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THE MAIN ISSUES OF BOSNIA-HERZEGOVINA'S ELECTORAL SYSTEM

**Can the challenge be overcome?**

INTRODUCTION

The other former Yugoslav republics which gained independence during the Yugoslav Wars were more ethnically homogeneous than Bosnia and Herzegovina, where history had brought three different ethnic groups together in one state and made them, but solely them, equal state-building factors. Five out of the six Western Balkan states are unitary with a clearly defined system of relations between a main constituent peoples and national minorities. The exception is Bosnia and Herzegovina which is a federal state and structured by three main constituent nations (Bosniaks, Serbs and Croats) and their relations with national minorities, referred to as 'Others' in the constitution. The dominant, leading parties in Bosnia are the Bosniak, Serb and Croat parties, which are organized on an ethnic basis and represent primarily ethnic interests irrespective whether they are left or right-wing parties.<sup>1</sup>

It is important to note that during the Bosnian War in the first half of the 1990's members of these three nations inflicted very serious and still unresolved trauma and injuries to each other. Despite the distrust that has existed for thirty years now since the end of the war, finding collectively a solution for the various and many social and economic problems of Bosnia and Herzegovina is impetuous. Nonetheless, adding these issues would undoubtedly pose a significant challenge even for a well-prepared and united state leadership as well. The social and economic problems to be solved were included in the Reform Agenda adopted by a broad social consensus in July 2015.<sup>2</sup> The implementation of the aspiring agenda has come to a halt since the end of 2017.

As regards Bosnia and Herzegovina's accession to the EU, it is necessary to highlight that in August 2016, a coordination mechanism was established at the "all-national" level, with the aim of ensuring administrative coordination and cooperation on EU matters between the two entities and the Brčko District. The work was successful as the country received candidate

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<sup>1</sup> For a detailed description see Zsolt Szabó: *Constitution and Government at the Western Balkans*, Berliner Wissenschafts-Verlag, 2023, 216.

<sup>2</sup> The Reform Agenda 2015–2018 set out the socio-economic reforms to be implemented at all levels of government to achieve EU membership. The document included the following chapters: Public Finance, Taxation, Fiscal Sustainability; Investor Environment and Competitiveness; Labour Market; Social Welfare and Pension Reform; Rule of Law and Good Governance; Administrative Reform.

status on 15 December 2022 on condition that Bosnia and Herzegovina will take further steps to strengthen democracy, promote functioning of state institutions, strengthen rule of law, strengthen fight against corruption and organized crime, ensure media freedom and better management of migration and fundamental rights.<sup>3</sup>

Due to the fragile relations among the constituent peoples, the civil and military presence, the supervision of the international community, the limitation of state sovereignty – despite the idea of abolition, which was repeatedly raised – was necessary to ensure post-war peace and to increase the dynamics of the country’s development. (The civilian component of the international administration is the Office of the High Representative (OHR) and the military component is the EUFOR Althea mission).<sup>4</sup> Civil and military supervision is still necessary because the constituent peoples cannot agree even on such fundamental issue as the structure of the state.<sup>5</sup> Between the two entities which make up the country the situation is more simple in the ethnically homogeneous and centralized Republika Srpska (which covers 49% of the state), where owing to the Serbian dominance the Serb parties “only” have to compete with each other. The picture is more complex in the Bosniak–Croat Federation (which comprises of 51% of the state), which consists of 10 cantons.<sup>6</sup> Within this entity, both Croats and Bosniaks are often engaged in a two-front struggle, meaning that they often have to fight their battles not only within their own nation, but also with the other constituent nation of the entity and, in many cases, with the third constituent nation at state level.

## THE ELECTORAL SYSTEM

Due to the ethnic complexity of the state, a highly complex electoral system and administrative structure was created after the end of the war in Bosnia and Herzegovina. The aim was to ensure that all three constituent nations, as defined in the state-level constitution, had an equal share in

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<sup>3</sup> EEAS Press Team: EU Candidate Status for Bosnia and Herzegovina: a message to the people and a tasking for politicians, *European Union External Action*, 19.22.2022. [https://www.eeas.europa.eu/eeas/eu-candidate-status-bosnia-and-herzegovina-message-people-and-tasking-politicians-0\\_en](https://www.eeas.europa.eu/eeas/eu-candidate-status-bosnia-and-herzegovina-message-people-and-tasking-politicians-0_en)

<sup>4</sup> Ágnes Kemenszky: *Balkan models of international territorial administration: Bosnia and Herzegovina and Kosovo*, PhD thesis, BCE International Relations Multidisciplinary Doctoral School, 2012, 44.

<sup>5</sup> While Bosniaks are interested in centralising the country, Serbs and Croats are interested in decentralising it (the concept of unitarian state vs. federal state).

<sup>6</sup> Cantons are administrative units in the Federation between the entity level and the local government level, with their own parliament, government and court system. Out of the ten cantons that make up the Federation, five are Bosniak-majority and three are Croat-majority, while two cantons are of mixed Bosniak-Croat ethnic composition and administration.

the governance of the state, and that the ethnic groups defined in the constitution as ‘others’<sup>7</sup> also had an influence in the political process. However, as a result of attempts at ethnic balancing and ethnic engineering, the practice of human rights protection, narrowed down to essentially the rights of the three main ethnic groups, has not changed until today. At different levels of the representation system, representatives do not represent the citizen itself, but a particular ethnic group. This phenomenon is mainly due to the fact that the normative part of the constitution at state level, contrary to the preamble, effectively nullifies the political citizen in favor of the ethnic citizen. Bosnia and Herzegovina has a bicameral parliament with a Lower and Upper House at both federal and entity level. The Lower Houses are elected directly, while the Upper Houses are elected indirectly. The election of the Upper House of the state parliament and the state presidency are in the main focus of this study as only the members of the three constituent nations can be elected to these positions under the current electoral law.

#### A SPECIFIC LEGAL CASE

In 2006, Dervo Sejdic and Jakob Finci, a Roma and a Jewish citizen of Bosnia and Herzegovina who wished to apply to become candidates for these institutions (*Upper House of the State Parliament and State Presidency*), however, their candidacy applications were both rejected by the Central Election Commission on the grounds of their ethnic belonging. The two politicians challenged this decision at the European Court of Human Rights in Strasbourg, which ruled in 22 December 2009 that the ethnic representation and preference of the state’s constituent nations in the composition of parliamentary and executive institutions leads to double exclusion.<sup>8</sup> On the one hand, all Serbs living on the territory of the Federation, as well as all Croats and Bosniaks living in the Republika Srpska, are excluded from standing for direct elections to the state presidency. On the other hand, any citizens belonging “Other” ethnicity who do not consider themselves to be a part of one of the constituent peoples of the state are also excluded from running for both of the above-mentioned offices. Thus, members of the legally recognized national minorities are literally excluded from holding these offices. Although the European Court of Human Rights concludes that the state constitution is incompatible with the European Convention on Human Rights, it has not been amended to the

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<sup>7</sup> In 2003, the Bosnian Parliament adopted the Law on the Protection of National Minorities, which names 17 national minorities: Albanian, Czech, Polish, Macedonian, Hungarian, Montenegrin, German, Italian, Russian, Roma, Romanian, Ruthenian, Slovak, Slovenian, Turkish, Ukrainian, Jewish.

<sup>8</sup> Zsolt Szabó: *The Parliaments of the Western Balkans*, Gondolat, Budapest, 2016, 139.

present day, even though one of the conditions for the country's EU perspective is to solve this question.

That fact that Bosnia's constitution does not allow for national minorities to be elected for a member of the state presidency or a member of the upper house of the state parliament also violates the European Convention for the Protection of Human Rights and Fundamental Freedoms, which provisions Bosnia and Herzegovina has acknowledged as binding on itself (Dayton Agreement, Appendix 6: Agreement on Human Rights). In the light of the above mentioned, it is clear that the current electoral system in Bosnia and Herzegovina does not comply with basic democratic electoral principles, as it does not guarantee universal, equal, direct and free suffrage at all levels, in particular the right to the passive suffrage.

#### WHAT ISSUES ARISE FROM THE ABOVE?

Free, secret, direct, periodic, and competitive parliamentary elections, based on universal and equal suffrage, provide an opportunity to effectively represent public opinion. Even if the actual power of the electorate is limited to choosing who governs them (i.e., to decide who will make the decisions for them),<sup>9</sup> more emphasis should be placed on the electoral system and on any additional minority-sensitive components, as the electoral system can be the engine but also the impediment of a democratizing society's development.<sup>10</sup> Florian Bieber, Donald L. Horowitz, and Arend Lijphart agree that in a heterogeneous society, traditional institutions of democracy (such as the parliament) without the involvement of national minorities are not sufficient for the establishment and functioning of a stable democratic society; leaving these groups out can lead to alienation and unwanted consequences. In order to prevent alienation from the political community, the state must play an active role in promoting the parliamentary presence and representation of national minorities, engaging in active governance and the integrity of the state, while simultaneously resolving any resentments and tensions that may exist with national minorities.<sup>11</sup>

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<sup>9</sup> Giovanni Sartori: *Democracy*, Osiris Kiadó, Budapest, 1999, 63.

<sup>10</sup> Adis Arapovic – Bedrudin Brljavac: Election System of Bosnia and Herzegovina: Catalyst of Unsuccessful Democratization, *Khazar Journal of Humanities and Social Sciences*, 2013/1, 31.

<sup>11</sup> László Horváth: Parliamentary Representation of National Minorities in the Western Balkans: Wishful Thinking or Reality? *Hungarian Journal of Minority Studies*, Vol. IV., 2021, 13.

## WHAT COULD BE THE SOLUTION?

In order to prevent peoples' alienation from the political community, the state as a legislator, by resolving any possible resentment and tensions that may exist with regard to national minorities, must take an active role in order not to hinder, and at the same time to promote, through the available means, the presence and representation of national minorities in parliaments thus the good governance and the integrity of the state. In connection with the available means the Lund Recommendations on the Effective Participation of National Minorities in Public Life notes that "*the electoral system should facilitate minority representation and influence*"<sup>12</sup> by the means of specially designed electoral districts, proportional representation systems, certain forms of preference voting, and lower parliamentary thresholds.<sup>13</sup>

Currently, the EU accession is a priority agenda for all six Western Balkan countries. In the case of the new accession countries (Montenegro, Serbia, North-Macedonia, Albania, Kosovo, Bosnia-Herzegovina), the international organization's enlargement policy displays signs of fully protecting national minorities by referring to the fulfilment of the Copenhagen criteria as a precondition for accession. The sensitivity to the issues of national minorities means that their demands may be included in the EU accession negotiations process. For Bosnia and Herzegovina, this means amending the state constitution and all relevant and related laws. It is important to note that in order to start accession negotiations in 2011, Montenegro had to align its electoral law with the country's Constitution (*which was adopted in 2007 and grants individual and collective rights for national minorities*). For this to happen, the European Union must also change and become more credible. It must prove that it really wishes to the Western Balkan states to join to the international organization.

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<sup>12</sup> OSCE: *The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note*, OSCE High Commissioner on National Minorities, 1999, (Participation in Decision-Making. B). Elections) 9–10. Retrieved from: <https://www.osce.org/files/f/documents/0/9/32240.pdf> March 8, 2020.

<sup>13</sup> Ibid.

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