeness. Question of representativeness is crucial for fragmented societies. The most typical institutional form created to resolve conflicts in divided societies is federalism and its division of sovereignty within each entity has its own constitutional jurisdiction. Federalism successfully regulates conflicts in multiethnic communities and manages to integrate complex societies. In addition, it is also established for historical, geographical or economic reasons. In an influential study on federalism, Ivo Duchacek emphasizes that there is no consensus on what federalism is exactly (Duchacek, 1970:189) therefore, for the evaluation of federalism, he lists ten important criteria (Duchacek, 1970:207-208).¹ Within the institutional forms created to resolve conflicts in the divided societies, a

¹ 1. Has the central authority exclusive control over diplomacy and defense as befits a nation-state in its relations with other nation-states? 2. Is the federal union constitutionally immune against dissolution by secession? 3. As the exercise of the Central Authority, as it reaches all citizens, directly independent of the individual approval and resources of the component units? 4. Who has the ultimate control over amendments to the federal constitution? 5. Are the component units immune to elimination of their identity (antedating or postdating the union) and authority? 6. Is the collective sharing in federal rule making adequately secured by equal representation of unequal units in a bicameral system? What are the constitutional provisions for collective sharing in the executive and judiciary rule implementation? 7. Are there two independent set of courts, one interpreting and adjudicating the federal laws and the other the state laws? 8. Is there a judicial authority in the central authority but standing above the central authority and the components units to determine their respective rights? 9. Have the component units retained all the powers that the constitution

significant place also belongs to the model of consociational democracy, whose analytical development is linked to Arend Lijphart.² Besides four initial institutional arrangements, it includes a great coalition, a veto, the proportionality of representation within executive and legislative power, and the autonomy of the segments with federalism, proved that it is possible to manage divisional societies through negotiation, compromise and involvement. There is a high level of independence of each segment. Divided societies allow autonomy and federalism through decision making on internal issues, which can be achieved through a particularly strong upper chamber role that represents specific interests.

The starting point for creating a constitutional arrangement, within the Dayton Peace Agreement, was precisely the model of consociational democracy. This confirms that constitutive creators were aware of the starting structural key fact of being a divided society and that the majority form of democracy is inadequate for such a society, especially in the post-conflict period. From the basic consociational elements, legalization of three segments was implemented in the form of three constituent peoples, Bosniaks, Serbs and Croats. The principle of ethnic quotas in state institutions was established, the right to the protection of vital national interests, the proportional representation of consensual decision-making along with the damaged principle of autonomy of the segment through asymmetric federalism.

There are three distinct ethnic-religious identities dominated in Bosnia and Herzegovina that, as it is today, have been separated from the past. In the demographic context, the largest share in the total population is recorded by Bosniaks. Since the beginning of the 1970s, when they were granted the status of a nation, the number of Muslims (since 1993. Bosniaks) has increased gradually with the simultaneous reduction of Croats and Serbs.

The number of Muslims increased by 30.73% since 1948, when there was a total of 2,564,308 inhabitants in Bosnia and Herzegovina (Markotić, 1996:73) to 43.67% in 1991, when there were 4,365,009 inhabitants. According to the latest census of 2013, of the total number of 3,531,159 inhabitants, Bosniaks are 1,769,592 or 50.11%. The number of Serbs declined from 44.29% in 1948 to 31.37% in 1991 (Markotić, 1996:76-77) and in 2013 it was 1,086,733 or 30.78. The number of Croats declined, in Bosnia and Herzegovina in 1948 they were 23.9%, and in 1991, 17.3% (Vukšić, 1996:61), and in 2013 there were 544,780 or 15.43% of Croats (Agency ..., 2017).

The political history of Bosnia and Herzegovina was complex and burdensome (Malcolm, 1995:11). With the break in Christianity in the XI. century Catholic and Orthodox religious identities were created while the Muslim began shaped by the penetration of the Turks into the area of the present state, around 1463., when the era of Islamization occurred. After 1878., during the period of Austro-Hungarian administration, national identification processes were initiated, with the former confessionalism being transposed into nationalism (Džaja, 2002:242). With the collapse of Austro-Hungarians, Bosnia and Herzegovina became part of the Kingdom of Serbs, Croats and Slovenes, from 1918. to 1929., when the state changed its name to the Kingdom of Yugoslavia (Boban, 1974:44). After the Second World War, Bosnia and Herzegovina became one of the six national republics, along with Serbia, Croatia, Slovenia, Macedonia and Montenegro, which were part of the newly formed state. The sovereignty of the national republics, at least theoretically, was based on right to self-determination (Vukas and Fabijanić-Gagro, 2011:580). In Constitution from 1974., the principles of centralization were corrected with the guarantee of sovereignty and the possibility of independence and the Muslims, until then religious communities, have officially confirmed the status of a nation.

During the past in Bosnia and Herzegovina there was no transformation of the ethnic communities into a unified nation, but rather the opposite, it created a split between three different religious and cultural identities, which is enabled social prerequisites for the emergence of a divided society. Towards the end of the 1980s and the early 1990s Yugoslavia breaks down and the war in Croatia and Bosnia and Herzegovina erupted. The war cycle in Bosnia and Herzegovina, since 1991, has been marked by opposing national interests and finding territorial solutions to national issues. This is confirmed by the proposals on the organization of the state overseen by the International Community during the peace process. Most of them took territorialisation according to the national principle. Cutilier's (The Lisbon) plan proposed a state made up of three constituent units based on national principles (Tuđman and Bilić, 2005:74-76). Vance-Owen's plan proposed a decentralized federal state with

has not given to the central authority? And are these retained powers significant or marginal? 10. Is the territorial division of authority clear and unambiguous?

² Arend Lijphart, Carlos H. Waisman, *Institutional Design in New Democracies. Eastern Europe and Latin America*, (Boulder: CO Westview Press, 1996); Arend Lijphart, "Constitutional Design for Divided Societies", *Journal of Democracy*, no. 15, (2004): 96-109; Arend Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries*, (New Haven: Yale University Press, 1984); Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, (New Haven: Yale University Press 1999); Arend Lijphart, "Constitutional Choices for New Democracies", *Journal of Democracy*, no. 2, (1991): 72-84

provinces that would have significant roles and would also be based on ethnic origins (Tuđman and Bilić, 2005:221-229). Owen-Stoltenberg's proposal was based on a confederation made up of ethnic republics (Tuđman and Bilić, 2005:271). Defining the current political system was preceded by a territorial division on a rare principle in multinational states, from two numerically different ethnic segments, the Bosniaks and Croats, the Washington Agreement in 1994 formed the Federation of Bosnia and Herzegovina, whose constitution first names the Bosniaks instead of Muslims (Bougarel, 2009:129). This agreement has brought a constant crisis within Bosniak-Croat relations. In Dayton, in 1995, the International Peace Agreement was divided into two entities, the Federation of BiH and the Republic of Srpska, with the majority Serb population and the Brčko District. The Federation of Bosnia and Herzegovina consists of ten cantons, five are majority Bosniaks, three are majority Croatian and two are mixed. While the Republic of Srpska entity is composed of municipalities and cities. The Constitution of Bosnia and Herzegovina is actually an annex to the Dayton Peace Agreement. Apart from the constitution, this peace agreement has also established an unconstitutional institution of the High Representative. As all of the most important decisions and key reforms adopted by the international community's decrees, Bosnia and Herzegovina is often compared to colonial empires with similar resemblance to style and content (Knaus and Martin, 2003:62).

Institutional structures have established cooperation mechanisms based on the principle of ethnic proportionality and parity. Central government oversees foreign, customs, monetary, trade and migration policy, oversees the airspace and carries out international obligations. All other competencies belong to entities, education policy, police, natural resources, spatial and housing policies, culture, health, social welfare and traffic.

The lower (first) chamber of the Parliamentary Assembly of Bosnia and Herzegovina, the House of Representatives, consists of two thirds of the FBiH representatives and one third of the Republic of Srpska, while the upper (second) chamber, House of Peoples, constructed according to the ethnic-entity principle, consists of five Serbs, five Croats and five Bosniaks. State Government, Council of Ministers, appointed by the Presidency of BiH, is also based on the principle of proportionality. The three-member Presidency also consists of Croats, Bosniaks and Serbs.³

The lower house of the two chamber Parliament of the Federation of Bosnia and Herzegovina, the House of Representatives, represents general interests, while the upper house represent the interests of constituent and other peoples. While inside the entity of the Republic of Srpska legislative authority is located in the one chamber National Assembly and since 2010. the Council of Peoples is a chamber representing constitutive peoples, but has no role of the second chamber because it does not participate in the adoption of the law.

In reality, the complicated constitutional structure, which has enabled the formation of large coalitions of all three national segments, and numerous interventions by the High Representative, affect the constant crisis of the political system. The changes that were made to correct the disadvantages of the political system went in the wrong direction, and they were trying to solve the issue of effectiveness at the expense of equality. In this way, the institutional inequality of Croats in the Federation questioned their status as a constituent people.

For this reason, the implementation of the elections in Bosnia and Herzegovina regularly results in voters giving their support to political parties with the national program, which confirms the thesis that the national question is not considered settled members neither one of the three constituent peoples. In Bosnia and

³ The Croatian public and Croatian political elite in Bosnia and Herzegovina dispute the legitimacy and choice of Željko Komšić, who was elected as a member of the Croatian Presidency member of BiH, 2006, 2010 and 2018. His illegitimacy supporting the claims that Komšić won 116,062 votes in 2006., in 2010. 337 065 votes, despite the fact that the Croats are the smallest nation. In the Kalesija, where are only 35 Croats, Komšić got 7 033 votes. In 2018 he won 225,500 votes. If we take the results of other candidates for the Croatian member of the Presidency, there is a figure that is less than 5% support of Croats in BiH. In the dominant Croatian municipalities Komšić results are negligible. In Široki Brijeg he got 0.52% support, in Čitluk 0.54%, in Grude 0.72%, in Posušje 0.76%, in Ljubuški 1.26%, in Neum 2.95%, in Tomislavgrad 3.37 % of Croatian votes. (Central Election Commission Bosnia and Herzegovina, 2019.) The Election Law of Bosnia and Herzegovina prescribes that a voter from the territory of the Federation of Bosnia and Herzegovina may vote either for Bosniaks or for Croats. The problem arises when the Bosniak and Croat members of the BiH Presidency were chosen by the numerically dominant Bosniak voters, making it impossible for Croats to be represented in the institution of the collective head of the state. The constitutional provision in this case ignored the overwhelming fact that Bosniaks are far more numerous than Croats in the Federation of Bosnia and Herzegovina and that in this way they constantly violate the equality of peoples.

Herzegovina, there is no consensus among the three constituent communities or their political representatives on whether the state should survive and how it should be regulated.

III. The main election features of Bosnia and Herzegovina

General elections in Bosnia and Herzegovina are held for the state, entity and county levels of government. Until 2002, they were held every two years⁴, and since then a four-year term has been introduced. The main features of elections for all levels of government are voter voting for national political parties, attempts to "correct" the will of voters from the international community and the High Representative by intervening in electoral legislation⁵ and suspending decisions of the Central Election Commission⁶, and illegitimate election of Croatian representatives in government.

The first democratic elections in Bosnia and Herzegovina were held according to a proportional electoral system with multi-member constituencies, using D'Hondt's method⁷ of converting votes into seats. They were held on November 18, 1990, with more than 40 registered political parties. 3,018,206 voters were registered in the voter lists, of which 77.5% voted for the three national parties. The Croatian Democratic Union of BiH, for which Croats voted, received 15.51% of the vote and 44 parliamentary seats. The Democratic Action Party, voted for by Muslims, won 30.41% of the vote or 84 parliamentary seats. The Serbian Democratic Party won 25.23% of the vote and 72 parliamentary seats. Members of the three constituent peoples chose the majority for their national parties, HDZ received 84.38% of Croatian votes, SDS 78.79% of Serbs, and SDA 76.94% of Muslim votes. It was an indicator of future electoral trends, ranging from organizing political parties by ethnicity to their overwhelming victory within their own ethnic circles.

Voters again showed a preference for national parties⁸. Classification under the auspices of national parties was an expression of an unresolved national question, which further intensified national charges, otherwise suppressed when the national question was resolved.

The general elections, held in early September 1998, were also held in accordance with the Rules and Regulations of the Provisional Election Commission organized by the OSCE Mission to Bosnia and Herzegovina. It is important to emphasize that in the elections for the House of Representatives of the Parliamentary Assembly of BiH in 1996 and 1998, a subtype of proportional electoral system without electoral thresholds and division of the state into constituencies was applied. Such a system that "maximizes proportionality" is a fundamental element in democracies with shared power. (Kasapović: 2005) This shows that the international community was still inclined to conduct elections close to the traditions of divided societies. The 1998 general elections, as well as those of 1996, showed the overwhelming dominance of national parties in all three constituent peoples. It will also be the last election for the lower house of the state parliament to have a purely proportional electoral system, which most consistently meets the need for fair representation. The application of pure proportional elections shows its meaningfulness in societies with marked heterogeneity and deep divisions, such as the Bosnian society in which the function of representation should be most clearly reflected in the ratio of votes to mandates.

The third post-war general elections in Bosnia and Herzegovina in early November 2000 were also organized and funded by the OSCE Mission to Bosnia and Herzegovina. They are largely marked by a change in election rules introduced by the OSCE just a month before the election. The Provisional Election Commission, whose mandate is established by Annex III. The General Framework Agreement for Peace in Bosnia and Herzegovina, consisting of domestic and international members, imposed new electoral rules for the November

⁴ Kasapović (2005:136) calls the two-year term a „electoral strategy“ preferred by the international community based on the belief that elections can „transfer, establish and consolidate democracy in undemocratic, pre-democratic or semi-democratic political systems“.

⁵ General elections held in 2000. were largely marked by a change in election rules, introduced by the OSCE just a month before the elections. See: "Rules and Regulations of the Provisional Election Commission, General Elections 2000", Central Election Commission of Bosnia and Herzegovina,

⁶ "Order temporarily suspending certain decisions of the Central Election Commission of Bosnia and Herzegovina adopted at its 21st session, held on March 24, 2011, as well as all proceedings related to the aforementioned decisions", Office of the High Representative

⁷ D'Hondt's method is a process of converting votes into mandates named after a Belgian mathematician. Mandates are distributed by dividing the total number of votes of each party by a series of divisors 1, 2, 3, 4, 5..., and the mandate is given to the party with the highest quotient. Given its technical simplicity, it is widely used due to the allocation of mandates in the first allocation procedure. This method is most suitable for large parties. (Kasapović, 2003)

⁸ Official Gazette of the Federation of Bosnia and Herzegovina, 1996.

2000 elections⁹. The OSCE intended to diminish the importance and dominance of national political parties. Changes in the rules for the election of delegates to the House of Peoples of the Parliament of the Federation of BiH also went in that direction. Electoral rules prior to the change required members of the House of Peoples to be elected by county parliamentary groups, while new rules provided that each party, or group of three members of county assemblies, could nominate a list of candidates for the House of Peoples from Croats, Bosniaks or others. This decision resonated most negatively in the corps of Croatian political and intellectual elites, who considered it a blow to the constitutivity of the Croatian people, given that their representatives had the right to nominate and elect members of other nations. In response to the imposed changes, most Croatian political parties organized the Croatian National Assembly. It adopted the Declaration on the Rights and Position of the Croatian People in BiH and the Decision on Calling a Referendum of the Croatian People in BiH. The referendum decided on the regulation of the attitude of Croats towards Bosnia and Herzegovina, and in places with a Croat majority, it was held at the same time as the elections, on November 11, and resulted in 90 percent support. It was a failed attempt to resolve the Croatian issue in Bosnia and Herzegovina, and the international community declared it illegal.

The elections were followed by a political crisis caused by the artificial creation of a new election procedure which created the preconditions for the expulsion of national political parties from the political scene. With the introduction of a two-tier electoral compensation system, political status was also achieved by political parties, which won about 1% of the vote at the state level. The message sent to voters was that their vote was not relevant in the election. This had a counter-effect, so political parties with a national sign continued to gain the most trust of voters in the elections. After the elections, HDZ BiH blocked the work of all legislative bodies at the state and federal level and demanded a change in the election rules. At the constituent session of the House of Peoples of the FBiH Parliament, instead of 30 delegates from the Croat people, 14 were present, instead of 30 Bosniaks there were 25, and from the other 20 possible delegates, there were 19. The present delegates elected five Croats and Bosniaks for the House of Peoples of the BiH Parliament. Such a procedure made it possible to elect members of the legislature who did not receive the support of the electorate. It is also possible for a representative of one constituent people to be elected by representatives of other peoples. Although they were of general characteristics, such electoral rules affected Croats the most, as the smallest constituent people. Croatian political parties gathered around the Croatian National Assembly challenged the legality and legitimacy of the work of the House of Peoples and boycotted it by organizing their second session in the spring. This was followed by a reaction from the Office of the High Representative, which removed the Croatian member of the Presidency, banning him and six other politicians from any further political and party activity, which culminated in the political crisis in Bosnia and Herzegovina and some international officials reacted. and work in public life. (Žepić, 2008)

Despite mixed reactions, the government was formed after the election by a coalition of ten political parties called the Alliance for Change. However, the Bosniak-majority SDP BiH and the Party for BiH dominated the coalition. The two parties did not pay much attention to their partners, so smaller and completely marginalized parties within the artificial coalition began to publicly accuse them¹⁰. Given the balance of power at the Alliance's disposal, such a relationship was to be expected. The Alliance for Change did not have the approximate results in the exercise of power expected of it by the international community, its founder. The immense expectations placed in the artificially created and imposed coalition of political parties of different ideological orientations quickly dissipated. Due to mutual disagreements and differing political interests, the Alliance for Change parties did not run together in the 2002 General Elections that soon followed.

Frequent elections, during the two-year term, sought to compensate at all levels of government for the usual institutional mechanisms for regulating social conflicts. The strategy of the international community, which adapted the rules to its intended outcome of creating a functioning system at the expense of equality, was based on the belief that elections could establish and consolidate democracy in a pre-democratic political system such as Bosnia and Herzegovina. In doing so, they naively ignored the key fact that this is a deeply divided society.

Compared to the 2000 elections, the 2002 General Elections included a new element based on the implementation of the Decision on the Constituency of the Peoples throughout BiH, which allowed political parties to operate outside their home entities. A novelty was the introduction of a four-year election cycle. Also, based on the Election Law, Articles 9.6. and 9.7, it was possible to allocate compensatory mandates that allowed parties that failed to win mandates in individual units to win mandates at the state level. Thus, the election law achieved an absurd effect, and allowed parties with minimal political power to enter the state parliament. In the political science literature, electoral thresholds are the most effective means of preventing parliamentary

⁹ Rules and regulations of the Provisional Election Commission, General Elections 2000.

¹⁰ Nationalist Governments of Bosnia and Herzegovina: Paddy Ashdown and the State-Building Paradox, International Crisis Group Report

fragmentation, which is a source of instability¹¹. The election law of Bosnia and Herzegovina enabled the survival of politically marginal and parties with minimal power, and achieved parliamentary fragmentation, which greatly affected the inefficiency of decision-making. In the House of Representatives of the Parliamentary Assembly of BiH, out of 42 seats, fourteen political parties won seats, and as many as seven had one seat each. The number of deputies in the House of Representatives of the Federation Parliament was also subject to changes in the election rules, and the previous 140 were reduced to 98 deputies. Eighteen political parties had representatives in the House of Representatives of the Parliament of the Federation of BiH, and fourteen had three or less representatives each. Despite the constant efforts of the international community to prevent the coming to power of parties with national backgrounds, the outcome of these elections also showed the essence of the reality of Bosnia and Herzegovina. Voters again voted for the three national parties that retained or won power in the entity and state parliaments, while the international community remained the supreme authority given the decisions¹² it imposed before and after the elections.

The fifth general elections in Bosnia and Herzegovina, held in 2006, were characterized by a split within parties with a Croatian sign and the election of Zeljko Komsic as the Croatian member of the Presidency by Bosniak votes. This has greatly deepened Croatia's frustrations and mistrust of BiH institutions.

The general elections that followed in 2010 resulted in the longest-running political crisis to date. After them, the political crisis in Bosnia and Herzegovina became even bigger. The re-election of Željko Komšić as the Croatian member of the Presidency once again raised the question of who should represent the constituent people. The candidate chosen by the constituent people to represent him, regardless of his nationality, or a candidate who is a member of a certain constituent people, but is chosen by others? The same pattern was repeated in 2018, the re-election of the Croat member of the Presidency by Bosniak votes further destabilized the collapsed political system and once again deprived Croats as a constituent people of the right to political subjectivity.

An example of a deep political crisis and illegitimate representation was the formation of government at the Federal level in 2011. The SDP and allies convened a session of the House of Peoples and elected the president of the Federation and formed a government without legitimate Croatian representatives. The Central Election Commission also reacted by deciding that the election of the President and Vice-President was not in accordance with the Election Law of Bosnia and Herzegovina, and that it should be annulled¹³. The illegal formation of the government continued with the involvement of the High Representative, who issued an Order suspending the decision of the Central Election Commission, further complicating and devaluing the election process. The election of the executive authorities without respecting constitutional regulations and the envisaged confirmation in the House of Peoples, further led to the absurdity of US Ambassador Patrick Moon by

¹¹ An election threshold is a legal or natural obstacle that an election participant must cross in order to participate in the process of allocating seats. It is also called a prohibitive and representative clause or a clause of exclusivity and inclusiveness. The legal threshold is the statutory percentage of votes required to participate in the distribution of seats. The natural threshold is a real obstacle in the parties' access to mandates, which is primarily determined by the size of the constituency, and is also called the theoretical inclusion clause, while the effective threshold is a variable based on the legal threshold and the size of the constituency. There are discussions in the electoral literature about the justification of electoral thresholds. It has been argued that they violate the principle of justice which is essential to proportional elections. Such views were opposed by arguing that the purpose of the electoral threshold was to encourage the formation of a majority capable of forming a government and thus making political decisions. (Kasapović, 2005)

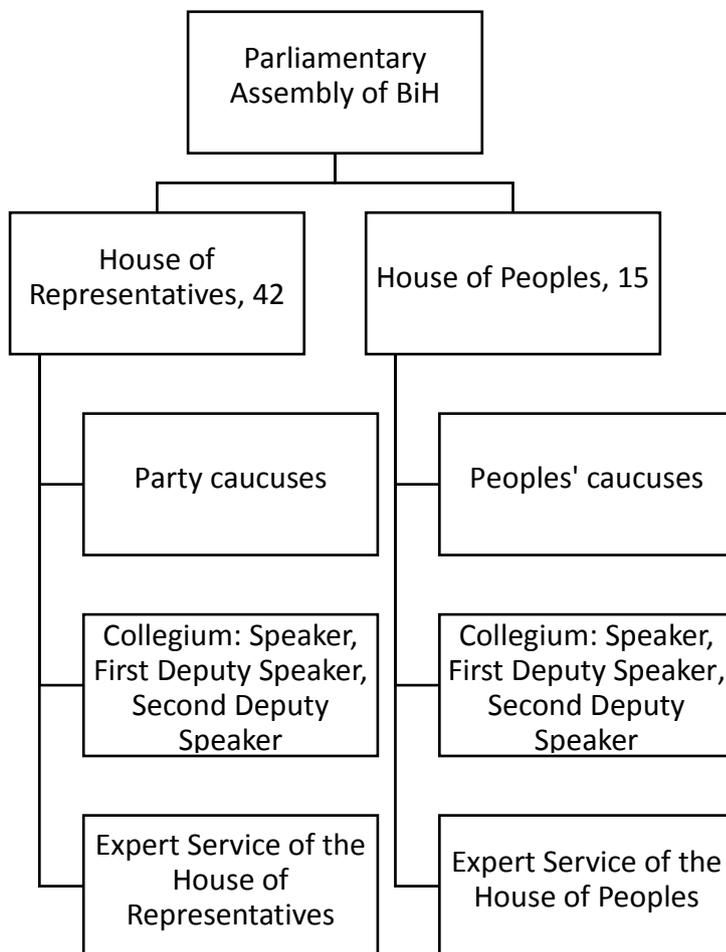
¹² Three days after the election, High Representative Paddy Ashdown imposed an amendment to the Constitution of the Federation of Bosnia and Herzegovina, abolishing the institution of county prefects at the county levels of government. A month later, he imposed a law on the Council of Ministers which increased the number of ministries at the state level, *"Decision amending the Constitution of the Federation of Bosnia and Herzegovina"*, Office of the High Representative.

¹³ The statement of the Central Election Commission, among other things, stated: "... Acting upon the received objections related to the holding of the constituent session of the House of Peoples of the Parliament of the Federation of BiH and the election of the President and Vice President of the Federation of BiH, elections for the House of Peoples of the Parliament of the Federation of BiH were not conducted in all ten cantons in accordance with the provisions of the Election Law of BiH, and that the conditions for its constitution were not met; Decision establishing that the election of the President and Vice President of the Federation was not conducted in accordance with the Election Law of BiH and annulling the election of the President and Vice President of the Federation of BiH and Conclusion ordering cantonal legislatures that did not hold elections for the House of Peoples ... ". Press release, Central Election Commission.

supporting such a project. The answer to the situation was given by the Croatian and Serbian political elites and they continued to challenge the federal government.

IV. House of People role in Parliamentary Assembly of BiH

Legislature at the state level, the Parliamentary Assembly of Bosnia and Herzegovina, is composed of two homes. House of Representatives representing the general interests and House of Peoples, representing the interests of the constituent peoples. The House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina consists of 42 members, of which two thirds are elected from the territory of the Federation, 28 representatives, and one third, 14 of them from territory of Republic of Srpska. Members of the House of Representatives are elected directly from their entities. The House of Peoples has 15 delegates, which two thirds are from the Federation, five Croats and five Bosniaks, and five Serbs from the Republic of Srpska. Croatian and Bosniak delegates from the Federation are elected by the Croatian, or Bosniak delegates in the House of Peoples of the Federation of Bosnia and Herzegovina. Republic of Srpska delegates are elected by the National Assembly of Republic of Srpska. Thus, it is about the mechanism of the ethnic territorial indirect principle for the election of delegates to the Upper House of Parliament by entity assemblies. The House of Peoples thus has the role of protecting ethnic interests, namely three constituent peoples, Serbs from the Republic of Srpska and Bosniaks and Croats from the Federation of Bosnia and Herzegovina.



Graph 1. Parliamentary Assembly of BiH

In order to legislate, and this applies to all laws, the consent of both Houses of the Parliamentary Assembly is required. The House of Representatives and the House of Peoples have almost identical legislative powers, which is a rarity in federal political systems. The upper house in this case fulfills the special role of the complex state, reflected in the expression of equally ethnic representation. However, the key difference between the two Houses of the Parliamentary Assembly is reflected in the protection mechanism of vital national interest that the House of Peoples has. Article IV / 3 of the Constitution of Bosnia and Herzegovina provides:

„e) A proposed decision of the Parliamentary Assembly may be declared to be destructive of a vital interest of the Bosniak, Croat, or Serb people by a majority of, as appropriate, the Bosniak, Croat, or Serb Delegates ... selected in accordance with paragraph 1(a)¹⁴ above. Such a proposed decision shall require for approval in the House of Peoples a majority of the Bosniak, of the Croat, and of the Serb Delegates present and voting.
f) When a majority of the Bosniak, of the Croat, or of the Serb Delegates objects to the invocation of paragraph (e), the Chair of the House of Peoples shall immediately convene a Joint Commission comprising three Delegates, one each selected by the Bosniak, by the Croat, and by the Serb Delegates, to resolve the issue. If the Commission fails to do so within five days, the matter will be referred to the Constitutional Court, which shall in an expedited process review it for procedural regularity”.

Namely, a decision of the Parliamentary Assembly may be declared harmful to the vital national interests of one of the three constituent peoples in the event that the majority of the delegates of that people declare it. In order for such a decision to be adopted, majority of Bosniak, Croat and Serb delegates must vote for it. In the event that the majority of the delegates from a particular country are complaining about the protection of vital national interest, a harmonization procedure is envisaged with the final decision of the Constitutional Court. If it finds that a vital national interest has been violated, the disputed law will be returned to the proposer with a solution that would not endanger the vital national interest. If it is determined that the proposed law does not jeopardize the vital national interests of a particular nation, the law is adopted by a qualified majority (Constitution of BiH, Article IV, paragraph 3). So far, vital national interest has been launched 15 times, 13 times as Bosniak envoys and twice as Croat, while Serbs have not used it.

The Bosniak representative club raised questions: Proposal of the Law on Amendments to the Law on Refugees from BiH and Displaced Persons in Bosnia and Herzegovina; Agreement between Bosnia and Herzegovina and the Republic of Croatia on co-operation in the area of the rights of victims of war in Bosnia and Herzegovina who were members of the Croatian Defense Council and members of their families; Proposal by the House's Delegate Conclusion People of Parliamentary Assembly of Bosnia and Herzegovina Ilija Filipović; Decision on confirmation of the Decision of the Chairman of the Council of Ministers of Bosnia and Herzegovina on the resignation of the Minister of Security of Bosnia and Herzegovina, Minister of Defense of Bosnia and Herzegovina and Deputy Minister of Finance and Treasury of Bosnia and Herzegovina; Proposal of the Law on Amendments to the Law on Conflict of Interest in Bosnia and Herzegovina; Proposal of Decision on Consideration of the Draft Law on Amendments to the Law on Public Procurement of Bosnia and Herzegovina under an Emergency Procedure; Proposal of Decision on Consideration of the Draft Law on Amendments to the Law on Unique Identification Number by Urgent Procedure; Proposal of Decision on Consideration of the Draft Law on Amendments to the Law on Citizenship of Bosnia and Herzegovina by Urgent Procedure; Proposal of Decision on Consideration of the Draft Law on Amendments to the Law on Residence and Residence of Citizens of Bosnia and Herzegovina in an Emergency Procedure; Proposal of the Law on Amendments to the Law on Residence and Residence of Citizens of Bosnia and Herzegovina; Proposal of the Law on Amendments to the Law on Establishment of the Transfer Company electricity in Bosnia and Herzegovina; Proposal of the Law on Amendments to the Election Law of Bosnia and Herzegovina of 2013 and the Proposal of the Law on Amendments to the Election Law of Bosnia and Herzegovina of 2017.

The Croatian representative club has raised questions: Proposal of the Framework Law on Higher Education in Bosnia and Herzegovina and the Proposal of the Law on the Public Broadcasting System of Bosnia and Herzegovina (Parliamentary ..., 2019).

A small number of posts for the instrument of vital national interest are attributed to the fact that the Constitution does not provide an answer to the question of vital national interest and its definition is left to the judgment of national delusions. Therefore, the initiated cases are forwarded to the Constitutional Court¹⁵, which ultimately decides whether the vital interest of the constituent people is endangered. Unlike national, vital national interest through amendments, they recognize entity constitutions. According to them, vital national interests are: the right of the three constitutive peoples to be represented in the legislative, the executive and the judicial authorities; the right to the preservation of their identities; the right to territorial organization; the right to the organization of public bodies of government; the right to education; the right to the use of language and alphabet; the right to the use of national symbols and flags; the right to the protection of spiritual legacy,

¹⁴ 1 (a) The designated Croat and Bosniak Delegates from the Federation shall be selected, respectively, by the Croat and Bosniak Delegates to the House of Peoples of the Federation. Delegates from the Republic of Srpska shall be selected by the National Assembly of the Republic of Srpska.

¹⁵ It is important to add the composition of Constitutional Court, which consists of nine members, of which three are foreign. Four are elected by House of Representatives of Federation, two Parliament of Srpska, and three are elected by the president of European Court of Human Rights.

especially to the nurture of religious and cultural identity; the right to the preservation of the integrity of BiH; the right to a public information system; the right to submitting amendments to the Constitution of BiH; the right to veto any issue that two thirds of the members of one national family in the House of Peoples (Constitution of F BiH, Constitution of RS).

In general, the fundamental role of the protection of vital national interest would be to guarantee that no decision will be made if it is in conflict with the interests of one of the three constituent peoples. As an alternative option, by which a certain bill of motion stops in the parliamentary procedure, the entity voting is largely used (Constitution of Bosnia and Herzegovina, IV., point 3d)¹⁶ which is a direct veto to stop the bill and it is not subject to blocking the Constitutional Court. Entity voting enables two thirds of representatives from each entity to block any activity. Thus, the Entity's veto of the House of Representatives has become a powerful means of blocking state-level decision making for delegates from Republic of Srpska and Bosniaks delegates from the Federation of Bosnia and Herzegovina.

Together with the House of Representatives, the House of Peoples has a controlling role as the executive authority submits a report on the execution of the budget, the Audit Office is obliged to submit a financial report and the Council of Ministers is responsible to the Parliamentary Assembly for Policy Implementation, Law Enforcement and Ministerial Work. Representatives in both Houses may vote on the mistrust of the Council of Ministers, may ask questions related to official information. At least one-half year, a joint session of two homes should be held in which representatives and delegates submit their inquiries to the Council of Ministers.

The House of Peoples has three permanent commissions and six joint members who share the lower house, and both houses can set up interim commissions. The commissions are based on the competences of the Parliamentary Assembly of Bosnia and Herzegovina. The House of Peoples can be dissolved or made by the Presidency of BiH.

V. Conclusion

The role of two chamber legislature in Bosnia and Herzegovina is justified by the established model that interests of the general character are represented through the lower house, and through the upper house special interests, in this case the interests of constituent peoples. Also, as in most legislatures, and in Bosnia and Herzegovina, there is the upper house, the House of Peoples with 15 delegates, smaller than the lower house with 42 representatives. Mandates in both homes are uniform and last for four years. Within the formal constitutional powers of both houses, they are uniform in their legislative competences, regardless of the fact that the House of Peoples is a direct method of electing a delegate, and in the House of Representatives, directors are directly elected by voters. Despite the lack of democratic legitimacy due to the indirect election of representatives, both chambers have a balanced power, and the Parliamentary Assembly of Bosnia and Herzegovina is a strongly symmetrical two chamber legislature. The indirect selection of representatives allows over representation and equalization of numerically different segments of the divided society, so that the two chambers are in this sense non-congruent. Although the two-chamber parliament as a secondary feature of federalism should govern differences and legitimize the political system of frequent blockade and inefficiency show that it is not so. Second chamber on state level is often used as a method of blocking the legislative procedure and is abused by the original meaning in which it represents the national interests of the three constituent peoples, Bosniaks, Serbs and Croats.

References

- [1]. "Constitution of BiH", Constitutional Court of BiH, accessed March 11, 2019, <http://www.ccbh.ba/osnovni-akti/ustav/>
- [2]. "Constitution of Republic of Srpska", National Assembly of Republic of Srpska, accessed March 13, 2019, <https://www.narodnaskupstinars.net/?q=la/akti/ustav/>
- [3]. "Constitution of the Federal People's Republic of Yugoslavia", Archive of Yugoslavia, Republic of Serbia, accessed February 19, 2019 http://www.arhivyu.gov.rs/active/srlatin/home/glavna_navigacija/leksikon_jugoslavije/konstitutivni_akti_jugoslavije/ustav_fnrj.html

¹⁶ d) The Delegates and Members shall make their best efforts to see that the majority includes at least one-third of the votes of Delegates or Members from the territory of each Entity. If a majority vote does not include one-third of the votes of Delegates or Members from the territory of each Entity, the Chair and Deputy Chairs shall meet as a commission and attempt to obtain approval within three days of the vote. If those efforts fail, decisions shall be taken by a majority of those present and voting, provided that the dissenting votes do not include two thirds or more of the Delegates or Members elected from either Entity.

- [4]. "Constitution of the Federation of Bosnia and Herzegovina", House of Representatives of the Federation of BiH, accessed March 13, 2019, https://predstavnickidompfbih.gov.ba/upload/file/ustav/ustav_precisceni_tekst.pdf/
- [5]. "Election Results", Central Election Commission, accessed March 22, 2019, http://www.izbori.ba/rezultati_izbora?resId=25&langId=1#/1/1/0/0/702
- [6]. "MPs, Lords and offices", UK Parliament, accessed February 24, 2019., <https://www.parliament.uk/mps-lords-and-offices/>
- [7]. "Population Census", Agency for Statistics of Bosnia and Herzegovina, last modified February 7, 2019, accessed February 10, 2019 <http://www.popis2013.ba/>
- [8]. "Vital national interest", House of Peoples, Parliamentary Assembly of Bosnia and Herzegovina, accessed March 10, 2019, <https://www.parlament.ba/Content/Read/39?title=Vitalnacionalniinteres&lang=en>
- [9]. Alvin Rabushka, Kenneth A. Shepsle, *Politics in Plural Societies: A Theory of Democratic Instability*, (Ohio: Charles E. Merrill, 1972)
- [10]. Amendments to the Constitution of the Socialist Federal Republic of Yugoslavia, *Official Gazette of the Socialist Federal Republic of Yugoslavia*, (Belgrade:1967), no. 18/67
- [11]. Amendments to the Constitution of the Socialist Federal Republic of Yugoslavia, *Official Gazette of the Socialist Federal Republic of Yugoslavia*, (Belgrade:1968), no. 55/68
- [12]. Amie Kreppel, "Legislatures", in: *Comparative Policy*, ed. Daniele Caramani, (Zagreb: Faculty of Political Science, 2013), 121-40.
- [13]. Ante F. Markotić, "Croats in Bosnia-Herzegovina - a People in Emergence in an Emerging State", in: *Herceg-Bosna or ...*, ed. Mile Lasić, (Mostar: Ziral, 1996), 66-80.
- [14]. Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, (Zagreb: Faculty of Political Science, 2014)
- [15]. Božo Žepić, *Pat in Bosnia and Herzegovina*, (Mostar: Politička kultura, 2005)
- [16]. Budislav Vukas, Sandra Fabijanić – Gagro, "Legislative and international legal determinants of the integration processes of SFRY successor states", *Collected Papers of the Faculty of Law in Split*, no. 48, (2011): 577-612.
- [17]. Central Election Commission Bosnia and Herzegovina, accessed on April, 13th, <http://izbori.ba/Documents/Documents/Rezultati%20izbora%201996-2002/2000gen/rules-egulations-general-elections-2000-cro.pdf>
- [18]. Constitution of the Socialist Federal Republic of Yugoslavia, *Official Gazette of the Socialist Federal Republic of Yugoslavia*, (Belgrade:1963), no. 14/63
- [19]. Constitution of the Socialist Federal Republic of Yugoslavia, *Official Gazette of the Socialist Federal Republic of Yugoslavia*, (Belgrade:1974), no. 9
- [20]. Dušan Bilandžić, *Croatian Modern History* (Zagreb: Golden Marketing, 1999)
- [21]. Gerald Knaus, Felix Martin, "Lessons from Bosnia and Herzegovina. Travails of the European Raj", *Journal of Democracy*, no. 14, (2003): 60-74
- [22]. Guillermo O'Donnell, Phillipe C. Schmitter, *Transition from Authoritarian Rule*, (Zagreb: Center for Political Research, 2006)
- [23]. International Crisis Group Report, „Nationalist Governments of Bosnia and Herzegovina: Paddy Ashdown and the State-Building Paradox“, no. 146, (Sarajevo / Brussels: 2003)
- [24]. Ivo Duchacek, *Comparative Federalism: The territorial dimensions of politics*, (New York: Holt, Rinehart and Winston, 1970)
- [25]. John Sydenham Furnivall, *Colonial Policy and Practice: A Comparative Study of Burma and Netherlands*, (Cambridge: University Press, 1948)
- [26]. Ljubo Boban, *Maček and politics of the Croatian Peasant Party 1928–1941*, (Zagreb: Liber, 1974)
- [27]. Mirjana Kasapović, "Methodological Problems of Criticism of Concessional Democracy in Bosnia and Herzegovina", *Status*, no. 13, (2007): 137-43
- [28]. Mirjana Kasapović, „Bosnia and Herzegovina, Consociational or Liberal Democracy“, *Politička misao*, no. 5, (Zagreb: 2005)
- [29]. Mirjana Kasapović, „*Lexicon of Elections*“, (Zagreb: Politička kultura, 2003)
- [30]. Mirjana Kasapović, *Bosnia and Herzegovina: Divided society and unstable state*, (Zagreb: Politička kultura, 2005)
- [31]. Miroslav Tuđman, Ivan Bilić, *Plans, Agreements on Constitutional Structure of Bosnia and Herzegovina, 1991-1995*, (Zagreb, 2005)
- [32]. Muhamed Filipović, *Bosniak politics, Political development in Bosnia in the 19th and 20th centuries*, (Sarajevo: Svjetlost, 1996)
- [33]. Noel Malcolm, *History of Bosnia: A Short Review*, (Zagreb: Novi liber, 1995)

- [34]. Office of the High Representative, accessed on May, 5th, <http://www.ohr.int/order-temporarily-suspending-certain-decisions-of-the-central-election-commission-of-bosnia-and-herzegovina-adopted-at-its-21st-session-held-on-24-march-2011-and-any-proceedings-concerning-said-deci-2/>
- [35]. Office of the High Representative, http://www.ohr.int/decisions/statemattersdec/default.asp?content_id=28093, Accessed on January 21st, and "Decision Enacting the Law on the Council of Ministers", also, http://www.ohr.int/decisions/statemattersdec/default.asp?content_id=28607, Accessed on January 25th.
- [36]. Official Gazette of the Federation of Bosnia and Herzegovina, (Sarajevo: 1996), no. 20 p. 599 – 606
- [37]. Ron Hague, Martin Harrop, *Comparative Government and Politics*, (Zagreb: Golden Marketing, 2009)
- [38]. Rules and regulations of the Provisional Election Commission, *General Elections 2000*, <http://www.izbori.ba/Documents/Documents/Rezultati%20izbora%2096-2002/2000gen/rules-regulations-general-elections-2000-bos.pdf>
- [39]. Samuel Huntington, *Clash of Civilization*, (Zagreb: Izvori, 1998)
- [40]. Srećko Džaja, *Bosnia and Herzegovina in the Austro-Hungarian Period (1878 - 1918): Intelligence between Tradition and Ideology*, (Mostar-Zagreb: Ziral, 2002)
- [41]. Tomo Vukšić, "The Process and Causes of Persecution of Catholics and Croats in Bosnia and Herzegovina", in: *Herceg-Bosna ili ...*, ed. Mile Lasić, (Mostar: Ziral, 1996), 34-65.
- [42]. Wolfgang Merkel, *Transformation of political systems: Introduction to the theory and empirical research of transformation*, (Zagreb: Politička misao, 2011)
- [43]. Xavier Bougarel, "From Muslim to Bosniaks: The Question of the Bosnian Muslim Names", in: *Discussions on the National Identity of Bosniaks*, ed. Husnija Kamberović, (Sarajevo: Institute of History, 2009), 117-37.