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PARLIAMENTARY REPRESENTATION
OF NATIONAL MINORITIES
IN THE WESTERN BALKANS:
WISHFUL THINKING OR REALITY?

Abstract: In the 1990s, not only the countries of Central and Eastern Europe but also the countries of the Western Balkans became pluralist democracies, where, in addition to the political representation organized (primarily along ideological dimensions) by members of the majority society, national minorities also started to articulate their interests and demands to be involved in politics. At the same time the rights of national minorities and their participation in political life have gradually transformed from a marginal issue into a major one. This shift happened with changing dynamics, especially due to the tragic events in the Balkans. Simultaneously possible ways of ensuring the independent parliamentary representation of national minorities have also been widely discussed. Among alternative solutions there are various methods for separate parliamentary representation of national minorities. These solutions have been put into practice in many of the Western Balkan states. The aim of this paper is to review these alternative solutions of the past 30 years and the difficulties they have faced. The objective has been to provide a comprehensive exposition of the evolution of parliamentary representation of national minorities in the Western Balkans.

The following paper¹ relies on the premise Goethe articulated about language, and with which the German philosopher of religion Helmuth von Glasenapp begins his book *The Five World Religions*: “*Those who know nothing of foreign languages know nothing of their own.*”² This thought, together with the physical closeness of the Western Balkans³, the intertwined history of the Western Balkan states, my personal relation to the region, and the fact that national

1 The paper reflects the author’s ideas and evaluations only. It does not reflect those of the Ministry of Foreign Affairs and Trade.

2 Glasenapp Helmuth von, *Az öt világvallás* [The Five World Religions] (Budapest: Gondolat – Tálentum, 1993), 5.

3 Albania, Bosnia-Hercegovina, Kosovo (this designation is without prejudice to positions on status, and is in line with UNSCR 1244 (1999) and the International Court of Justice’s Opinion on the Kosovo declaration of independence), Montenegro, North Macedonia (Macedonia until February 2019), Serbia.

minorities – in different ratios and in different settings – live in all of the region’s countries,⁴ inspired me to analyze the area from a fresh perspective: the parliamentary electoral system’s national minority aspects. Neither Hungarian nor international researchers have yet to undertake analyzing the Western Balkans as a unit from this point of view.

Due to the length limits of the paper, I do not present in detail the findings of previous works on the parliamentary representation of national minorities, nor do I examine the interaction between descriptive and substantive representation,⁵ which is becoming an increasingly important issue in the region. Instead, I focus on a deeper analysis of developments of the Western Balkan parliamentary electoral systems’ characteristics spanning three decades (e.g., type of electoral system, election formula, district sizes, district delimitation, parliamentary threshold, number of representatives, ballot paper) in a descriptive and comparative manner. I pay special attention to the provisions directly or indirectly granting parliamentary representation for national minorities (wherever it is relevant), as certain national minorities have parliamentary representation due to – or despite the lack of – affirmative actions, such as granted seats for representatives of a national minority, a reduced parliamentary threshold for minorities, or a minority-friendly delimitation of electoral districts. My analysis is carried out by reviewing the given countries’ constitutions, election laws, and acts on minorities, the relevant international agreements and literature, and the final reports on parliamentary elections of the Organization for Security and Cooperation in Europe’s Office for Democratic Institutions and Human Rights (OSCE ODIHR) and of the European External Action Service.

4 According to the last censuses, minorities or ethnic groups make up 7% of the population in Kosovo, 55% in Montenegro, 17% in Serbia, 36% in North Macedonia, 3% in Bosnia-Herzegovina, and 17% in Albania. Numerous researchers say that in some of these countries the proportion of certain ethnic or minority groups, and thus the overall proportion of minorities, might be significantly higher.

5 The debate is about whether the proportionate parliamentary representation equal to the social ratio (descriptive representation) is a precondition for the actual substantive representation of a group’s interest. See more: Ágnes M. Balázs, “A kisebbségek képviseletének elméleti keretei” [Theoretical Frameworks of the Parliamentary Representation of Minorities], *Parlamenti Szemle* 3, no. 2 (2018): 27–45.; and Tibor Toró, “Új irányok a politikai képviselet kutatásában” [New Directions in the Research of Political Representation], *Többlet* 7, no. 3 (2015): 64–95.

Introduction

In modern representative democracies, the electoral system is of crucial importance, as it translates the votes cast into seats in the parliament. “It is a practical tool which turns the principle of representation into reality.”⁶ As we will see, most countries apply one of the three main types of electoral systems: the candidate-centered majoritarian (simple one-round or two-round absolute majoritarian),⁷ the party-centered proportional,⁸ or the mixed electoral system,⁹ which blends the previous two. In mixed systems, one part of the parliamentary seats is allocated based on the majoritarian principle, while the other part is allocated proportionally. Today, with the widespread presence and strengthening of mass-based parties, majoritarian electoral systems have been mostly replaced by proportional and mixed electoral systems in Europe (except for in Great Britain and France).

In the 1990s, not only the countries of Central and Eastern Europe but also the countries of the Western Balkans became pluralist democracies, where, in addition to the political representation organized (primarily along ideological dimensions) by members of the majority society, national minorities also started to articulate their interests and demands to be involved in politics. Over the last 30 years (the time frame that the paper covers),¹⁰ the rights of national minorities and their participation in political life have gradually transformed from a marginal issue into a major one. This shift happened with changing dynamics, especially due to the tragic events in the Balkans. At the same time, possible ways of ensuring the independent parliamentary representation of national minorities have also been widely discussed. This is understandable, as it is one of the strongest legal institutions for the enforcement of national minority rights and interests, which, depending on

6 Zsolt Enyedi – András Körösnéyi, *Pártok és pártrendszerek* [Parties and Party Systems] (Budapest: Osiris Kiadó, 2004), 162.

7 Based on territoriality and with single mandate constituencies.

8 With single or multiple mandate party-list constituencies, where parties acquire mandates in the proportion of the votes cast for them. In proportional party-list systems, mandates are usually distributed with the natural quotient or the largest remainder method (Hare, Droop, Imperiali quotas) or the division or the highest average method, for which the two most-used formulas are the d’Hondt and the Sainte-Laguë methods.

9 There are two types: compensational (where the proportional element has a compensatory function) and parallel systems (there is no connection between the two systems).

10 Except for Bosnia and Herzegovina and Kosovo. For Bosnia and Herzegovina, the paper focuses on the period following the 1995 Dayton Agreement, and in the case of Kosovo, on the period following the 1999 introduction of UN Interim International Administration.

the way it is implemented,¹¹ can ensure political participation on the national level, effective participation in decision-making processes, accountability and expansion of granted minority rights, and the handling of minority-specific issues in general. In addition, these rights and their practical implementations are often considered a way to measure the degree of democracy and the rule of law in a given state.

Five nation states and a multinational state make up the Western Balkans.¹² Each nation state has a clearly definable system of relations between the constituent majority nation and the national minorities. Bosnia and Herzegovina, on the other hand, is a multi-ethnic federal state consisting of two entities and structured by the system of relations existing between the three constituent peoples (i.e., Bosniaks, Serbs, Croats) and the “Others”. The state and population structure strongly influence how party politics develop. While in the unitary states of the region (i.e., Albania, Kosovo, North Macedonia, Montenegro, Serbia) the largest parties are organized mainly along right and left dichotomies, or in other words, along the political mainstreams, in federal Bosnia, the country’s dominant parties are the ethnic parties of the three constituent peoples.¹³

The existence or lack of an electoral system promoting the parliamentary representation of national minorities in this region – just like anywhere else – is significantly influenced by local historical traditions, the number of national minorities, their location in the country, and their ability to promote their interests. Minority representation appears as a sensitive issue for both the majority and the minority communities.¹⁴ Even though it has become more moderate, it is still a typical attitude of politicians to view power sharing with minorities as a threat, and as a consequence, minorities become a security concern, especially if they maintain friendly relations with their (often neighboring) kin-state.¹⁵

11 From the point of view of the quality of interest representation, it does matter whether a member of the national minority obtains a mandate by running on a national coverage majority party list with or by running on an independent national minority party list.

12 Zsolt Szabó, *A Nyugat-Balkán parlamentjei* [Parliaments of the Western Balkans] (Budapest: Gondolat Kiadó, 2016), 117.

13 László Horváth, “Parlamentari választási rendszerek a Nyugat-Balkánon” [Parliamentary Electoral Systems in the Western Balkans], *Jogtudományi Közlemények* 74, no. 10 (2019): 410.

14 Ferenc Tar, “Képviselők vagy szószólók? Kisebbségi képviselőválasztás Magyarországon” [Representatives or Spokesmen? Election of Minority MPs in Hungary], *Modern Geográfia* 10, no. 2 (2015): 29. Retrieved from: www.moderngeografia.eu/wp-content/uploads/2015/04/2015_II_02_tar.pdf; downloaded: March 7, 2020.

15 Balázs Vizi, “A kisebbségek politikai szerepe és a nemzetközi szervezetek Európában” [The Political Role of Minorities and International Organizations in Europe], *Kisebbségkutatás* 24, no. 4 (2015): 125. Retrieved from: http://real.mtak.hu/32634/1/Kisebbskutatas2015_ViziB.pdf; downloaded: March 7, 2020.

Strongholds: Legal documents issued by universal and regional international organizations

Committing to democratic social norms and structures made it a realistic possibility for the Western Balkan states to join both universal (e.g., United Nations¹⁶) and regional (e.g., Council of Europe [CoE],¹⁷ Organization for Security and Cooperation in Europe [OSCE],¹⁸ Central European Initiative [CEI],¹⁹ European Union [EU]²⁰) international organizations and initiatives. This is of crucial importance, since the documents adopted by the United Nations (i.e., Universal Declaration of Human Rights 1948, International Convention on the Elimination of All Forms of Racial Discrimination 1965, International Covenant on Civil and Political Rights 1966, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992), the Council of Europe (i.e., Convention for the Protection of Human Rights and Fundamental Freedoms 1950, European Charter for Regional or Minority Languages 1992, Framework Convention for the Protection of National Minorities 1995), the CSCE/OSCE (i.e., Copenhagen Document 1990, Geneva Meeting 1991, Helsinki Summit Document 1992, Lund Recommendations 1999), the CEI (i.e., Instrument for the Protection of Minority Rights 1994),²¹ and the EU (i.e., Copenhagen criteria 1993, Race Equality Directive 2000, Charter of Fundamental Rights 2000, Lisbon Treaty 2009) serve as the primary sources of universal and regional human and minority individual and collective (especially the treaties motivated by the wars of the 1990s) rights, which can be the basis of an electoral system's sensitivity towards national minorities.

However, these documents usually do not go any further than stating the prohibition of negative discrimination of national minorities, the protection of their individual rights, and the protection of their right to effectively participate in public matters and public life.

16 Albania joined in 1955, Bosnia-Herzegovina in 1992, North Macedonia in 1993, Serbia in 2000, Montenegro in 2007. Kosovo has not joined the UN.

17 Albania joined in 1995, North Macedonia in 1995, Bosnia-Herzegovina in 2002, Serbia in 2003, Montenegro in 2007. Kosovo has not joined the CoE.

18 Albania joined in 1991, Bosnia-Herzegovina in 1992, North Macedonia in 1995, Serbia in 2000, Montenegro in 2006. Kosovo has not joined the OSCE.

19 Bosnia-Herzegovina joined in 1992, North Macedonia in 1993, Albania in 1996, Serbia in 2000, Montenegro in 2006. Kosovo has not joined the CEI.

20 Montenegro and Serbia are in the process of negotiations; Albania and North Macedonia are candidate countries; Bosnia and Herzegovina and Kosovo are potential candidates.

21 The legally non-binding instrument is lesser known to this day and has remained in the shadow of the above-mentioned conventions. Its significance is that it is the first international document to define the concept of a national minority (Article 1) and to state that the signatories allow national minorities to form political parties (Article 21).

Regardless of whether or not they are legally binding, these international documents – with one exception – do not explicitly prescribe²² for the member states to design their electoral systems in a way that ensures the parliamentary representation of national minorities. As the execution of these international documents is the competence of the member states – besides monitoring, preparing country reports, and adopting recommendations – international organizations do not have any instrument to enforce these voluntarily undertaken international obligations. As a consequence, whenever a member state joins such a treaty, it should be interpreted as a political commitment. We should add that “*international regulations can never take over the role of national constitutional guarantees, but their expectations can guide the states’ minority policies in the right direction.*”²³ Ideally this would mean, according to Erzsébet Szalayné Sándor, that when talking about the execution of the Framework Convention (which, according to the agreement between the Council of Europe and the United Nations, is compulsory for Kosovo as well)²⁴, the member states “*design their national legal systems and relevant institutions*”²⁵ in accordance with the international minority rights norms.

National minorities represent a more sensitive and vulnerable group compared to the majority population, which in parliamentary democracies means that they can have parliamentary representation either under very special conditions or with affirmative actions. This challenge was effectively addressed by the OSCE for the first time. The Lund Recommendations on the Effective Participation of National Minorities in Public Life states that “*the electoral system should facilitate minority representation and influence*”²⁶ by the means of specially designed electoral districts, proportional representation systems, certain forms of preference voting, and lower parliamentary thresholds.²⁷

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

22 Indirectly, however, we encounter this requirement in many places in the form of references to the will of the people, non-discrimination, and good governance as the integration of diversity.

23 Gábor Kardos, “Mérlegen a Nyelvi charta” [Minority Language Charter on the Balance Sheet], *Kisebbségi Szemle* 2, no. 3 (2017): 38.

24 Erzsébet Szalayné Sándor, “A Kisebbségvédelmi keretegyezmény húsz év után – Tapasztalatok a negyedik monitoring ciklus végén” [The Framework Convention for the Protection of National Minorities Twenty Years After: Experiences at the End of the Fourth Monitoring Cycle], *Kisebbségi Szemle* 2, no. 3 (2017): 43.

25 Ibid., p. 47.

26 *The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note* (1999): Participation in Decision-Making. B). Elections: 9–10. Retrieved from: www.osce.org; downloaded: March 8, 2020.

27 Ibid.

decide who will make the decisions for them),²⁸ 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. 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.²⁹ 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.³⁰ In the following, I attempt to review how state involvement in this matter has evolved in the countries of the Western Balkans over the past 30 years.

The evolution of Kosovo's electoral system

In Kosovo, following the transfer of the province to international administration on June 10, 1999, a total of seven parliamentary elections have been held (through 2020), and since the declaration of independence on February 17, 2008, four (early) parliamentary elections have been held (through 2020).³¹ In the 2001 and 2004 parliamentary elections, 120 seats were allocated according to a closed-list, proportional system, with a natural threshold using the Sainte-Laguë method for three years, with the whole country being considered as one constituency. The Constitutional Framework for Provisional Self-Government in Kosovo, which was proclaimed in May 2001, provided for 20 reserved seats out of the 120 for the non-Albanian national communities.³² However, Article 64 Paragraph 2 of the Constitution of Kosovo, adopted in 2008, already provides for 20 guaranteed seats for non-Albanian national communities. Article 148 of the Constitution, entitled Transitional Provisions for the Assembly of Kosovo, regulates the distribution of the 20 minority seats as described below, with the proviso that in the first two parliamentary terms following the

28 Sartori Giovanni, *Demokrácia* [Democracy] (Budapest: Osiris Kiadó, 1999), 63.

29 Bieber Florian, "Introduction: Minority Participation and Political Parties" in *Political Parties and Minority Participation*, ed. Bieber Florian (Skopje: Friedrich Ebert Stiftung, 2008), 8.

30 See footnote 26.

31 2001, 2004, 2007, 2010 (early elections), 2014 (early elections), 2017 (early elections), 2019 (early elections) (compilation by the author).

32 The Constitutional Framework for Provisional Self-Government in Kosovo (UMNIK Regulation 9/2001), Articles 9.1.3. and 9.1.4. Retrieved from: www.esiweb.org; downloaded: March 4, 2020.

adoption of the Constitution (i.e., in the 2007 and 2010 parliamentary terms), Kosovo's national minorities would have reserved seats, while they would have guaranteed seats from the subsequent 2014 elections. The difference between reserved and guaranteed seats is that while in the former the seats (if any) won by national minority political entities in the "normal" competition for parliamentary seats above the 5% parliamentary threshold are added to the reserved seats of that minority. In the case of guaranteed seats, any seats won by crossing the 5% threshold will already be deducted from the number of seats constitutionally guaranteed to each national community. Thus, under the new regulations, there is only competition for the 20 guaranteed minority parliamentary seats amongst national minorities.³³

From 2007 to the present, seats have been allocated from across the country as a single constituency under the Sainte-Laguë method, with a 5% entry threshold. The only change has been the introduction of an open-list system. The open-list provides an opportunity for the voter to establish an order of preference among the candidates on the ballot paper of his or her choice. While the preference order included up to 10 candidates during the 2007 elections, since 2010, the ballot paper has only allowed a preference order up to five candidates.³⁴ The reduction was justified with two arguments: first, that the high number confused the voters, and thus the number of invalid votes increased, and second, that if a voter selected fewer candidates than 10, and left spaces empty, the parties could abuse that and add names to the ballot afterwards.³⁵ The last year when MPs were elected for three years was 2007, as from 2010 the term of office of MPs has been four years.³⁶ The Law on General Elections makes party registration subject to the supporting signatures of 500 party members registered on the Kosovo Voters List,³⁷ but does not specify a mandatory number of signatures to be collected for a party list to participate in an election. For parties that have won at least one parliamentary seat in previous elections, it is not required

33 Zora Popova, "Minority Participation in Kosovo Elections: Opportunities and Challenges" *European Centre for Minority Issues (ECMI) Working Paper #69*, (2013): 5. Retrieved from: www.ecmi.de/fileadmin/redakteure/publications/pdf/Working_Paper_69.pdf; downloaded: November 18, 2019.

34 Democracy for Development Institute: *Electoral Reform Agenda – Towards Real Representation*. Series: Election and Political Parties, No. 12. Phristina, 2018. Retrieved from: www.d4d-ks.org; downloaded: November 20, 2019

35 *Elections for the Citizen: Evaluation of the Kosovo electoral system and recommendations for future elections*. Review of previous KIPRED reports on electoral system. Kosovar Institute For Policy Research and Development (KIPRED), Policy Brief 2012/01. Retrieved from: www.kipred.org; downloaded: November 20, 2019

36 Constitution of the Republic of Kosovo (2008), Article 66, Paragraph 1. Retrieved from: <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>; downloaded: March 4, 2020.

37 The Law on General Elections in the Republic of Kosovo (03/L-073/2008), Article 12, Paragraph 3, Point j. Retrieved from: <https://aceproject.org/ero-en/regions/europe/KS/on-general-elections-in-the-republic-of-kosovo/view>; downloaded: March 4, 2020.

to submit signatures in support of its application for certification in elections.³⁸ Parties that have not previously held a mandate and wish to run must collect the number of signatures specified by the Central Election Commission.³⁹

The Constitution of Kosovo states that the 120 seats of the Parliament will be distributed proportionally among all parties, coalitions, citizens' initiatives, and independent candidates according to the votes cast,⁴⁰ with 20 out of the 120 seats guaranteed for minority national communities.⁴¹ The election law further clarifies the general provision of the Constitution that 100 seats are distributed between Political Entities representing the Albanian majority national community, Political Entities of the Kosovo Serbs, and other non-majority national communities, with a 5% entry threshold.⁴² Pursuant to Article 64 Paragraph 2 Point 1 of the Constitution, parties, coalitions, citizens' initiatives, and independent candidates belonging to the Serbian Community of Kosovo shall have a minimum of 10 seats in the legislature, provided that the number of seats they have won is less than 10. Paragraph 2 Point 2 of the same Article provides, with regard to the remaining guaranteed 10 seats, that they must be granted to parties, coalitions, citizens' initiatives, or independent candidates belonging to other national or ethnic communities. The Roma, Ashkali, and Egyptian communities have one parliamentary seat each, and the community that receives the most votes receive an additional seat. The Bosnian community is entitled to three seats, the Turkish community to two seats, and the Gorani community to one seat, even if they do not reach the number of votes that are required for a parliamentary seat.⁴³ The 20 seats guaranteed to national minorities will be allocated according to the Sainte-Laguë method on the basis of the valid votes cast for all political entities, regardless of how the distribution of the 100 "normal" seats developed.⁴⁴

Parliamentary elections at the national level in Kosovo shall be convened by the president of the republic at a maximum of 60 days and a minimum of 30 days before the end of the parliamentary term.⁴⁵

38 Ibid. Article 15, Paragraph 8.

39 Ibid. Article 15, Paragraph 7.

40 Constitution of the Republic of Kosovo (2008), Article 64, Paragraph 1.

41 Ibid. Article 64, Paragraph 2.

42 The Law on General Elections in the Republic of Kosovo (03/L-073/2008), Article 111, Paragraph 2, Point a.

43 Constitution of the Republic of Kosovo (2008), Article 64, Paragraph 2, Point 2.

44 The Law on General Elections in the Republic of Kosovo (03/L-073/2008), Article 111, Paragraph 3.

45 Ibid. Article 4, Paragraphs 1–2.

The evolution of Montenegro's electoral system

Since the introduction of the multi-party system in Montenegro in 1990, 11 parliamentary elections have been held in the country through 2020, and five since the declaration of independence on June 3, 2006.⁴⁶ Until 2006, when the country declared its independence from Serbia, the electoral system, the electoral process, the number of seats, and the delimitation of constituencies changed frequently in Montenegro, but only minor changes have occurred since the country's independence. In 1990, in the first multi-party parliamentary elections, the then 125 members of Montenegrin Parliament were elected for a four-year term in 20 constituencies (the constituencies coincided with the municipalities) in a one-round, proportional closed blocked-list system with a 4% entry threshold. The number of seats to be allocated ranged from one to 29 in the constituencies, and the allocation happened via the d'Hondt method. The 1992 early elections differed from the 1990 in two respects. First, the number of parliamentary seats was decreased to 85, and second, the whole country represented a single constituency.

In the 1996 elections, the number of parliamentary seats further decreased. The 71 MPs were elected in 14 constituencies, and the number of seats per constituency ranged between one and 17. Out of the 14 constituencies, two Albanian-majority special constituencies were formed (Podgorica II. with one and Uncilj 9 with three seats). The borders of these constituencies did not overlap with the administrative boundaries of the municipalities. These districts guaranteed four parliamentary seats for the Albanian community. The measure had the potential to exacerbate inter-ethnic tensions, as it raised one of the many minorities and ensured positive discrimination against the other national minority communities.⁴⁷ The formerly applied 4% threshold and the d'Hondt method were kept. The closed blocked list was amended to a modified closed blocked list,⁴⁸ but in 2012 the closed blocked list was reinstated.⁴⁹

46 1990, 1992 (early elections), 1996, 1998 (early elections), 2001 (early elections), 2002 (early elections), 2006, 2009 (early elections), 2012 (early elections), 2016, 2020 (early elections) (compilation by the author).

47 Dedović Vlado – Vujović Zlatko, "Electoral System in Montenegro" in *Electoral and Party System in Montenegro – Perspective of Internal Party Democracy Development*, eds. Goati Vladimir – Darmanović Srđan (Podgorica: Centar za Monitoring i Istraživanje CeMI, 2015), 112.

48 Unlike in the case of the closed blocked list, where it is not possible to change the order of the candidates, in the case of the modified closed blocked list, 50% of the parliamentary seats are allocated in the order as determined on the electoral list, and the other 50% are allocated in accordance with the decision of the leadership of the party following the elections. Due to the lack of transparency and the inherent uncertainty in the system, this method of allocating parliamentary seats was widely criticized by both the OSCE and the Council of Europe. In Montenegro, the modified closed blocked list was in force during the 1996–2009 elections. The 2011 amendment to the Election Law eliminated this method.

49 Dedović – Vujović, "Electoral System in Montenegro," 93.

Following the amendment of the Law on Election, in the 1998 early parliamentary elections, the number of seats was 78, out of which 73 were allocated from across the country as one constituency (main constituency).⁵⁰ Pursuant to Article 118 of the Transitional Provisions of the election law, five additional seats were allocated to the Albanian minority, in a set number of special Montenegrin Albanian-majority constituencies specified by a separate resolution of the Montenegrin Parliament before each parliamentary election.⁵¹ These special constituencies (i.e., special polling stations or sub-constituencies) were made up by approximately 30,000 voters, and they did not actually divide the country into more constituencies. These parliamentary seats, which can in fact be considered guaranteed, continued to be specifically designed to provide parliamentary representation for the Albanian minority in Montenegro.⁵² The threshold in both the main and in special constituencies was 3%. If a party or a coalition running for the five Albanian minority seats reached 3% in a special constituency but not in another special constituency or in the main constituency, the votes on the same minority list below the threshold were transferred and added to the votes on the lists above the threshold, in order to avoid actually dividing the country into more constituencies and to increase the chances of winning a seat. This rule applied in both directions (to both main and special constituencies). If an electoral list did not reach the 3% threshold in any of the constituencies, it did not receive a seat, and no votes were transferred. The seats were allocated for a four-year term with the d'Hondt method in a proportionate modified closed blocked list.⁵³

In the early elections of 2001, 72 of the 77 parliamentary seats were allocated from the whole country as one constituency. Five seats were again available for the Montenegrin Albanian-minority, this time in 70 special constituencies designated by the Montenegrin Parliament. The method of allocating seats remained the same as in previous elections, but the relevant OSCE report points out that if an electoral list in both the main

50 Office for Democratic Institutions and Human Rights (OSCE ODIHR): *Republic of Montenegro (Federal Republic of Yugoslavia), Parliamentary Elections, 31 May 1998*. Retrieved from: www.osce.org; downloaded: February 21, 2020

51 Ibid.

52 Due to the special constituencies incorporating the Albanian population of Montenegro, the Albanian nationality could obtain parliamentary seats with 1% of the votes instead of the official 3% threshold. The other national minorities (Serbian, Bosniak, Roma, Croatian) – as they were not subject to positive discrimination – have strongly criticized this solution because of its inconsistency and preferential treatment of the Albanians. Their resistance was later reinforced by a negative decision by the Montenegrin Constitutional Court, which declared unconstitutional and repealed Provisions 23 and 24 of the Law on Minority Rights and Freedoms (2006) on guaranteed minority parliamentary seats. In general, there has been a positive shift for national minorities in terms of obtaining parliamentary seats following the 2011 amendment to the election law.

53 See footnote 50.

constituency and in one of the special constituencies met the 3% threshold, no vote transfer took place, but the electoral list was considered in the allocation of seats at both levels.⁵⁴

In the early elections of 2002, 71 of the 75 parliamentary seats were allocated from the whole country as one constituency. Without consulting the parties concerned and without international consent, the amended election law reduced the number of the Albanian national community's seats to four. The four seats were allocated in the 52 special constituencies that the Montenegrin Parliament designated at the time.⁵⁵ No other relevant changes took place that year. For the 2006 parliamentary elections, the number of MPs was set at 81, and it has not changed to this day. The seats were allocated for a four-year term with the d'Hondt method in a proportionate modified closed blocked list with a 3% threshold. Following the previous pattern, the whole country formed a single constituency in the 2006 regular and 2009 early parliamentary elections. There were 76 "classic" seats plus the special constituencies. Due to the lack of consultation and dissatisfaction with the 2002 reduction in the number of mandates, the five secured seats and 70 special constituencies were reinstated instead of the 52 for the 2006 elections for the Montenegrin Albanian national community. This regulation remained in effect until the 2009 early elections, after which several provisions of the election law on the electoral system were modified.

Following the 2011 amendment to the election law, from 2012 each party (or party alliance) has been able to run a single closed list. Registering an electoral list is subject to the supporting signatures of at least 1% of those eligible to vote (from 2016 parliamentary elections 0.8%). Setting up and launching a list by national minority party or association requires one thousand supportive valid signatures nationwide. A minority ethnic community that constitutes up to 2% of the Montenegrin population according to the last census results can register an electoral list with 300 supporting signatures.⁵⁶ Following the amendment of the election law, the acquisition of parliamentary representation for minorities was redesigned to ensure wider minority representation and to comply with constitutional requirements. Currently, if none of the national minority lists reach the 3% threshold, but each of them obtains at least 0.7% of the valid votes, they participate in the distribution

54 Office for Democratic Institutions and Human Rights (OSCE ODIHR): *Republic of Montenegro, Federal Republic of Yugoslavia, Parliamentary Elections, 22 April 2001*. Retrieved from: www.osce.org; downloaded: February 21, 2020

55 Office for Democratic Institutions and Human Rights (OSCE ODIHR): *Republic of Montenegro, Federal Republic of Yugoslavia, Parliamentary Elections, 20 October 2002*. Retrieved from: www.osce.org; downloaded: February 22, 2020.

56 Law on Election of Councillors and Representatives (46/2011), Article 43, Paragraph 1-3. Retrieved from: https://www.legislationline.org/download/id/4191/file/Montenegro_Law_on_elections_of_councillors_and_representatives_1998_am2011_en.pdf; downloaded: February 22, 2020.

of seats as a large joint list with all valid votes cast for them and may acquire a maximum of three seats, provided that the number of these minorities does not exceed 15% of the population of the given constituency according to the last census.⁵⁷ In the event that none of the minority election lists reaches 0.7%, the distribution of seats shall be allocated individually, depending on the number of valid votes obtained.⁵⁸ For the Croatian national community, the law on election grants a special possibility that if none of the electoral lists of this community reaches 0.7%, it can still have one MP with 0.35% of the votes.⁵⁹ As formerly indicated, the modified closed blocked list was replaced by the closed blocked list, but the d'Hondt method, the four-year term, the 3% threshold, and the single constituency remained in effect.

In the run-up to the 2020 early parliamentary elections, due to the pressure of the opposition, the Montenegrin Parliament decided on October 30, 2018, to set up an ad hoc committee of 14 members (seven MPs from the governing and seven from the opposition parties).⁶⁰ The purpose of the committee was to comprehensively amend the legal environment for parliamentary elections in line with the relevant recommendations of international organizations (i.e., EU, OSCE ODIHR, CoE) and the expectations expressed by opposition parties.⁶¹ The term of office of the committee expired on December 18, 2019, by which date the draft Law on the Election and Status of MPs, submitted by a the governing parties⁶² and requiring a two-thirds majority of votes, was not passed, and it was not passed

57 Ibid. Article 94, Paragraphs 1-3.

58 The current electoral regulation for national minorities was in fact created after the 2012 early parliamentary elections with the 2014 amendment to the election law, in line with the relevant OSCE ODIHR related report and recommendations.

59 Law on Election of Councillors and Representatives (46/2011), Article 94, Paragraph 2, Point ii.

60 "Usvojili odluku o formiranju odbora za reformu izbornog i drugog zakonodavstva" [Adopted a decision to form a committee to reform electoral and other legislation], *Vijesti*, October 30, 2018. Retrieved from: www.vijesti.me; downloaded: December 7, 2019

61 In Montenegro, unlike in the other Western Balkan states, the bipartisan political scene has not emerged in the last 30 years. (However, this practice changed after the parliamentary elections on August 30, 2020.) The reason for this, according to the opposition, lies in the current electoral regulations. The proposals for amendments did not focus on changing the electoral system itself, but on harmonizing electoral legislation in an inclusive way with other legislations, campaign finance, media independence, and transparency and independence of the electoral administration, and also focused on increasing the proportion of women in party leadership and election campaign.

62 Regarding the electoral legislation, and in particular the reform of the electoral system, the Podgorica-based Non-Governmental Center for Monitoring and Research (CEMI), established in 2000, presented in the summer of 2019 its report *Reform of Electoral Legislation in Montenegro – Recommendations for Progress*, which recommended change in four points: 1) maximum five preference votes on the electoral list, but the first seat to be allocated is fixed, 2) preferential seat for the Roma community (they argued that the proportion of the Croatian (0.97%) is lower than that of the Roma community (1.01%)), 3) rejecting those electoral lists that do not contain women in the proportion prescribed by the law, 4) specifying the administrative process how an electoral list can be registered as a minority list.

after re-submission in spring 2020 either. As a consequence, the early elections of 2020 took place in the same electoral system as before. Legislative amendments that required a simple majority (e.g., Law on Financing of Political Parties and the Election Campaign, Law on the Electoral Register, Law on the Administrative Division of Montenegro) were adopted on December 27, 2019, by the Montenegrin government majority.⁶³

In Montenegro, parliamentary elections are called by the head of state.⁶⁴ No fewer than 60 and no more than 100 days shall pass between the day when the election is called and the day of election of the MPs. The elections shall be held no fewer than 15 days prior to the expiry of the election period of the Parliament.⁶⁵

The evolution of Serbia's electoral system

Since the introduction of the multi-party system in Serbia in 1990, 12 parliamentary elections have been held at the national level through 2020.⁶⁶ In 1990, during the first democratic multi-party elections, the 250 members of the Serbian Parliament were elected in a two-round majority electoral system in 250 constituencies. In the first round, candidates who obtained the absolute majority of the votes in their constituencies received the seat, provided that 50% of all eligible voters took part in the parliamentary elections. In the event that a seat was not obtained in the first round, the two candidates who obtained the most votes in a constituency in the first round participated in the second round of elections. Eventually the candidate who received the most votes in a constituency obtained the seat, regardless of the number of voters.⁶⁷

By the early parliamentary elections in 1992, a number of changes were made. The majoritarian electoral system was replaced by a proportional system, and the country was

63 Završena deveta sjednica drugog redovnog zasjedanja u 2019. godini [The ninth session of the second regular session in 2019 has ended], *Skupština Crne Gore*, December 27, 2019. Retrieved from: www.skupstina.me; downloaded: January 3, 2020.

64 Constitution of Montenegro (2006), Article 95, Paragraph 4. Retrieved from: www.constituteproject.org; downloaded: February 22, 2020.

65 Law on Election of Councillors and Representatives (46/2011), Article 14.

66 1990, 1992 (early elections), 1993 (early elections), 1997, 2000 (early elections), 2003 (early elections), 2007, 2008 (early elections), 2012, 2014 (early elections), 2016 (early elections), 2020 (compiled by the author).

67 Teréz Kovács, "A szerbiai parlamenti választások eredményei" [Parliamentary Elections in Serbia], *Tér és Társadalom* 5, no. 2-3 (1991): 95-96. Retrieved from: www.tet.rkk.hu; downloaded: April 17, 2020.

divided into nine multi-member constituencies.⁶⁸ The parliamentary threshold was set at 5%, and the d'Hondt method was applied to allocate seats. This regulation was modified prior to the 1997 parliamentary elections in one respect: the nine multi-member constituencies were replaced by 29.⁶⁹

In the early parliamentary elections of 2000, the 250 MPs were elected in one round in a proportional-list system for a four-year term, with the whole country being a single constituency.⁷⁰ These regulations are with some amendments still in force today. Parties and party alliances were allowed to register one closed electoral list, and they had to reach the 5% threshold to obtain parliamentary seats. The d'Hondt method was applied to allocate seats and ten thousand valid supporting signatures were required to register an electoral list.

Thanks to an amendment to the law following the 2003 early parliamentary elections, the 81st Article of the Law on the Election of Representatives (35/2000) was supplemented with three paragraphs, as a result of which, since 2004 access to parliamentary seats for national minorities in Serbia has not required the threshold that applies for majority parties. Instead, a so-called natural threshold (meaning that the number of votes required for a minority seat is obtained by dividing the amount of votes resulting in the seat by the number of seats that can be allocated) ensures that national minorities have access to the parliamentary seats.⁷¹

In the run-up to the 2020 parliamentary elections, a significant change in the electoral system was the reduction of the 5% parliamentary threshold to 3%, and in accordance with that, the previous rules on the acquisition of seats by national minorities were amended in line with the national standards.⁷² For the future elections, the natural threshold for national minorities will be calculated by multiplying the number of votes received by a national minority list by an additional 35% of the total valid votes cast in support (i.e., by multiplying the number of votes cast for national minority lists by 1.35). A further change with respect to national minorities, mainly due to abuses in the past, is the extension of the definition of their political parties. Henceforth, a national minority political party is a

68 1. Beograd 46; 2. Zrenjanin 28; 3. Kragujevac 29; 4. Leskovac 25; 5. Niš 24; 6. Novi Sad 28; 7. Priština 24; 8. Smederevo 22; 9. Užice 24 mandates.

69 Kurtović Rejhan, "Izbori i izborni sistemi u Republici Srbiji" [Elections and electoral systems in the Republic of Serbia], *Univerzitetska misao* 12, no. 1 (2013): 122. Retrieved from: <http://um.uninp.edu.rs/>; downloaded: April 17, 2020.

70 Szabó, *A Nyugat-Balkán parlamentjei* [Parliaments of the Western Balkans], 57.

71 László Horváth, "Parlament, tartományi és helyi önkormányzati választások Szerbiában – Megőrizte befolyását a vajdasági magyarság" [Parliamentary, provincial and local elections in Serbia – The Hungarians of Vojvodina have maintained their influence], *Kisebbségi Szemle* 1, no. 2 (2016): 58.

72 The correction of the natural threshold was initiated by the representatives of the Hungarian Alliance of Vojvodina.

party about which the Republic Electoral Commission has stated that its primary objective is to represent and advocate for the interests of national minorities and to protect and enhance the rights of persons belonging to national minorities in line with international legal norms. Whether the entity registering the electoral list qualifies as a national minority party or coalition is decided by the Republic Electoral Commission in a separate decision before the list is published. Prior to making a decision on recognizing the list as a minority, the commission may seek the opinion of the national council of the given national minority as to whether the submitter is a political party of a national minority or a coalition of political parties of national minorities.⁷³

In Serbia, national level parliamentary elections are called by the head of state.⁷⁴ The elections must be held no later than 30 days before the end of the parliamentary term,⁷⁵ and no earlier than 45 days but no later than 60 days after the announcement.⁷⁶

The Assembly of the Autonomous Province of Vojvodina, situated in the northern part of the country, is elected via a separate electoral procedure.⁷⁷ The 120 members of the provincial assembly, according to its decision of January 6, 2014, is elected with a proportional list system similar to the republican electoral system, instead of the previous, mixed system.⁷⁸ Prior to the 2020 elections, the changes indicated for the national level were also introduced at the provincial level. As a result, the provincial parliamentary threshold was changed from 5% to 3%.⁷⁹ The law requires the collection of 6000 valid signatures for the registration of an electoral list.⁸⁰ Here too, national minority parties acquire seats on the basis of a natural threshold, following the procedure described at the national level. To establish a national minority list, it is necessary to collect 3000 valid signatures, which is fewer than on the national level.⁸¹

73 Law on the Election of Representatives (12/2020), Article 81.

74 Ibid. Article 25.

75 Ibid. Article 27.

76 Ibid. Article 26.

77 Pokrajinska skupštinska odluka o izboru poslanika u Skupštinu Autonomne Pokrajine Vojvodine [Provincial Assembly Decision on the Election of Deputies of the Assembly of the Autonomous Province of Vojvodina], June 6, 2014 („Sl. list APV”, br. 23/2014) and its amendment („Sl. list APV”, br. 12/2020). Retrieved from: www.skupstinavojvodine.gov.rs; downloaded: December 28, 2020.

78 On the May 2012 elections of the Provincial Parliament, 60 members from individual constituencies and 60 from party lists entered the provincial legislature.

79 Pokrajinska skupštinska odluka o izboru poslanika u Skupštinu Autonomne Pokrajine Vojvodine (12/2020), Article 2. Retrieved from: www.skupstinavojvodine.gov.rs; downloaded: December 28, 2020.

80 Pokrajinska skupštinska odluka o izboru poslanika u Skupštinu Autonomne Pokrajine Vojvodine (23/2014), Article 25. Retrieved from: www.skupstinavojvodine.gov.rs; downloaded: December 28, 2020.

81 Ibid.

Provincial elections are called by the Speaker of the Provincial Parliament 90 days before the expiration of the term of office of the provincial parliament, and the elections must be held within 60 days of the announcement.⁸²

The evolution of North Macedonia's electoral system

Since the introduction of the multi-party system in 1990, 10 parliamentary elections have been held in the country through 2020, out of which nine took place after the Declaration of Independence on September 8, 1991.⁸³ At the time of the 1990 and 1994 parliamentary elections, 120 MPs were elected in a two-round majority system in 120 single-member constituencies for a four-year term. At that time, the candidate who obtained the majority of the votes in a given individual constituency in the first round became a representative, provided that the number of votes they received was not less than one third of the voters on the constituency's register. If in the first round no candidate obtained a majority of the votes, a second round was held 14 days later in which all candidates who obtained more than 7% of the votes in the first round could participate. If none of the candidates received the 7% required to advance in the first round, the election was repeated. In the second round, the candidate who won the most votes became the representative. If there were several such candidates, it was decided by lot who would have the seat.⁸⁴

In order to eliminate the disproportions in the electoral system, a mixed system was introduced in 1998, as a result of which 85 people were elected by majority⁸⁵ and 35 people by the proportional system. In the first round, a candidate who obtained the absolute majority of the votes⁸⁶ in a given individual constituency would become a representative, provided that the number of votes the candidate received was not less than one third of the

82 Ibid. Article 8.

83 1990, 1994, 1998, 2002, 2006, 2008 (early elections), 2011 (early elections), 2014 (early elections), 2016 (early elections), 2020 (early elections) (compiled by the author).

84 Law on the Election and Recall of Members of Parliament and the General Assembly (1990), Article 54.

85 According to the International Crisis Group's election report, Albanians in Macedonia criticized the Macedonian government for the way creating individual constituencies, because constituencies populated by predominantly Albanians have an average of about 20,000 voters, while those populated by predominantly Macedonians consisted of 16,000 voters.

86 Article 88 of the election law of 1998 used the term *majority*, which provoked a debate among some political parties. According to the relevant decision of the State Election Commission, an absolute majority of the votes casted in the constituencies had to be obtained. According to a study by an embassy based in Skopje, the absolute majority was the criterion at the 1994 elections also. (*Parliamentary elections in the Former Yugoslav Republic of Macedonia 18 October and 1 November 1998*, OSCE/ODIHR Report. Retrieved from: www.osce.org; downloaded: December 18, 2019.

voters on the constituency's register. If one of these two criteria was not met, the elections had to be repeated two weeks later in the individual constituency concerned. The two candidates with the most votes would qualify for the second round, and they were not allowed to withdraw. In the second round, the candidate who received the most votes won. The law did not specify a minimum turnout, and in the event of a tie, the winner was chosen by lot. In the case of the 35 seats that were obtained in the proportionate system, where the whole country was considered a single constituency, the d'Hondt method was used to allocate the seats, and the entry threshold was 5%.⁸⁷

The new election law of 2002 was part of a larger package of laws aimed at implementing the 2001 Ohrid Framework Agreement.⁸⁸ Accordingly, to date, all 120 seats have been allocated in a proportional closed-list electoral system in six constituencies,⁸⁹ with approximately the same number of eligible voters (approximately 280,000) for four years. Four of the constituencies have a Macedonian majority: Nr. 3 in the middle and northeast parts of the country; Nr. 4 in the south and southeast; Nr. 1 in the capital, Skopje; and Nr. 5 in the southwest. Constituency Nr. 6, located in the northwest and partly bordering both Kosovo and Albania, is predominantly inhabited by the Albanian minority. Constituency Nr. 2, located in the northeast and partly bordering both Kosovo and Serbia, has an ethnically balanced population that includes Serbian and Roma minority communities.⁹⁰ There are 20 available seats in each of the six constituencies, and the election results are determined separately in each constituency. Parties win seats in proportion to the number of votes cast on the lists. A significant change from previous elections was the replacement of the 5% parliamentary threshold with the natural threshold, as well as the d'Hondt method being applied in all constituencies⁹¹ after the extension of the proportional system to the whole country.⁹² In parliamentary elections, each party (or party alliance) has the right to register a single closed list. The election law does not set conditions to collect signatures for parties to run in elections, but in the case of a group of citizens, the support of thousands of eligible voters in their respective constituency (including electoral districts abroad) is necessary to register their electoral list.⁹³

87 *Parliamentary elections in Republic of Macedonia*. Retrieved from: www.sobranie.mk; downloaded: January 20, 2020.

88 Berisha Dardan, "The Politics of Electoral System in the Former Yugoslav Republic of Macedonia," *Indiana Journal of Constitutional Design* 2, no. 1 (2016): 9. Retrieved from: www.repository.law.indiana.edu; downloaded: January 25, 2020.

89 Law on Election of Members of Parliament of the Republic of Macedonia (2002), Article 1, Paragraph 2.

90 Office for Democratic Institutions and Human Rights (OSCE ODIHR): *Former Yugoslav Republic of Macedonia, Parliamentary Elections 15 September 2002, Final Report*. November 20, 2002. Retrieved from: www.osce.org; downloaded: January 26, 2020.

91 Law on Election of Members of Parliament of the Republic of Macedonia (2002), Article 96, Paragraph 5.

92 Berisha, "The Politics of Electoral System in the Former Yugoslav Republic of Macedonia," 9.

93 Electoral Code of the Republic of Macedonia (196/2015), Article 61, Paragraphs 1-2.

As a result of the 2008 amendment to the election law, which first applied to the 2011 early parliamentary elections, three additional seats were allocated abroad in the diaspora⁹⁴ in a majoritarian system in three specially designated constituencies (Nr. 7 is Europe and Africa; Nr. 8 is North and South America; and Nr. 9 is Australia and Asia).⁹⁵ Following the electoral reform ordained in the Pržino Agreement of June 2, 2015, the seats of the diaspora have been allocated in a single “constituency” that covers the six continents.⁹⁶ In order to win a seat in the diaspora, the electoral candidate list must obtain the minimum number of votes that resulted in a seat in one of the six constituencies in the previous parliamentary elections. The second and third seats require twice and three times the number of votes, respectively. If no list of candidates reaches the required number of votes, these seats are not allocated.⁹⁷ As a result of the 2016 amendment to the election law, the three additional seats are allocated abroad in the diaspora in a proportional system.

In the Republic of North Macedonia, parliamentary elections shall be convened by the President of the Parliament in such a way that no more than 90 and no fewer than 70 days elapse between the announcement and the elections.⁹⁸ Elections must take place during the last 90 days of the Parliament’s term.⁹⁹

The evolution of Bosnia and Herzegovina’s electoral system

In Bosnia and Herzegovina [BiH], the country’s federal bicameral parliament, the bicameral parliaments of the two entities of the state (i.e., the Bosniak-Croat Federation [FBiH] and the Republika Srpska [RS]), the 10 cantonal parliaments of the Bosniak-Croat Federation, and the legislation of Brčko District are simultaneously elected in the general elections.¹⁰⁰ As the country’s constitution (the fourth annex to the Dayton Agreement)

94 Article 62 of the Constitution of the Republic of North Macedonia defines the number of parliamentary mandates between 120 and 140.

95 Electoral Code of the Former Yugoslav Republic of Macedonia (2008), Article 4, Paragraph 2.

96 Electoral Code of the Republic of Macedonia (196/2015), Article 4, Paragraph 2.

97 Ibid. Article 4, Paragraphs 3-6.

98 Electoral Code of the Republic of Macedonia (27/2019), Article 12.

99 Ibid. Article 15.

100 Due to space constraints, the paper cannot cover the election of the bicameral parliament of the two entities of the country: the Bosniak-Croat Federation and the Republika Srpska. The representation of national minorities, which are referred to as „Others” by the country’s constitution and election law, is promised in the form of guaranteed seats in the Upper Houses of these parliaments. For the comprehensive introduction of the parliamentary electoral system in Bosnia and Herzegovina, see the author’s article: *Választások Bosznia-Hercegovinában – Újabb elvesztegetett négy év előtt állunk?* [Elections in Bosnia and Herzegovina – another four years of lost opportunities?] *Parlamenti Szemle* 4, no. 1 (2019): 73–106.

does not specify the term of office for MPs, the members of both houses of the federal and the entity level parliaments were elected for two years in 1996, 1998, and 2000. This practice was overruled by the State Election Law passed in the autumn of 2001, which ordains that starting in 2002, MPs would be elected at all administrative levels for a period of four years.

Bosnia and Herzegovina's current state structure was defined by the Dayton Accords, signed into effect on November 21, 1995. Since then, state-level parliamentary elections have been held eight times in the country.¹⁰¹ Article IV of the Dayton Agreement states that the state-level Parliamentary Assembly consists of two chambers: the 15-member House of Peoples (Upper House) and the 42-member House of Representatives (Lower House). Two thirds of the 15 members of the House of Peoples (i.e., five Bosniaks and five Croats) are elected separately by the Bosniak and Croat Delegates of the Upper House of the Bosniak-Croat Federation's Parliament, while one third of the members (i.e., the five Serbs) are elected by the National Assembly of the Republika Srpska (via indirect election). Two thirds of the 42 members of the House of Representatives, 28 members are elected in the territory of the Bosniak-Croat Federation, and one third of the deputies (i.e., 14 members) are elected in the territory of the Republika Srpska by direct universal suffrage as described below.

In the Upper House of the State Parliament of Bosnia and Herzegovina, 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 and Delegates from the Republika Srpska shall be selected by the National Assembly of the Republika Srpska.¹⁰² The 17 Serb Delegates and the seven Delegates of the Others delegated to the Upper House of the Bosniak-Croat Federation cannot participate in the election of Croat and Bosniak members, while Bosniak and Croat Delegates and Delegates of the Others delegated to the National Assembly of the Republika Srpska shall participate in the process of electing Delegates to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina (BiH) from the Republika Srpska.¹⁰³

The election law of Bosnia and Herzegovina also states that Bosniak or Croat Delegates to the House of Peoples of the Parliamentary Assembly of BiH shall be elected in such a way that each political entity participating in the Bosniak or Croat Caucus or each Delegate from the Bosniak or the Croat Caucus in the House of Peoples of the Parliament

101 1996, 1998, 2000, 2002, 2006, 2010, 2014, 2018 (compiled by the author)

102 Constitution of Bosnia and Herzegovina (1995), Article IV, Paragraph 1, Point a.

103 Election Law of Bosnia and Herzegovina (24/2006), Article 9.12a, Retrieved from: www.ohr.int/laws-of-bih/election-legislation/; downloaded: March 7, 2020.

of the Federation of BiH, shall have right to nominate one or more candidates to the list for the election of Bosniak or Croat Delegates to the House of Peoples of the Parliamentary Assembly of BiH. The law stipulates that each list may include more candidates than the number of delegates to be elected. The voting is secret, and Each Delegate from the Bosniak or the Croat Caucus in the House of Peoples of the Parliament of the BiH Federation shall cast one vote for a list of candidates for the election of Bosniak or Croat Delegates to the House of Peoples of the Parliamentary Assembly of BiH. In the case of the Republika Srpska election of Delegates to the House of Peoples of the Parliamentary Assembly of BiH shall be conducted in such a way that each political party or each Delegate to the National Assembly of Republika Srpska shall have right to nominate one or more candidates to the list for the election of Serb Delegates. Each list may include more candidates than the number of Delegates to be elected. The voting is secret, and each representative has one vote. The mandates in the state-level Upper House are allocated with the Sainte-Laguë method for both entities.¹⁰⁴

In the 1996 state-level parliamentary elections, members of the Lower House were elected directly, for a two-year term, in a proportional closed-list system, and with the entire country being considered a constituency. To run at this level of the election, 10,000 valid supporting signatures were required for parties and 5,000 for independent candidates. The first round of seats was distributed by dividing the total number of valid votes cast in the election by the number of seats to be allocated (B) and then dividing the number of votes cast for each party (A) by the number obtained (A/B). The remaining seats were then determined along the largest remainder principle (C)¹⁰⁵ for parties that had already won at least one seat in the first round.¹⁰⁶ At these elections, no threshold was applied. With regard to the 1998 state-level Lower House parliamentary elections, the election law was amended in two respects: parties that had already registered and ran in any of the previous elections did not have to send the required number of signatures to the Interim Electoral Commission or the OSCE, and the allocation of seats happened on the basis of the Sainte-Laguë method. The aim and political result of the change in the method of allocating seats was a slight flattening of the seat distribution curve. Thus, as a result, smaller parties were given some extra seats at the expense of the larger parties.¹⁰⁷

104 Ibid. Articles 9.12c-9.12g

105 X (the number of seats allocated to the party) = A (the number of valid votes cast for the party) / B (total of valid votes/number of seats to be allocated) + C (largest remainder principle).

106 OSCE – Mission to Bosnia and Herzegovian. Provisional Election Commission, Rule and regulations, Decisions until July 16, 1996. Retrieved from: www.aceproject.org; downloaded: March 11, 2020.

107 Office for Democratic Institutions and Human Rights (OSCE ODIHR): Bosnia and Herzegovina Elections, September 12-13, 1998. Retrieved from: www.osce.org; downloaded: March 11, 2020.

For the 2000 state-level Lower House parliamentary elections, a number of changes were introduced to the electoral system. The proportional system was maintained, but open electoral lists replaced the closed lists.¹⁰⁸ Participation in the elections required at least 3,000 valid signatures for parties and 1,500 valid signatures for independent candidates.¹⁰⁹ The candidates who obtained at least 3% of the valid votes cast on their electoral list were first granted the parliamentary seats in the Lower House. If the allocation of all available seats was not ensured in this way, the seats still available were distributed among the candidates on the list who did not reach 3% in the order in which the names appeared on the list. If an electoral list did not have as many candidates as there were seats available, the remaining seats were reallocated to another multi-member constituency (introduced in these elections).¹¹⁰ The seat allocation method did not change.

Since 2000, 21 of the 28 seats in the Lower House of the State Parliament of Bosnia and Herzegovina, directly obtainable in the Bosniak-Croat Federation, have been distributed in five proportional open-list multi-member constituencies (the number of seats that can be allocated 3, 3, 4, 5, 6) and seven in the form of a compensatory mandate.¹¹¹ Following the amendment of the election law in 2001, since 2002, first the candidates on the list who have obtained at least 20% of the preferential votes receive regular seats.¹¹² Since the 2001 amendment to date, parties and independent candidates are required to collect at least 5,000 valid signatures in order to run in elections.¹¹³ The parliamentary threshold is 3%, which has to be reached per constituency. The distribution of seats continues to be based on the Sainte-Laguë method.¹¹⁴ Since 2002, only parties and coalitions that have obtained 3% of the valid votes cast in the whole entity (considered as a constituency) can participate in the distribution of the seven compensation seats out of the total 28 seats.¹¹⁵ Compensation seats are allocated in a closed party-list system.

Since 2000, nine of the 14 seats in the Lower House of the State Parliament of Bosnia and Herzegovina, directly obtainable in the Republika Srpska, have been distributed in three proportional open-list, multi-member constituencies,¹¹⁶ and from 2001 onwards,

108 Election Law of Bosnia and Herzegovina (2000), Article 529, Retrieved from: www.izbori.ba; downloaded: March 7, 2020.

109 Ibid. Article 405, Paragraph 1.

110 Ibid. Article 1108.

111 Ibid. Articles 1101 and 1102.

112 Ibid. Article 9.8, Paragraph 2.

113 Ibid. Article 4.4, Paragraph 5, Point 2.

114 Ibid. Article 9.5, Paragraphs 1-3.

115 Ibid. Article 9.6, Paragraph a.

116 Article 9.2a. Point a–c of the Electoral law of Bosnia and Herzegovina determine exactly which cities and municipalities make up each constituency.

candidates on the list who obtained at least 20% of the preferential votes receive seats first. At least 5,000 valid signatures must be collected for both parties and independent candidates to run in the election. The threshold for entering the Parliament is 3%, which needs to be reached per constituency. Seats are allocated with the Sainte-Laguë method. The parties and coalitions that have obtained 3% of the valid votes cast in the entire entity as a constituency may participate in the distribution of the remaining five compensatory seats out of 14 seats. Compensation seats are also allocated in a closed party-list system.

As shown above, multi-member constituencies were introduced into the Bosnia-Herzegovina's electoral system at the 2000 parliamentary elections, both at state and entity levels, with the aim of making the legislature geographically representative. However, in these constituencies, due to their specificities, some parties did not obtain a seat. This is because they may have had the same level of support in the entire entity or even the entire country, but not to the extent that it would have resulted in a parliamentary seat locally, in one concrete multi-member constituency. To eliminate this shortcoming, in 2000 the so-called *compensatory mandate (seat)* was introduced,¹¹⁷ which favors parties that are under-represented in the parliaments. Compensatory seats were distributed in the same way as ordinary seats in the 2000 elections. However, since 2001, only those parties and coalitions that have obtained 3% of the valid votes in the territory of the entity for which the compensation list has been drawn up can participate in the distribution of the compensatory seats.¹¹⁸ Parties or coalitions must submit the compensation list to the Electoral Commission within five days of the approval of their electoral list. The compensation lists can only include candidates whose names are on a party or coalition list that has been certified in a multi-member constituency.¹¹⁹ Seats are allocated according to the Sainte-Laguë method.

In Bosnia and Herzegovina, general elections are called by the Central Election Commission at least 150 days prior to the holding of an election (it was 170 days before the parliamentary election of 2006).¹²⁰

117 Entity-level mandate allocation.

118 OSCE/ODIHR Election Observation Mission International Observer Guide, Bosnia and Herzegovina, General Elections 3 October 2010

119 Election Law of Bosnia and Herzegovina (23/2001), Article 4.24, Paragraphs 1-2, Retrieved from: www.ohr.int/laws-of-bih/election-legislation/; downloaded: March 7, 2020.

120 Election Law of Bosnia and Herzegovina (24/2006), Article 1.14, Paragraph 2, Retrieved from: www.ohr.int/laws-of-bih/election-legislation/; downloaded: March 7, 2020.

The evolution of Albania's electoral system

In Albania, after the introduction of the multi-party system in 1990, parliamentary elections were held nine times through 2020.¹²¹ The Albanian electoral system, the number of seats that can be allocated, the number of constituencies, and the parliamentary threshold have also undergone a number of changes over the past three decades. In 1991, on the occasion of the first multi-party parliamentary elections, a 250-member parliament – the same number of members as the previous one-party system – was elected in a two-round majority system in 250 constituencies. Under the electoral regulations in effect at the time, candidates who obtained an absolute majority of the votes in an individual constituency in the first round became MPs. If none of the candidates won a seat in the first round, a second round was held in which the candidates who obtained more than 25% of the votes in the first round could participate. In the second round, new candidates were nominated if no candidates obtained 25% of the valid votes in the first round, or if only one candidate received 25% of the valid votes (he or she could run in the second round). In the second round of voting, the candidate who received the most votes (relative majority) won the mandate.¹²²

For the early parliamentary elections held in 1992, the number of seats was reduced to 140, and they were allocated in a mixed electoral system. In 100 individual constituencies, 100 seats were allocated, and a seat was obtained in the first round if a candidate received more than 50% of the valid votes. Otherwise a second round took place where the two candidates who had the most votes in the first round ran, and in the end the one with the relative majority of the votes won the seat. The remaining 40 seats for closed party lists were allocated on the basis of the largest remainder principle with the Hare quota,¹²³ with a parliamentary threshold of 4%, and with the entire country being considered a single constituency. In the 1996 parliamentary elections, the mixed electoral system and 140 seats remained in force, with the amendment that 115 seats were allocated in 115 individual constituencies, based on the majority principle, and in two rounds (if necessary). The remaining 25 parliamentary seats were allocated to closed party lists on the basis of the largest remainder principle with the Hare quota, with the entire country being considered a single

121 1991, 1992 (early elections), 1996, 1997 (early elections), 2001, 2005, 2009, 2013, 2017 (compiled by the author).

122 Law on the Election of Representatives in the Republic of Albania (1991), Articles 64, 65, 66, 67, Retrieved from: www.iri.org; downloaded: October 18, 2019.

123 *Election Passport*. Retrieved from: www.electionpassport.com; downloaded: October 20, 2019.

constituency.¹²⁴ The parliamentary threshold was 4% for parties, 8% for a two-party coalition, 12% for a three-party coalition, and so on.¹²⁵

The number of seats was increased to 155 for the early parliamentary elections in 1997. The number of seats to be obtained in individual constituencies on the basis of the majority principle, and in two rounds if necessary, remained 115, and the number of seats to be allocated in a proportional closed party-list system with the Hare quota increased to 40. The parliamentary threshold was reduced to 2%.¹²⁶ For the 2001 parliamentary elections, on the basis of the 2000 election law, the 1992 electoral system was basically restored; the only difference was that the threshold for the 40 seats to be allocated with the Hare quota was 2.5% for parties and 4% for party coalitions.¹²⁷ As a result of the amendments to the election law adopted in 2003, the 2005 parliamentary elections differed from the 2001 parliamentary elections in that the seats in the 100 individual constituencies were allocated by a simple majority in one round, with no change in the acquisition of proportionally allocated seats.¹²⁸

Albania's parliamentary electoral system was changed to a closed party-list proportional-regional system after 2009, in line with the 2008 constitutional amendment. According to this regulation, the 140 parliamentary seats were distributed in proportion to the population in 12 constituencies¹²⁹ that are the same as the administrative districts of the country.¹³⁰ Parties that have not previously had a parliamentary seat earlier, required 5,000 valid signatures at the national level to register their list, and party colatition required 7,000 valid

124 Office for Democratic Institutions and Human Rights (OSCE ODIHR): *Observation of the parliamentary elections held in the Republic of Albania, June 2, 1996*. Retrieved from: www.osce.org; downloaded: October 20, 2019.

125 Ilirjana Nano, "Main Electoral Systems, Electoral system in Albania and the Problems of it's Implementation," *Anglisticum Journal* 4, no. 6 (2015): 154. Retrieved from: www.anglisticum.org.mk; downloaded: October 22, 2019.

126 Commission on Security and Cooperation in Europe: *Albania's parliamentary elections of 1997*, July 1997. Retrieved from: www.electionpassport.com; downloaded: October 23, 2019.

127 Electoral Code of the Republic of Albania (2000), Article 62 and 66.

128 *The Final Report of the Election Observation Mission of OSCE/ODIHR*, Warsaw, Nov 7, 2005. Retrieved from: www.osce.org; downloaded: October 25, 2019.

129 The number of seats that can be allocated in the constituencies according to the 2016 population register of the Ministry of the Interior is as follows: Berat, 7; Diber, 6; Durres, 14; Elbasan, 14; Fier, 16; Gjirokaster, 5; Korce, 11; Kukes, 3; Lezhe, 7; Shkoder, 11; Tirana, 34; Vlore, 12. In the 2009 and 2013 elections, based on the then statistics of the Ministry of the Interior, it was as follows: Berat, 8; Diber, 6; Durres, 13; Elbasan, 14; Fier, 16; Gjirokaster, 5; Korce, 12; Kukes, 4; Lezhe, 7; Shkoder, 11; Tirana, 32; Vlore, 12.

130 *Albanian Elections Observatory Brief*, Issue No 1, April 19, 2013. Retrieved from: www.eliamep.gr; downloaded: October 26, 2019.

signatures.¹³¹ This rule did not apply to coalitions where the participating parties had held a number of seats not smaller than the number of parties in the coalition.¹³² The law stipulated that independent candidates had to be supported by 1% of the voters in their constituency but by not more than 3,000 voters.¹³³ The parliamentary threshold was 3% for parties and 5% for party coalitions. The threshold had to be reached in each constituency separately.¹³⁴ Seats were allocated in regional constituencies with the Sainte-Laguë method for individual party lists¹³⁵ and with the d'Hondt method for party alliances.¹³⁶

Prior to the April 2021 parliamentary elections, in the summer of 2020, the part of the country's constitution relating to parliamentary elections was slightly modified, while the law on the election of MPs was amended on several points, resulting in three fundamental changes in Albania's electoral system. First of all, it should be noted that Article 64 Paragraph 1 of the amended Constitution left the proportional electoral system, but instead of multi-member constituencies equal to the country's administrative borders, it established regional competition with a national threshold.¹³⁷ The threshold is defined as 1% by Article 162 Paragraph 1 of the amended Electoral Code,¹³⁸ thus replacing the previous 3% and 5%. Secondly, another significant change is that, although the previous regulations for registering an electoral list remained in force, in the future, if parties want to run in the parliamentary elections in electoral coalition, they would only be able to do so with a joint list, as an electoral unit, contrary to the previous practice that allowed the parties in the coalition to have separate lists of their own.¹³⁹ Third, Article 64 Paragraph 3 of the amended Constitution introduces preferential voting and provides that the Electoral Code must ensure that at least two thirds of each electoral list is open.¹⁴⁰ Article 162 Paragraph

131 The Election Law, adopted in 2008, provided for 10,000 and 15,000 supportive signatures respectively, but it was reduced to the current level in line with the opinion of the Venice Commission.

132 Electoral Code of the Republic of Albania (31/2015), Article 68, Paragraph 1, Retrieved from: www.legislationline.org; downloaded: March 5, 2020.

133 Ibid. Article 69, Paragraph 3.

134 Ibid. Article 162, Paragraph 1.

135 Ibid. Article 163, Paragraph 2. e ivelyhe current level, of Albaniaory

136 Ibid. Article 162, Paragraph 2.

137 Constitutional Amendments Approved by Parliament on 30 July 2020 (Article 64, Paragraph 1), Retrieved from: [www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2020\)074-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2020)074-e); downloaded: December 20, 2020. (Neither the Constitution nor the electoral code defines exactly what the regional competition is. The Constitution allows for the application of the proportional regional electoral practices used in the former 12 constituencies, as the definition of constituency is left to the discretion of the electoral code, and Article 74 Paragraph 1 of the electoral code is similar to the repealed constitutional provision).

138 Electoral Code of the Republic of Albania (118/2020), Article 162, Paragraph 1. Retrieved from: www.osce.org; downloaded: December 20, 2020.

139 Constitutional Amendments Approved by Parliament on 30 July 2020 (Article 68, Paragraph 1).

140 Ibid. Article 64, Paragraph 3.

2 of the Electoral Code retained the d'Hondt method, but the Sainte-Laguë method was abolished. In the future, candidates who receive more preferential votes than the number of votes required by the d'Hondt method to obtain one seat will be the first ones to receive mandates.¹⁴¹ In order to ensure a one-third representation for the under-represented gender among the MPs, this rule should be waived in their case.¹⁴²

In Albania, the President of the Republic decrees the date of the elections for the Assembly no later than 9 months before the expiry of the Assembly's mandate, and the elections have to be held no later than 30 days before the end of the term.¹⁴³

Summary

Having reviewed the legislation and documents relevant to the parliamentary representation of national minorities and the tendencies inherent in it, we see that the issue of parliamentary representation of national minorities and its practical implementation has been and continues to be part of the political discourse in the Western Balkans. In the case of some states, the conditions for this have already been created; in others it is still a challenge that has to be solved.

In *Kosovo*, the Constitution adopted in 2008 provides for the parliamentary representation of national minorities in the form of guaranteed seats.

In *Montenegro*, Chapter V (*Minority Rights*), Article 79, Paragraph 9 of the Constitution – which was adopted in 2007 and grants individual and collective rights to national minorities – provides for “*authentic parliamentary representation*” of national minorities. Authentic parliamentary representation is not the same as proportional representation; the latter was rejected due to the different numbers of minorities. With regard to authentic national minority representation, the question arose as to whether it could only be achieved by national minority parties or also by parties organized on a non-ethnic basis. The harmonization of the Constitution and the election law (which, as we have seen earlier, favored only the Albanian national community, disregarding the authentic representation of other nationalities) in the period between 2007 and 2011 was impossible; due to the differences in approaches and positions on the implementation in the parliamentary working group

141 Electoral Code of the Republic of Albania (118/2020), Article 163, Paragraph 3. Retrieved from: www.osce.org; downloaded: December 20, 2020.

142 Ibid. Article 163, Paragraph 5.

143 Electoral Code of the Republic of Albania (31/2015), Article 9, Paragraphs 1-2, Retrieved from: www.legislationline.org; downloaded: March 5, 2020.

responsible for the process, the MPs could not agree on how to implement authentic minority representation. The deputies argued that the main reason for the disagreement was that the Constitution did not define the concept of a national minority. Nevertheless, Article 2 of the Law on Minority Rights and Freedoms, cited above, set out the definition, which could have helped the MPs to agree on the implementation. The harmonization of the election law and the Constitution – in the absence of the support of the Albanian national minority – and the establishment of parliamentary representation of national minorities took place under pressure from the EU in 2011, as the EU called for the settlement of the problem as one of the conditions for the opening of accession negotiations.¹⁴⁴

In Serbia, the electoral system has provided preferential access to the Parliament for national minorities since 2004 in the form of a natural threshold, and the country's constitution, adopted in 2006, effectively fortified this solution. Article 75 guarantees the individual and collective rights of members of national minorities, ensures their participation in decision-making directly or through their representatives, and provides that members of national minorities have the right to participate in the management and administration of public affairs and to hold public office under the same conditions as other citizens. In accordance with Article 20, the achieved level of human and minority rights cannot be reduced.

In North Macedonia, amendment VI of the 1991 Constitution provides for the equitable representation of persons belonging to all communities in public bodies at all levels of public life,¹⁴⁵ but the Electoral Code, unlike those of Montenegro and Serbia, does not contain any further elements that expand upon or clarify this provision. In the summer of 2007, the Macedonian government submitted a proposal for guaranteed places for national minorities (four places for the Turkish, two places for the Serbian and Roma, and one for the Bosnian and Vlah national communities). This was driven by the idea to guarantee the rights of minorities within minorities, and by the pragmatic goal of making it easier to secure the “Badinter majority”, which is a double majority (i.e., the majority of all MPs, including the majority of members of national minorities), that is necessary to amend the Constitution and certain laws.¹⁴⁶ This initiative did not win the support of the Albanian national community, as it would have abolished the dominance of their

144 Džankić Jelena, “Montenegro’s Minorities in the Tangles of Citizenship, Participation, and Access to Rights,” *Journal on Ethnopolitics and Minority Issues in Europe (JEMIE)* 11, no. 3 (2012): 46. Retrieved from: www.ecmi.de; downloaded: May 2, 2020.

145 Amendment VI of the Constitution of the Republic of North Macedonia is a completion of the second point of the list under Article 8 of the Constitution.

146 Taleski Dane “Minorities and Political Parties in Macedonia” in *Political Parties and Minority Participation*, ed. Bieber Florian (Skopje: Friedrich Ebert Stiftung, 2008), 135.

community among the national minorities that had existed and have prevailed since then. It is true that the constituency system introduced in the 2002 elections provides slightly more favorable conditions for non-Albanian national minorities, but the ultimate goal of these minorities remains that the electoral system, while transforming the six constituencies into one, provides a reserved or guaranteed place for them to be able to run and win a seat in the parliamentary elections on their own.¹⁴⁷

In Bosnia and Herzegovina, the practice that human rights are fundamentally the rights of the three main ethnic groups has not changed to date.¹⁴⁸ As a result, at different levels of the representation system MPs do not represent citizens in the political sense but rather particular ethnic groups. This phenomenon is mainly due to the fact that the citizen in the political sense is destroyed by the normative part of the state-level Constitution, – contrary to the provision of the preamble – in favor of the citizen in the ethnic sense.¹⁴⁹ Many long-standing rule of law and suffrage cases remain unresolved, as neither the recommendations of the Venice Commission on inter-ethnic power sharing, nor the 2009 ruling¹⁵⁰ of the European Court of Human Rights (ECHR) in the *Sejdic-Finci* case¹⁵¹ have been implemented.¹⁵² In addition, in its 2018 country report on Bosnia, the European Parliament also expressed concern about the low level of representation of national minorities in public life. There seems to be a consensus that the country's constitution, and consequently its election law, is discriminatory against national minorities, as the provisions of Article II of the Constitution on the prohibition of discrimination and on the non-discriminatory safeguarding of rights and freedoms for all citizens as granted in the Constitution and in

147 Office for Democratic Institutions and Human Rights (OSCE ODIHR): *The Former Yugoslav Republic of Macedonia, Parliamentary Elections 11 December 2016*, Final Report, February 28, 2017. Retrieved from: www.osce.org; downloaded: May 5, 2020.

148 Arapovic Adis – Brljavac Bedrudin, "Election System of Bosnia and Herzegovina: Catalyst of Unsuccessful Democratization," *Khazar Journal of Humanities and Social Sciences* 16, no. 2 (2013): 31. Retrieved from: <http://dspace.khazar.org/bitstream/20.500.12323/2190/1/02pdf-bedrudin-1.pdf>; downloaded: September 14, 2019.

149 Ibid. 32.

150 Eszter Polgári, "Az Emberi Jogok Európai Bíróságának legutóbbi döntéseiből," [Recent Decisions of the European Court of Human Rights], *Fundamentum* 14, no. 1 (2010): 82–83. Retrieved from: <http://fundamentum.hu/sites/default/files/10-1-06.pdf>; downloaded: September 18, 2019.

151 A Roma and a Jewish politician appealed to the European Court of Human Rights claiming that their passive voting rights are violated by Articles IV and V of the Constitution of Bosnia and Herzegovina, as the articles only allow persons belonging to the three constitutional peoples (Serbs, Bosniaks, Croats) to be elected members of the collective state presidency and the Upper House of the state parliament. The European Court of Human Rights decided that the Constitution of Bosnia and Herzegovina violates national minorities' political and human rights. Furthermore, it violates the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, the provisions of which Bosnia and Herzegovina agreed to secure in the Dayton Agreement Annex 6 (Agreement on Human Rights).

152 The execution of two similar decisions (Azra Zornić, 2014 and Ilijaz Pilav, 2016) of the European Court of Human Rights are yet to happen.

the undertaken international treaties are not met. The Dayton Agreement in force to date made the three opposing parties full members of the artificially created political system, completely disregarding the rights and interests of national minorities in the case of the state-level parliament. (In the entities, there is a slight shift in favor of other nationalities through guaranteed Upper House seats.) This practice was changed neither by the 2003 Law on the Protection of the Rights of National Minorities (Articles 19–20 provide for the participation of national minorities in public life), nor the 2009 Anti-Discrimination Law, as subordinate legislation could not override relevant provisions of the Constitution. Due to the problems outlined some analysts do not see the country as a true democracy (but rather as a transitional/hybrid regime), because it excludes national minorities from actual political participation.¹⁵³ In its country reports issued in recent years, the European Commission has consistently indicated that Bosnia and Herzegovina needs to bring its constitutional and legislative framework in line with the relevant ECHR case law, which in fact imposes a comprehensive constitutional amendment obligation on the country.

In Albania, the rise of the multi-party system and the democratization of the country put national minorities in a difficult period. In 1992, ethnically organized parties, such as the Greek Omnia, were banned from participating in parliamentary elections as political parties. Subsequently, the organization changed its name (to the Human Rights Union Party) and broadened its minority spectrum but basically continued to represent mainly Greek interests. Although Article 20 of the country's constitution (1998) allows the establishment of advocacy bodies, and the provisions of Articles 8 and 9 of the Law on the Protection of National Minorities (2017) allow for equal participation in political life and party formation, in practice, Albania's electoral system, quite uniquely in the region, does not in any way promote the parliamentary representation of national minorities.¹⁵⁴

While Serbia, North Macedonia, and Albania have gradually moved from a majority to a proportional electoral system since the establishment of the multi-party system, Kosovo, Montenegro, and Bosnia and Herzegovina have had a proportional electoral system even since the first multi-party elections. The parliamentary representation of national minorities and the electoral strategy of their parties – determined primarily by their population, political organization, and last but not least, the electoral system of their respective countries – have

153 Bell Jared O, "Dayton and the Political Rights of Minorities: Considering Constitutional Reform in Bosnia and Herzegovina after the Acceptance of its Membership Application to the European Union," *Journal on Ethnopolitics and Minority Issues in Europe (JEMIE)* 17, no. 2 (2018): 21. Retrieved from: www.ecmi.de; downloaded: June 6, 2020.

154 The Venice Commission and ODIHR in their Joint Opinion "*On the amendments to the Constitution of 30 July 2020 and to the Electoral Code of 5 October 2020*" recommend that after the 2021 parliamentary elections to consider making an exception to the 1 % national threshold for national minorities. Retrieved from: www.osce.org/files/f/documents/7/2/473655.pdf; downloaded: December 20, 2020.

developed differently in the Western Balkans. Where they have guaranteed parliamentary seats (Kosovo) or a reduced threshold (Montenegro, Serbia), or where other methodological specificities (North Macedonia) make it easier for them to enter the parliament, larger minorities tend to run independently and typically join a government coalition after the elections. If there is little (Bosnia) or no preferential treatment for national minorities (Albania), their candidates will usually run on the list of majority parties, or form a pre-election coalition with majority parties and run on a joint list under the name of their own minority party.¹⁵⁵ Parties of smaller national minorities or larger but more fragmented national minorities with less support are mostly found on the electoral lists of majority parties. In connection with this phenomenon, however, the question arises as to whether a majority party is interested in the real representation and enforcement of the interests of national minorities, and whether it is at all willing to articulate those in an authentic way.

At present, EU accession, without exception, is a priority on the agenda of all six Western Balkan countries. In the case of the aspiring countries, the enlargement policy of the EU shows signs of full protection for persons belonging to national minorities, as it refers to the fulfillment of the Copenhagen criteria as a precondition for accession.¹⁵⁶ Due to the sensitivity to the problems of national minorities, we find that the demands of these communities could be part of the accession negotiations.¹⁵⁷ The trends in the six states examined suggest that these national minorities – mainly because of the respective states' Western orientation and their ambition to join the Euro-Atlantic¹⁵⁸ area – will gradually, often through lengthy and complex processes, gain the opportunity to assert their aspirations, including guaranteed independent parliamentary representation.

155 Western Balkan states almost without exception have a national minority party or person belonging to a minority that is part of the governing coalition (or that supports it from outside of the government). In Kosovo this is usually the Serb List; in Montenegro it is typically one Albanian, one Bosniak, and one Croatian party; in Serbia it has been the Hungarian Alliance of Vojvodina for the last three parliamentary elections; and in the Republic of North Macedonia it is usually one of the Albanian parties or minority parties in coalition with the two mainstream parties or minority candidates running on the list of majority parties. In Bosnia and Herzegovina, national minority candidates usually run on the lists of multiethnic parties. In Albania, they are either in coalition with the three dominant parties or run on their lists.

156 Istvan Lakatos, "The protection of National and Ethnic Minorities by and within the EU," *European Human Rights Law Review* 5, (2019): 502.

157 The start of accession negotiations with Montenegro was conditional on the harmonization of the Constitution and the Law on Minority Rights and Freedoms (2011). Serbia had to prepare (as initiated by Hungary) a Minority Action Plan for negotiation Chapter 23 *Justice and Fundamental Rights* (2016). Albania adopted the new Law on the Protection of National Minorities (2017) as a commitment to EU integration, and parliamentary representation of national minorities may also be a demand later in the accession negotiations. Bosnia and Herzegovina will likely have to amend its constitution in line with the rights of national minorities in order to advance the EU accession negotiations.

158 Serbia's current official position is that it does not want to become a member of North Atlantic Treaty Organisation.