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The Electoral System of Bosnia and Herzegovina: A Short Review of Political Matter and/or Technical Perplexion

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The Dayton Proximity Talks were held in the Wright - Patterson Air Force Base in Ohio, USA from 1-21 November 1995. They resulted with the General Framework Agreement for Peace in Bosnia and Herzegovina (e.g. Dayton Peace Accords, Dayton Peace Agreement) that was signed by the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia and witnessed by USA, UK, Germany, France, Russia and an EU special negotiator. The Dayton Peace Accords ended the conflict in Bosnia and Herzegovina and shaped a basis for peace. But, the most important issues for democratic functioning of the state have not become conciliated with international legal standards; such as elections and the electoral system. The Dayton Peace Accords arose from compromises and different trade-offs which account for many open questions regarding the Bosnian electoral system.

Key words: electoral system, Bosnia and Herzegovina, political and technical issues, elections, Dayton Peace Agreement

1. Introduction

From a scientific view, elections are exceptionally interesting, since they constitute a very important decision that, once brought, in next several years, depending on a concrete Electoral Law in an individual country, determines the repository of political power. In that act of electoral commitment, the whole national history, certain regions, political traditions of family

and reference groups, the actual political situation, effects of concrete life conditions, political socialisation of an individual, activity of electoral campaign so as interested political parties and candidates, the role of mass media and many more unpredictable effects that compress in, at the first look, simple decision of choosing a certain list, party or candidate are reflected (Šiber, 2003: 88-103).

An electoral system is a “unity of electoral principles and mechanisms of their achievement which is conducted as a part of the overall political and constitutional system of a certain state” (Đorđević, 1975: 697). For the purposes of this analysis, we will mention only the differences between the proportional and the plurality electoral system and their influence on political participation. Proportional electoral systems are considerably more responsive to different political programmes; they enable representation of smaller political parties in representative bodies, which means taking a variety of interests of the electorate into consideration. Majority systems aspire to decrease the number of political parties, especially in the plurality systems. From the perspective of voters’ motivation, proportional systems are considered more motivating, because they make it possible for even some minor interests to be represented, based on a certain number of votes (Šiber, 2004: 3-27). In the framework of proportional election systems, the meaning of the electoral threshold is also worth noting, i.e. the percentage of votes that is required for the participation in the distribution of mandates. Logically, a high electoral threshold is explicitly discouraging, while a low one gives the smaller parties and their potential voters the chance to participate in sharing the “electoral cake” (Šiber, 2004: 8). Generally speaking, all institutions, as well as electoral systems, are designed and governed by laws and regulations, which are drafted by national or international actors. Nevertheless, this design can derive from different origins of social and political change, being driven by accident, evolution or intention (Goodin, 1998: 24-30). Finally, previous experiences acknowledge that effects of electoral systems are contingently conditioned and that they can be apprehended only by a historical-empirical analytic approach (Kasapović, 2002: 3-19).

2. Historic Background

Not to be prejudiced and spacious, this is how authors Belloni and Deane describe ending war in Bosnia and Herzegovina: the Bosnian War lasted from April 1992 until November 1995, when a peace agreement was reached at Dayton, Ohio, after three weeks of intense negotiations conducted under the aegis of the United States. The end of the war came about as a result of three interrelated episodes. First, the North Atlantic Treaty Organization (NATO) conducted the Operation “Deliberate Force” in September 1995, effectively undermining the Bos-

nian Serb war machine. Second, ethnic cleansing was practically completed. With most (but not all) Bosnians living in ethnically defined areas, nationalists had achieved their goal of securing control of territory by destroying the ethnic mix characterising Bosnia prior to the outbreak of the conflict. Third, Serbia and Croatia were ready to terminate their support for their ethnic cousins in Bosnia. Serbia was desperate to obtain the lifting of the United Nations sanctions imposed earlier on. Croatia wanted to regain control of its eastern region of Slavonia taken by the Serbs in 1991, and gain international legitimacy for its newly acquired independent state. Both Serbian and Croatian leaders negotiated and signed the peace at Dayton on behalf of their Bosnian counterparts. A massive international peace operation was deployed in early 1996 to help the parties implement the agreement. Implementing the Dayton Peace Agreement has been very difficult, and no clear exit strategy has yet emerged for international organisations and humanitarian agencies in the country. The primary reason for this is that the Dayton Peace Agreement was negotiated with the same ethnic leaders likely to boycott its full implementation (Belloni and Deane, 2005: 219-243).

Elections played a particularly important role in attempts to manage ethnic tensions in plural societies such as Bosnia and Herzegovina. Debates about electoral systems have traditionally revolved around the desirability of the major ideal types. Majoritarian electoral systems are designed to promote accountable single-party government, by awarding the greatest representation to the two leading parties with the most votes. Proportional electoral systems aim to generate inclusive and consensual power-sharing, by producing parliaments that reflect the vote shares of multiple parties. During the 1990s debates turned increasingly towards the pros and cons of “combined” (or “mixed”) electoral systems, incorporating features of each of the major ideal types (Søberg Shugart and Wattenberg, 2001: chap 5).

The Law for Protection of the Rights of National Minorities was adopted in 2003; however, its implementation still has not commenced. According to the Helsinki Committee for Human Rights in Bosnia and Herzegovina, the economic and social rights of the members of minority

groups are more frequently violated than those of constituent peoples. Procedural obstacles made it impossible for national minorities to elect their representatives to local assemblies in 2004 local elections; subsequently this group remains deprived of opportunities to influence political developments (Bieber, 2006: 46). Minorities and ethnic groups, unless geographically concentrated, tend to be better represented in proportional systems, while majoritarian systems tend to permanently exclude dispersed minorities from representation (Harris and Reilly, 1998: 193-199).

The formal dominance of religious institutions has decreased in recent years; for example, the emphasis of the Serbian Orthodox Church in the Republic of Srpska, mentioned in the constitution of this entity, has promoted the exclusion of Croats and Bosniaks in the past. Constitutional amendments and changes to legislation eliminated this form of discrimination in 2002. Informally, however, religious institutions continue to significantly influence Bosnian politics. Religious leaders' extensive involvement in politics was exposed during the pre-election campaign for general elections in 2002 and municipal elections in 2004. In both cases, the Helsinki Committee for Human Rights in Bosnia and Herzegovina reported on the significant influence of religious leaders on election outcomes, exercised by directing the electorate toward three national parties: *Srpska demokratska stranka* (Serbian Democratic Party), *Stranka demokratske akcije* (Democratic Action Party) and *Hrvatska demokratska zajednica* (Croatian Democratic Union). The interference of religion in politics produces a twofold effect: the ethnic religious elites have grown into influential interest groups in Bosnia and Herzegovina's political discourse, often impacting policy outcomes; and the fragmentation of the political agenda along ethnic nationalist lines, and subsequently the process of ethnic homogenisation are being perpetuated (Bieber, 2006: 46).

There is a democratic system in the sense that there are democratic elections, but the result of the elections is that they give the advantage to one ethnic group over another. This is only a continuation of the war with other means (Chandler, 2000: 111-112). Due to the ethnic electorates of the parties, they do not compete with each other, but with the opposition parties, and all three nationalist parties possess strong authoritarian and paternalistic instincts toward their respective constituency (Bieber, 2006: 57). Framing elections around the promise of European Union accession, however, will be a

challenge given the proven power of ethnic fear and zero-sum ethnic polarisation in Bosnia and Herzegovina. The country still faces significant challenges, but the next ten years are likely to be much more progressive and dynamic for the country than the past decade because of the European Union accession process. With European Union membership possible on the twentieth anniversary of Dayton, there may eventually be something to celebrate on November 21 for all of Bosnia and Herzegovina's citizens (Ó Tuathail, O'Loughlin and Djipa, 2006: 61-75).

3. Electoral Legislation in Bosnia and Herzegovina¹

The grounds for elections and the electoral system of Bosnia and Herzegovina have been arranged by the Dayton Peace Accords for Bosnia and Herzegovina and the Electoral Law of Bosnia and Herzegovina.

a) Dayton Peace Accords for Bosnia and Herzegovina – about elections and electoral system

Considering the meaning of the Dayton Peace Accords, much attention has been dedicated to the regulation of the electoral system in Bosnia and Herzegovina. But, many compromises influencing the electoral system have been made. These compromises are based on the combination of two principles: the constituent² people's principle and the national sovereignty principle. International democratic standards related to electoral systems (universal suffrage, right to stand for elections, equal right to vote, direct ballot, secret ballot, etc.) have been incorporated in the Dayton Peace Accords. Initially, the Dayton Peace Accords specified elections pursuit in shorter periods of time. This was later prolonged until 2002; even it was anticipated to last only for elections that were held in 1996 and 1998. The Dayton Peace Accords address elections and the electoral system of Bosnia and Herzegovina in several instances.

¹ On constitutional foundations related to elections see more in: Dmičić, M. (2003): *Ustavnopravni osnov funkcionisanja Bosne i Hercegovine na osnovu slobodnih i demokratskih izbora*, http://www.soros.org.ba/docs_pravo/ustav_txt/dr_mile_dmicic.doc

² Various authors differentiate between the terms constituent and constitutive. On this difference see: Sahadžić, M. (2009): *Priroda političkog sistema u Bosni i Hercegovini*, in: *Uvod u politički sistem Bosne i Hercegovine*, Sarajevo: Sarajevski otvoreni centar and Fondacija Konrad Adenauer, 37-39

Annex III of Dayton Peace Accords (Elections in Bosnia and Herzegovina) is directly related to the electoral system and elections in Bosnia and Herzegovina. The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republic of Srpska have agreed to establish elections in accordance with the relevant documents of the Organization for Security and Co-operation in Europe (OSCE). Annex III of Dayton Peace Accords explicitly and specifically assesses requirements to promote free, fair, and democratic elections and to lay the foundations for a representative government and to ensure the progressive achievement of democratic goals in Bosnia and Herzegovina in Article 1 (1) of Annex III of Dayton Peace Accords³. These are also premises for the establishment of an effective electoral system. But, the electoral system that was created by this Annex was merely temporary. It was supposed to last for a short time after the war in Bosnia and Herzegovina with the support of OSCE, yet it was prolonged until 2002.

Annex IV of Dayton Peace Accords (Constitution of Bosnia and Herzegovina) dedicated much attention to elections and the electoral system Bosnia and Herzegovina. Article I (2) states that Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections. In Article II (1) related to human rights and fundamental freedoms it is stated that Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. In Article II (2) related to international standards it is stated that the rights and freedoms set forth in the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law. In particular, a separate point has been made on rights related directly or indirectly to elections in Article II (3)⁴. Also, in Article II (7) related to international agreements it is stated that: Bosnia

3 The Parties shall ensure that conditions exist for the organisation of free and fair elections, in particular a politically neutral environment; shall protect and enforce the right to vote in secret without fear or intimidation; shall ensure freedom of expression and of the press; shall allow and encourage freedom of association (including of political parties); and shall ensure freedom of movement (Annex III, Article 1(1), Dayton Peace Accords).

4 The rights to liberty and security of person, freedom of thought, conscience, and religion, freedom of expression, freedom of peaceful assembly and freedom of association with others etc (Annex III, Article II (3), Dayton Peace Accords).

and Herzegovina shall remain or become party to the international agreements listed in Annex I to this Constitution.⁵ By including a large number of international documents on human rights and fundamental freedoms in Constitution of Bosnia and Herzegovina, it can be noted that Bosnia and Herzegovina accepted the international standards related to electoral legislation.

Annex VI of Dayton Peace Accords (Agreement on Human Rights) is considerably dedicated to elections and the electoral system in Bosnia and Herzegovina. Besides human rights and fundamental freedoms mentioned in Annex I of Constitution of Bosnia and Herzegovina (Annex IV of Dayton Peace Accords), Annex VI is also related to the protection of human rights and fundamental freedoms which affects elections and the electoral system legislation.

b) The Electoral Law of Bosnia and Herzegovina – about Elections and Electoral Legislation

On the other hand, we have the Electoral Law of Bosnia and Herzegovina⁶ that was adopted by the Parliamentary Assembly of Bosnia and Herzegovina at the House of Representatives session held on August 21, 2001 and the House of Peoples session held on August 23, 2001. By adopting the Electoral Law of Bosnia and Herzegovina, all criteria and requirements needed have been met to ensure the holding future elections according to international and domestic legal regulations. But, the adoption of this law was accompanied by different compromises and compensations of political parties which participated in the work of the Parliamentary Assembly of Bosnia and Herzegovina. It should be mentioned that the adoption of this law was followed with credentials that the passing of this legislature is a prerequisite for admission to Council of Europe. In the end, the Electoral Law of Bosnia and Herzegovina did not offer significant changes to the temporary electoral system based on

5 Annex I of Constitution of Bosnia and Herzegovina correspond to fifteen human rights agreements to be applied in Bosnia and Herzegovina where some are directly or indirectly related to elections and electoral systems: 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto, 1965 International Convention on the Elimination of All Forms of Racial Discrimination, 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto, 1966 Covenant on Economic, Social and Cultural Rights, 1994 Framework Convention for the Protection of National Minorities, etc.

6 see: *Official Gazette of Bosnia and Herzegovina*, 23/01, 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08 and 37/08.

the Dayton Peace Accords. But, in order to see the differences, we have to give an overview of the temporary electoral system in Bosnia and Herzegovina.

4. The Temporary Electoral System of Bosnia and Herzegovina

The temporary electoral system of Bosnia and Herzegovina was based on Annex III of Dayton Peace Accords (Elections in Bosnia and Herzegovina). In compliance with this Annex, Article II (1) defines the role of the OSCE in elections. This role requested the parties of agreement to adopt and put in place an elections programme for Bosnia and Herzegovina, to supervise the preparation and conduction of elections for legislative and executive government bodies in Bosnia and Herzegovina (state, entity, cantonal and municipal level). Article V of Dayton Peace Accords defined the agreement of Parties to create a permanent Election Commission with responsibilities to conduct future elections in Bosnia and Herzegovina. According to Article II (3), the OSCE was to establish a Provisional Election Commission in Bosnia and Herzegovina.

In accordance with Article III (1) the Provisional Election Commission adopted a large number of rules and regulations related to the registration of political parties and independent candidates; the eligibility of candidates and voters; the role of domestic and international election observers; the ensuring of an open and fair electoral campaign; as well as the establishment, publication and certification of final election results. Those rules and regulations had priority over domestic rules and regulations. The Provisional Election Commission had wide responsibilities.⁷ According to Article III (3), the Provisional Election Commission consisted of the Head of the OSCE Mission, the High Representative or his or her designee, representatives of the Parties, and other persons as the Head of the OSCE Mission, in consultation with the Parties, may have decided. The Head of the OSCE Mission was also Chairman of the Commission. In the event of disputes within the Commission, the decision of the Chairman was final.

⁷ Those responsibilities can be described as supervision of the electoral process in order to obtain free and fair elections, determine provisions for voter registration, ensure compliance with the electoral rules and regulations established pursuant Dayton Peace Accords, accredit observers from international organisations and foreign and domestic non-governmental organisations, etc. (Annex III, Article III(2), Dayton Peace Accords).

According to Annex III of the Dayton Peace Accords, the Provisional Election Commission adopted the Electoral Rules and Regulations for the Elections on Local and Higher Level in Bosnia and Herzegovina⁸ in 1996 and the Electoral Rules and Regulations for Municipal Elections in Bosnia and Herzegovina⁹ in 1997. Those rules regulated the process of registration and voting of displaced persons and refugees. It has to be mentioned that the Provisional Election Commission also adopted the Electoral Rules and Regulations¹⁰ in 2000 that were used to hold elections in Bosnia and Herzegovina until the Electoral Law of Bosnia and Herzegovina was introduced.

General electoral principles have been settled in the Attachment to Annex III on Elections by the Document of the Second Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe, Copenhagen, 1990 (called the Copenhagen regulations) in Paragraph 7.¹¹

Annex III of Dayton Peace Accords and Rules and regulations of the Provisional Election Commission have been applied to the elections for: the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, the Presidency of Bosnia and Herzegovina, the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina, the National Assembly of the Republic of Srpska¹²,

⁸ see: *Official Gazette of Bosnia and Herzegovina*, 22/96, 25/96, 29/96, 21/96

⁹ see: *Official Gazette of Bosnia and Herzegovina*, 10/97, 15/97

¹⁰ see: *Official Gazette of Bosnia and Herzegovina*, 1/00

¹¹ By Copenhagen regulations elections are free held at reasonable intervals, as established by law; regulations permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote; guarantee universal and equal suffrage to adult citizens; ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public; respect the right of citizens to seek political or public office, individually or as representatives of political parties or organisations, without discrimination; full freedom of political parties or other political organisation; ensure conducting political campaigning in a fair and free atmosphere; ensure equal access to the media on a non – discriminatory basis for all political groupings and individuals wishing to participate in the electoral process; ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.

¹² Additional intervening but independent house named Council of Peoples of the Republic of Srpska has been established by High Representative for Bosnia and Herzegovina

the President and Vice-president of Republic of Srpska¹³, as well as cantonal and municipal assemblies (Pobrić, 2000: 201). The rules and regulations related to parliamentary elections in Bosnia and Herzegovina introduced a system of proportional representation, the so-called D'Hondt system. However, an exception to the rule of proportional representation was introduced as well. This was in a situation where the formula for proportional representation could not be applied. In that case, the Chairman of the Provisional Election Commission had to determine which kind of formula was to be applied and then forwarded his conclusion to the Commission for adoption (Pobrić, 2000: 203). The supervision of the electoral process has been done through submitting a Complaint or Appeal to the Election Appeals Sub-commission that was formed in 1996 by the Provisional Election Commission. Its task was interpreting, strengthening and improving of the above mentioned Rules and Regulations.

"The first post-war elections were held on 14 September 1996, including presidential and parliamentary elections on national level, as well as entity level. The first local elections were postponed a year" (Trnka, 2006: 200). In the next two years, the implementation of Dayton Peace Accords has seen some progress. However, the international community found that the conditions for permanent electorate system condition were not yet met, so that the next elections (against Dayton Peace Accords provisions) were held on 12 and 13 September 1998, according to Rules and Regulations of Provisional Election Commission, respectively organized by OSCE. This routine was continued until presidential and parliamentary elections held in 2002 (Trnka, 2000: 200). The first round of post-war elections (from 1996 to 1998) helped to consolidate ethnic exclusivism with little impact on the promotion of peace building and democratization. As the local elections of 1996 demonstrated, in conditions of group insecurity and mutual distrust, with no incentive for politicians to appeal beyond their own ethnic constituencies, elections predictably turned into an ethnic census. By granting constitutional guarantees to protect the safety and survival of all three national groups and ensure their representation at all levels of governance, the DPA [Dayton Peace Accords] played into the

intervention in 2000.

13 By later amendments of Constitution of Republic of Srpska this has changed to President and two Vice – Presidents of Republic of Srpska, each from different constituent peoples members.

hands of the ethno-nationalist parties who conducted the war. These parties were quick to take advantage of the post – war electoral process to legitimize them and occupy the newly established institutions by democratic means (Belloni, 2004: 337).

The 2000 elections differed from the previous elections in three important aspects. First, open lists and multi – member constituencies were introduced. Second, a preferential voting system was adopted for the election of the RS (Republic of Srpska) Presidency. Third, new rules for the election of members of the House of Peoples in the Federation were introduced. Of the three innovations, the first did not specifically foster inter – ethnic accommodation but rather disadvantaged multi – ethnic and civic parties; the second and the third, both inspired by an integrationist approach, backfired because of the timing and method of their adoption. As the experience of the 2000 elections shows, there is a narrow line between fine – tuning election rules and manipulating them. The international community's approach, leaning more towards manipulation, backfired (Belloni, 2004: 340)¹⁴.

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Open lists at 2000 elections implied that up to that point citizens of Bosnia and Herzegovina could only vote for a party, not for candidates so lists were based on closed list system. In 2000 Electoral Rules and Regulations delivered open list system so voters were able to vote for

14 On this topic see: Belloni, R. (2004): "Peacebuilding and Consociational Electoral Engineering in Bosnia and Herzegovina", *International Peacekeeping*, 11 (2): 334-353

15 On this topic see: Belloni, R. (2004): "Peacebuilding and Consociational Electoral Engineering in Bosnia and Herzegovina", *International Peacekeeping*, 11 (2): 334-353

a party, but also for a candidate on that specific party list which became a norm in latter Electoral Law of Bosnia and Herzegovina. "However, this system does not take into account the uniqueness of a society divided along ethnic lines. Open lists might increase accountability but do not necessarily favour moderation. Nor do they promote multiethnicity and multi – ethnic parties – both explicit goals that the Electoral Law was supposed to achieve" (Belloni, 2004: 340). On the other side multi – member constituencies at 2000 elections were effectuated for the Parliament of the Federation of Bosnia and Herzegovina and the National Assembly of the Republic of Srpska elections. But, there were some flaws. "While sensible in theory, to improve accountability, in practice its impact on fostering inter-ethnic moderation is small. Indeed, the way the MMCs [multi-member constituencies] were drawn up (preserving a clear ethnic majority within each constituency) made it unlikely that candidates would seek support across ethnic lines. Furthermore, the sheer complexity of the system was likely to be difficult for voters to understand, and thus discourage electoral participation. Finally, compensatory mandates increase the number of parties represented in parliament, encouraging political fragmentation at the expense of stable government (...)" (Belloni, 2004: 340-341). In the Republic of Srpska preferential voting was accepted for the election of the President and Vice – President of the Republic of Srpska. "Nevertheless, preferential voting for the RS Presidency was unlikely to be a reliable test for at least for two reasons. First, this system is unlikely to produce conciliatory behavior where ethnic groups are concentrated in particular geographic regions. In these instances, the politicians' incentive to seek support from various groups depends on the presence and size of minority groups. Because the RS electorate was not ethnically heterogeneous, only under the most unusual circumstances could AV [alternative votes/voting] have influenced the results" (Belloni, 2004: 342). House of Peoples of the Parliament of Federation was about to be elected through Cantonal Assemblies in a manner that member of different community can vote for each other and not by the same community elected members. This rule was known as a Barry Rule¹⁶. "The main Croat nationalist party, the Croatian Democratic Union (HDZ) objected vigorously. It argued that when all members of the

¹⁶ US Ambassador Robert Barry, who imposed this rule, was appointed Head of the OSCE Mission to Bosnia and Herzegovina from 1998-2001

Canton Assembly elected the delegates in one election, there would be an influence of the majority group – the Bosniaks – on the selection of the delegates from the smaller groups. The HDZ began its 2001 rebellion against international policy as a protest against the Barry Rule, leading to a major confrontation between the party and international peacebuilders" (Belloni, 2004: 343). This does not downgrade the fact that by this very Rule Bosniaks intrinsically influenced Croat member's conformation in the House of Peoples of the Federation of Bosnia and Herzegovina, and thereby political and legal dimensions of Bosniak-Croat relation concernment in the Federation of Bosnia and Herzegovina.

In 2002, the Bosnian and Herzegovinian electoral commission, rather than the OSCE, organized general elections for the first time autonomously without major problems. Elections for municipal councils, mayors and the District of Brčko were held without significant incidents in October 2004. For the first time, mayors were directly elected in the country, as was a unified city council in previously divided Mostar. Some incidents of fraud, nevertheless, have occurred. As the OSCE notes, the electoral system is very complex and often not understood by voters. The government has the power to govern in principle, but its ability to govern is constrained by the continued intervention of the Office of High Representative in Bosnia and Herzegovina (OHR), the fragmentation of public authority in the entities and regions, as well as the extensive veto rights at state and entity level (Bieber, 2006: 43-64).

5. Permanent Electoral System in Bosnia and Herzegovina

In 2001 Parliamentary Assembly of Bosnia and Herzegovina adopted Electoral Law of Bosnia and Herzegovina. "The draft Electoral Law was prepared by international OSCE staff and legitimized firstly as national project through the involvement of the seven-strong Independent Experts Commission appointed by the HR (High Representative) and, secondly, as an internationally sanctioned document through the approving comments of the Council of Europe's Venice Commission. The EL (Electoral Law) took long time to pass through Parliamentary Assembly of Bosnia and Herzegovina. One of the main reasons was that the OSCE meant for it to clearly favor in the electoral competition non – nationalist parties that have multiethnic leadership and membership, that respect the GFAP

[General Framework Agreement for Peace] provisions that stand for issue politics and reconciliation and reject separatism and politics of exclusion. The final version was considerably toned down from this ambitious intention, containing only the uncontested provision banning ICTY [International Criminal Tribunal for the former Yugoslavia] – indicted war criminals to hold any functional position in the candidate parties (Article 1.6), and nothing in its Chapter 4 (Certification and Candidacy for Elections) requiring parties to present reconciliatory platforms or to have multiethnic membership. With regard to this the outcome of the last general elections is a hardly surprising indication of both the strength of the exclusive nationalist appeal within the country and the lack of potential for attracting politicians capable of mustering voter's support under the banner of reconciliation and civic nationalism" (Bojkov, 2003:57).

We emphasized earlier that this law did not make any significant changes by comparison to temporary electoral system based on Dayton Peace Accords. But, even if it did not provide considerable and distinctive transformation, Electoral Law of Bosnia and Herzegovina remained within framework of Constitution of Bosnia and Herzegovina (Annex IV, Dayton Peace Accords). Certain authors refer to "basic characteristics of permanent electoral system" (Trnka, 2006: 201-203) in Bosnia and Herzegovina:

- a) election of the Parliamentary Assembly of Bosnia and Herzegovina and members of the Presidency of Bosnia and Herzegovina has been regulated;
- b) 2/3 of members of the House of Representatives of the Parliamentary Assembly and members of the Presidency of Bosnia and Herzegovina from the line of Bosniak and Croat peoples are being elected on territory of Federation of Bosnia and Herzegovina. 1/3 of members of this house of parliament and member of the Presidency of Bosnia and Herzegovina from the line of Serb peoples are being elected on territory of Republic of Srpska;
- c) conditions for acquirement of right to vote has been also regulated;
- d) voters have right to vote in person or in absence in municipality where they had residence according to 1991 population census;
- e) a citizen of Bosnia and Herzegovina who has dual citizenship have right to

vote only if Bosnia and Herzegovina is the country his or her permanent residence;

- f) person that was accused or sentenced by International Tribunal for former Yugoslavia for serious violations of humanitarian law cannot be elected for any function on territory of Bosnia and Herzegovina;
- g) principle of incompatibility is regulated;
- h) cumulating of functions is disabled;
- i) mandate belongs to candidate not to party or coalition on which list candidate was;
- j) permanent terms for conduction of elections were stipulated.

If we take closer look at the list of basic characteristics we can make a short analysis of permanent electoral system in Bosnia and Herzegovina:

Point (a) is referring to Article 1.1 of Electoral Law of Bosnia and Herzegovina which defines that this law shall regulate the election of members and delegates of the Parliamentary Assembly of Bosnia and Herzegovina and of the members of the Presidency of Bosnia and Herzegovina and shall stipulate the principles governing the elections at all levels of authority in Bosnia and Herzegovina. On one side, it has to be noted that precise regulations on this have been provided by entities. On the other side, Electoral Law of Bosnia and Herzegovina used broad approach in regulating principles which narrows range of entities regulation.

Point (b) is referring to Article IV(2) and Article V(1) of the Constitution of Bosnia and Herzegovina (Annex IV, Dayton Peace Accords) which are regulating election of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina and the Presidency of Bosnia and Herzegovina. Consequence of this constitutional regulation is that all citizens of Bosnia and Herzegovina cannot elect all members of those two. For disproportional number of voters, equal right to vote is doubtful. On the other side, this is not in accordance with 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols that shall apply directly in Bosnia and Herzegovina by Article II(2) of Constitution of Bosnia and Herzegovina (Annex IV of Dayton Peace Accords) and Article 1.3 of Electoral Law which defined that election of members of all bodies of government is based on free elections and universal suffrage and equal right to

vote and by secret balloting.

Point (c) is referring to Articles 1.4 and 1.5 of Electoral Law of Bosnia and Herzegovina. Each citizen of Bosnia and Herzegovina who has attained eighteen years of age shall have the right to vote and to be elected pursuant to this law. To exercise his or her right to vote, a citizen must be enlisted in Central Voters Register. Electoral Law of Bosnia and Herzegovina determined conditions for acquirement of right to vote: citizenship, eighteen years of age and enlistment in Central Voters Register. Until 2006 there was a model of active registration applied which implied obligation of voters to register. In 2006 model of passive registration applied which means that state bodies manage Central Voters Register *ex officio* by using official record of place of residence. Every citizen who applied for the ID before August 17 was registered in a Central Voters Register. However, the system did not apply to certain/special categories of voters. Refugees and voters living temporarily abroad who wished to vote out – of – country had to submit an application to the Central Election Commission before July 18, but voters registered to vote out – of – country were allowed to vote in Bosnia and Herzegovina on election day with tendered ballots in the municipality of their permanent residence.¹⁷

Point (d) refers to Article 1.5 of Electoral Law of Bosnia and Herzegovina which defines that all citizens of Bosnia and Herzegovina who have the right to vote, pursuant to this law, shall have the right to vote in person in the municipality of their permanent residence. A citizen of Bosnia and Herzegovina who is temporarily residing abroad and has the right to vote, is entitled to vote in person (by appearing at an appropriate polling station in Bosnia and Herzegovina or at a diplomatic and consular representation office of Bosnia and Herzegovina abroad) or by mail (by sending the voting ballot by mail) for the municipality where the person had the permanent place of residence prior to his or her departure abroad. Displaced persons, according to Article III of Dayton Peace Accords can vote in municipality where they reside at present time under condition that they have permanent residence in that municipality for at least six months.

Point (e) also refers to Article 1.5 of Electoral Law of Bosnia and Herzegovina that is related to citizen of Bosnia and Herzegovina who has dual citizenship pursuant to Article I(7)

(d) of the Constitution of Bosnia and Herzegovina. This citizen does not have right to active and/or passive election right if he or she resides in other state.

Point (f) refers to Articles 1.6 and 1.7 of Electoral Law of Bosnia and Herzegovina. No person who is serving a sentence delivered by the International Tribunal for the former Yugoslavia, and no person who is under indictment by the Tribunal and who has failed to comply with an order to appear before the Tribunal, may be recorded in the Central Voters Register or stand as a candidate (the candidate for the purpose of this Law refers to persons of both genders) or hold any appointive, elective or other public office in the territory of Bosnia and Herzegovina. Also, no person who is serving a sentence delivered by a Court of Bosnia and Herzegovina, courts of the Republic of Srpska, courts of the Federation of Bosnia and Herzegovina and court of the District of Brčko or has failed to comply with an order to appear before a Court of Bosnia and Herzegovina, courts of the Republic of Srpska, courts of the Federation of Bosnia and Herzegovina and courts of the District of Brčko for serious violations of humanitarian law where the International Criminal Tribunal for the former Yugoslavia has reviewed the file prior to arrest and found that it meets international legal standards may not be recorded in the Central Voters Register or stand as a candidate or hold any appointive, elective or other public office in the territory of Bosnia and Herzegovina.

Point (g) refers to Article 1.8 of Electoral Law of Bosnia and Herzegovina and it relates to principle of incompatibility. Members of legislative, executive, judicial branch, members of police, military forces, diplomatic and consular representatives cannot hold two public functions.

Point (h) also refers to Article 1.8 Electoral Law of Bosnia and Herzegovina and it relates to cumulating of functions disability. This means that nobody can hold more than one elected function.

Point (i) refers to Article 1.9 of Electoral Law of Bosnia and Herzegovina. A mandate belongs to the elected holder and not the political party, coalition or list of independent candidates, which nominated him or her on the candidates list. The mandate cannot be terminated except where prescribed by law. Should an elected holder, during his/her term of office, withdraw from a political party, coalition or list of independent candidates that participated in the elections or nominated him/her on its candidates list, the elected holder shall become an independent

¹⁷ For more information refer to: OSCE (2007), General Elections 1 October 2006, OSCE/ODIHR Election Observation Mission Final Report, Warsaw 6 February 2007.

representative.

Point (j) refers to Article 1.14 of Electoral Law of Bosnia and Herzegovina. The elections at all levels of authority in Bosnia and Herzegovina shall be held on the first Sunday in October unless that date conflicts with observance of a religious holiday of one of the constituent peoples of Bosnia and Herzegovina. Any election that cannot be held on the first Sunday in October because of a conflict with a religious holiday shall be scheduled by the Central Election Commission of Bosnia and Herzegovina for the Sunday closest to the first Sunday in October, which does not conflict with a religious holiday.

The Authorities responsible for the conduct of elections in permanent electoral system of Bosnia and Herzegovina, according to Electoral Law of Bosnia and Herzegovina are Central Election Commission, Municipal Election Commissions and the Polling Station Committees. The composition of those authorities should be multiethnic, reflecting population of constituent peoples and others in accordance the most recent population census.

1. The *Central Election Commission* is consisted of seven members: two Croats, two Bosniaks, two Serbs, and one Other¹⁸ member (Article 2.5). The election commission member is appointed for a period of seven years (Article 2.4). The President of the Central Election Commission of Bosnia and Herzegovina is elected from amongst its members. One Croat, one Bosniak, one Serb and Other member of the Central Election Commission of Bosnia and Herzegovina serve as the President for one fifteen month rotation in a five year period (Article 2.6). The Central Election Commission is independent body, which derives its authority from and reports directly to, the Parliamentary Assembly of Bosnia and Herzegovina. The Central Election Commission of Bosnia and Herzegovina has its tasks regulated in Article 2.9¹⁹;

18 In Bosnia and Herzegovina, Others are referring to national minorities and nationally indetermined people.

19 By this article Central Commission tasks are following: coordinate, oversee and regulate the lawful operation of all election commissions and Polling Station Committees in accordance with this law; issues administrative Regulations for the implementation of this law; is responsible for accuracy, update and overall integrity of the Central Voters Register for the territory of Bosnia and Herzegovina; certifies the participation of political parties, coalitions, lists of independent candidates and independent candidates for all levels of direct elections in Bosnia and Herzegovina; verifies and certify the lists of candidates for all levels of direct and indirect elections in Bosnia and Herzegovina covered by this law; is

2. A *Municipal Election Commission* shall consist of three, five or seven members. The member of the Municipal Election Commission can be: president or judge of a regular court, the Secretary of the Municipal Council/Municipal Assembly and City Council, persons professionally employed in Municipal administration (Article 2.12). This Commission is appointed for a period of seven years (Article 2.4). The Municipal Election Commission shall have its tasks regulated in Article 2.13²⁰;
3. The *Polling Station Committee* shall consist of three or five members of whom one shall be appointed as President. The President and members of the Polling Station Committee shall have deputies. The appointment of the President and members of the Polling Station Committee and their deputies shall be made by the Municipal Election Commission no later than thirty days prior to the date of the election (Article 2.19). Certification and Candidacy for the Elections is also defined in Electoral Law of Bosnia and Herzegovina. In order to participate in the elections political parties, independent candidates, coalitions and lists of independent candidates shall certify their eligibility with the Central Election Commission of Bosnia and Herzegovina (Article 4.1). In order to be certified for the elections for all bodies of authority at all levels in Bosnia and Herzegovina, an independent candidate or a candidate on a political party, list of independent candidates or a coalition's candidates list shall meet re-

responsible for the timely printing, distribution and security of ballots and forms for all levels of direct elections in Bosnia and Herzegovina; defines the contents and the form of the ballot for all levels of direct elections in Bosnia and Herzegovina; determines and verify election results for all direct and indirect elections covered by this Law, certify that elections were conducted in accordance with this Law and publish results of all direct and indirect elections covered by this Law; and perform all other duties as authorized by law.

20 By this article Municipal Election Commission tasks include following: monitor and supervise (control) the work of the Voters Register Center; designate Polling Stations in the territory of the municipality for voting on all levels of authority in Bosnia and Herzegovina; conduct the appointment procedure, appoint and train the members of the Polling Station Committee; be responsible for the proper conduct of the counting of ballots at Polling Stations and municipal counting centers; compile the results of elections from all Polling Stations in the municipality, separately for each body for which elections were administered and forward the results to the Central Election Commission of Bosnia and Herzegovina; and perform all other tasks as authorized by law and by the Regulations of the Central Election Commission of Bosnia and Herzegovina.

quirements numerated in Article 4.2²¹. In order to participate in the elections, a political party must be registered with the competent authority in accordance with the law as regulated in Article 4.3²². Rules of Conduct in the Election Campaign are regulated in Article 7.1²³.

The Electoral Law of Bosnia and Herzegovina specified elections for different levels of executive and legislative branches of government:

21 The candidate must be recorded in the Central Voters Register in the municipality in which he or she is standing for office or in the municipality found within the boundaries of the electoral unit if he or she is standing for office at the higher levels of authority, no later than by the day when the elections are announced; and the candidate may only run for office in one electoral unit at any level of authority and may appear only on one political party, coalition or list of independent candidates.

22 Three thousand (3,000) signatures of voters recorded in the Central Voters Register for the elections for the members of the Presidency of Bosnia and Herzegovina; three thousand (3,000) signatures of voters recorded in the Central Voters Register for the elections for the members of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina; two thousand (2,000) signatures of voters recorded in the Central Voters Register for the elections for the members of the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina or for the members of the National Assembly of the Republic of Srpska or for the elections for the President and Vice – Presidents of Republic of Srpska; five hundred (500) signatures of voters recorded in the Central Voters Register for elections for the delegates of the Cantonal Assemblies of the Federation of Bosnia and Herzegovina; one hundred (100) signatures of voters recorded in the Central Voters Register for the elections for the Municipal Council/Municipal Assembly and for the Head of Municipality in a municipality where the number of voters recorded in the Central Voters Register on the day when the elections are announced did not exceed ten thousand (10,000) voters, or two hundred (200) signatures for the election in the municipality in which this number exceeded ten thousand (10,000) voters recorded in the Central Voters Register; (5)% of signatures of voters recorded in the Central Voters Register for the election of Municipal Council or Municipal Assembly and for the Head of Municipality, in a municipality where the number of voters recorded in the Central Voters Register on the day when the elections are announced did not exceed a thousand (1000) voters recorded in the Central Voters Register; supporting signatures submitted for the higher level of authority shall also be applicable to the lower levels of authority included in the higher level of authority.

23 Political parties, coalitions, lists of independent candidates and independent candidates have the right to: conduct the election campaign in a peaceful environment; organise and hold public meetings in which they can freely express their positions in order to gain support from the voters; and publish and distribute placards, posters and other materials related to the election campaign. For the purposes of public meetings permits from the competent body shall not be required, but the organiser shall notify the competent body responsible for public order and peace twenty – four (24) hours prior to holding such an event.

1. The *Presidency of Bosnia and Herzegovina* is a collective head of state which is constituted of three members of each constituent people: one Bosniak, one Croat and one Serb. Preferential voting system is applied with plurality principle in mandates distribution. “Still, with regard to way of their election, expression of constituent peoples will be mediated through entities, and by that significantly damaged” (Trnka, 2006: 207). “Annex 4 of the Constitution of Bosnia and Herzegovina prescribes a split of citizens in terms of voting rights. Article V of the Constitution reads: the Presidency of Bosnia and Herzegovina shall consist of three Members: one Bosniak and one Croat, each directly elected from the territory of the Federation, and one Serb directly elected from the territory of the Republika Srpska” (Scholdan, 2000: 35). Many citizens of Bosnia and Herzegovina do not have opportunity to elect members of Presidency from national group they belong. In this way, Bosniaks and Croats with permanent residence in Republic of Srpska cannot cast a vote for election of Bosniak or Croat Presidency member. On the other side, Serbs with permanent residence in Federation of Bosnia and Herzegovina cannot cast a vote for Serb member of Presidency. This is conditioned by a fact that this constitutional solution is not consistent with constitutional principles but also international democratic standards related to elections and electoral systems²⁴; and this is not contributing to integration of Bosnia and Herzegovina. On the other hand, certain repercussions on election of Croat member of the Presidency of Bosnia and Herzegovina occurred in 2006 elections. Electoral system of Bosnia and Herzegovina facilitated that Bosniaks, on a basis of their most part

24 According to Article 8.1 of Electoral Law of Bosnia and Herzegovina, members of the Presidency of Bosnia and Herzegovina directly elected from the territory of the Federation of Bosnia and Herzegovina – one Bosniak and one Croat shall be elected by voters recorded in the Central Voters Register to vote for the Federation of Bosnia and Herzegovina. A voter recorded in the Central Voters Register to vote in the Federation of Bosnia and Herzegovina may vote for either the Bosniak or Croat Member of the Presidency, not for both. The Bosniak and Croat member that gets the highest number of votes among candidates from the same constituent people shall be elected. The member of the Presidency of Bosnia and Herzegovina that shall be directly elected from the territory of RS – one Serb shall be elected by voters recorded in the Central Voters Register to vote in the Republic of Srpska. Candidate who gets the highest number of votes shall be elected. The mandate for the members of the Presidency of Bosnia and Herzegovina shall be four (4) years.

had significant and essential leverage on Croat member of the Presidency of Bosnia and Herzegovina (Željko Komšić). Political parties as representatives of their people reacted bitterly stating that Croats did not choose Željko Komšić as a member of the Presidency of Bosnia and Herzegovina. In counterpart Croats hold minor influence upon Bosniak member of the Presidency of Bosnia and Herzegovina election. In the end, changes in electoral system should enable similar way and conditions of elections in the Federation of Bosnia and Herzegovina and Republic of Srpska. Yet, in present and momentarily state of affairs, constitutional reform is under way of attempt and if it happens, members of political parties as representatives of their people will surely reflect on electoral system of Bosnia and Herzegovina.

2. The *Parliamentary Assembly of Bosnia and Herzegovina* is constituted of House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina and House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina. *House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina* is consisted of 42 members that are being directly elected by citizens.²⁵ Each entity is one electoral unit/constituency where candidates are being elected on a basis of compensatory list which gives compensatory mandates. Entities are being divided to smaller electoral

25 By Article 9.1 of the Electoral Law of Bosnia and Herzegovina the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina shall consist of forty-two (42) members, twenty-eight (28) of whom shall be directly elected by voters registered to vote for the territory of the Federation of Bosnia and Herzegovina, and fourteen (14) of whom shall be directly elected by voters registered to vote for the territory of the Republic of Srpska. The mandate of members of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina shall be four (4) years. Of the twenty – eight (28) members who shall be directly elected by voters registered to vote for the territory of the Federation of Bosnia and Herzegovina, twenty – one (21) shall be elected from multi-member constituencies under the proportional representation formula set forth in Article 9.5 of this law, and seven (7) shall be compensatory mandates elected from the territory of the Federation as a whole according to Article 9.6 of this law. Of the fourteen (14) members who shall be directly elected by voters registered to vote for the territory of the Republic of Srpska, nine (9) shall be elected from multi-member constituencies under the proportional representation formula set forth in Article 9.5 of this law, and five (5) shall be compensatory mandates elected from the territory of the Republic of Srpska as a whole according to Article 9.6 of this law. A voter shall have one ballot for the proportional representation mandates in the multi-member constituency for which the voter is registered.

units/constituencies which give the rest of 2/3 of mandates. Electoral Law adopted half-open list system which is more democratic but connected with difficulties of votes counting. When it comes to mandates distribution, proportional representation formula has been adopted according to the Saint-Laguë method of the highest average.²⁶ Also, as a correction there is compensatory mandate system applied.²⁷ This house should express interests of all citizens on whole territory of Bosnia and Herzegovina. But, this kind of election of members is disabling expression of will of all citizens of Bosnia and Herzegovina. *House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina* is consisted of 15 delegates of whom 2/3 from the Federation of Bosnia and Herzegovina (five Croats and five Bosniaks) and 1/3 from the Republic of Srpska (five Serbs) that are indirectly delegated by entity

26 By Article 9.5 of the Electoral Law of Bosnia and Herzegovina mandates are allocated in each constituency in the following manner: for each political party and coalition, the total number of valid votes received by that political party or coalition shall be divided by 1, 3, 5, 7, 9, 11, et seq., as long as necessary for the allocation in question. The numbers resulting from this series of divisions shall be the "quotients". The number of votes for independent candidates is the quotient for that candidate. The quotients shall be arranged in order from the highest quotient to the lowest quotient. Mandates shall be distributed, in order, to the highest quotient until all the constituency mandates for the body have been distributed. Political parties, coalitions, lists of independent candidates and independent candidates cannot participate in the allocation of mandates if they do not win more than 3% of the total number of valid ballots in an electoral unit.

27 By Article 9.6 of the Electoral Law of Bosnia and Herzegovina compensatory mandates shall be allocated in the following manner: only political parties and coalitions, which won more than 3% of the total number of valid ballots for the territory of the entity for which the compensatory list is made¹⁹³ may take part in the distribution of compensatory mandates. First, the total number of mandates for the legislative body to be allocated for the territory of the respective Entity, reduced by the number of mandates won by independent candidates, is distributed according to the formula set forth in Article 9.5 of this law. From the number of mandates a list of a political party or coalition has won according to this procedure, the number of mandates won by the same party or coalition, according to the procedure set forth in Article 9.5 of this law, is deducted. The remaining number is the number of compensatory mandates the list wins. If a political party or coalition receives a negative number of mandates according to the procedure in the previous paragraph, the political party or coalition keeps the mandates won in the constituencies, but does not receive any compensatory mandates. In case one or more lists get a negative number of mandates, the mandates to be distributed according to the procedure of this article is decreased correspondingly to preserve the correct number of mandates in the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina elected from the territory of the respective Entity.

parliaments.²⁸ Mandate distribution is being done through proportional representation formula so as in House of Representatives. Usually, (in federal states) upper house of parliament is consisted of member that represents federal units. But, that is not case in Bosnia and Herzegovina where constituent people (along with entities) are being represented to be able to maintain equality of three constituent peoples.

3. The *President of the Federation of Bosnia and Herzegovina* is head of executive government and is accompanied with two *Vice – Presidents*. They are being elected indirectly by the Parliament of Federation of Bosnia and Herzegovina²⁹, and each has to be from

28 By Article 9.12a of the Electoral Law of Bosnia and Herzegovina Croat and Bosniak Delegates to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina from the Federation shall be elected by the Croat and Bosniak Caucus of Delegates as appropriate to the House of Peoples of the Federation of Bosnia and Herzegovina. Croat and Bosniak Delegates to the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina shall elect delegates from their respective constitutive people. Serb Delegates and Delegates of the Others to the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina shall not participate in the process of electing Bosniak and Croat Delegates for the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina from the Federation of Bosnia and Herzegovina. Delegates from the Republic of Srpska (5 Serbs) to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina shall be elected by the National Assembly of the Republic of Srpska.

29 By Article 9.13 of the Electoral Law of Bosnia and Herzegovina in election of the President and Vice-presidents of the Federation of Bosnia and Herzegovina, at least one third of the delegates of the constituent peoples caucuses to the House of Peoples of the Federation shall nominate delegates for the office of the President and Vice-presidents. By Article 9.14 the joint slates for the office of President and Vice-presidents of the Federation of Bosnia and Herzegovina shall be formed from among the candidates referred to in Article 9.13. The House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina shall vote on one or several joint slates composed of three candidates including one candidate from among each constituent peoples. The slate which receives the majority of votes in the House of Representatives of the Parliament of 72 the Federation of Bosnia and Herzegovina shall be elected if it gets majority of votes cast in the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina including majority of votes of each constituent peoples caucuses. By Article 9.15 if the joint slate presented by the House of Representatives does not receive the necessary majority in the House of Peoples, this procedure will be repeated. If in the repeated procedure the joint slate which receives majority of votes in the House of Representatives is rejected again in the House of Peoples that joint slate shall be considered to be elected. By Article 9.16 delegates to the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina from the rank of Others may participate in the election of candidates for the President and Vice-president. However, on this occasion, no caucus of Others shall be formed and their vote shall not be counted in calculating the specific majority in the cau-

different constituent people. National consensus had to be reached in order to gain place.

4. The *Parliament of the Federation of Bosnia and Herzegovina* is constituted of House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina and House of Peoples of the Federation of Bosnia and Herzegovina. *House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina* is constituted of 98 members that are being elected directly by citizens of Federation of Bosnia and Herzegovina.³⁰ Mandates distribution is done in the same way as in House of Representatives of Parliamentary Assembly of Bosnia and Herzegovina. What is important is that Constitution of Bosnia and Herzegovina regulates that at least four members of each constituent people has to be represented in this house. But, this is also non-consistent to nature of this house that has to represent interests of citizens of whole territory of Federation of Bosnia and Herzegovina although, theoretically it is justified by present conditions in Bosnia and Herzegovina. *House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina* is consisted of 58 delegates that are being indirectly delegated by cantonal assemblies.³¹

causes of the constituent peoples. By Article 9.17 mandate of the President and Vice-president shall be for four (4) years provided that the mandate does not expire earlier.

30 By Article 10.1 of the Electoral Law of Bosnia and Herzegovina the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina shall consist of ninety eight (98) members, directly elected by voters registered to vote for the territory of the Federation of Bosnia and Herzegovina. The mandate of members of the House of Representatives of the Federation of Bosnia and Herzegovina shall be four (4) years. A certain number of members shall be elected from multi-member constituencies under the proportional representation formula set forth in Article 9.6 of this law. There shall be compensatory mandates from the territory of the Federation of Bosnia and Herzegovina as a whole according to Article 9.7 of this law. The House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina shall determine, based solely on the guidelines set forth in Article 10.2 of this law, what shall be the number of mandates and boundaries for multi-member constituencies and the number of compensatory mandates. A minimum number of four (4) members of each constituent people shall be represented in the Federation House of Representatives. A voter shall have one ballot for the proportional representation mandates in the multi-member constituency for which the voter is registered. This ballot shall also count for the allocation of compensatory mandates under Article 10.5 of this law.

31 By Article 10.10 of the Electoral Law of Bosnia and Herzegovina the Cantonal Legislature shall elect fifty-eight (58) delegates to the House of Peoples, seventeen (17) from

Mandate distribution is being done by proportional representation formula. Number of delegates from each canton is proportional to the number of voters and national structure of each canton is determined by population census from 1991. It has to be bared in mind that demographic and national structure of Bosnia and Herzegovina is severely changed during war and ethnic cleansing 1992 – 1995. In this manner, there has to be done new population census to be able to determine real national structure of each canton.

5. The *President of and two Vice-presidents of Republic of Srpska* are being elected directly by citizens registered to vote in Republic of Srpska.³² Mandate distribution is being done by plurality principle applying preferential voting, so as in election of Presidency of Bosnia and Herzegovina. In fact, Sumantra Bose suggests that the Alternative Vote system used for the Republic of Srpska presidential elections poses considerable problems that it is probably fortunate that the designers of Bosnia's Electoral Law eventually decided not to make the elections to the tripartite Bosnia and Herzegovina state presidency dependent on an AV [alternative voting] type multiple/preferential voting system (Bose: 2002: 238).
6. The *National Assembly of the Republic of Srpska* consists of 83 members, who are

among Bosniaks, seventeen (17) from among Serbs, seventeen (17) from among Croats and seven (7) delegates from the rank of Others. By Article 10.11 the representatives from among Bosniaks, Croats, Serbs and Others in each Canton's Assembly shall elect delegates of their respective constituent peoples in that Canton. Each party represented in the respective caucuses of the constituent peoples and Others or each member of one of these caucuses shall be entitled to nominate one or more candidates on a list for election of delegates of that particular caucus from that Canton. Each list can include a larger number of candidates than is the number of delegates to be elected on the condition that the legislature of the Canton has a larger number of delegates from among Bosniaks, Croats, Serbs and Others than is the number of delegates from amongst Bosniaks, Croats, Serbs and Others that ought to be elected to the House of Peoples.

³² By Article 12.1 of the Electoral Law of Bosnia and Herzegovina the President and two (2) Vice-presidents of Republic of Srpska shall be directly elected from the territory of Republic of Srpska by voters registered to vote for Republic of Srpska. By Article 12.2 voters registered to vote for the President of the Republic of Srpska may vote for one candidate only. By Article 12.3 candidates from each constituent people receiving the highest number of votes shall be elected. Among these three (3) candidates, one from each constituent people, the candidate receiving the highest number of votes shall be elected President and the two candidates receiving the second and third highest number of votes shall be elected Vice-presidents.

being directly elected by voters registered to vote for the Republic of Srpska. Proportional representation formula of mandate distribution is applied along with distribution of compensatory mandates.³³

7. The *Council of Peoples of Republic of Srpska* is consisted of 28 delegates, 8 from among Bosniaks, 8 from among Serbs, 8 from among Croats and 4 representatives of Others elected by their caucuses in the National Assembly of the Republic of Srpska. This council is parity-based so that each constituent people can have the same number of delegates.³⁴ This house was es-

³³ By Article 11.1 of the Electoral Law of Bosnia and Herzegovina the National Assembly of the Republic of Srpska shall consist of eighty-three (83) members, who shall be directly elected by voters registered to vote for the Republic of Srpska. A certain number of members shall be elected from multi – member constituencies under the proportional representation formula set forth in Article 9.5 of this law. There shall be compensatory mandates from the Republic of Srpska as a whole according to Article 9.6 of this law. The National Assembly of the Republic of Srpska shall determine, based solely on the guidelines set forth in Article 11.2 of this law, what shall be the number of mandates and boundaries for multi-member constituencies and the number of compensatory mandates. A minimum number of four (4) members of each constituent people shall be represented in the National Assembly of Republic of Srpska. A voter shall have one ballot for the proportional representation mandates in the multi-member constituency for which the voter is registered. The mandate of members of the National Assembly of the Republic of Srpska shall be four (4) years. By Article 11.2 the National Assembly of the Republic of Srpska shall determine, based solely on the guidelines set forth in this article, the number of mandates and boundaries for multi-member constituencies and the number of compensatory mandates. Of the eighty-three (83) mandates for the National Assembly, between twenty-three percent (23%) and twenty-seven percent (27%) shall be compensatory mandates. The remaining mandates shall be allocated in multi-member constituencies. There shall be a minimum of six (6) multi-member constituencies. A multi-member constituency shall have a minimum of four (4) members and a maximum of fifteen (15) members. The Brčko District shall be included in one of the multi-member constituencies. The number of mandates for a constituency shall be determined as follows: the number of registered voters for the Republic of Srpska, as determined by the Central Election Commission of Bosnia and Herzegovina, shall be divided by the total number of constituency mandates to be allocated. The number of registered voters for a constituency shall be divided by the quotient resulting from the previous division to determine the number of mandates to which the constituency is entitled. Mandates which cannot be allocated based on whole numbers shall be allocated to constituencies on the basis of the highest remainders.

³⁴ By Article 11.11 of the Electoral Law of Bosnia and Herzegovina, the members of the Council of Peoples shall be elected by their respective caucus in the National Assembly. In the event that the number of members elected to one caucus of the Council of Peoples exceeds the number of the representatives of the respective caucus of the National Assembly, an additional number of members shall be elected by a caucus to be established for that purpose from

established by High Representative for Bosnia and Herzegovina intervention in 2002, but solution that was imposed is not symmetrical to Federation of Bosnia and Herzegovina. This house can be apprehended as intervening house, but National Assembly of the Republic of Srpska still makes decisions as unicameral body while House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina acts as equal to House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina.

8. We have to be aware that there are also elections for Cantonal Assemblies, Municipal Councils/Assemblies, and City Councils/Assemblies so as elections for Brčko District and City of Mostar that will not be discussed here for the limited length of paper.

Bosnia's peculiar constitutional structure has the effect of segmenting the electoral marketplace along ethnic lines. At the same time, it creates a patchwork quilt of political arenas, each with varying degrees of ethnic integration and each with different rules for promoting ethnic integration. In all of Bosnia's elections, however, parties tend to compete for the votes of a single ethnic community. No politician needs the support of anyone from another ethnic group in order to get elected. There are certain offices for which the system is structured to ensure that members of a given ethnic group vote only for their own representatives (Manning, 2004: 71).

6. Conclusion

The fundamentals of the electoral system in Bosnia and Herzegovina are based on the Constitution of Bosnia and Herzegovina (Annex

among all members of the appropriate constituent peoples in the Municipal Assemblies in Republic of Srpska. By Article 11.12 any political party represented in the caucuses of the their respective constituent peoples and the Others or any member of one of these caucuses, including ad hoc members elected in accordance with Article 11.11, Paragraph 2, shall have the right to propose one or more candidates on the list for election of members of that relevant caucus. Any list may contain a number of candidates that is larger than the number of members to be elected. No delegate in the National Assembly or councilor of the Municipal Assembly may be a candidate. Each delegate in the National Assembly shall cast one vote for a list within his or her caucus. The vote shall be cast as a secret ballot. By Article 11.13 the results of the votes shall be communicated to the Election Commission for the final allocation of seats. Mandates shall be distributed, one by one, to the lists or candidate with the highest quotients resulting from the proportional allocation formula provided for in Article 9.5. of the Electoral Law of Bosnia and Herzegovina. When a list wins a mandate, the mandate shall be allocated from the top of the list.

IV, Dayton Peace Accords) and the Electoral Law of Bosnia and Herzegovina. We can perceive that there are two normative frames of regulating an electoral system. Constitutional provisions on elections are very brief and short which leads us to the point that we can determine worthiness and effects of the electoral system only on grounds of the Electoral Law of Bosnia and Herzegovina as a specific legal document related to elections and the electoral system.

During the temporary electoral system in Bosnia and Herzegovina, electoral legislation was not adopted by authorised bodies but by the Provisional Election Commission, with support of the OSCE. Rules and regulations were often changed which affected voters and political parties and candidates.

It is not common that the Electoral Law and related terms are at least in principles distinguished and specified in an constitution. Also, concerning the legal nature of Dayton Peace Accords, it is not strange that provisions of this kind are not explicitly and/or specifically part of Article II (Human rights and Fundamental Freedoms) of the Constitution of Bosnia and Herzegovina (Annex IV, Dayton Peace Accords). Concerning human rights and fundamental freedoms, it has to be said that there is no integrative and consistent approach in application of the Constitution of Bosnia and Herzegovina in respect to international human rights standards named especially in the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, 1966 International Covenant on Civil and Political Rights and 1989 Optional Protocols thereto that form an integral part of the legal system of Bosnia and Herzegovina through Annex I (Additional Human Rights Agreements to be Applied in Bosnia and Herzegovina) of Constitution of Bosnia and Herzegovina (Annex IV, Dayton Peace Accords). The electoral procedure for election of members of the Presidency of Bosnia and Herzegovina and/or House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina is not in accordance with the documents mentioned. Bosniaks and Croats on Republic of Srpska territory cannot elect their representatives and Serbs in the Federation of Bosnia and Herzegovina cannot elect their representatives in those institutions. On the other side, the electoral system of Bosnia and Herzegovina shows national and ethnic representation. The representation of Others is not defined, especially when it comes to elections for the Presidency of Bosnia and Herzegovina and the House of Peoples of the Parliamentary As-

sembly of Bosnia and Herzegovina. Others are “disqualified” and “neutralised” in their representation by the Constitution and the Electoral Law.

Further analysis shows that Bosnia and Herzegovina still does not have a complete and integral and yet democratic electoral system. This system is based on different categories of electoral rights titulars that do not for different status materialise their rights in equal way (e.g. refugees, displaced persons, migrants, citizens of entities that can not elect all members of the government, etc.).

In the present electoral system of Bosnia and Herzegovina, it seems that there are no available instruments and mechanisms that would give citizens the opportunity to influence elections. Citizens are not able to decide and determine the lists of candidates. This is done through political parties. Also, citizens vote for candidates that are elected by a political party and placed on list of candidates which means that citizens do not have the opportunity to elect candidates outside of the list of candidates presented by political party. In this way, citizens do not have power to decide to elect the most competent persons. Elected candidates are not responsible to citizens because citizens do not have power to revoke them. Elected candidates are responsible to the political party they belong to and to other elected candidates.

The electoral system of Bosnia and Herzegovina uses different models and principles of mandate distribution. There are elements of both direct and indirect elections applied; plurality and proportional system tampered in electorates; proportional representation formula, compensatory mandates etc. Some authors are “convinced of the soundness of this and believe that the current electoral system of proportional representation through party/coalition lists (list PR) is the appropriate choice for Bosnia and Herzegovina. Nonetheless, it is conceivable that elements of the integration through electoral engineering approach, based on multiple preferential voting and/or ethnic vote distribution requirements for certain executive posts at various levels of government, can be introduced with some success, albeit in a very limited way, in the foreseeable future. This should not be ruled out as permanently infeasible – times change and conditions can change with time” (Bose, 2005: 328).

The electoral system of Bosnia and Herzegovina insufficiently and poorly mirrors the constitutional, legal, national, political and ethnic structure of Bosnia and Herezgovina. The elec-

toral system change, in line with premises and standpoints presented in this paper, should be anticipated and expected as well as implied and inherent. The legal system of both state and the two entities has to be transformed and modified to comply with democratic electoral procedures. As a brakedown, we should state that the goal should be such that would encompass solid and full citizen equality, without any form of discrimination in the electoral system of Bosnia and Herzegovina.

References

- Bieber, F. (2006): Bosnia-Herzegovina: Slow Progress towards a Functional State, *Southeast European and Black Sea Studies*, 6 (1): 43-64
- Belloni, R. (2004): "Peacebuilding and Consociational Electoral Engineering in Bosnia and Herzegovina", *International Peacekeeping*, 11 (2): 334-353
- Belloni, R., Deane, S. (2005): From Belfast to Bosnia: Piecemeal Peacemaking and the Role of Institutional Learning, *Civil Wars*, 7 (3): 219-243
- Bojkov, V.D. (2003): Democracy in Bosnia and Herzegovina: Post-1995 Political System and its Functioning, *Southeast European Politics*, 4 (1): 41-67
- Bose, S. (2002): *Bosnia after Dayton: Nationalist Partition and International Intervention*, London: Hurst
- Chandler, D. (2000): *Bosnia: Faking Democracy after Dayton*, London: Pluto Press
- Dmičić, M. (2003): „Ustavno-pravni osnov funkcionisanja Bosne i Hercegovine na osnovu slobodnih i demokratskih izbora“, http://www.soros.org.ba/docs_pravo/ustav_txt/dr_mile_dmicic.doc
- Đorđević, J. (1975): *Ustavno pravo*. Beograd
- Goodin, R.E. (1998): *The Theory of Institutional Design*. Cambridge: Cambridge University Press
- Harris, P. and Reilly, B. (1998): *Democracy and Deep – Rooted Conflict: Options for Negotiators*. Stockholm: International IDEA
- Kasapović, M. (2002): Obrasci izbornih reformi u stabilnim demokracijama: Novi Zeland, Italija i Japan, *Politička misao*, 39 (3): 3-19
- Manning, C. (2004): Elections and Political Change in Post-War Bosnia and Herzegovina, *Democratization*, 11 (2): 60-86
- OSCE (2007): General Elections Oct. 1, 2006, OSCE/ODIHR Election Observation Mission Final Report, Warsaw, 6 February 2007
- ÓTuathail, G., O'Loughlin, J., Djipa, D. (2006): Bosnia-Herzegovina Ten Years after Dayton: Constitutional Change and Public Opinion, *Eurasian Geography and Economics*, 47 (1): 61-75
- Pobrić, N. (2000): *Ustavno pravo*, Mostar: Slovo
- Sahadžić, M. (2009): Priroda političkog sistema u Bosni i Hercegovini, in: *Uvod u politički sistem Bosne i Hercegovine*, Sarajevo: Sarajevski otvoreni centar, Fondacija Konrad Adenauer
- Scholdan, B. (2000): Democratization and electoral engineering in post-ethnic conflict societies, *The Public*, 7 (1): 25-40
- Šiber, I. (2003): Tri klasična pristupa istraživanju ponašanja birača, *Politička misao*, 40 (2): 88-103
- Šiber, I. (2004): Interest in Elections and Electoral Participation, *Politička misao*, 41 (5): 3-27
- Søberg Shugart, M., Wattenberg, M.P. (eds) (2001): *Mixed-Member Electoral Systems: The Best of Both Worlds?*, New York: Oxford University Press
- Trnka, K. (2006): *Ustavno pravo*. Sarajevo: Fakultet za javnu upravu

Documents

- Dayton Peace Accords, <http://www.state.gov/www/regions/eur/bosnia/bosagree.html> (26.08.2009)
- Electoral Law of Bosnia and Herzegovina, *Official Gazette of Bosnia and Herzegovina*, 23/01, 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08
- Electoral Rules and Regulations for Municipal Elections in Bosnia and Herzegovina, *Official Gazette of Bosnia and Herzegovina*, 10/97, 15/97
- Electoral Rules and Regulations for the Elections on Local and Higher Level in Bosnia and Herzegovina, *Official Gazette of Bosnia and Herzegovina*, 22/96, 25/96, 29/96, 21/96
- Electoral Rules and Regulations, *Official Gazette of Bosnia and Herzegovina*, 1/00

Izborni sustav Bosne i Hercegovine: Kratki prikaz političkog pitanja i/ili tehničkog nesuglasja

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Daytonski mirovni pregovori održani su u zračnoj bazi Wright-Patterson u Ohiju, SAD, od 1.-21. studenog 1995. godine. Rezultirali su Općim okvirnim sporazumom za mir u Bosni i Hercegovini (Daytonski mirovni sporazum) koji su potpisali predstavnici Republike Bosne i Hercegovine, Republike Hrvatske, Federalne Republike Jugoslavije, a svjedočili su predstavnici Sjedinjenih Američkih Država, Velike Britanije, Njemačke, Francuske, Rusije i posebnog izaslanika Europske unije. Daytonski mirovni pregovori okončali su sukob u Bosni i Hercegovini i postavili osnove za ponovno uspostavljanje mira. Međutim, najvažnija pitanja demokratskog funkcioniranja države nisu se usuglasila s međunarodnopravnim standardima, poput izbora i izbornog sistema. Daytonski mirovni sporazum nastao je kao kompromis različitih ustupaka što se odražava posebno kada se govori o izborima i izbornom sustavu Bosne i Hercegovine.

Ključne riječi: izborni sustav, Bosna i Hercegovina, politički i tehnički problemi, izbori, Daytonski sporazum