
Lijphart and Horowitz in Bosnia and Herzegovina: Institutional Design for Conflict Resolution or Conflict Reproduction?

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Summary

The author analyses the prerequisites and consequences of the implementation of different conflict management mechanisms, consociational and centripetal, in deeply divided societies, by looking at the “Komšić case” in Bosnia and Herzegovina. The case concerns the election of the Croat member to the three-member Presidency of Bosnia and Herzegovina. Owing to the revision of electoral patterns laid down in the “Dayton Constitution” of 1995, prerequisites were created for the election of the Serb member of the Presidency by Serbs, the Bosniak member by Bosniaks, whereas only the Croat member could not be elected by Croats. Consequently, the Croat member of the Presidency was elected by votes of Bosniaks in the 2006 and 2010 presidential elections. This led to a political and constitutional crisis in the country.

Keywords: Bosnia and Herzegovina, Conflict Management, Komšić Case, Lijphart, Horowitz

1. Introduction

According to Annex 4 of the Dayton Peace Accords, Bosnia and Herzegovina (B-H) comprises three constitutive peoples, Bosniaks, Croats and Serbs, as well as members of the country’s national minorities and any nationally undeclared members of the population. Normatively speaking, the Croats are not a national minority. Empirically speaking, they are turning more and more into an ethnic minority and are being treated accordingly. This point of view is based on two major arguments. Firstly, non-majority ethnic groups are generally treated as minorities, regardless of their normative status: “Ethnic minorities are numeric minorities in a country” (Bochsler, 2011: 234). Accordingly, the Croats as well as the Serbs are minorities, and the Bosniaks are “not a majority but a strong plurality” (Horowitz, 2008:

1237-1238). Secondly, the Croats had a subordinate position in the post-war state-building. This was above all visible in the process of making the Dayton constitution in which “the most important players were Bosnian Serbs of Republic of Srpska and the Bosniaks of the Federation (the Croats of the Federation played an increasingly secondary role)” (Petersen, 2011: 256). A thorough analysis of the constitutional order shows that “the interests of the Croats are at some points protected more poorly than those of the Bosniaks and Serbs... The Croats are not excluded but they are in a worse position when compared to the Bosniaks and Serbs. This could be marked as a relative exclusion which intensifies HDZ efforts to keep the structures of their para-state of Herzeg-Bosnia” (Gromes, 2007: 374). Chronologically speaking, this political subordination traces its origins back to the process of concluding the Washington Agreement in 1994. It created the Federation of B-H as the first step of the state-reconstruction process which was marked by at least four special features. Firstly, the Federation was created during the war, more than a year before the Dayton Peace Accord was concluded. Secondly, it meant only a partial reconstruction of the state which included only two out of three constitutive peoples. Thirdly, it predetermined the constitutional order of the country by having established an entity or regional consociation, regardless of the constitutional order of the other part of the country which joined this “quasi-state” as The Republic of Srpska (RS) only after the Dayton Peace Accord was concluded. Fourthly, this solution was foisted upon the Bosniaks and the Croats by actors of international politics, above all by the USA. Enormously strong diplomatic pressure was placed on Croatia to discipline leaders of the Croat community in B-H and to force them to accept the Federation (Reuter, 1997: 159; Chandler, 2000: 43; Bose, 2002: 75). Thanks to the consociational political arrangements established by the Washington and Dayton Peace Accords, the Croats, as the smallest constitutive people and a factual empirical minority, should be represented equally or even over-represented in political institutions and in this way be equal to the other two peoples. But is it really so? There is a pretty broad consensus among the members of the Croat political and intellectual elite both in B-H and in Croatia that the Croat question has come to “a political dead end”. This point of view is supported by many politicians and intellectuals outside the Croat elite who confirm the existence of “a crisis of the ‘Croat question’” which was in their opinion sparked off by the Social Democratic Party of B-H (SDP) with the so-called “Komšić case” (Džolan, 2013: 158, 249). “The Komšić case” did not spark the crisis of the “Croat question” in B-H, but it certainly raised it to one of its highest levels in the post-Dayton period, thereby making constitutional problems of the whole country more visible. This case will hence be in the focus of consideration in this text.

2. Lijphart in Bosnia

There is a broad consensus on the fact that B-H is a deeply ethnically divided post-conflict society which needs politics of accommodation as the main form of interaction between the three co-constitutive ethnic communities, i.e. between their electorally legitimised political elites. “Bosnia’s consociational constitution, embodied in the Dayton Accords of 1995” (Horowitz, 2008: 1221) is based on the politics of accommodation and “Dayton, clearly, is a consociational agreement” (Weller & Wolff, 2006: 4). There is no doubt that B-H was originally constituted as a consociational democracy despite different viewpoints on the patterns of consociational democracy. Belloni sees post-Dayton Bosnia and Herzegovina as “a classical example of consociational settlement” (Belloni, 2004: 336), O’Leary sees “corporate consociationalism”, as well as “complex consociationalism” (O’Leary, 2005: 33-36), whereas Bogaards identifies “a fully fledged system of consociational democracy under international tutelage” (Bogaards, 2006: 123). Petersen sees it as “a bifurcated consociational political system” (Petersen, 2011: 243), Taylor as “a consociational democracy of new wave” (Taylor, 2009: 6), and Gromes as a typical “Konkordanzdemokratie” (Gromes, 2007: 243).¹ The Washington and Dayton Peace Accords institutionalised consociational democracy at the national level in B-H, regulating relations between the Bosniaks, the Serbs and the Croats (national consociation), and at the level of the Federation of B-H, regulating relations between the Bosniaks and the Croats (regional or entity consociation). The national consociation politically organises a three-segmental society in which none of the segments has an absolute majority, whereas the regional consociation organises a two-segmental society in which the Bosniak segment is absolutely numerically superior over the Croat. According to Lijphart’s interpretation, the two-segmental structure of a divided society is extremely unfavourable for the success of a consociational democracy since one of the important prerequisites to its success is the non-existence of a majority segment that can behave imperialistically towards the smaller segment. This insight becomes extremely evident in the “Komšić case”.

The consociational order at the state level comprises: (a) the asymmetric territorial autonomy of the two entities whereby the RS is a unitary entity and the Federation of B-H is an entity composed of ten units; (b) proportional and parity representation of the three ethnic segments in the central legislative body; (c) executive power is composed according to the principle of entity proportionality; (d) all important decisions in the parliament are made by consensus and by qualified or special majorities; (e) the Presidency, as a collective head of state, is formed by the princi-

¹ For classical consociationalism s. Lijphart (2008). For corporate and liberal consociationalism s. O’Leary (2005).

ple of ethnic parity; (f) the power of veto as a means of protection of vital national interests. The consociational order at the level of the Federation of B-H comprises: (a) cantons as federal units; (b) proportional and parity representation of the two ethnic segments in the legislative and the executive branches of government; (c) the power of veto which entitles the Bosniak and the Croat parliamentary groups to protect vital national interests in the House of Peoples of the federal parliament.

A form of corporate consociationalism was initially visible at both levels. It was established and maintained with difficulties because the consensus on constitutional arrangements and the political system among the members of the three constitutive ethnic communities and their political representatives has never been established (Hayden, 2005). In the case of B-H it means that not even the consensus on the state community itself has been reached since the Serb and the Croat communities explicitly connect their minimal consent to the state to its consociational order, whereas the Bosniak community considers this order “subversive” for the survival of the state. The Bosniak community’s political representatives were looking for, and sometimes even finding, political partners in the form of actors of international politics, above all in high representative positions in the international community in B-H, as well as in the US diplomacy and politics, who would help them to first “liberalise” and after that abolish this corporate consociationalism. And thus Horowitz was slowly “coming” to B-H.

3. Horowitz in Bosnia

Elements of Horowitz’s “theory of political incentives”, the “centripetal approach” or “integrative majoritarianism” started to be incorporated into the political system and used in political practice soon after the conclusion of the peace agreement.² This was an expression of a principled disinclination of American constitutional designers towards consociationalism. It was acceptable only as a temporary post-war solution, which practically confirmed that the Dayton Accord was conceived as a “transformative conflict settlement”: the “gradual evolution of the institutional system, rather than large-scale changes, emphasises the transformative effects of the institutional arrangements agreed at Dayton” (Weller & Wolff, 2006: 4). Founders and distinguished advocates of the centripetal approach were involved in re-designing the political system of B-H. Horowitz confirmed in a personal conversation with Austrian political scientist Florian Bieber that he was consulted in drawing up the permanent electoral law of B-H, but only a few of his suggestions were incorporated into law (Bieber, 2008: 169). Bosnian political scientist Suad Arnautović asserts

² For classical centripetalist school s. Horowitz (1993; 2000; 2003; 2008). For a cynical view about the “school” s. Bogaards (2015).

that the Organisation for Security and Co-operation in Europe (OSCE) adopted the new electoral system, applied in 2000, “almost in full with certain modifications”, which was presented at the international conference in Sarajevo in 1998 by a group of experts in which the highest authority for the electoral and constitutional design in divided societies was vested in Benjamin Reilly, a consistent advocate of Horowitz’s approach (Arnautović, 2009: 599).

The consequences of the “arrival” of Horowitz in B-H were visible in several forms. Firstly, the alternative vote system, favoured by the centripetalist school, was used in the direct presidential elections in the RS in 2000, in order to create institutional prerequisites for the promotion of multi-ethnic parties, inter-ethnic accommodation, moderate politics and the election of a more moderate candidate based on the total of the first and second preferences. Milorad Dodik, current president of the RS, was in those days considered a moderate candidate in the eyes of the international community. Institutional designers presumed that Dodik could count on all the first preferences of the small number of Bosniaks and Croats living in the RS, as well as on the second preference of the Serbs and win by the total of the first and second preferences. The attempt failed. A candidate of the Serb Democratic Party (SDS) won the election and all the following presidents of the RS were elected by the majority system. Interestingly, Reilly announced the introduction of the same electoral system “for the tripartite presidency in deeply divided Balkan state of Bosnia and Herzegovina” (Reilly, 2001: 130). He pointed out that “AV has also been recommended – but not, at the time of writing, implemented – as an electoral reform in Europe’s most deeply divided state, Bosnia and Herzegovina” (*ibid.*: 143). And indeed, actors of international politics and experts prepared this model for the 2000 elections, but it did not gain the support of the Croat and Serb sides and was never applied. Secondly, the way the members of the House of Peoples are elected was also changed. The intra-ethnic voting was substituted by inter-ethnic voting, meaning that “everybody voted for everybody”. It practically meant that Bosniak cantonal legislators, who make up the majority of members of the ten cantonal assemblies, would crucially influence the election of Croat members of the House. The Croat Democratic Union (HDZ) as a leading Croat political party, which won the elections by an absolute majority in the Croat majority cantons, declared this procedure unconstitutional and temporarily withdrew from all federal political institutions.

Thirdly, the way of electing the Bosniak member and the Croat member of the Presidency in the Federation was changed. Instead of the two corporate ethnic electoral bodies voting for their representatives, all voters were entitled to vote for all candidates. Regarding the numerical ratio between the Bosniaks and the Croats, it created an institutional framework within which the Bosniaks could elect both members of the Presidency in the Federation, which actually happened in the 2006

and 2010 elections. Fourthly, almost a pure PR for the first chamber of the Parliamentary Assembly was substituted by a compensatory PR in the multimember constituencies, which makes the parliamentarisation of smaller non-ethnic or multi-ethnic parties easier. Thanks to the compensatory mandates, the parties which were not able to win seats in basic constituencies entered the parliament. The election of the Croat member of the B-H Presidency in 2010 will be more thoroughly analysed further on in the paper as an example of the consequences of the application of the limited centripetal strategy.

4. Elections of the Croat Members of the B-H Presidency

The B-H Presidency is a collective head of state whose members are elected in direct elections. The number of members, the way they are elected, as well as the patterns of representation have changed from the first (1990) elections. Seven members were elected in the pre-war elections in 1990 – two Croats, two Muslims (as of 1993: Bosniaks), two Serbs and one representative of the “Others” – in the whole territory of B-H. A common electoral list with the names of all candidates was formed. Each voter had one vote by which he could vote for a candidate of his/her ethnic group. The winners were the candidates who won the majority of votes within their ethnic groups and within the “Others”. Related to the size of the ethnic communities and their electorates, two elected representatives of the Muslims took first and second place, two representatives of the Serbs took fourth and sixth place, two Croats eighth and ninth, whereas one representative of the others ended up third according to the number of gained votes. All of the elected representatives of the three constitutive ethnic communities were candidates of the strongest ethnic parties – of the Muslim Party of Democratic Action (SDA), the SDS and the HDZ – and even the representative of the “Others” belonged to the SDA, who at the time of the election formally declared himself a Yugoslav, but soon declared himself a Muslim. The changes of the composition of the Presidency which were occurring during the war undermined its democratic legitimacy and caused the institution to be declared illegitimate above all in the Serb, but also in the Croat political community. As soon as the first conflicts broke out, the elected Serb representatives left the Presidency. The remaining members of the Presidency co-opted representatives of Serbs without electoral legitimacy into this body by an arbitrary decision. The same scenario happened with the Croat representatives (Komšić, 2006).

The Dayton constitution changed the composition of the Presidency and the way its members are elected. It has become a three-member body comprised of one representative of the Bosniaks, one of the Croats and one of the Serbs who are elected on separate ethnic lists. The three constitutive communities form ethnic corporate electoral bodies within which each voter has only one vote, which he/she

gives to one of the candidates from his/her ethnic list. Members of the Presidency were elected in this way in the first post-war elections in 1996 as well as in the 1998 and 2002 elections. Candidates of the strongest ethnic parties (SDA, HDZ and SDS) overwhelmingly won in all three cycles, with the exception of 1998 when a candidate of the “Sloga”, a coalition of three Serb parties, became the Serb representative. Since the focus of this study is on the election of Croat members of the B-H Presidency, it is worth mentioning that HDZ candidates won by a large margin in all the three cycles of presidential elections: Krešimir Zubak won 88.7% (1996), Ante Jelavić 52.9% (1998) and Dragan Čović 61.5% of the votes cast (2002). Nevertheless, since the 2006 elections things have radically changed. The Social Democratic Party of B-H – formally the leading multi-ethnic party, but actually a predominantly Bosniak party – entered the race for the Croat member of the Presidency. The party put up its vice-president Željko Komšić as a Croat candidate. Komšić is ethnically of Croat origin, but he was publicly profiled as a “political Bosnian” who did not have much in common with the programmes and politics of the leading Croat parties in B-H. Komšić’s candidacy becomes even more indicative if one is aware of the fact that in the 2006 presidential elections the SDP as a de facto Bosniak party did not put up its candidate for the Bosniak member of the Presidency. Komšić won 116,062 votes or 40% of the votes cast, whereas the two candidates of the HDZ and the HDZ 1990 gained together 130,006 votes or 44.3% of the votes cast. Immediately after the declaration of the election’s results, the Croat political parties asserted that Komšić had not been elected by the votes of the Croats and was hence not their legitimate representative in the Presidency.

They provided two pieces of evidence in this matter. Firstly, more than a 100,000 voters, more than in the previous elections, voted for the Croat member of the Presidency, which made them conclude that numerous members of other communities, above all of the Bosniaks, gave their votes to the Croat member. Secondly, an analysis of territorial origin of votes they received showed that Komšić gained very few votes in the areas in which the Croats were in the majority and the most votes in those areas in which the Bosniaks formed a majority of the population. But a true political drama took place in the 2010 presidential elections. Komšić was again put up as a candidate for the Croat member of the Presidency by the SDP and his overwhelming victory over the HDZ candidate deepened and sharpened tensions not only in the Federation, but also in the whole of B-H. In order to understand the nature of the “primary conflict” one should outline profiles of the two main parties, the HDZ and the SDP, whose candidates competed in the race for the Croat member of the B-H Presidency.

The HDZ is a purely ethnic party established in the Croat community in B-H, articulating the community’s interests, and is legitimated by the support of its mem-

bers. It has evolved from a wartime separatist or semi-separatist organisation to a party which formally accepted B-H after the conclusion of the peace agreements, although neither the entire electorate nor the party leadership has ever given up its secessionist goals. According to one study from 1998, as much as 79% of the Croats did not support the survival of B-H, wanting Croat ethnic territories to join Croatia (Gromes, 2007: 209). In the same year, 84% of Croats were “opposed to a united Bosnian state” (Bose, 2002: 3). Political objectives have become particularly radicalised at the moment when the leadership of the RS sharpened its secessionist rhetoric, flirting with the possibility of a referendum on the secession of the RS from B-H, leaving the Croats with a perspective of life in a rump state in which the Bosniaks would make up an absolute majority of the population and they a national minority. The HDZ supported the idea of a third entity, i.e. of a reorganisation of B-H into a confederation of three ethnic states or at least into a federation of three or more ethnic units/territories. In October 2000 it tried – based on a referendum which was held among the Croats in B-H on the general election day in the country, in which 90% out of 77% of voters declared themselves for a Croat entity – to establish the Croat self-government as a third entity. In May 2007 the HDZ tried to re-establish the wartime Croat political community of Herzeg-Bosnia which was declared unconstitutional and disbanded by actors of international politics. The HDZ vehemently rejected any idea of the establishment of a unitary, decentralised, or even a regionalised B-H without ethnic division lines. Shortly, it excluded all the options preferred by the SDP. Furthermore, the HDZ has been, since its beginnings, explicitly anti-Communist and the SDP has been its “natural” political opponent as a successor party of the League of Communists of Bosnia and Herzegovina (SK BiH). The efforts of actors of international politics within and outside B-H were openly directed at weakening and destroying the HDZ. In the pre-war and all the post-war parliamentary and presidential elections in B-H and in the Federation, the HDZ has won an overwhelming majority of votes of the Croats. In the 2010 elections for the parliament of B-H the HDZ won 45.2% of the votes in municipalities with the Croat majority and its splinter party the HDZ 1990 another 22% of the votes cast.

The SDP is a successor party of the Communist party which has never completely given up the ideological heritage and political tradition of Titoism as a Yugoslav version of Communism. It is reputed as the strongest multi-ethnic party, trying to attract voters from different ethnic groups, although it enjoys very little support outside the Bosniak community. In the 2010 elections for the parliament of B-H the SDP won 2.96% of the votes in the RS and 7.3% of the votes in the 23 federal municipalities with the Croat majority. The SDP opposes the Dayton system and supports the abolition of entities and cantons. It sees B-H as a “decentralised state of regions” based on economic, geographical, transport and other criteria. In the whole

post-war period it was a particular favourite of the international community which helped the SDP in all possible ways to grow stronger and to win power (Chandler, 2002: 112; Gromes, 2007: 231-232). A Croat politician as well as many intellectuals call the SDP “a Bosniak-centric party” and “a gravedigger of social democratic ideas” in B-H (Džolan, 2013: 21, 38). After the initial doubts, foreign analysts also concluded that it is “nominally a multi-ethnic, but considerably a Bosniak” party (Caspersen, 2004: 575; Bose, 2002: 8). The SDP could actually be subsumed under Horowitz’s category of an open ethnic party which includes members of other ethnic communities, but elections eventually show whose party it actually is. Ethnic parties with a multi-ethnic façade include members of different ethnic groups in their membership, choose them in their leadership and put them on their list of candidates. “If voters elect a minority member of such an ethnic party to a certain post, it cannot be treated as non-ethnic voting since what counts is the ethnic identification of the party and not that of a single candidate. On the other hand, it happens very rarely that members of the ethnic group to which the candidate of the façade multi-ethnic party nominally belongs, actually vote for him” (Horowitz, 2000: 320-321).

Since it is impossible to determine exactly how individual members of ethnic communities voted, I use indirect evidence that creates “a closed circle of circumstantial evidence”. I use two types of evidence: voting results in towns and municipalities with an absolute Croat and an absolute Bosniak majority.

Table 1 shows that the SDP candidate did not win in any of the 23 municipalities with an absolute Croat majority. A bigger ethnic homogeneity, i.e. a bigger share of Croats in the electorate meant more votes for the HDZ candidates and fewer votes for the SDP candidate. Typical examples of ethnically most homogeneous Croat municipalities are in West Herzegovina. And vice versa: if a municipality is more heterogeneous, i.e. if the share of Croats in the electorate is smaller, the Croat candidates win less and the SDP candidate slightly more votes, as in some municipalities in Central and North Bosnia. These differences are not to be interpreted as a confirmation of the stereotypes about the political divisions between the Bosnian and Herzegovinian Croats. The HDZ candidates won and the SDP candidate lost in all municipalities that have an absolute Croat majority. The differences in voting primarily arise from the differences in the share of Croats in the electorate of these municipalities, and not from the political differences between the Herzegovinian and Bosnian Croats. Moreover, Caspersen found that ethnic voting in B-H was often more evident in more ethnically heterogeneous municipalities than in more ethnically homogeneous municipalities (2004: 577-578). The election results in Mostar confirm this general finding. Mostar is a physically and politically divided town: Croats make up an absolute majority in West Mostar and Bosniaks in East Mostar. The Croat candidate for a member of the Presidency in East Mostar

Table 1. Election for the Croat Member of the Presidency of B-H in 2010 in the Municipalities with Croat Majority¹

Municipalities	Borjana Krišto (HDZ)		Martin Raguž (HDZ 1990/HSP)		Željko Komšić (SDP)		Others ²	
	Votes	%	Votes	%	Votes	%	Votes	%
Čapljina	6,431	55.9	2,357	20.5	968	8.4	1,756	15.2
Čitluk	3,238	61.0	1,842	34.8	97	1.8	124	2.4
Dobretići	277	45.1	311	50.7	20	3.3	6	0.9
Domaljevac/Šamac ³	991	60.9	425	26.1	132	8.1	78	4.9
Grude	3,162	56.7	1,304	23.4	128	2.3	987	17.6
Kiseljak	3,322	37.6	1,028	11.6	1,649	18.7	2,841	32.1
Kreševo	1,167	46.7	386	15.4	268	10.7	679	27.2
Kupres ³	844	56.9	472	31.8	78	5.3	89	6.0
Livno	6,896	51.5	1,964	14.7	1,150	8.6	3,378	25.2
Ljubuški	5,002	51.7	3,352	34.6	210	2.2	1,116	11.5
Neum	756	54.2	532	38.2	62	4.4	44	3.2
Novi Travnik	2,463	23.7	1,141	11.0	2,425	23.3	4,377	42.0
Odžak ³	1,816	27.4	1,177	17.8	1,745	26.3	1,885	28.5
Orašje ³	4,149	51.9	1,983	24.8	918	11.5	944	11.8
Posušje	3,352	51.7	2,631	40.5	99	1.5	407	6.3
Prozor/Rama	1,853	29.6	2,544	40.6	559	8.9	1,314	20.9
Ravno ³	237	34.0	428	61.3	10	1.4	23	3.3
Stolac ³	2,960	43.9	1,010	15.0	988	14.7	1,782	26.4
Široki Brijeg	8,621	66.2	2,151	16.5	105	0.8	2,150	16.5
Tomislavgrad	3,546	47.2	2,651	35.3	518	6.9	801	10.6
Usora	404	23.8	747	44.1	263	15.5	280	16.6
Vitez	3,569	29.2	2,249	18.4	2,180	17.8	4,215	34.6
Žepče	3,847	33.7	1,263	11.1	1,842	16.1	4,466	39.1
Total	68,903	45.0	33,948	22.2	16,414	10.7	33,732	22.0

¹ Results of three candidates with most votes.

² All other candidates.

³ Municipalities divided by Federation and RS after 1995.

Source: <http://www.izbori.ba/Finalni2010/Finalni/PredsjednistvoBiH/Opstine.aspx>. Calculations by the author.

Table 2. Election for the Croat and Bosniak Members of the Presidency of B-H in 2010 in Mostar

Candidate	East Mostar ¹		West Mostar ¹		Mostar ¹	
	Votes	%	Votes	%	Votes	%
Borjana Krišto (HDZ)	476	2.5	11,848	45.7	12,367	25.9
Željko Komšić (SDP)	6,778	35.8	3,342	12.9	10,627	22.2
Martin Raguž (HDZ 1990/HSP)	274	1.4	6,861	26.5	7,170	15.0
Bakir Izetbegović (SDA)	4,825	25.5	569	2.2	5,497	11.5
Fahrudin Radončić (SBB)	3,109	16.4	634	2.4	3,843	8.0
Haris Silajdžić (SBiH)	2,513	13.3	431	1.7	3,011	6.3
Others	964	5.1	2,220	8.6	5,273	11.0
Total	18,939	100.0	25,905	100.0	47,788	100.0

¹ East Mostar: constituencies 1, 2, 3 with absolute majority of Bosniaks; West Mostar: constituencies 4, 5, 6 with absolute majority of Croats; Mostar: constituencies 1-6 and city district Mostar with very small electorate.

Source: Central Electoral Commission of B-H. <http://www.izbori.ba/Finalni2010/Finalni/PredsjednistvoBiH/Opstine.aspx>. Calculations by the author.

did not only defeat his Croat counter-candidates, but he also obtained more votes than the candidate for the Bosniak member of the Presidency. The HDZ candidate overwhelmingly won in West Mostar leaving her SDP opponent with only 12.9% of the votes cast.

Furthermore, the SDP candidate for the Croat member of the Presidency won in 35 out of 45 municipalities with the Bosniak majority, obtaining more votes than all the Bosniak candidates. Komšić gained on average 36.1% of the votes in these 45 municipalities, whereas the best positioned Bosniak candidate Bakir Izetbegović (SDA) obtained only 21.3% of the votes and won only in seven municipalities. The municipality of Kalesija is often quoted as an oddity. There were altogether 35 Croats in the electoral register. The HDZ and HDZ 1990 candidates won 33 votes, whereas Komšić won 7,033 votes, more than the two leading Bosniak candidates combined (Vukoja, 2011: 87). Komšić won 41.2% of the votes in the four biggest Bosnian cities in which the Bosniaks make up an absolute majority – Sarajevo, Zenica, Tuzla and Bihać – a little bit less than the three first-placed Bosniak candidates

Table 3. Election for the Croat Member of the Presidency of B-H in 2010 in the Municipalities and Cities with Croat and Bosniak Majority (only three candidates with most votes)

Candidate	Municipalities and cities with Croat majority ¹		Municipalities and cities with Bosniak majority ²		Total	
	Votes	%	Votes	%	Votes	%
	178,902	17.8	824,435	82.2	1,003,337	100.0
Željko Komšić (SDP)	19,756	11.0	311,832	37.8	331,588	33.0
Borjana Krišto (HDZ)	80,751	45.1	23,927	2.9	104,678	10.4
Martin Raguž (HDZ 1990)	40,809	22.8	16,577	2.0	57,386	5.7

¹ Aggregated data of 23 municipalities with the Croat majority and West Mostar.

² Aggregated data of 45 municipalities, 4 cities with the Bosniak majority and East Mostar.

Source: Central Electoral Commission of B-H. <http://www.izbori.ba/Finalni2010/Finalni/PredsjednistvoBiH/Opstine.aspx>. Calculations by the author.

who won together 44.5% of the votes. Finally, it is visible from the aggregated data in table 3 that Komšić was the third-placed candidate for the Croat member of the Presidency of B-H in places with a Croat majority, and in most cases the first-placed candidate for the same post in places with a Bosniak majority.

When the election results were made public, the institution of the Presidency was pushed into the centre of the political crisis. Members of the three ethnicities and their political representatives reacted very differently to the results of the presidential elections. For the Croats, the way of electing the Croat member was the key evidence of their exposure to majoritarianism and inequality both in the Federation and in B-H. Conflicts in the formation of the legislative and the executive powers in the state and in the Federation after elections, in which the HDZ occasionally used the method of obstruction and blockade, were to a large degree a reflection of the presidential elections. The rhetoric of the leading Croat parties in B-H was radicalised, the distrust of most Croats in the future of the Federation and the whole state was deepened, and the option according to which “for many Croats, the solution is to exit” (Petersen, 2011: 245) was intensified. The Bosniaks did not only elect the two members of the Presidency, but they also got two representatives in this body in regard to the political conviction of Komšić and of the SDP. On the other hand, the Croats neither elected nor had their member in that body. For the Serbs, who were not directly impacted by the elections, this was evidence of the unitaristic

pretensions of the Bosniaks and an additional reason to engage in a strong defence of the Dayton status of the RS or to opt for a secession. While commenting on the “Komšić case”, Milorad Dodik, the most influential Serb politician in B-H, said: “We observe the thing that is going on right now in the Federation as a possible message to us about the way the Bosniaks are getting even with the Croats who are marginalized, outvoted and disrespected. They are sending a clear message to us: ‘it is your turn as soon as we clean this up and get even with the Croats...’ But, of course, our turn will never come” (Dodik, 2011: 164). The position of the Croats in the Federation was understood as an indicator of the potential status of Serbs if the RS was to be abolished (Rajčević, 2012: 164). The Bosniaks basically ignored this problem. They were ready to problematise the institution of the Presidency above all from the perspective of the case *Sejdić & Finci vs. BiH*, seeing in this a chance to undermine the Dayton constitution and to shake the foundations of “ethnocracy”.³ Of course, not everybody estimated the “Komšić case” negatively. Political and theoretical supporters of the reconstruction of B-H into a pure liberal state exulted over everything that had happened, calling the “Komšić case” the most positive “subversion” of the Dayton system since its establishment (Štiks, 2011).

5. Conclusion: What Next?

Lijphart’s classical consociational school excludes presidential and semi-presidential systems with a direct election of the state president from the institutional design of deeply divided societies and supports a pure parliamentary system and the election of the state president in the parliament. This model is rejected by the political leadership of the RS as they consider it a form of disempowerment of the ethnic entities in favour of central state institutions. They have nothing against the idea that the Croat and the Bosniak members are elected in the central parliament, but insist on a direct election of the Serb member in the RS. This is in the first place not accepted by the Bosniak side because it is seen as an additional increase in the asymmetry between the two entities and a further disintegration of the state. Moreover, the three-member Presidency does not solve the problem of the ECHR verdict. The centripetalist school does not exclude non-parliamentary and parlia-

³ B-H was sued to the European Court of Human Rights (ECHR) by Jakob Finci, the president of the Jewish community, and Dervo Sejdić, the president of Roma organisation, for discriminating against members of national minorities through legal documents by guaranteeing them only the active, but not the passive right to vote in elections for Presidency of B-H and for House of Peoples of the Parliamentary Assembly. On 22nd December 2009 the ECHR reached a verdict by majority of votes, saying that B-H breaches the European Convention of Human Rights which forbids any type of discrimination. It was concluded that the rules for the elections of these two institutions were discriminatory, and the ECHR ordered B-H to abolish these rules and practices. See <http://www.wchr.coe.int>

mentary systems with a directly elected state president in divided societies. The famous “Nigerian case” is promoted as a prototypical pattern of electing the state president in which the winning candidate did not only have to obtain the “plurality of votes cast in presidential elections, but also at least 25 percent of the votes cast in no fewer than two-thirds of states” (Horowitz, 2008: 1223). Besides the systems of preferential voting in parliamentary elections, its advocates also support the option of a “directly elected president chosen either by a national election on the basis of the alternative vote, or through a supermajority requirement where the winning candidate must win, not merely a natural majority, but surmount a threshold in all regions of the country” (Reilly, 2001: 157). This means that a candidate who would represent the Croats in the Presidency should get a legally prescribed percentage of votes in federal units with a Croat majority. Swiss political scientist Daniel Bochsler’s patterns are close to the centripetalist school. He suggests that a five-member Presidency be elected by the system of a single non-transferable vote (SNTV): each voter would have one vote which he/she would give to one candidate. Candidates with the most votes would be elected. The fourth and the fifth seat would be open to inter-ethnic electoral competition. Bosniak and Croat parties would in this way be motivated to address voters outside of their groups in order to win these mandates. But voters of more numerous ethnic groups can vote for a candidate of a minority group, so there is no guarantee that the Croat member of the Presidency would not be elected by others. This would not happen only if the Croat ethnic bloc fanatically closed its ranks around one candidate and if the “quasi-proportional nature” of the SNTV actually started to function (Bochsler, 2011: 75-76). Bochsler also considers the possibility to elect the members of the Presidency in the whole country by the system of a single transferable vote (STV) and by the geometric mean. Candidates with the highest geometric mean of the votes of the majority and of the minority would be chosen according to the pattern $GS = \sqrt{(gv \times gm)}$. This would enable the election of candidates who are popular both with the majority and with the minority, i.e. “who are supported by two different sovereigns” (*ibid.*: 77-78). The geometric mean rule could also be applied to the election of the three or five members of the Presidency, whereby each voter would have two or three votes. Nevertheless, the suggestion again overlooks the fact that the Federation is not an ethnically homogenous entity, which means that the geometric mean rule would practically ensure victory for the candidate supported by the majority of the Serbs and Bosniaks in the two entities. Since B-H consists of entities of unequal size, it would be suitable to use the weighted geometric mean rule based on the cube root: $GSw = \sqrt[3]{(VFed^2 \times VRS)}$. This should prevent the situation where votes from the RS would have a greater influence on the election of a candidate than those from the Federation (*ibid.*: 79-80). Bochsler believes that the rules of the pure and modified geometric mean would encourage political parties

and candidates to fight for the votes from more ethnic groups, contributing in this way to the ethnic accommodation.

Political and professional circles offer a wide range of different suggestions on this issue. Some think that B-H should have one president of the state who is elected in the whole state, providing that a member of one people cannot be the state president in the following three mandates. This would create space for candidates from the other two constitutive peoples and “Others” to “have their turn”. This suggestion is supported by the Bosniaks who want to “normalise” B-H in this way, referring to the basically non-comparable practice of the neighbouring countries which elect their state presidents directly, but which are not deeply divided ethnic societies. The others stand for a direct election of all members of the Presidency. They see the Federation divided into two constituencies – one with a Croat and one with a Bosniak majority – while the RS would form one constituency. All eligible citizens would have both the active and the passive right to vote. This would formally meet the requirements of the ECHR verdict, although it is clear that the ethnic structure of the constituencies predetermines the election of the three members from the three constitutive peoples. This pattern was advocated by the Croat side, it was not opposed by the Serb elite, but it was rejected by Bosniak parties. The third view argues that the members of the Presidency – one president and two vice-presidents – should be elected in the Parliamentary Assembly of B-H. This solution was also advocated by the Venice Commission within the evaluation of the “April Package”, one of the many failed draft constitutional reforms from 2006. The solution suggests a more emphasised parliamentarianisation of the system by reducing authority of the indirectly elected head of state. Candidates would be formally nominated, but actually elected, by parliamentary groups in the House of Peoples among the members of the Parliamentary Assembly. The provision saying that the president and the vice-presidents must not belong to the same people is not interpreted as discriminatory toward the others since it is not specified which peoples are meant. The fourth advocate a US-like electoral college: the RS would be one electoral unit, whereas the electoral units in the Federation would be cantons or, alternatively, districts for parliamentary elections. The two candidates with the most victories in the cantons/electoral districts would be elected in the Federation. If the candidates have an equal number of victories, the candidate with more votes would win the election. Is there a way out of this Rashomon-like view of solving Bosnia and Herzegovina’s problems?

The “Komšić case”, as well as political events before and after it, shows that B-H is, two decades after the Dayton Accord, still a deeply ethnically divided society with strong collective ethnic identities which cannot be deconstructed by violence or pressure. Hence, both foreign and domestic re-designers of the corporate consociationalism of the Dayton provenance must face this fact. This seems a better solution than to reopen violent conflicts, to divide the country by the secession

of one of its parts (RS) or to impose the control of one community over the other (in the Federation) which would lead to new conflicts or the dissolution of the state. There is an open discussion in the RS about two options in the case of secession from B-H: the first one implies unification with Serbia, and the second one the establishment of the RS as a sovereign state according to the Greek-Cypriot pattern (Rajčević, 2012: 72). The corporate consociationalism in B-H is based on competitive elections. It enabled the creation of a multi-party system and it did not prevent the development of a political opposition within the three main ethnic communities, and thereby the development of a political opposition to the coalition government both at the level of entities and at the state level. It also prevented the “war of camps”, giving each of them the opportunity to mind their own business in accordance with the proverb “good fences make good neighbours”. “Liberal internationalists” should hence be more restrained in criticising consociational arrangements, which for now hold together a deeply divided country, and they should be even more thoughtful in their re-designing.

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