

IMPROVING ELECTION LAW IN BOSNIA AND HERZEGOVINA: THE MAIN CHALLENGES

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This study is the product of discussion and conclusions of the Conference 'Reform of the Election Legislation in Bosnia and Herzegovina', held in December 2019 in Sarajevo, which was organized by the Alumni network of the School for Political studies of the Council of Europe in Bosnia and Herzegovina, with support of the Council of Europe and Norwegian Embassy in Bosnia and Herzegovina.

1. FOUNDATIONS OF THE BH ELECTION SYSTEM

Even though BH election system has given certain contribution towards establishing rule of law in political arena, democratization and legitimate political pluralism in the last two decades, it is still not fully based on universal axioms of general, equal and secret right to vote, and free and direct election for all citizens of the BiH who have voting right. BH Election system has not reached contemporary democratic standards which assume five election principles:

- Voting secrecy,
- Free elections,
- Direct elections,
- Equal voting right, and
- General voting right.

BH Election System is defined by certain provisions of the BH Constitution, and constitutions of lower levels of the government, as well as by package of the election law which enters Election Law of BiH, and 13 laws at the state and lower levels, as follows:

1. Law on Conflict of Interest in Institutions of Government in BiH;
2. Laws on Financing Political Parties in BiH;
3. Law on Filling Emptied Place of the Presidency of BiH During the Mandate;
4. Election Law of Republic of Srpska;
5. Election Law of District of Brcko;
6. Law on Election, End of the Mandate, Recall and Replacement of the Municipal Mayors in Federation of BiH;
7. Law on Conflict of Interest in Institutions of Government of Federation of BiH;
8. Law on Prevention of Conflict of Interest in Institutions of Government in Republic of Srpska;

9. Law on Conflict of Interest in Institutions in District of Brcko;
10. Law on Financing Political Parties from the Budget of District of Brcko;
11. Law on Political Organizations of SR Bosnia and Herzegovina;
12. Law on Political Organizations of Republic of Srpska;
13. Law on Political Organizations of District of Brcko.

Constitutions of entities, cantons and statutes of the cities, municipalities can also be considered part of the election system of Bosnia and Herzegovina. Election system of BiH is combination of almost all known election principles: majority principle and single election units for example relating to election of the members of the Presidency of BiH; proportional principles of multiple election units regarding the election of the members of parliaments; election floor for the ordinary mandates through half-closed preferential lists; preferential voting (lists open to voters); and election floor of 5% for compensation mandates; different preferential floors inside lists from 10% and 20%, etc., because of which we can consider election system of BiH as combined or hybrid *sui generis* election system, which is unique in the world.

Such heterogenous and incomplete election system too often enables breaches of constitutional principles and international conventions on human rights, and in combination with inadequate law implementation, through possible election misuse due to inadequate reaction of prosecutor offices and courts, very often generates political crisis and unstable parliamentary majority, as malversations and misuse in election process are not exception but the rule.

Slowed or blocked implementation of election results after the 2018 General Election has deepened the overall political crisis, so that even 15 months after the election the election results have not been fully implemented. Election system of BiH becomes catalyst for political blockages and as such slows down or blocks the process of consolidation of parliamentary democracy. The three last election cycles have without doubt confirmed the paradox of election system and Election Law of BiH.



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Namely, all relevant actors, from the Central Election Commission (CIK), through local and international independent election observes, to the very political subjects, even though with numerous justified objections and documented anomalies in the election process, still in principle recognize the election results and concurrently in one voice advocate for the improvement of the election system.

Also, all named actors, and professionals in the field especially, jointly take stand that actual Election Law and system in entirety, is obsolete, inadequate, incomplete, contradictory, and as such naturally generates political tensions and brings into doubt legality and legitimacy of the government, so that more often than ever its fundamental reform is being advocated. Due to this inescapable question is whether Election Law can still be restored, polished, improved, adjusted for court decisions, realities which political life is manufacturing? Or the integral reconstruction of the election system is required, which includes Election Law, but also few other laws? Is reform unavoidable and next phase of democracy and internal consolidation in Bosnia and Herzegovina? Equally important is question how to achieve political consensus, on which premises and priorities in the reform of the election system, if we know that political reforms in BiH in the past 10 years are executed in very reduced form, unsystematically and slowly?

2. ELECTION SYSTEM OF B&H AS AGENTS OF DISCRIMINATION

Election system can be defined in two ways, in the narrow and the broad sense. 'In the broader sense, under this term we consider all measures and actions which are regulated through legislation of one country, which relate to election and election law. And in the narrow sense, under the term election system, we relate to its single element, - its election formula, or the way of distributing of mandates.'¹ Fundamental role of the election system in democratically organized state is the creation of institutional frame within which democratic order is improved and strengthened, transparency of the election process and holding of free and fair elections, where citizens have trust in the system of transposition of their political will through the act of voting for their representatives in the government. Some of the leading authorities of contemporary politology such as Ardent Lijphart and Giovanni Sartoria stress that election system is very important segment of political system, whose shape fundamentally determines its functioning.

Lijphart describes election system as the most important element of representative democracy while Sartori considers that election system is the most important part of the action of the political system. Election system is not just a pure framework and we should not undermine its importance for the results of the elections, which is very indicative at the example of Bosnia and Herzegovina. Because of this it is important to remind that once it is formed, election system starts to generate very important and long term consequences. Election system is important for stability of the society or put differently, incomplete and anomalous election system can become agents of social instability.

Bosnia and Herzegovina has established proportional election system with larger number of multiple-mandate units, which was mainly determined by complex political system, or constitutional architecture of Bosnia and Herzegovina. Namely, 'mainly due to two-entity model, which is followed by multiple-level election units, it was necessary to establish concurrent existence of proportional and compensatory election system'.² 'Due to compensatory election system, we observe mixing of two levels of election census levels (that of 3-5%), which is not the common practice, (...).'³

We observe that in the system of award of mandates, there is pronounced intention of protection of territorial and/or ethnic collective interests, as opposed to civic sovereignty and protection of individual rights and interests, including equal active and passive voting right. For example, the way of election of the members of the Presidency of BiH, election of President/Vice president of Republic of Srpska as well as election of delegates in the House of People BiH does not allow members of 'unconstitutional' people, national minorities and others to be nominated or to be elected into these bodies, which according to the court ruling of ECHR in the case of 'Sejdic & Finci', has been marked as contrary to the European Convention on Protection of Human Rights and Fundamental Freedoms, and as such it has to be changed and harmonized with this Convention, so that the existence of such discrimination has to be put out of force.

Even though the function of elections is to, among others, 'ensure representation and establish legitimacy', in order to 'deliver to the government

² Mirjana Kasapović, Izborni leksikon (Zagreb, 2003), 198.

³ Florian Bieber, „Institucionaliziranje etničnosti: postignuća i neuspjesi nakon ratova u Bosni i Hercegovini, na Kosovu i u Makedoniji”, 25, Forum Bosnae (2004), 31-47, at 36.

¹ Pravni leksikon, (Beograd, 1970), 378-379.

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demands by the people', as even 'authority regimes hold elections even when they are not competitive'⁴, election system of Bosnia and Herzegovina, except its nominal declaration for some elements of liberal-democratic tradition of pluralism, equally contains certain relapse parts of totalitarianism, political, ethnic, territorial and gender discrimination.

The last general, presidential and parliamentary elections in Bosnia and Herzegovina, which were held in October 2018, took place in very complicated election system according to the opinion of international institutions. According to the OSCE's observer mission, 'legislative framework is very detailed and in general conducive to democratic elections. However, there still remain long term deficiencies such as limitation of the right to be elected which breaches the principles of universal and equal right of vote and prohibition of discrimination which are assumed by obligations and determination of OSCE, European Convention on Human Rights (ECHR) and other international standards. Equal right of vote is further disputed through irregular revision of borders of election units which is contrary to what law imposes. Majority of previous ODIHR recommendations have not been taken into account, including introduction of effective provisions on prevention of misuse of state resources, financing of campaigns and oversight of financing of campaigns and solving of election disputes. There exists serious concern because of the lack of political will towards approaching constitutional and election reforms (...). After the election day numerous candidates have described election process as full of fraud and publicly disputed validity of election results. Political subjects have talked about alleged election malversations on the election day, including 'stealing' of votes during the election count, buying of votes, purposeful destruction of valid voting papers and biased participation of OIK in the process (...)'⁵

After the 2018 election situation from 2011 repeats itself, when forming of the Government of Federation of BiH lasted 6, and forming of the Council of Minister 15 months of political negotiations. At the time of writing of this text, in January 2020, more than 15 months since holding of elections, Council of Ministers has just been formed, and governments in one canton and Federation of BiH have not been formed yet, which means that election process and execution of election results have not been executed within the prescribed deadlines, so that provisions of the election legislation have been

brutally breached and political climate has deteriorated further. Consequence of the mentioned is deepening of mistrust of the citizens into legal order and democratic process in general.

3. REFORM OF THE ELECTION LEGISLATION – MINIMUM CONSENSUS FOR POLITICAL STABILIZATION

'It can rarely be claimed that example of constituting election system is result of careful design which is based on historical, ethnic, political, cultural, technical and other criteria'⁶ It is more commonly observed that election system is created by two main reasons: 'because political actors do not have sufficient information and knowledge of the consequences of different types of election system, so they turn towards 'political transplantation' of certain election model which is used as an example, and other reason is that political actors use their knowledge for promotion of that election system which enhances their chances in election game.'⁷

Even though large number of changes to election system took place, especially in the Election Law of Bosnia and Herzegovina, there still exist serious obstacles which slow down consolidation of parliamentary democracy and functioning of election system on the basic principles of free elections: secrecy and freedom of voting, direct and indirect election, and equal and general voting right (suffrage). Namely, in the Election Law of BiH there are numerous deficiencies, non-clarity, contradictions and anomalies which in cumulative endanger holding of transparent, democratic, fair and just elections. Election system of Bosnia and Herzegovina is still to the great extent reflecting dominance and supremacy of ethnic collectivities in relation to individual or citizen, in the sense that its meaning and the role are understood in European societies of parliamentary democracy.

Of course, election system is determined by provisions and principles on which constitutional order of Bosnia and Herzegovina rests, so that every critique of election system, in fact begins with the critique of the hybrid constitutional order. However, through analysis of the actual election system of BiH, we can conclude that there are numerous deficiencies which primarily dispute active and passive voting rights, and encourage inequality and discrimination. It can be concluded that election system, more precisely voting right relies on ethnic and territorial belonging, which is contrary to the Constitution of Bosnia

⁴ Andrew Heywood, Politics (New York, 2002), 435-436.

⁵ Bosnia and Herzegovina General Election 2018, Final Report of Election Observing Mission OSCE/ODIHR, 2018, 1-2.

⁶ Vladimir Goati, et.al., Preporuke za izmenu izbornog zakonodavstva u Srbiji, (Beograd, 2008), 44;

⁷ Ibid.



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and Herzegovina, which insists on promotion of individual and political rights. Nevertheless, as a final result, political rights in BiH do not represent individual rights of every citizen or individual but are to larger extent rights of collectives, while additionally in the case of BiH, these collective rights are guaranteed only to members of the three largest national groups in the country, or to three constitutional peoples. In fact, democratic principle of equal voting right in BiH is not achieved, as in multiple ways it infringes on passive voting right (through limiting the right of candidacy to certain territory and belonging to certain people), and active voting right (by limiting choice of candidates only of certain peoples and from certain territory).

The above is the proof, among others, that human and political rights are reduced to ethnic rights. According to the existing solutions, it is not citizens that are chosen in elections, but peoples, and those that are voted into power are not citizens but members of the peoples and representatives from the territory, that is often ethnically predisposed. Such conceptual matrix stimulates apartheid and regresses democratic consolidation of state and society. According to international standards on human rights each individual has right to active and passive voting right on the whole territory of the state in which he/she lives, and not only one of those rights on certain part of the state, without having that right in its other parts. Through solutions in normative section of the Constitution of BiH political citizen has been annulled to the advantage of ethnic political representation, as ignorance of the facts in preamble to the Constitution which identifies also 'citizens' as constitutional subjects which have established Constitution of BiH, so that normative provisions of the Constitution of BiH recognize only Bosniaks, Serbs and Croats, their collective rights and collective identities in achieving their constitutional rights to political representation. Therefore, 'basis of political representation is not citizen, but nation and national identity. Instead of promotion of individual interests and rights of citizens, political interests are shaped on national basis, and that means on collectivity.'⁸

Overall picture is such that in eighteen years since the adoption of Election Law, and over twenty changes and additions which have happened between 2002 and 2019, with great certainty we can state that this election system, must be reformed, harmonized with the decisions of international and domestic courts, so that

numerous anomalies are minimized to the maximum extent. This can be done by corrections of those parts of Election law which deal with methodology and technology of election process, and to the less extent constitutional and political norms which require broader political consensus.

Election reengineering, changes or reforms in election system of a certain country, are understood as normal and even welcomed move if it leads to optimization, positive political dialectic and normative improvements. As Sartori states, existing practice shows that reengineering and choice of election system was especially fundamental and significant for (re)constituting of democracy in post-socialist societies. Election system is not neutral regulatory mechanism, but one of the key factors for forming political scene in the country which requires periodic reconsiderations.

4. CRITICAL POINTS OF ELECTION LAW REFORM

Given the reasons explained beforehand, until the constitutional reforms occur at the level of the state and the entity, and complementary to this – crucial changes in election system occur, it is of utmost importance to ensure that less complex changes of Election law which will ensure fulfillment of principles for holding of fair, transparent and just elections. Democratic ambient for free and fair elections can be created with prior fulfillment of the next preconditions, or interventions in election legislation:

4.1. Compatibility of constitutional provisions on election system with the court rulings and election s in Mostar – equal voting right

One of the interpretations of the common political crisis, and blockages in forming of the government after 2010 elections and even 2018, is that two political concepts are clashing for a number of years, which is enabled by loopholes in the election legislation. Namely, Bosnian-herzegovinian political space, besides other conflicts, is the place of ideological conflict of two concepts on forming government and functioning of the state in general. Clash of these two concepts is clash of primacy of collective ethno-national sovereignty, as opposed to individualist civic sovereignty. In the same way that ethno-national political circles are disputing political legitimacy to multiethnic parties, civic or non-ethnic parties stay blind to the fact that exclusivity of ethnic political representation is characteristic of the Constitution of Bosnia and Herzegovina, and hence Election law that is in force. Repercussions from this are

⁸ Mirko Pejanović, Politički razvitak Bosne i Hercegovine u postdejtonskom periodu, (TKD Šahinpašić, 2005), 54.

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continued political conflicts on political specter cleavages centralization-decentralization and individualism-collectivism, which permanently handicaps functioning of the legal-political system, efficiency of legislative and executive branches of the government, and speed and content of the process of democratization. Good example for previous elaborations is lack of implementation of the ruling of the constitutional court of BiH relating elections in City of Mostar. While some political parties refuse majority principle for the City of Mostar, they advocate that same principle at the level of Federation of BiH and the state. Analog to this, other parties refuse majority principle at the higher levels of the government, while they accept it at the territory of City of Mostar. Finding compromise, changes to the Statute of City of Mostar, and holding local elections during 2020 in accordance to election calendar, is imperative which can unlock and other necessary reforms of the Election Law. This relates to court decisions of ECHR but also those of domestic courts, primarily in the 'Ljubic' case.

In few public discussion the idea of introducing electors as one of the measures that could potentially bring together the imperative of protecting individual, as opposed to collective interests, without breaking election principles of equality of vote and equal voting right, so that this possibility should also be evaluated.

4.2. Legitimacy of representing collectivities

Pronounced problem of election system is also legitimacy of representing collectivities, or different interpretations of the legitimacy itself, depending on whether the mandate is assumed to be given to representative or member of the constitutive people. This problem has escalated at the elections of 2010 and has repeated in 2018, when the election of the Croat member of the Presidency, has been proclaimed as illegitimate by leading Croat parties or national Croat parties, with the objection that the elected member of the Presidency from Croat people has been chosen by the majority of non-Croat votes. Similar anomaly is happening also at the parliamentary elections for few previous election cycles, when certain candidates, have changed their ethnic belonging in order to increase their chances of being voted in, directly or indirectly, into parliaments. Question of electing member of Presidency of BiH from the Croat people, represents important turning point in reform of election system and playfield for finding consensus among individualistic (civic) and collectivistic (ethnic) principle.

4.3. Execution of the overall election cycle and early elections mechanism

Introduction of the functional mechanism which will ensure the implementation of election results without the possibility that any subject or reason blocks constituting of parliaments and choice of executive power, even if the last option are early elections, or repeating elections for the level of the government for which election cycle has not been fully implemented. This assumes smaller corrections to election laws in the parts which describes constituting of the parliaments on all levels, in-direct constituting of the house of peoples, and of course executive powers, through the president of the entities and governments on all levels of the government. For example, in this moment 15 months after the holding of 2018 general elections Federation BiH does not candidate for President and vice-Presidents of FBiH, with which even the first precondition for the forming of the Government of FBiH has not been fulfilled, and responsibility can not be addressed in a simple way, nor there is way for this process to end through legal remedies.

Also, extraordinary or early elections, according to European good practices, should be prescribed for some other critical situations, such as non-adoption of budget until the end of third month for the current year, absence of holding or lack of convening sessions of the government or parliament for longer than 100 days, etc.

Equally important, holding of general and local elections during one calendar year, with minimum time of 6 month in between, every four years, would significantly reduce political tensions which are in two-year cycles or even in continuity occur as country is every two years finding facing itself with so called election years.

4.4. Equal value of each vote

Value of the vote is not even nearly equal in all election units, especially in Federation of BiH, so that parliamentary mandate from some of them requires only few hundred votes, while in the other even few thousands are not sufficient for the mandate to be won. Absence on the part of voters in District of Brcko to choose their representatives into Cantonal Assemblies, and hence, consequently into house of peoples of the higher level of the government, breaches both equal voting and general right to representation. Correction of the borders of election units in Federation of BiH, according to the newer statistical data is legal requirement and imperative for protecting principle of equal value of each vote.

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4.5. Integrity of the election process

Besides other systematic elements which are meant to protect the integrity of the election process, question of election malversations which do not fall into group of systematic anomalies, but are more of incidental kind can be handled without too much resistance through the new package of reforms.

Cleaning of the election registers and interoperability of the data between the registrar's offices and municipal election commissions regarding the question of correcting election registry of voters in real time (with possible differences within 24 hours in getting or losing voting right) does not require any technical/professional responsibility.

Voting by the post has to be submitted to the greater level of control, as sending of the voting ballots through the post has been a cause and one of ways of corrupting election process.

Preventing manipulations in composition of the election boards, in a short period prior to elections, such as ones that have been a massive appearances in the 2018 General election and removing the crucial role of election boards in the process of executing elections, and regularity of voting and counting votes.

Better protection of the rights and roles of political party observers and independent observers can to the large extent ensure regularity and transparency of the election process, especially on the very day of elections, which was not the case so far, due to frequent obstructions of work and basic objections received from the observers.

Prohibition of use of public resources for the holders of the public office functions which are concurrently the candidates in the elections can be prohibited through election law but also criminal law, during the (30 days) period of the official election campaign.

Preventing of so called 'false candidacies' in situations where the holders of political functions, primarily (city) majors become first candidates on the candidate's lists for the general elections, and then after they attract the number of votes required for one or more mandates in their lists, refusing the mandate and carrying it over to the next candidate who can have drastically lower results. It is necessary to reassess this practice, as well as practice of unlimited number of mandates for the majors, as these are the rare political functions with direct election in executive branch of the government, for which are not limited in number of mandates for their holders, compared to for example, members of Presidency of BiH or any other top management functions in the public sector.

4.6. Depolitization of the permanent election administration

There are numerous arguments which are rarely disputed by any relevant address that it is of the utmost importance to depolitize or reduce to minimum influence of political parties or individuals on the workings of the permanent election administration: Central Election Commission (CIK) and municipal election commissions (OIK). Relating to this, it is of great importance that during the 2020, when the composition of CIK needs to be changed due to large number of commission members' mandates expiring, as well as compositions of OIKs, to minimize the partitocratic pressures, and through these basic institutes of the election system ensure protection of integrity and trust in the election process through independent, professional and efficient election administration.

4.7. High fragmentation of the political offer and election thresholds

One of the obvious problems in implementation of election results and forming of executive powers (government) is highly fragmented political party composition in the parliaments, where even the largest party clubs do not hold more than 30% of parliamentary seats, which requires very broad coalitions of three or more partners in order to form stable parliamentary majorities. This necessarily causes very long negotiation process in order to form coalitions, numerous questions on which these coalitions do not agree, and in the end results in mathematical majorities without strong coalition agreements, clear program of action and mutual trust. Such platform of action almost by rule reduces efficiency of the government, generates political tensions and opens space for defectors, or individual parliamentarians to move from one parliamentary group to another, which disturbs or even changes parliamentary majorities in entirety.

Individual ownership of the mandate in combination with low election threshold of 3% has been seen as destabilizing election mechanism, and political corruption which follows 'buying' of seats or 'blackmailing' of holders of the mandates fundamentally determines the shape of parliamentary majorities, and in this way concentration of power in legislative and executive branches of the government. Therefore it is very important to reexamine the mechanisms for protecting the credibility of parliaments and elected representatives of the citizens, and it that requires raising the election thresholds to 4 or 5 %, or even considering ownership over mandate, especially compensatory mandates, election and party system could be improved.

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According to the number of political parties per capita BiH is leading in Europe, and the reasons for this are not to be found in high degree of political culture, but in divergent party system which encourages political corruption, where the most of political subjects register in order to trade influence or corrupting of election process, and not in order to compete for citizen votes. Trade in seats of election boards on behalf of marginal political parties, confusion which is created in political game and fictional offer on voting ballots are reasons due to which we need reassess the criteria for forming, acting and especially participation in elections by political subjects.

4.8. Election threshold within the parties

The most recent changes to election law have risen so called within the party preferential thresholds from 5% to 10% for the local elections and from 5% to 20% for the general elections. This correction went in favor of women on the lists of candidates, and most probably has ensured higher level of participation of directly voted women into legislative bodies. Concurrently, rising the threshold has reduced likelihood that preferential votes change order of candidates on the list and the chance that large number of votes for one candidate will bring mandate to that candidate has been reduced to minimum. Even though few exceptions emerge, model of half-closed lists with preferential voting, with internal threshold of 20% in general does not give the results due to which half-open lists exist, and that is preferential success of lower positioned candidates on the lists due to the will of the voters, which can be opposite to the will of the political party leadership which generates the order of candidates on the list of candidates. High threshold of 20% in fact 'closes' the list, helps achieve better 'women quota' but at the same time reduces the importance of the preferential voting and will of the voters, so that due to this method parliaments become populated by those that party wants and not by those that people want.

4.9. Question of who has ownership over mandate and half-closed lists

One of the always present questions of reforming election legislation is the question of who has the ownership over mandate. Since the adoption of the Election Law of BiH, through the logic of half-closed lists, and direct elections of representatives of the citizens-voters, ownership of the mandate has been entrusted to the candidates themselves. Mandate, as temporarily given trust or transferred will of the citizens' will to the holder of the mandate is as such a sovereign ownership of the individual, irrespective of the level of individual's deserving or credibility which individual or the party he/she represents possesses. Special dilemma relates to ownership over compensatory mandate, behind which, hypothetically, does not have to stand even one vote won, but only a formal candidature on any ordinary list of candidates.

In theory, such model has for an aim that candidates and voters are enabled for the full understanding of the direct democracy, and to increase the level of political responsibility of holders of mandate in front of the citizens-voters. However, in the system of dominating partitocracy, responsibility of the holder of parliamentary mandates is not sufficiently proportional to the principle of direct election and individual ownership of the mandate so it is too common that we see transfers from one party to another or simply declaration of parliamentarians as 'independent' from the party on whose lists they contested the elections. This practice is very often in direct connection to the particular interests when parliamentary majorities are being formed, governments are being elected or major political or legislative decisions are being made. Manipulation and privatization of the mandate is therefore becomes critical point of election and party system, given the fact that mandate holder in this way diverges the party scene and even the slightest predictability of parliamentary life.

Separate challenge is represented by compensatory lists as well as ownership over compensatory mandate. Given the fact that compensatory mandates are result of the overall number of votes of certain political subject, the principle of direct legitimacy is not applicable as in ordinary mandates, so that party ownership over compensatory mandate would be one of the possibilities for preventing privatization and defection of mandates from one into another political subject. Another challenge is the way in which compensatory lists are being formed, which could be formed in accordance to the individual election results of candidates who do not win ordinary mandates. In this way compensatory lists would be defined after the distribution of ordinary mandates, and not in advance, or parallel with ordinary lists, which would strengthen the legitimacy of the carriers of compensatory mandates and give higher contribution to direct democracy.

4.10. Representation of women and minority groups

In 2018 General elections, 41.6% of women candidates were certified for participation in elections, while only 27.4% won mandates. Imperative norm of Election law on minimum quota of 40% of representation of women on all lists has increased the level of their participation on lists, but due to the model in which man are by the rule first on the list of candidates and preferential model of the voting process percent of elected women is by 14% lower from their representation in the lists. It is public secret that election malversations are most pronounced within party lists and almost by the rule in harm of women candidates.

Also, representation of other minority of marginalized groups such as national minorities, persons with

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disabilities, LGBT population, etc. should be guaranteed by certain minimum quotas.

Equally important question is low representation of women in executive branches of the government, primarily in governments, but also in positions of (city) majors, directors of government agencies, public companies, extra-budgetary funds, and other institutions, where their participation is obviously lower than parliamentary.

Prescribing different rules which would ensure minimum 40% participation of women in executive legislative branches of the government, and at least approximately as much as that in the executive branches will ensure equality and engage unused social capital.

4.11. Question of turnout in the elections-measure of the mandatory voting in elections

Turnout rate in the past 10 election cycles (2000-2018) has ranged between 47% and 57%. If we take into account the fact that the part of invalid voting ballots, depending on the kind of the ballot, or level of elections, ranges from 3% to 10%, we arrive at conclusion that on average only 50 to 52% of the voters uses their voting right in full, and their votes become transferred into mandates. Except few exceptions, parliamentary majorities and election of executive branches of the government in BiH, relies on the simple majorities, and we can conclude that executive power, through the whole mandate period is based on the will of parliamentary majorities whose election legitimacy is between 255 and 35% of the overall electorate. Due to this governments regularly habitate in the zone of continuous 'minority support' by the citizens, which with the help of media, produces tensions and vibrations of silent majority.

One of the options which can be discussed and which would drastically change context of elections is prescription of mandatory voting in elections, which is the practice in few EU states (Belgium, Greece, Luxemburg), as well as number of non-European states (Argentina, Australia, Bolivia, Brazil, Congo, Costa Rica, Ecuador, Egypt, Honduras, Mexico, Paraguay, Peru, Singapore, Thailand, Uruguay, etc.).

Very comparable example to BiH is Belgium. Turnout in the last parliamentary elections in Belgium was 89%. Belgium is concurrently the country which has the longest tradition of mandatory voting since 1982. All citizens above 18 years of age must vote in elections, or they face reasonable fines. However, if the voter does not vote in four election cycles he/she is faced with loss of voting right in the period of ten years.

In the context of Bosnia and Herzegovina, understanding that high turnout rates can significantly correct malversations in the process of voting and voting count, or that statistics of big numbers can overweight stealing of votes, buying of votes, voting by dead, 'Bulgarian trains' and other forms of election engineering, and increase the level of political culture, measure of mandatory voting in elections could crucially trace new level of democratization and different outcomes from political system of Bosnia and Herzegovina.

4.12. Electronic voting and /or vote count

Even though the idea of electronic voting and /or vote count is present already for few years, and even though certain simulations have been performed and legislative initiatives have been initiated for modernization of election process, no major advances in relation to the initial model of voting have occurred. Long deadlines for announcement of the official election results, leave space for post-election malversations, so that technological improvements would eliminate or significantly reduce this anomaly.

It is of great importance to finally take into account quick technological advancement, and through new technological solutions reduce corruption and doubts into regularity of voting, and especially count of votes in voting places. That is why some of the offered models (voter ballots with bar-code, scanners at voting places, overall software-hardware packages (machines for electronic voting and real time voting), video oversight etc.) are options which have to be considered in order to optimize election rules.

5.CONCLUSION

Listed twelve points, even though they are not all conclusive, represent critical framework for reform of election law around which it is possible but also mandatory to achieve political and professional compromise, with an aim of protection of disturbed integrity of election system and ensure fair and just elections, through protection of election principles: general, equal and sacred right to vote, and free and direct elections for all citizens of BiH with the voting right.

This document is result of an effort by alumnus of School for Political Studies of the Council of Europe in Bosnia and Herzegovina. Opinions expressed in this paper do not necessarily reflect opinions of the Council of Europe and the Embassy of Norway in Bosnia and Herzegovina.