

Minorities in pluralistic democracy

FROM SPECIAL RIGHTS TO ABUSE

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Study of political representation of national minorities and constituent communities in Bosnia and Herzegovina, Croatia and Belgium with a new model of political representation of constituent peoples and national minorities in BiH

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I

Introduction and description of the problem

Plural democracies differ significantly in the constitutional and legal status of individual collectives. Some of them are defined as national states of one people, in which their citizens who are members of other peoples enjoy the status of national minorities. In some of these countries, national minorities also have mechanisms for political representation, i.e., positive discrimination. Some states are entirely civil, and in such states, no nation or other collective other than the simple sum of their citizens is constitutionally recognized as the bearer of sovereignty and state tradition. Therefore, there are no precisely defined national minorities. Of course, this does not mean that in any of these states, the national or other identity affiliations of their citizens are not politically relevant. However, there are states in which the constitutional holders of sovereignty and state tradition recognize more than one identity (national, linguistic, or religious) community/collectivity. Therefore, all such states, require special mechanisms of political representation of such collectives at the state and/or other government levels. Some of these states include a special constitutional structure, most often embodied in a bicameral representative body or bodies (a horizontal division of power) and various forms of territorial or non-territorial self-government (a vertical division of power). In addition to the previously mentioned constituent communities, there are national minorities in some of these states. Such communities may also enjoy special rights, including those related to political representation. Such countries are particularly complex, as the mechanisms of political representation of constituent communities are applied simultaneously with the positive discrimination mechanisms of national minorities. The character and position of these two types of political collectives are not always easy to conceptually delineate and regulate.

According to the Constitution of the Republic of Croatia, “the Republic of Croatia is established as the nation state of the **Croatian nation** and the **state of the members of its national minorities...** (they are listed by name)”¹. Therefore, the bearers of sovereignty are the **Croatian people** and members of the **national minorities** listed by name, who are guaranteed a **special form of representation** in the *Croatian Parliament*.

According to the Constitution of BiH, holders of state sovereignty “**Bosniacs, Croats and Serbs, as constituent peoples** (along with **Others**), and **citizens of Bosnia and Herzegovina..**”². Therefore, the constitutions of BiH and the entities have established bodies for representation:

1 Constitution of the Republic of Croatia, Historical foundations https://narodnenovine.nn.hr/clanci/sluzbeni/2010_07_85_2422.html

2 BiH Constitution, Preamble. https://www.ustavisud.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_hrv.pdf

1. **each of the three constituent peoples** – *Presidency of BiH, and Caucuses of Bosniacs, Croats and Serbs in the House of Peoples of the Parliamentary Assembly of BiH, House of Peoples of the Parliament of the Federation of BiH and Council of Peoples of the Republic of Srpska;*
2. **all citizens**, regardless of their (non)affiliation to those peoples, in which **a certain degree of representation of members of all constituent peoples is ensured** – the House of Representatives of the Parliamentary Assembly of BiH and FBiH, and the National Assembly of the Republic of Srpska.
3. **all citizens who do not belong to the constituent peoples**, regardless of whether they are members of national minorities, nationally undeclared or declared only as citizens of BiH or in some other way – *Caucus of Others in the House of Peoples of the Parliament of FBiH and the Council of Peoples of RS.*

The position of the **Croatian people** in the Republic of Croatia is on the same level as the position of **three constituent peoples – Bosniacs, Croats, and Serbs** – in BiH. The position that in Croatia belongs to **national minorities**, in BiH belongs to **Others, i.e., citizens of BiH that do not belong to the constituent peoples and include members of national minorities.**

The Law on Elections of Representatives to the Croatian Parliament stipulates that the members of national minorities elect **eight representatives in a special electoral unit**. It is separated from ten electoral units in which other Croatian citizens elect a total of 140 representatives and from eleventh in which three representatives are elected by Croatian citizens living abroad³ regardless of which nation they belong to or not. Each minority is assigned **a number of representatives**, and members of minorities themselves must **register before the elections**⁴.

The BiH Election Law, on the other hand, has several systemic shortcomings, some of which have been identified by the Constitutional Court of BiH⁵ and European Court for Human Rights⁶:

3 Law on Election of Representatives to the Croatian Parliament (https://zakon.hr/z/355/Zakon-o_izborima-zastupnika-u-Hrvatski-sabor), Article 8.

4 Law on Election of Representatives to the Croatian Parliament, Article 16 and Article 17.

5 Decision U 23/14 (“Decision Ljubić”), https://www.ustavnisud.ba/uploads/odluke/_hr/U-23-14-1058444.pdf

6 Decisions on “Sejdić and Finci” case. (http://www.mhrr.gov.ba/ured_zastupnika/novosti/default.aspx?id=1008&langTag=hr-BA), “Zornić” (<http://www.mhrr.gov.ba/PDF/UredPDF/default.aspx?id=4745&langTag=hr-BA>), “Šlaku” (<http://www.mhrr.gov.ba/PDF/UredPDF/default.aspx?id=6715&langTag=hr-BA>), “Pilav” (<http://www.mhrr.gov.ba/PDF/UredPDF/default.aspx?id=6680&langTag=hr-BA>) and “Pudarić” (http://www.mhrr.gov.ba/ured_zastupnika/odluke/PUDARIC%20protiv%20BOSNE%20I%20HERCEGOVINE.pdf).

- **prevents** non-constituent peoples from running for the Presidency of BiH, as well as Bosniacs and Croats from the RS and Serbs from the FBiH, while allowing Bosniacs to elect a Croat member of the Presidency **at the same time**;
- enables the election of the delegates of Croats, Serbs, Bosniacs, as well as Others in the House of Peoples of the Parliament of FBiH **by votes not given by members** of those peoples and groups of Others, which **grossly violates the right** of all of them to legitimate representation, and allows the **formation of illegitimate** executive bodies in FBiH (President, two Vice-Presidents and the Government of the FBiH), and the House of Peoples of the Parliamentary Assembly of BiH;
- prescribes that among the 98 members of the House of Representatives of the Parliament of FBiH and 83 members of the National Assembly of RS, each constituent people has to be represented by four members at least⁷. However, this **does not ensure or increase the likelihood** that members of the people they belong to will elect them. The rights of Others, including national minorities, **are not regulated at all**, although Others have caucuses of their delegates in both the House of Peoples of the Parliamentary Assembly of FBiH and the Council of Peoples of the RS. As a result, at the entity level, citizens who do not belong to the constituent peoples, including members of minorities, are **represented exclusively in the upper houses** as well as the constituent peoples, which is absurd. At the same time, **in the lower houses**, they are **negatively discriminated**, while in the Republic of Croatia and other European countries, their representation is ensured.

These anomalies of the BH political system have been causing systematic crises for more than a quarter of a century by artificially opposing the legitimate representation of constituent peoples and other citizens, including minorities, and depriving both collectives of the right to legitimate representation at all government levels in which they are not a majority. Using the experiences of the Republic of Croatia and other European countries, it is necessary to carry out a reform that would ensure political stability and democracy and apply the judgments of all domestic and international courts.

⁷ Election Law of BiH, Articles 10.6, 10.8, 11.1, 11.6 i 11.8, https://www.izbori.ba/Documents/documents/ZAKONI/Izborni_zakon_PRECISCENI_TEKST-hrv.pdf

II

Bosnia and Herzegovina

II-1) The constitutional structure of a country with two entities and three constituent peoples

The current administrative-political division and structure of government in BiH is defined by its Constitution, which in the formal-legal sense is Annex 4 of the Dayton Agreement. According to the Dayton Agreement, the second level of government, lower than the state level, consists of the entities⁸ – Republic of Srpska (RS) and the Federation of BiH (FBiH). Its territories are approximately equal in area, but the population of FBiH is much larger. The Brčko District of BiH, which has its own administration, belongs to both entities⁹, and its citizens can choose entity citizenship and opt for one of the entities in elections for state and entity authorities.

According to the Dayton Agreement, Bosniacs, Serbs and Croats have the status of constituent peoples, as they had in the pre-war Federal Republic of BiH. FBiH and RS have their own parliaments, governments, presidents and vice-presidents, they can have flags and coats of arms (which only RS practices), while the armed forces were united at the state level in 2005 but are based on equal traditions of opposing armed forces during the war – the Army of the Republic of BiH, the Army of Republic of Srpska and the Croatian Defence Council.

The extreme asymmetry in the organization of the entities is reflected in the fact that the RS is completely centralized, with a strong Serbian majority, while the FBiH consists of 10 cantons (in Croatian the term county is often used), five of which are with a strong Bosniacs majority, three with Croatian majority, while two are mixed, one with a Bosniac and one with a Croatian absolute majority¹⁰. This key difference in organizational structure also causes great differences in the way the political system works. The President and Vice-Presidents of the RS, as well as members of the Presidency of BiH, are elected in direct elections, which means that at the level of the state of BiH and this entity, there is a form of parliamentary – semi-presidential system, similar to the one in Croatia. The key difference is that the members of the Presidency of BiH and the President and Vice-Presidents of the RS are elected according to a one-round system, in which these duties are obtained by relative majority (similar to the USA), while in Croatia and other European countries that have such a system, the office of president is won in the second round, in which the absolute majority of valid votes must be won.

8 BiH Constitution, Article I, paragraph 3.

9 Amendment I to the BiH Constitution, <https://www.paragraf.ba/propisi/bih/ustav-bosne-i-hercegovine.html>

10 <http://www.statistika.ba/>

However, the President and Vice-Presidents of the FBiH are elected by the entity's parliament, meaning that a parliamentary system is in place, similar to those in Germany, Italy, Hungary or Greece. Given the fact that the President and Vice-Presidents of the FBiH give the mandate to form the FBiH Government, and are elected by the Parliament, it puts the power relations between the houses of Parliament and the ways of their election, constitution and functioning (especially in the election of the executive authority) at the very centre of political disputes that chronically shake the country. Most of the problems in the functioning of the FBiH political system, but also in the relations between Croats and Bosniacs, were caused by changes in the way of constituting and voting in the House of Peoples of the FBiH Parliament. These changes disavowed the constitutional protection mechanisms of equality of these two peoples and enabled the overvoting of Croats, first at the level of the House of Peoples by reducing the capacity of the Croat People Caucus, and then at the level of the entire FBiH Parliament. This domination is possible given that in the House of Representatives, elected on the "one man – one vote" principle, due to the national demographic structure of the party for which Bosniacs vote, they certainly have a superior majority. This and other changes in the political system have been imposed by the high representatives of international community, who enjoy supra-constitutional powers in BiH with an insufficiently clear mandate and the international legal basis for those powers.

It can be stated that BiH is essentially established and functions as a federation with some confederate elements, which include primarily special parallel relations between the entities and neighbouring states, but without the right of the entities for independence. This right is also used asymmetrically, as the RS uses it in relations with Serbia, while the FBiH does not use it in relations with Croatia. The Constitution and laws of BiH define a structure that in a comparative perspective could be classified as *federalist*, but in practice, it is only a formal federation without the accompanying process of federalization. Among the most important causes of this situation are historical ones, those related to the formation of BiH and its entities. The Federation of BiH was established during the war, even before Dayton BiH. With the 1994 Washington Agreement, the territories under the control of the civil command of the Army of BiH (Republic of BiH) and the civil command of the Croatian Defence Council (Croatian Republic of Herzeg-Bosnia) formed the Federation of BiH as a union of Croatian and Bosniac people, with the aim of later federalization of the entire state.

The Washington Agreement defines the internal organization of the territory with a majority of Bosniac and Croatian population in BiH. According to the agreement, the FBiH consists of federal units, counties, which have equal rights and responsibilities. Such a

structure represented a sort of defence mechanism against the possible political domination of extremely numerous Bosniacs over smaller number of Croats. According to the 1994 Constitution of the FBiH, the HP FBiH PA consisted of 30 Bosniac and 30 Croatian delegates, as well as a number of other peoples (Serbs and Others), corresponding to their share of the Federation's population in the 1991 Census, which included 20 delegates according to the 1991 Census on the FBiH territory. This composition of the House of Peoples guaranteed Croats a high level of institutional equality with Bosniacs at the FBiH level.

The 1994 FBiH Constitution guaranteed Croats a high level of institutional equality with Bosniacs at the FBiH level. There were no adequate mechanisms in the RS to ensure the constitutiveness of either Croats or Bosniacs. Instead of ensuring the effective constitutiveness of all constituent peoples throughout BiH, the processes initiated and led by international officials with the support of Bosniac and other unitarian political forces after the introduction of the asymmetric Dayton structure went through various stages: from ignoring, arbitrary interpretation, open denial of the category of constitutiveness, and finally to the demand for its elimination from the Constitution.

II-2) Imposed deviations of the constitutional structure of BiH to the detriment of equality of constituent peoples in FBiH

A special role in the processes of endangering the equality of Croats in the FBiH was played by the activities of high representatives, primarily Austrian, Wolfgang Petritsch and British, Paddy Ashdown, but also other foreign officials, some of whom served in the BiH Constitutional Court, and some in certain international organizations or influential countries, hence they provided political support to decisions aimed at transforming the BiH political system. It seems that the dominant part of the international community, using levers of power that did not have an explicit foundation in the Dayton Agreement, wanted to subsequently, without convening a new international conference of the same rank, but thoroughly revise the agreement in a way that was not possible at the time. The focus of such a revision has always been a support for centralist and unitarian forces with systematic neglect, and even a fundamental lack of understanding of the constitutiveness of the peoples. For about two decades, this approach has led to a marked escalation of the inequality of the constituent peoples, and a threat to interethnic relations and the functionality and stability of BiH as a state.

The constitutional category of the constitutiveness of the peoples carries along binding implications in terms of ensuring the normative and real equality of the constituent

peoples, which should be taken into account by all models of election legislation in BiH. However, this respect was most often lacking at the level of operational political activity of a large number of domestic and foreign actors, which created conditions for the elimination of the category of constitutiveness of the people from real socio-political life. Such intentions were most likely attempted and abused by the BiH Constitutional Court, but the highest constitutional court in BiH still, adhering to the necessary measure of the letter and spirit of the BiH Constitution, especially its Preamble, actually strengthened the principle of peoples' constitutiveness.

In the proceedings of 1998 initiated by Alija Izetbegović, the Chairman of the Presidency of BiH at the time, which requested an assessment of the compliance of the entity constitutions with the Constitution of BiH, the Constitutional Court of BiH issued Decision U 5/98-III on 1 July 2000¹¹. None of the constitutional provisions that were the subject of the procedure referred to the manner of election and constitution of government bodies at any level, but to the fundamental symbolic issues of statehood. This character of the disputed provisions of the entity constitutions in no way hinted at the far-reaching consequences of the Decision on the equality of any people, including Croats, in the field of electing and constituting a governing body. Such consequences were not indicated by Article I 1(1) of the FBiH Constitution, which disputes Bosniacs and Croats as constituent peoples, nor by articles of the RS Constitution defining Serbs as constituent people primarily within the RS. Izetbegović practically considered that merely linking the constitutiveness of certain peoples to specific entities was unconstitutional.

For the current situation in BiH, it is extremely important that the applicant delegates of the House of Representatives of the FBiH Parliament (strongly dominated by Bosniacs) pointed out that the provisions of the BiH Constitution that define RS as an electoral unit for the election of a Serbian member of the Presidency and for five Serbian delegates to the HP BiH PA guarantee the constituent status and equality of all three peoples throughout BiH. This means that even the Bosniac participants in the debate at the time did not deny, principally, the application of territorial solutions related to the technique of conducting elections. This fact strongly contradicts the later practice, which is still applied today, of assessing the demands for at least an electoral, and not an administrative-territorial unit in which Croats would be the majority as separatist. In any case, this Decision, probably contrary to the fundamental intention of its initiators, later served as the basis for the adoption of Decision U 23/14 ("Ljubić Decision"), a key line of defence of the constituent peoples' right to legitimate representation.

¹¹ Decision U 5/98-III of the BiH Constitutional Court: <http://www.ohr.int/ohr-dept/legal/const/pdf/Djelomicna-odluka-3.pdf>

The first serious preparations for depriving Croats of the right to elect their own political representatives were made at the initiative of the Head of the OSCE Mission to BiH, Robert Barry, who imposed new election rules just before the 2000 General Elections. The amendments at the time made it possible for delegates in the HP FBiH PA, regardless of their nationality, to be nominated and elected by all delegates of the county assemblies in FBiH¹². This completely changed the essence of the function of that House, originally intended for the protection of political rights and the political representation of the constituent peoples.

The changes particularly affected Croats because in 6 of the 10 counties, they represent a clear, and in some, a distinct minority. In some, the total number of Croats is even lower than the electoral threshold (3%), and even if all Croats in these counties went to the polls and all voted for one list, it could not win a single seat in the county assembly. Therefore, the parties for which Croats vote and which enjoy their true political support have been put in a position to be simply outvoted by Bosniac parties in the election of delegates to the House of Peoples in the assemblies of those counties. Bosniac parties could elect canton deputies as delegates to the House of Peoples, who can define themselves as members of the Croatian people in their individual official statements, but do not need to have the support of Croats as voters at all. “Barry’s Amendments” have made the process of deconstitution of Croats in the FBiH incomparably easier on a practical level than before. As a result of these amendments, it was no longer necessary to secure an assembly majority of “Croatian” representatives from the Bosniac party list for the election of delegates to the Croat People Caucus in the HP FBiH PA in the 2000 elections, but to have enough “Croatian” delegates as candidates in those assemblies, which is a much more achievable goal.

Admittedly, the “Barry’s Amendments” ceased to be valid with the adoption of the first post-war BiH Election Law in August 2001, but they had negative consequences for the system’s legitimacy in the 2000 General Elections, as it was the first time that duties reserved for political representatives of BiH Croats were held by officials who did not enjoy the majority of support of that people in the elections. The process initiated by “Barry’s Amendments” was continued by High Representative Wolfgang Petritsch’s direct interventions in the constitutional order of FBiH and BiH. Referring, among other things, to the aforementioned 2000 Decision on Constitutiveness, Petritsch passed a total of 36 amendments to the FBiH Constitution in April 2002. However, it is almost impossible to justify these amendments by the Decision U 5/98-III of the

12 Rules and regulations of the Provisional Election Commission, Article. 1212. <https://www.izbori.ba/Documents/Documents/Rezultati%20izbora%2096-2002/2000gen/rules-egulations-general-elections-2000-cro.pdf>

BiH Constitutional Court, especially in the part in which they refer to the manner of constituting legislative and executive bodies and their decision-making procedures. However, the amendments to these provisions produced profound, far-reaching and permanently harmful consequences for the political life of BiH, primarily for the equality and constitutiveness of Croats in the FBiH, and in BiH as a whole.

According to Amendment XXXIII¹³, the HP FBiH PA consists of 58 delegates, 17 Bosniacs, 17 Croats, 17 Serbs and 7 Others, which puts the representation of Serbs and Others in the House of Peoples even more disproportionate to their share in the FBiH population than the previous application of the 1991 Census, whose results in no way reflected the real picture of the representation of individual peoples in the population of certain cantons. This is, in terms of the representation of Croats, irrelevant because the representatives of each peoples vote as a separate group, but it seems that the intention was to disavow the very concept of the constitutiveness of peoples on a symbolic level, especially in the FBiH. However, the consequences of reducing the number of delegates in Croat and Bosniac caucuses from 30 to 17 were extremely far-reaching, as the possibility of proportional representation of each of the two peoples in the respective caucuses decreased significantly, and the possibility of manipulation increased.

Adequate and proportional representation of constituent peoples in the HP FBiH PA is essential for their legitimate representation, because that house is filled from county assemblies so that each county assembly elects a certain number of Bosniac, Serbian and Croatian delegates and an appropriate number of Others. The manner of electing delegates to the House of Peoples, which was prescribed by the BiH Election Law in accordance with the Amendment XXXIII, primarily the quotas of delegates of different peoples elected in the assemblies of individual counties, however, allow Bosniac parties to elect a two-thirds majority (12 of 17) of Bosniac Caucus members, a two-thirds majority (12 of 17) of Serbian Caucus members, and 5 of 7 members of Others in counties where the Bosniacs are majority, whereby Bosniacs control three caucuses in the HP FBiH PA by a two-thirds or greater majority. Croats, on the other hand, do not have the opportunity to significantly influence the composition of the Bosniac Caucus because 3 out of 17 Bosniacs are elected in the counties where Croats are majority.

The most significant consequence of this amendment is certainly the fact that in addition to controlling the caucuses of Bosniacs, Serbs and Others, Bosniacs can decisively

¹³ Constitution of FBiH with all amendments. <https://www.paragraf.ba/propisi/fbih/ustav-federacije-bosne-i-hercegovine.html>

influence even the composition of the Croat People Caucus, because as many as 6 Croatian delegates are elected in counties with a strong Bosniac majority¹⁴, while in counties with a strong Croatian majority¹⁵, only 5 Croatian representatives are elected, and 6 Croats are elected in “mixed counties”¹⁶. Thus, within “their” counties, Croats independently and freely elect less than one third of the delegates in the Croat Caucus (only 5 out of 17). This allows Bosniacs to elect the entire executive power of this entity – the President, two Vice-Presidents and the FBiH Government – completely unilaterally, without respecting the electoral legitimacy of Croats, Serbs and Others in the FBiH.

Due to the application of the results of the 1991 Census to the determination of quotas for the election of delegates of certain peoples from county assemblies, there is no guarantee that delegates of any people in the HP FBiH PA realistically represent members of that people in the FBiH. Real representation would mean that the largest number of delegates of a certain peoples is elected from the counties where the largest percentage of members of that people live. It is necessary to emphasize that members of the constituent peoples, as well as all other citizens of the Federation, are represented in Parliament according to their percentage share in the total population of FBiH through the House of Representatives, which is constituted on the “one man – one vote” principle. The fact that no political actor in BiH has literally asked for the abolition or reduction of the powers of the House of Representatives strongly contradicts the frequent accusations against Croatian parties that their advocacy for legitimate political representation in the House of Peoples is in fact advocating for “the division of BiH along national lines”, “the domination of the peoples over the citizens” or “the transformation of BiH into a confederation of constituent peoples”.

Unlike the House of Representatives, however, in the House of Peoples the only interpretation of representative, i.e., legitimate representation that is in line with the function and character of that House is that the number of delegates of individual peoples elected in each county must be proportional to the share of members of each of those peoples living in the county in relation to the total number of members of those peoples in the entire FBiH. This would mean that, for example, the share of Croatian delegates elected in the Central Bosnia County should be aligned with the percentage of Croats from that county in the total number of Croats in the FBiH. Any attempt to refer to the numerical relations between Croats and the county and the rest of the

14 Una-Sana Canton, Tuzla Canton, Zenica-Doboj Canton, Bosnian-Podrinje Canton and Sarajevo Canton.

15 Posavina County, West-Herzegovina County and Herzeg-Bosnia County.

16 Central Bosnia Canton and Herzegovina-Neretva County.

population of the county or the whole FBiH, would be a gross violation of the role and character of the House of Peoples as a body intended for political representation of the people, not citizens of any administrative-territorial unit.

The representativeness of the advocacy of the constituent peoples in the House of Peoples is, however, most severely threatened by the retention, even after the adoption of the “Petritsch Amendments”, a provision that existed in both the FBiH Constitution and the BiH Election Law: “There will be at least one Bosniac, one Croat and one Serb from each county in the House of Peoples who have at least one such delegate in their legislative body“. Considering that in as many as four counties, the parties for which Croats vote for do not traditionally cross the electoral threshold, and therefore, do not enter their assemblies, this means that already at the beginning of the election process four delegates elected by Bosniac parties are elected to the Croat People Caucus in the HP FBiH PA. This syndrome has existed before, but until then Bosniacs chose 4 out of 30 delegates in the Croat People Caucus (13,33%), and after “Petritsch’s Amendments” 4 out of 17 delegates (25,53%).

Although the described syndrome was completely unacceptable in the previous state, the significance of this increase in the percentage of delegates in the Croat People Caucus became quite clear in light of the fact that “Petritsch’s Amendments” radically intervened in the legislative and executive relations, as in the relations between the houses of the highest representative body of the FBiH. Thus, according to Amendment XLII in the election of the President and two Vice-Presidents of the FBiH, at least one third of the delegates from the Bosniac, Croat or Serb Caucus in the House of Peoples may nominate the President and two Vice-Presidents of the Federation. The election of the President and two Vice-Presidents (formerly one) of the Federation requires, as before, the adoption of a joint list with these three (formerly two) candidates by a majority vote, also in both houses, including the majority of each caucus of constituent people in the House of Peoples.

Following the adoption of Amendment XLII, if no list of candidates obtains the required majority in both houses, the candidacy procedure is repeated, and if in the repeated procedure one of the houses rejects the joint list, the candidates will be considered elected by accepting the list in only one house. Under these circumstances, if the joint list in the first round of voting does not get a majority in the Croat Caucus of the House of Peoples, the second round follows, in which a majority is sufficient in only one of the houses. As the list in the first round did not pass in the House of Peoples, in the second round it is decided only in the House of Representatives, in which it is enough for the joint list to

receive support by a simple majority. Given that the Bosniac parties have a comfortable two-thirds majority in the House of Representatives, in the second round Croatian political representatives have literally no influence on the election of the President and two Vice-Presidents of the FBiH. Thus, one half of the delegates in the caucuses of constituent peoples in the House of Peoples needed earlier, as the basic instrument for protecting the collective rights of constituent peoples, in the second round of voting on the President and two Vice-Presidents of FBiH, was turned into zero because in that round only the numerical majority was crucial. This way, the President-elect and two Vice-Presidents assign a mandate to form the FBiH Government, in whose election the House of Representatives also enjoys supremacy, and it is an indelible and strong impression that the essence of “Petritsch’s Amendments” at least in the most narrowly understood electoral issues, was to enable the election of the entire FBiH executive power without any influence of the parties for which the Croats of that entity actually vote.

In addition, the 1991 Census results, which are far from today’s reality, have been subject to the Sainte-Laguë electoral formula, which is only applied in a small number of countries, with explicit intention of ensuring disproportionately strong parliamentary representation of smaller political parties. In BiH, this formula has been applied to the process of determining the representation of delegates of individual peoples from some certain counties in the House of Peoples. This representation should, by elementary logic, correspond as much as possible to the percentage of members of each people in each of the counties, without any favouring of any smaller or larger groups of members of the same people.

By applying Sainte-Laguë formula, parts of certain people that make up a smaller percentage of the population of the counties in which they live are formally disproportionately represented, at the expense of parts of the same people that make up a larger percentage of their counties (e.g. Croats in Tuzla Canton are formally more represented in the House of Peoples than Croats from the West-Herzegovina County). At first glance, it may seem that such a solution was intended to positively discriminate against “constituent minorities” but given the fact that the Constitution does not even recognize such a category, it seems that a completely different motive lies behind the choice of an extremely unusual electoral system. This motive is most likely the desire to allocate as many delegate seats as possible to parts of individual constituent peoples who, due to their real minority status in their counties, simply do not have the political capacity to elect their own representatives for the House of Peoples in county assemblies. In such situation, the election of their delegates is practically left to the parties of the people who are in the majority in those counties. In other words, this solution leads to the

following absurdity – Croats of Tuzla Canton who cannot elect their delegate even to the county assembly, but are elected by Bosniacs, are more strongly represented at the HP FBiH PA than Croats of West-Herzegovina County who can elect their delegates to their own county assembly.

Using this state of the electoral legislation in BiH, the most powerful Bosniac parties managed to take full control of the FBiH Government after the 2010 elections. In those elections, the most successful Bosniac party, SDP BiH, unjustifiably claimed to enjoy Croatian electoral legitimacy, and sought a share of the ministries reserved for Croats in the federal government, although the share of Croat votes in its total vote was less than 2%. At the same time, SDP BiH party formed a “Bosniac bloc” with the “rival” SDA party, which is a very rare example of forming a “grand coalition” among the parties of the majority people in multinational countries. That bloc aspired to all 8 ministerial positions in the Bosniac quota, prime minister and all 3 seats in the Serbian quota, while challenging the right of parties for which Croats actually voted to all ministerial positions from the Croatian quota, although those parties won about 85% of the total number of Croatian votes. When Croatian parties refused to cede ministerial positions from the Croatian quota to the SDP party, the “Bosniac bloc” initiated the formation of the FBiH Government, made up of the SDP-SDA coalition, strengthened by parties that received a minority percentage of Croatian and some Bosniac votes – HSP and NSRzB (that coalition was officially called the “Platform for Change”). Parties with 85-90% of Croatian electoral legitimacy were expelled from the FBiH Government, and Croats were “represented” in the government by parties with 10-15% of Croatian electoral legitimacy.

This procedure was made possible by the fact that since the 2002 amendment, the FBiH President and Vice-Presidents have been selected by having one third (1/3) of the votes in each of the House of Peoples’ constituent caucuses, which means that the “platformers” needed support of 6 Croatian delegates. Although the “Bosniac bloc” had the institutional means to elect 7 Croats by the majority Bosniac electoral will to the HP FBiH PA, it failed to do so, and Croatian delegates from minor Croatian parties were not enough, so the “platform” coalition was supported by only 5 delegates of the Croat Caucus, and they lacked one vote. Nevertheless, at a joint session of both houses of the FBiH Parliament, these parties unconstitutionally nominated and elected a President, two Vice-Presidents and the FBiH Government. These decisions were annulled by the Central Election Commission (CEC) because the appointment process was conducted by the HP FBiH PA, which was not constituted in accordance with the provisions of the BiH Election Law, as only 6 of the 17 Croatian delegates

were elected, and only 5 of them supported the mentioned appointments according to the Constitution and the Election Law. In the end, the then High Representative Valentin Inzko himself helped the unitary forces in this violation of the Constitution and Election Law, annulling the decision of the CEC and confirming all these appointments. Thus, this actor with supra-constitutional powers participated in disavowal of the minimum number of delegates in the caucuses of the constituent peoples as a necessary condition for election of the executive authorities, whose point is to prevent outvoting of fewer peoples.

In addition to the described, at the emerging level quite complicated, but strongly aimed at the goal of a strongly focused mechanism of overvoting Croats in FBiH bodies, for more than two decades there has been an incomparably simpler procedure for electing the Croat member of the BiH Presidency by Bosniac votes. This procedure has theoretically been possible since the first post-war elections in BiH, given that the FBiH is a single electoral unit for the election of Croat and Bosniac members of the Presidency, while in that entity Bosniacs are more than three times more numerous than Croats (70,40% : 22,44%). These circumstances were abused by some Bosniac parties in three election cycles, in 2006, 2010 and 2018, and nominated Željko Komšić for the Croat member of the Presidency of BiH, and invited their supporters, most of whom are Bosniacs, to vote for him, and thus circumvented the political will of the vast majority of Croats living in the FBiH. Such a procedure would be unthinkable in countries with developed democratic and political cultures in which there are constitutionally recognized identity-based political communities, because in those societies, it is unthinkable for voters who do not belong to a particular political community to elect representatives of that community. The numerical aspect of the manipulation of the election of Željko Komšić will be shown in the tables for all three mentioned election cycles.

Territorial unit	Komšić	Jović	Ljubić	Ivanković-Lijanović	Jurišić	Javor-Korjenić	In total
Una-Sana Canton	10.093	2.262	2.549	1.954	881	400	18.139
Posavina County	883	4.851	3.384	1.119	850	36	11.123
Tuzla Canton	38.258	3.282	917	4.943	740	301	48.441
Zenica-Doboj Canton	15.200	6.637	2.973	3.772	1.957	213	30.752
Bosnian-Podrinje Canton	1.542	21	10	276	28	22	1.899

Central Bosnia Canton	7.803	21.015	7.843	3.150	3.215	216	43.242
Herzegovina-Neretva County	6.981	18.974	17.624	2.216	4.087	197	50.079
West-Herzegovina C.	454	9.245	8.980	2.152	4.365	32	25.228
Sarajevo Canton	31.349	2.385	1.152	3.554	892	440	39.772
Herzeg-Bosnia County	1.233	4.544	6.317	1.166	2.746	168	16.174
Brčko District	917	2.541	805	255	178	24	4.720
Total votes	114.713	75.757	52.554	24.557	19.939	2.049	289.569
Percentage of votes	39,62 %	26,16 %	18,15 %	8,48 %	6,89 %	0,71 %	100 %

Table 1 – Elections for the Croat member of the Presidency of BiH in 2006¹⁷

The previous table shows that Željko Komšić won the absolute majority of votes in counties with a strong Bosniac majority, where the number of votes for all other candidates, which were nominated by parties traditionally voted for by Croats is extremely small. In a sense, the only exception is Zenica-Doboj Canton, where a slightly larger number of Croats live, but even here his result was only slightly less than the absolute majority. Considering that the number of his votes is completely negligible in West-Herzegovina County, with a huge majority of Croats, and that in counties where a significant number of Croats and Bosniacs live, he took only third or fourth place, it can be concluded that Bosniacs voted for him.

Territorial unit	Komšić	Krišto	Raguž	Ivanković-Lijanović	Galić P.	Kutle	Galić F.	In total
Una-Sana Canton	31.306	774	654	3.608	136	129	108	36.715
Posavina County	2.795	6.956	3.585	509	69	26	32	13.972
Tuzla Canton	99.031	5.116	1.846	4.659	123	222	87	111.084
Zenica-Doboj Canton	61.313	7.270	4.396	10.977	140	133	113	84.342
Bosnian-Podrinje Canton	5.107	45	24	531	16	6	11	5.740

17 Central Election Commission, https://www.izbori.ba/rezultati/konacni/predsjednistvo_bih/Predsjednistvo.asp?nivo=702&nivo1=701

Central Bosnia County	28.946	21.600	12.466	7.070	151	75	85	70.393
Herzegovina-Neretva County	20.037	28.375	16.146	4.056	161	98	152	69.025
West-Herzegovina C.	542	20.137	9.438	4.097	132	72	138	34.556
Sarajevo Canton	77.918	2.804	4.279	6.642	212	206	138	92.199
Herzeg-Bosnia County	2.108	12.628	5.710	2.834	286	75	71	23.712
Brčko District	4.106	2.475	782	46	74	5	14	7.502
Total votes	333.209	108.180	59.326	45.029	1.500	1.047	949	549.240
Percentage of votes	60,67 %	19,70 %	10,80 %	8,20 %	0,27 %	0,19 %	0,17 %	100 %

 Table 2 – Elections for the Croat member of the Presidency of BiH in 2010¹⁸

Even in the 2010 elections, in which his candidate party – the SDP BiH, was at the height of its political power, Komšić did not win an absolute majority in any county with more Croats than Bosniacs, not even in Central Bosnia Canton.

Territorial unit	Komšić	Čović	Zelenika	Falatar	Ivanković-Lijanović	In total
Una-Sana Canton	20.765	988	220	841	1.054	23.868
Posavina County	1.560	8.200	1.113	119	181	11.173
Tuzla Canton	51.108	4.703	617	2.435	612	59.475
Zenica-Doboj Canton	38.059	10.003	1.286	1.938	830	52.116
Bosnian-Podrinje Canton	5.158	68	21	152	103	5.502
Central Bosnia County	17.804	28.600	3.612	1.459	968	52.443
Herzegovina-Neretva County	14.910	40.731	6.931	1.322	369	64.263
West-Herzegovina C.	289	29.730	4.479	194	367	35.059
Sarajevo Canton	66.931	3.300	1.554	6.942	568	79.295

18 Central Election Commission, <http://www.izbori.ba/Finalni2010/Finalni/PredsjednistvoBiH/Default.aspx>

Herzeg-Bosnia County	1.418	12.197	4.282	175	863	18.935
Brčko District	2.878	2.889	330	77	56	6.230
Total votes	220.880	141.409	24.445	15.654	5.971	408.359
Percentage of votes	54,09 %	34,63 %	5,99 %	3,83 %	1,46 %	100 %

Table 3 – Elections for the Croat member of the Presidency of BiH in 2018¹⁹

In the 2018 elections, in which Komšić was for the first time the candidate of the new party – the Democratic Front, of which he is also president, the findings from the previous two analysed election cycles were repeated even more convincingly, so he was second in Central Bosnia County as well as in the Brčko District, where the number of Bosniacs more than doubles the number of Croats (42,36% : 20,66%).

II-3) Attempts to solve systemic problems of BiH through the Constitutional Court of BiH and decisions of the European Court of Human Rights

The described problems in the field of legitimate representation of constituent peoples in dedicated bodies, primarily in the HP FBiH PA, have long been neglected, given the aspirations of the most powerful Bosniac parties to disavow and later even eliminate the only principle of constitutiveness by preventing the legitimate representation of Croats in the FBiH, with tacit, sometimes even open support of relevant foreign actors for such aspirations. However, the BiH Constitutional Court, bound by the text of the BiH Constitution, and the already mentioned Decision U 5/98-III from 2000, about half a decade ago issued a decision that is one of the key determinants of the current situation in this area.

On 1 December 2016, the BiH Constitutional Court issued Decision U-23/14 according to which the BiH Election Law discriminates against the constituent peoples of BiH. Decision also confirms that the delegates to the HP FBiH PA (the upper of the two legislative houses in the FBiH) are representatives of the constituent peoples, not representatives of the counties. The same principle applies to the members of the three-member Presidency, who must be legitimate representatives of the constituent peoples.

This Decision of the Constitutional Court ordered the BiH Parliamentary Assembly to amend the Election Law to ensure that delegates to the HP FBiH PA are truly

¹⁹ Central Election Commission, http://www.izbori.ba/rezultati_izbora?resId=25&langId=1#/1/1/0/0/702

legitimate representatives of the constituent peoples. The Court gave the state parliament six-month deadline to change the Election Law.

The only proposal to amend the Election Law that was sent to the parliamentary procedure within the prescribed six-month deadline was the proposal of Croatian delegates. The proposal passed the constitutional commission of the HP BiH, but Bosniac delegates called for the protection of the “vital national interests” on 4 May and tried to remove the proposal from parliamentary procedure. This case was presented before the BiH Constitutional Court on 8 May 2017, and the Court ruled in case U-3-17 (Čolak case) that the vital national interest of Bosniacs was not jeopardized by the proposal, meaning that a vote on the proposal was allowed. The Constitutional Court also annulled the relevant provisions of the Election Law because the deadline by which the Parliamentary Assembly had to amend the Election Law has passed.

The BiH Parliamentary Assembly failed to amend the BiH Election Law in accordance with these decisions, and on 28 July 2017, the BiH Constitutional Court repealed the provision of Article 10.12 paragraph (2) of the BiH Election Law in the part: „Each constituent people shall be given one seat in each canton.“ (in the sense – one mandate for the each caucus of constituent peoples from each county), as well as the provisions of Article 19.4 paragraphs (2) to (8) which regulated in detail the number of delegates of each people from each county. As a result, the 2018 General Elections were held without these provisions, and the HP FBiH PA was filled based on the Instruction of the BiH Central Election Commission. In this way, this administrative-technical body took over the exclusive prerogatives of the BiH Parliamentary Assembly, arbitrarily deciding to apply the deleted provision of Article 10.12 paragraph (2).

In any case, the merits of the relevant decisions of the BiH Constitutional Court, which are the framework within which all future decisions related to the BiH Election and the legitimate representation of the constituent peoples and Others must be made, are as follows:

- Decision U-5/98 (“Constitutiveness”, 1 July 2000) – The constitutiveness (constitutionality) of the three peoples is a fundamental principle of the BiH Constitution with which all other constitutional principles and all other constitutions and laws in BiH must be harmonized. All three peoples are constituent in both entities.
- U-23/14 (“Ljubić”, 1 December 2016) – The House of Peoples of the FBiH Parliament is not the House of counties but the House of Peoples. Legitimate representation

in the HP FBiH PA is based on the constituent peoples as electoral units. The principle of proportionality or equality of electoral votes should be applied within the constituent peoples as separate electoral units. What applies to the HP FBiH PA also applies to all other bodies intended to represent the constituent peoples at all administrative and political levels.

- U-3/17 (“Čolak“, 6 July, 2017) – It is necessary to implement the *Ljubić Decision* (independent of the implementation of relevant ECtHR decisions) in order to fully implement the election results and to bring the elections in line with the general principle of democracy that one constituent people does not elect representatives of another constituent people.

The common denominator of all three relevant decisions of the BiH Constitutional Court are as follows:

- The constitutiveness (constitutionality) of Bosniacs, Croats and Serbs is a fundamental principle of the BiH Constitution. Therefore, all articles of the state, entity and cantonal constitutions must all be in accordance with the principle of the constitutiveness of the three peoples. The constitutiveness (constitutionality) of the three peoples is the source of legitimacy of both the state and entity government.
- Each of the three constituent (constitutional) peoples form a separate electoral unit (specific demos) for legislative and executive bodies intended to represent the constituent peoples at both the state and entity levels.
- Legitimate representation of the constituent (constitutional) peoples is the main characteristic of the constitutiveness and *conditio sine qua non* of their mutual equality.

Of course, in addition to these decisions, the already mentioned decisions of the European Court of Human Rights are also crucial and unavoidable determinant. In accordance with Protocol No. 12 in addition to the Convention for the Protection of Human Rights and Fundamental Freedoms, the ECtHR ruled in all the above cases that prosecutors were discriminated against on the following grounds:

- Sejdić-Finci (22 December 2009) – The applicants complained that they had been prevented from running in the elections for the House of Peoples and the Presidency of BiH as Roma and Jew. They relied on Articles 3, 13 and 14, Article 3 of Protocol No. 1 and Article 1 of Protocol No. 12.

- Zornić (15 July 2014) – The applicant complained about the fact that she had no right to run in the elections for the House of Peoples and the Presidency of BiH because she did not declare herself as a member of one of the “constituent peoples”. She relied on Article 3 of Protocol No.1, to the Convention *per se* and in conjunction with Article 14 of the Convention, and to Article 1 of Protocol No. 12.
- Šlaku (26 May 2016) – The applicant complained that he was not entitled to stand for election to the House of Peoples and the Presidency of BiH because he was not a member of any “constituent people”. He relied on Article 3 of Protocol No. 1 to the Convention *per se* and in conjunction with Article 14 of the Convention, and to Article 1 of Protocol No. 12.
- Pilav (9 June 2016) – On the 24 July 2006, The BiH Central Election Commission (“CEC”) has issued a decision rejecting his candidacy. The explanation said that the applicant could not be elected to the Presidency from the territory of the Republic of Srpska, given that he declared himself as Bosniac.
- Pudarić (8 December 2020) – Application submitted due to the applicant’s inability to run in the elections for the Presidency of BiH as a Serb residing in the FBiH.

The two of these decisions, therefore, refer to the denial of active and passive right to vote to members of national minorities (Sejdić-Finci and Šlaku), two to members of the constituent peoples regarding the entity of their residence (Pilav and Pudarić), and one to citizens who do not declare their nationality (Zornić). These different foundations on which the mentioned decisions were made are often not clearly delineated in public, and in essence national minorities and citizens without national self-identification are abused in order to disavow, and ultimately abolish the constitutional category of the constitutiveness of the peoples. At the same time, the decisions of the BiH Constitutional Court and the ECtHR are unfoundedly presented as mutually opposed and unenforceable at the same time. In the later parts of this study, a model that implements both decisions, and enables the political representation of national minorities as such will be presented. Before that, an overview of the current situation in the electoral legislation relevant to national minorities will be given, as well as an overview of their representation in the population of BiH. At the same time, national minorities will be delineated as precisely as possible in relation to other categories of the population that do not belong to the constituent peoples, and with whom in public discourse they very often tacitly identify and oppose the constituent peoples.

II-4) Political representation of national minorities in BiH

In the broadest sense, the term minority refers to a subordinate or marginal group that can be defined by ethnic, racial or other special characteristics.²⁰ According to F. Capotorti's definition, it is "a numerically smaller group than the rest of the population of a state, in a position not to dominate, whose members-citizens of that state have from ethnic, religious or linguistic point of view characteristics that distinguish them from the rest of the population, and who, which is self-evident, show a sense of solidarity, in order to preserve their culture, tradition, religion or language"²¹.

The status and position of national minorities is one of the most frequently themed majority-minority issues in a world which is interspersed with language, religion etc. Such is the situation in the society of BiH: a large number of national minorities and a small number of members of these minorities who are territorially located in almost all BiH municipalities. According to the 1991 Census, the three constituent peoples made up approximately 92% population of the BiH. The „rest“ needs to be taken with a pinch of salt as almost 250.000 citizens have declared themselves Yugoslavs. According to the 2013 Census, 3.68% of the population belonged to the category of „Others“, i.e., citizens who do not belong to the constituent peoples.

In the normative sense, national minorities are grouped under the term Others, which derives its existence from the preamble of the BiH Constitution and includes national, cultural and "political minorities" in BiH, i.e., national minorities (Jews, Roma...), persons from "mixed marriages", those who call themselves Bosnians and Herzegovinians, and all those who reject classification as constituent people. According to the BiH Law on Protection of the Rights of Members of National Minorities, national minorities are defined as "part of the population – BiH citizens who do not belong to any of the three constituent peoples, and are people of the same or similar ethnic origin, same or similar traditions, customs, beliefs, language, culture, and spirituality and close or related history and other characteristics"²². The same law lists 17 national minorities: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenes, Turks and Ukrainians, and others "who meet the conditions referred to in paragraph 1 of this Article".

20 Čačić-Kumpes; Kumpes: Ethnic minorities: Elements in Defining and Hierarchisation of the Right to Difference, *The Journal of Migration and Ethnic Themes*, Zagreb, Vol. 21, 2005, No. 3, p. 174.

21 Committee on the Elimination of Racial Discrimination, (UN Doc. E/CN.4/Sub.2/1977/385).

22 Article 3 paragraph 1 Law on Protection of the Rights of Members of National Minorities "Official Gazette of Bosnia and Herzegovina, number 12/03".

The issue of political representation of national minorities in BiH makes clear all its specifics and will have an important impact on shaping the concept of that representation. The problem of representation in a multinational, multiconfessional, multicultural and post-conflict state is often emphasized by politicizing and usurping the political representation of national minorities, whose existence is officially identified by the census. Consequently, this process may have a negative connotation and produce new weaknesses in the institutions of political representation. This process in BiH can be divided into two specific phases: the first, “short” formative phase and a more complex phase of the influence of international actors and constitutional changes, i.e., the establishment and reform of political representation of national minorities.

A) Formative stage

The formative phase implied minimal legal regulation of this topic. In many democracies of the world, the highest act of recognition of national minorities occurs through their constitutional definition. The Constitution of BiH as Annex IV. Article II 3 of the Dayton Peace Agreement directly addresses minorities, guaranteeing them non-discrimination. The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution, shall be guaranteed to all persons in BiH, without discrimination on any grounds such as sex, race, colour, language, religion, political and other opinion, national or social origin, affiliation with a national minority, birth or other status.²³

Part of the same peace agreement is Annex VI, which introduced fundamental human rights and freedoms into the legal system. Without almost any selection, the founders of the Constitution added 16 international legal acts on human rights and fundamental freedoms as part of the Constitution of BiH, while 22 of them are in Annex to the Constitution of the FBiH. Among them are those that fully deal with the protection of the rights of national minorities and have been part of the legal system of BiH since 1995: The Framework Convention for the protection of National Minorities, The International Convention on the Elimination of All Forms of Discrimination and The European Charter for Regional or Minority Languages.

²³ The constitutional provision is identical to Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and is repeated in Annex 6 of the Dayton Peace Agreement. More in: Miličević, N. (2004) The situation and problems of national minorities in Bosnia and Herzegovina. in: *Perspectives of multiculturalism in the countries of the Western Balkans*, Belgrade.

As a conclusion of the formative phase, building a normative system of protection of national minorities, it is clear that neither the Constitution of BiH nor the constitutions of the entities, that are the basic infrastructure that predetermines all other relations between citizens, have built a system of protection of national minorities nor their political representation: although constitutional solutions were crucially influenced by the echo of the war, they did not even sufficiently protect the rights of members of the constituent peoples. Therefore, the rights of minorities remained in the shadow of non-recognition of the constitutiveness of the constituents throughout the territory of BiH. Entity constitutions did not recognize all constituent peoples as such, and Serbs were treated as a minority in the FBiH, and Bosniacs and Croats in the RS. It was the same with the official languages in the entities as well as the official script.

B) Stage of constitutional changes and international monitoring

The Dayton aporia were a suitable testing ground for differences in entity constitutions and different treatment of the three constituent peoples, Bosniacs, Croats and Serbs, as well as Others. Consequently, according to the third partial decision of the Constitutional Court of BiH²⁴, the provisions stating that Bosniacs and Croats are the constituent people of the FBiH, but not of the RS, i.e., that Serbs are the constituent people of the RS, but not of the FBiH, should have been changed. Due to resistance of the entity systems, despite the legal obligation, the High Representative²⁵ issued a Decision on Constitutional Amendments in RS²⁶ and a Decision on Constitutional Amendments in FBiH²⁷. This constitutional change meant that three constituent peoples in both entities, but also the Others, became the building blocks of the government in both entities.²⁸ The Constitutions of the RS and FBiH, equal to the Constitution of BiH,

24 Official Gazette of Bosnia and Herzegovina, number 23/2000, from 14 September 2000.

25 The mandate of the High Representative resulting from Annex 10 of the Dayton Peace Agreement creates an additional anomaly in the organization of government. The deep institutional crisis enabled, as a temporary solution, the strengthening of his institution with the Bonn powers in 1997, without the revision of Annex 10. It created much more space for manoeuvring for political action than a contractual source of power. Therefore, political disputes on which political elites could not reach a consensus, such as defence and tax reform, were moved to the Office of the High Representative, which instead of withdrawing, merged with the system. Paradoxically, the symbols of statehood (coat of arms, flag) were his decision. The institutionalization of the High Representative made him the key actor and the main political authority in the country. BiH's system was like an international protectorate. Also, High Representative's initially envisaged one-year term was extended indefinitely. The created atmosphere of passivity and dependence has blocked the process of European integration. "The European Union will not be able to consider Bosnia and Herzegovina's application for full EU membership until the Office of the High Representative is closed" (European Commission, 2009: 27-28).

26 Official Gazette of Republic of Srpska, number 21/02.

27 Official Gazette of the federation of Bosnia and Herzegovina, number 16/02.

28 Amendment XXVIII, point (2) of the Constitution of the Federation of Bosnia and Herzegovina. Amendment LXVII, point 1, paragraph 4 of the Constitution of Republic of Srpska.

use the term “Others” guaranteeing them equal participation in government without discrimination. Constitutional changes also meant the introduction of a kind of equivalent to the HP FBiH PA, the Council of Peoples of the Republic of Srpska, which is a special body of legislative power.²⁹

The HP FBiH PA is composed of 17 delegates from each constituent people and 7 from the ranks of the Others,³⁰ while the Council of Peoples of the Republic of Srpska is composed of significantly fewer delegates: eight from each constituent people and four from the ranks of the Others.³¹ Delegates to the HP FBiH PA are elected by county assemblies, in proportion to the national structure, with emphasis on the fact that the right to vote belongs to representatives from the same people, while for the delegates from the ranks of the Others is stated only that the election will be regulated by law.³² According to the constitutional amendments, delegates to the Council of Peoples of the Republic of Srpska will be elected from the appropriate caucus of delegates in the National Assembly.³³

While the organization of the House of Peoples is linked exclusively to the national structure of counties, 98 members of the House of Representatives of the FBiH, elected by direct election and secret ballot, form party caucuses in accordance with international parliamentary regulations and election results. The caucuses are also formed by 83 members of the RS National Assembly. The position of national minorities is practically invisible in the lower houses of the entities. However, the concept of political representation of national minorities in the lower houses is not problematized in the political public sphere. Some other elements are considered controversial on the political scene.

Amendments to the entity constitutions did not regulate the “protection of the national interests of national minorities”, although they provide them with a seat on the councils for the protection of the vital national interests of the constituent peoples in the constitutional courts of entities.³⁴ The constitutions of entities provided for one member of the government from the ranks of the “Others” to be appointed by the prime minister, from the quota of the largest constituent people, as well as their representation in the legislative bodies, supreme and constitutional courts. However, members of the Others cannot be Vice-Presidents of the entities or ombudsmen in the entities³⁵.

29 Amendment LXXVI, paragraph 1 of the Constitution of Republic of Srpska.

30 Amendment XXXVIII, point (2) of the Constitution of the Federation of Bosnia and Herzegovina.

31 Amendment LXXVIII, point 3, paragraph 2 of the Constitution of Republic of Srpska.

32 Amendment XXXIV of the Constitution of the Federation of Bosnia and Herzegovina.

33 Amendment LXXVIII, point 5, paragraph 1 of the Constitution of Republic of Srpska.

34 Amendment XXXVIII point (3) of the Constitution of the Federation of Bosnia and Herzegovina; Amendment LXXXVIII point 2 of the Constitution of Republic of Srpska.

35 Amendment XXX and Amendment XLI Constitution of the Federation of Bosnia and Herzegovina.

County Constitutions almost uniformly introduce the category of “Others” into the constitution to appoint it, along with the constituent peoples, the fourth constituent of the county³⁶, while some constitution-makers go step further by guaranteeing proportional representation in county ministries, courts and municipal and county authorities.³⁷ Only the Constitutions of the West-Herzegovina³⁸ and Sarajevo County³⁹ explicitly mention national minorities.

The representation of national minorities in the FBiH has been reduced primarily to the county assemblies. The practices of county assemblies are different: from a secured place for Others, the possibility of establishing the Caucus of Others, the possibility of winning the position of Chairman and Deputy Chairman (Sarajevo Canton example), to a simple constitutional guarantee that the county assembly structure will reflect the national population structure (example – Constitution of Una-Sana Canton). Article 13.13 of the Election Law of BiH on the Appointment of Administration Officials and the Election of Executive Boards at the Local and County levels also guarantees that it will take into account the composition of the population. Furthermore, Article 10.12 of the Law on Amendments to the Election Law determines the manner in which the HP FBiH PA is filled from county assemblies: “The number of delegates from each constituent people and group of Others to be elected to the HP FBiH PA from the legislature of each canton shall be proportionate to the population of the canton as reflected in the last census. The Election Commission will determine, after each new

36 See Constitution of Posavina County (“*Narodne novine* of the Posavina County”, no. 1/1996, 3/1996 – Amendment I, 7/1999 – Amendment II, 3/2000 – Amendment III, 5/2000 – Amendment IV, 7/2004 – Amendments V-XII i 18/2021 – Amendments XIII-XXXIII); The Consolidated Version of the Constitution of the Bosnian Podrinje Canton (Constitution of Bosnian Podrinje Canton Goražde /”Official Gazette of the Bosnian Podrinje Canton Goražde”, no: 5/97, Amendments I-IV to the Constitution of Bosnian Podrinje Canton Goražde /”Official Gazette of the Bosnian Podrinje Canton Goražde”, No: 6/97 and Amendments V-XVII to the Constitution of Bosnian Podrinje Canton Goražde”, (“Official Gazette of the Bosnian Podrinje Canton Goražde”, No; 6/98)).

37 See Constitution of Una-Sana Canton (“*Official Gazette of the Una-Sana Canton*”, no. 1/2004 – consolidated text and 11/2004 – Amendments I-VIII); Constitution of Tuzla Canton (“*Official Gazette of the Tuzla-Podrinje Canton*”, no. 7/1997 and 3/1999 – Amendment I i “*Official Gazette of Tuzla Canton*”, no. 13/1999 – Amendments II-VI, 10/2000 – Amendments VII-XII, 14/2002 – Amendments XIII-XLI, 6/2004 – Amendments XLII-LXXIII and 10/2004 – Amendments LXXIV-LXXXII); Constitution of Zenica-Doboj Canton (“*Official Gazette of FBiH*”, no. 7/1996 and “*Official Gazette of Zenica-Doboj Canton*”, no. 1/1996 – Amendments I-V, 10/2000 – Amendment VI, 8/2004 – Amendments VII-LII, 10/2004 – corr. and 10/2004 – Amendments LIII-LXI); Constitution of Central-Bosnia County (“*official gazzete of Central-Bosnia County*”, no. 1/1997, 7/1998 – corr., 5/1997 – Amendment I, 6/1997 – Amendments II-III, 2/1998 – Amendments IV-VIII, 8/1998 – Amendment IX, 10/2000 – Amendment X, 8/2003 – Amendments XI-LXIII, 2/2004 – Amendment LXIV and 14/2004 – Amendments LXV-LXIX); Constitution of Herzegovina-Neretva Canton (*Official Gazette of Herzegovina-Neretva Canton – County* » no : 2 / 98, 4 / 00 i 7/04); Constitution of West-herzegovina County (*official Gazette of West-Herzegovina County*”, no: 1/96,2/99,14/00, 17/00, 1/03,10/04 i 17/11); Constitution of Sarajevo Canton (“*Official Gazette of Sarajevo Canton*”, no. 1/1996, 2/1996 – corr., 3/1996 – corr., 16/1997 – Amendments I-XIII, 14/2000 – Amendments XIV and XV, 4/2001 – Amendments XVI-XVIII, 28/2004 – Amendments XIX-XLII, 6/2013 – Amendments XLIII-XLIX i 31/2017 – Amendments L-LVII).

38 Amendment XLVII. Article 2 to *Constitution of West-herzegovina County*.

39 Amendment XLIV Article 17 to Constitution of Sarajevo Canton.

census, the number of delegates elected from each constituent people and from the group of Others that will be elected from each canton legislature. For each canton, the population number for each constituent people and for the group of Others shall be divided by the numbers 1,3,5,7 etc. as long as it is necessary for the allocation. The numbers obtained as a result of these divisions shall represent the quotient of each constituent people and of the group of Others in each county. All the quotients of the constituent peoples shall be ranked separately by size, so that the largest quotient of each constituent people and of the people from the ranks of the Others, is placed in the first place. Each constituent people shall be allocated one seat in every county. The highest quotient for each constituent people in each county shall be deleted from the list of quotients of that constituent people. The remaining seats shall be allocated to constituent peoples and to the Others one by one in descending order according to the remaining quotients on their respective list.”⁴⁰. The following articles of the said law stipulate that each delegate, by secret ballot, casts one vote for the list on which his/her corresponding caucus is.

Constitutional changes⁴¹ specifically regulated the constitutional position and participation of the Others through 10 amendments to the Constitution of the FBiH, i.e., eight amendments to the Constitution of the RS. The term “Others” has completely unjustifiably become a synonym for national minorities (more on this on Chapter II-5). “Special emphasis on the protection of the rights and position of national minorities has been avoided”⁴².

A further step was to be taken with the Law on the Protection of the Rights of Members of National Minorities⁴³ of BiH adopted on 1 April 2003. The Law of the same name at the level of RS was passed a year later,⁴⁴ and in the FBiH, after it was rejected in 2006, it was finally adopted in 2008. Entity laws did not elaborate on the state law on the protection of minorities, but almost literally copied it. They guarantee the right to be represented in government bodies and public services at all levels, in proportion to the percentage of national minorities in the total population according to the latest census. The protection of members of national minorities has also been

40 Law on Amendments to the Election Law, “Official Gazette of BiH”, number 20/04.

41 “In 10 out of a total of 28 amendments to the Constitution of the Federation of Bosnia and Herzegovina and in 8 out of a total of 27 amendments to the Constitution of the Republic of Srpska, “Others” are explicitly mentioned” (Miličević, *op. cit.*, p. 266).

42 Šolaja, M., Relativization of European national minority politics – case study Bosnia and Herzegovina, *Političke perspektive: časopis za istraživanje politike*, Vol. 5 No. 3, 2015., p. 44.

43 Law on Protection of National Minorities in BiH “Official Gazette of Bosnia and Herzegovina, number 12/03”.

44 Official Gazette of Republic of Srpska, 2/05.

developed at the county level in four counties: Tuzla⁴⁵, Sarajevo⁴⁶, Una-Sana⁴⁷ and Bosnia-Podrinje⁴⁸.

The Law on the Protection of Rights of Members to National Minorities has been widely criticized for insufficient elaboration and concretization of constitutional provisions⁴⁹, but its significance is indisputable because it introduced precision into legal political practice by introducing the legal term “national minorities” instead of the previous constitutional category “Others”⁵⁰. Following the 2005 amendments to the Law from 2005, in the wake of constitutional changes on the positions of national minorities in institutions of political representation, amendments stipulated that “they have the right to be represented in government and other public bodies and services at all levels, in proportion to the percentage of their participation in the population according to the latest census in BiH”⁵¹. The legislator further clarified that representation refers to all levels and branches of government, and that “representatives of national minorities in government structures are representatives of all national minorities”⁵². The Law on Amendments to the Election Law of BiH⁵³ regulates their participation at the local level of government, and adds chapters on the election of delegates to the HP FBiH PA and the Council of Peoples of the RS.⁵⁴ In order to present their differences as appropriately as possible, the legislator envisaged the establishment of councils of national minorities in state and entity legislative bodies⁵⁵, and recent legal changes have expanded the participation of minorities in parliamentary committees (in addition to the Constitutional and Human Rights Committees, it has been extended to the Committee on Protection of Children, Youth, Immigration, Refugees, Asylum and Ethics

45 Law on the Protection of Persons Belonging to National Minorities in Tuzla Canton (Official Gazette of Tuzla Canton, 14/09).

46 Law on Protection of the Rights of Members of National Minorities in Sarajevo Canton (Official Gazette of Sarajevo Canton, number 27/11).

47 Law on Protection of the Rights of Members of National Minorities in Una-Sana Canton (Official Gazette of Una-Sana Canton, 4/12).

48 Law on Protection of the Rights of Members of National Minorities in Bosnian Podrinje Canton (Official Gazette of Bosnian Podrinje Canton, 8/12).

49 Miličević, N., op. cit., p. 266.

50 Šolaja, M., op. cit., p. 47.

51 “Official Gazette of BiH”, number: 65/05.

52 Law on Protection of the Rights of National Minorities in BiH, Article 20, paragraph 3.

53 Law on Amendments to the Election Law, “Official Gazette of BiH”, number 20/04.

54 The members of the Council of Peoples are elected by the appropriate caucuses in the National Assembly. According to the Article 11.12. of the Law on Amendments to the Election Law “Each political party represented in the delegate caucuses of the respective constituent peoples and others, or any member of one of these delegate caucuses, including ad hoc members elected following Article 2, paragraph 2, shall have the right to nominate one or more candidates on the electoral list the relevant delegate caucus. Each list may contain more candidates than the number of delegates to be elected. Candidates cannot be deputies in the National Assembly or councillors in the municipal assembly. Each member of the National Assembly votes once for the list within his/her delegate caucus. They vote by secret ballot.”

55 Law on Protection of the Rights of National Minorities in BiH, Article 21; Article 23

and other working bodies).⁵⁶ However, members of national minorities could still not be members of the BiH Presidency, delegates to the HP BiH PA, nor chairmen or deputies in both houses of the BiH Parliamentary Assembly.

This phase showed that Others are not only subject to terminological confusion but also represent a kind of burden to national minorities in their efforts to exercise their rights defined by international standards. The Council of Europe emphasizes this term as a key obstacle for “minorities to occupy the highest positions in institutions”⁵⁷. International organizations agree – in addition to terminology, BiH has a problem with the institutional representation of national minorities in legislative and executive bodies, with their right to be elected to all positions of government, but also with cultural, linguistic and economic deprivation of national minorities.⁵⁸

In addition to constant monitoring at this stage, the role of external actors has become particularly visible through the ruling of the European Court of Human Rights. By a judgment in favour of two complainants (Sejdić/Finci case)⁵⁹, members of the Roma and Jewish communities, on 22 December 2009, the Court ruled that it was discriminatory to deny them the opportunity to run for the Presidency and HP BiH PA. The Court will remind us that there is a consensus at European level that it is appropriate to deny individuals the right to stand for election solely on the basis of their actions and not because of their natural or inalienable characteristics (European Court of Human Rights, 2009). Political actors in BiH are invited to put this issue at the top of the political agenda. While the Council of Europe and the European Union reiterated that the position and membership of BiH will be determined by the decision of the European Court of Human Rights, the same actors recognized the results of the 2010 General Elections as valid, as well as in 2014 and 2018. even though the decision was not implemented. “After the 2014 election, the new European Commission decided to completely freeze the process of implementing the decision on non-discrimination of minorities in the “Sejdić-Finci case”⁶⁰. The absence of a policy towards national

56 “Official Gazette of BiH”, no. 93/08.

57 Šolaja, M., *op. cit.*, p. 50.

58 Čorni, A., Rights of national minorities and local policies (Study on the application of standards for the protection of the rights of persons belonging to national minorities in BiH, Serbia, Croatia and Slovenia). Banja Luka: Helsinki Citizens' Assembly, 2010, p. 90.

59 The applicants relied on Articles 3, 13, and 14 of Protocol No. 1. 1 and Article 1 of Protocol No. 12 European Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette – International treaties, no. 8/99. ECHR, Sejdić, and Finci against BiH (applications nos. 27996/06 and 34836/06), Decision of 22 December 2009.

60 Šolaja, M., *op. cit.*, p. 53. External actors believe that Bosnia and Herzegovina has moved away from Dayton, and according to the Peace Implementation Council, the transformation is primarily driven by the provisions of the Stabilization and Association Process. In March 2000, the European Commissioner for External Relations published the EU Roadmap, which contained 18 key reforms to access the Feasibility Study for a Stabilization and Association

minorities is therefore their co-responsibility, because the external factor is a key actor in all institutional and normative solutions in BiH from Dayton to the present day. “BiH is paradoxically much more integrated into the EU than other member states, because it is governed directly from Brussels, without this type of governance being subject to any of the responsibilities common to democratic arrangements”⁶¹.

C) Next stage – rationalization of the political position of national minorities?

The effects of the previous phases of political representation of national minorities could be reduced to the marginalization of the position of national minorities, and then their politicization through the term Others. It is to be hoped that the next phase will be marked by a more rational approach to the issue. It should start with implementation of the decisions of the European Court of Human Rights. “Where minorities have the right to vote and stand for election, political organization and public representation of their views, this is often enough to have their interests heard to the end”.⁶² Furthermore, the next step in the political positioning of national minorities is a departure from the political elite of the Others, which has privatized and politicized the constitutional and legal position of national minorities in a way that is not in the interest of the minorities themselves. “It is therefore possible to conclude that minorities in BiH, in addition to being excluded from the highest political position in the country, are discriminated against due to unenforceable measures envisaged by the minority legislation, and that the exclusive “winner” of the BiH minority policy is a narrow layer of the minority political elite who managed to take positions within the newly established minority institutional apparatus provided by minority laws”⁶³.

While elections and parliament are institutions of political representation are in constant perspective of the phase of political representation of national minorities, party representation is completely neglected. Especially since it is a highly fragmented party

Agreement. It included 16 priority reforms, 41 new laws, and 27 new institutions. In November 2003, the European Commission adopted a Feasibility Study to sign its first partnership with BiH in March 2004. In June 2008, they signed the Stabilization and Association Agreement. The Agreement fully entered into force seven years later. BiH submitted a formal application for membership on 15 February 2016. The following year was spent answering the European Commission’s Questionnaire. In March 2019, they submitted additional questions from the European Commission’s Questionnaire.

61 Chandler, 2000. According to: Blagovčanin, S., *European Union and Bosnia and Herzegovina: state building through the process of European integration*, Sarajevo, Friedrich Ebert Stiftung, 2016, p. 48.

62 Kymlicka, W. *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Publisher Jesenski i Turk, Zagreb, 2003, p. 191

63 Petričušić, A., “How to ensure the survival of the ‘Others’: Eliminating institutional discrimination against national minorities in Bosnia and Herzegovina”, in: Potočnjak, Ž., Grgurev, I., Grgić, A. (ed.), *Perspectives of anti-discrimination law*. Faculty of Law in Zagreb, Zagreb, 2014, p. 224.

system. Dominant political parties use national minorities to position themselves in the political process, and national minorities, on the other hand, are not organized through parties other than the Democratic Party of Roma. Political parties did not follow the structure of social divisions between the constituent peoples and minorities, and therefore the issue of representation of minorities provokes political controversy.

The representative legitimacy of representatives of national minorities is politicized by placing them under the category of Others, and the Council of Ministers of BiH, as the institution responsible for exercising the rights of national minorities, has no data on participation in decision-making or the number of civil servants belonging to national minorities.⁶⁴

As a minimum common denominator of the next phase or regulating the position of national minorities, new solutions are therefore imposed in the policy of their political representation, which will strengthen the legislature as a representative body. Careful theoretical and professional discussion is certainly a necessary part of solving these problems.

II-5) Representation in the population and territorial distribution of national minorities and other citizens that do not belong to the constituent peoples of BiH

According to the 2013 Census, the following number of members of the constituent peoples and citizens who do not belong to the constituent peoples lived in BiH, its entities and the District:

	BiH	FBiH	RS	Brčko District
Bosniacs	1.769.592	1.562.372	171.839	35.381
Percentage of B.	50,11	70,40	13,99	42,36
Serbs	1.086.733	56.550	1.001.299	28.884
Perc. of Serbs	30,78	2,55	81,51	34,59
Croats	544.780	497.883	29.645	17.252
Perc. of Croats	15,43	22,44	2,41	20,66
Others	130.054	102.415	25.640	1.999
Perc. of Others	3,68	4,61	2,09	2,39
In total	3.531.159	2.219.220	1.228.423	83.516

Table 4 – Number and percentage of members of the constituent peoples and Others in BiH, its entities and the Brčko District⁶⁵

⁶⁴ Council of Ministers, Fourth report of Bosnia and Herzegovina on legislative and other measures implementing the principles set out in the Framework Convention for the Protection of National Minorities of the Council of Europe, 2016., available at: <http://www.mhrr.gov.ba/PDF/LjudskaPrava/CETVRTI%20%20IZVJESTAJ.pdf> (20 February 2022)

⁶⁵ Agency for Statistics of BiH, 3. Population by ethnic/national identity and gender https://www.popis.gov.ba/popis2013/doc/RezultatiPopisa/HRV/FR_T3_H.xlsx

These data will be presented at the level of the counties of the FBiH, and statistical regions of the RS:

	USC	PC	TC	ZDC	BPC	CBC	HNC	WHC	SC	HBC
Bosniacs	246.012	8.252	392.356	299.452	22.313	146.652	92.005	718	346.575	8.037
Percentage of Bosniacs	90,03	18,99	88,16	82,17	94,01	57,58	41,44	0,76	83,80	9,55
Serbs	8.452	831	7.058	5.543	885	3.043	6.432	101	13.300	10.905
Percentage of Serbs	3,09	1,91	1,59	1,52	3,73	1,19	2,90	0,11	3,21	12,96
Croats	5.073	33.600	23.592	43.819	24	97.629	118.297	93.725	17.520	64.604
Percentage of Croats	1,86	77,32	5,30	12,02	0,10	38,33	53,29	98,76	4,24	76,79
Others	13.724	770	22.022	15.619	512	7.362	5.273	354	36.198	581
Percentage of Others	5,02	1,77	4,95	4,29	2,16	2,89	2,37	0,37	8,75	0,69
In total	273.261	43.453	445.028	364.433	23.734	254.686	222.007	94.898	413.593	84.127

Table 5 – Number and percentage of members of the constituent peoples and Others in the counties of the FBiH⁶⁶

	Banja Luka	Prijedor	Doboj	Bjeljina	East Sarajevo	Trebinje
Bosniacs	26.175	39.127	32.481	62.517	5.697	5.842
Percentage of Bosniacs	6,46	26,37	14,95	23,41	6,03	6,07
Serbs	358.851	103.168	162.954	200.504	87.127	88.695
Percentage of Serbs	88,56	69,52	75,04	75,07	92,30	92,23
Croats	8.437	2.464	16.938	834	510	462
Percentage of Croats	2,08	1,66	7,80	0,31	0,54	0,48
Others	11.762	3.637	4.790	3.217	1.066	1.168
Percentage of Others	2,90	2,45	2,21	1,20	1,13	1,21
In total	405.225	148.396	217.163	267.072	94.400	96.167

Table 6 – Number and percentage of members of the constituent peoples and Others in the statistical regions of the RS⁶⁷

66 Ibid.

67 Ibid

However, it is necessary to break down the category “Others”, which includes members of national minorities, but also all other citizens who did not declare themselves as members of the constituent peoples, while members of national minorities do not represent the majority within the entire category “Others”.

	BiH	FBiH	RS	Brčko District
Declared territorially, locally and by status	52.472	48.941	3.223	308
Percentage	1,49	2,21	0,26	0,37
Undeclared and declared in biological, professional and similar terms	35.293	23.791	10.861	641
Percentage	1,00	1,07	0,88	0,77
National minorities	26.527	17.157	8.630	740
Percentage	0,75	0,77	0,70	0,89
Religiously declared	13.742	10.907	2.561	274
Percentage	0,39	0,49	0,21	0,33
Mixed declaration (combination of different categories)	2.020	1.619	365	36
Percentage	0,05	0,07	0,04	0,03
In total	130.054	102.415	25.640	1.999
Total percentage of Others	3,68	4,61	2,09	2,39

Table 7 – Number and percentage of members of different sub-categories of the population within the category “Others” in BiH, its entities and the Brčko District⁶⁸

It can be stated that the largest sub-category within the category of Others is represented by citizens declared territorially, locally or by status or state, among whom a convincing majority are those who declared themselves as Bosnians, followed by Bosnians and Herzegovinians and Yugoslavs. Other groups within this category are practically negligible. The second most represented sub-category within the category “Others” is undeclared, and citizens declared in biological, professional and similar terms, which cannot in any way be subsumed under common identity terms. Most of them are literally undeclared.

National minorities are only the third sub-category within the category “Others”, and this data can most strongly refute the argument that advocating for political, especially electoral rights of citizens who do not belong to the constituent peoples would actually be advocating for the rights of national minorities. The analysed data show that, if the legitimate political representation of citizens from the category “Others” were ensured

⁶⁸ Agency for Statistics of BiH, 1. Population by ethnic/national identity and gender – detailed classification, https://www.popis.gov.ba/popis2013/doc/Knjiga2/HRV/K2_T1_H.xlsx

as precisely as possible, members of national minorities, even taken together, could not ensure the election of their own political representatives, but would be outvoted by members of numerous sub-categories, in a similar way as it happens to members of the constituent peoples in administrative-territorial units in which they represent a numerical minority of the population.

It is also interesting to find that members of national minorities are the first sub-category within the category “Others” in the Brčko District, and second in the RS, and also that the dominance of the two most numerous sub-categories within the “Others” is a specific feature of the FBiH. This specificity of the FBiH, however, is so intense that in total sum at the state level it gives a dominant influence on the numerical relations within the entire category “Others”.

Given that the model for legitimate representation of constituent peoples, offered in later chapters, is based on the territorial distribution of their members in different administrative-territorial units lower than the entity units, here, based on available data from the Agency for Statistics of BiH, the most accurate possible analysis of this distribution was made regarding the category “Other” and its sub-category of national minorities.

Percentage of population of each canton/county – these data will be presented first for the FBiH, at the level of its counties, in relation to the total population of each county:

	Complete category “Others”	The most numerous national minorities and the most narrowly defined “Others”
Una-Sana Canton	5,02	0,39
Posavina County	1,77	0,47
Tuzla Canton	4,95	1,00
Zenica-Doboj Canton	4,29	1,22
Bosnian-Podrinje Canton	2,16	0,41
Central Bosnia Canton	2,89	0,83
Herzegovina-Neretva County	2,38	0,85
West-Herzegovina County	0,37	0,12
Sarajevo Canton	8,75	1,72
Herzeg-Bosnia County	0,69	0,21
FBiH	4,61	0,98

Table 8 – Percentage of members of the entire category “Others” and the most precisely defined national minorities in the counties of the FBiH⁶⁹

69 2.1. Population by ethnic/national identity and gender, by municipalities/cities, https://www.popis.gov.ba/popis2013/doc/Knjiga2/HRV/K2_T2-1_H.xlsx

It is evident that the identified syndrome of “dual minority status” of national minorities, not only in relation to members of the constituent peoples, but also within the entire category of Others, varies greatly between counties, and they will be ranked using the formula:

Complete category “Others” / The most numerous national minorities and the most narrowly defined “Others”

	“Coefficient of dual minority status”
Una-Sana Canton	12,87
Posavina County	5,27
Tuzla Canton	5,09
Zenica-Doboj Canton	4,95
Bosnian-Podrinje Canton	3,77
Central Bosnia Canton	3,52
Herzegovina-Neretva County	3,48
West-Herzegovina County	3,29
Sarajevo Canton	3,08
Herzeg-Bosnia County	2,80
FBiH	4,70

Table 9 – Coefficient of “dual minority status” of members of national minorities within the entire category “Others” in the counties of the FBiH

It can be noticed that according to the “coefficient of dual minority status”, national minorities in FBiH above the entity average, are most affected in cantons with a strong Bosniac majority, while according to the criterion they are least affected in counties with a strong Croatian majority or a significant percentage of Croats in the population.

This data will also be presented at the level of statistical regions of RS:

	Complete category “Others”	The most numerous national minorities and the most narrowly defined “Others”
Region of Banja Luka	2,90	1,28
Region of Prijedor	2,45	0,85
Region of Doboj	2,21	0,65

Region of Bijeljina	1,20	0,42
Region of East Sarajevo	1,13	0,35
Region of Trebinje	1,21	0,66
Republic of Srpska	2,09	0,81

Table 10 – Percentage of members of the entire category “Others” and the most precisely defined national minorities in the statistical regions of the Republic of Srpska⁷⁰

It is evident that the share of the whole category “Others” is significantly, more than twice smaller in the population of the RS (2,09% compared to 4,61% in the FBiH), while this disproportion is noticeably smaller when it comes to the largest national minorities and the most narrowly defined “Others” (0,81% in the RS and 0,98% in the FBiH), which means that the representation of national minorities in the population of both entities is comparable but also extremely low. These differences probably conditioned the specifics of the “coefficient of dual minority status”:

	„Coefficient of dual minority status “
Region of Dobož	3,40
Region of East Sarajevo	3,23
Region of Prijedor	2,88
Region of Bijeljina	2,86
Region of Banja Luka	2,27
Region of Trebinje	1,83
Republic of Srpska	2,58

Table 11 – Coefficient of “dual minority status” of members of national minorities within the entire category “Other” in statistical regions of the Republic of Srpska

The coefficient we established for this research is significantly lower in the RS than in the FBiH (2.59 vs. 4.70), while national minorities are less affected than the entity average in two of the six regions, including the Banja Luka Region in whose population they are otherwise most strongly represented.

Given the extremely small percentage of national minorities in both entities, and their involvement, the models of their political representation, that will be presented later, will not be based on the percentage of national minorities living in certain administrative-territorial units in relation to their total population in entity or state level.

⁷⁰ Ibid.

However, for the sake of a complete impression and gaining a more precise insight into the statistical relevance of certain territorial segments of minority populations, these data will be presented here for both entities, first for FBiH:

	Complete category "Others"	The most numerous national minorities and the most narrowly defined "Others"	Difference
Una-Sana Canton	13,40	4,89	-8,51
Posavina County	0,75	0,93	+0,18
Tuzla Canton	21,50	20,60	-0,90
Zenica-Doboj Canton	15,25	20,57	+5,32
Bosnian-Podrinje Canton	0,50	0,45	-0,05
Central Bosnia Canton	7,19	9,78	+2,59
Herzegovina-Neretva County	5,15	8,66	+3,51
West-Herzegovina County	0,35	0,51	+0,16
Sarajevo Canton	35,34	32,81	-2,53
Herzeg-Bosnia County	0,57	0,80	+0,23
Federation of BiH	100,00	100,00	0

Table 12 – Percentage of populations of "Others" and the most precisely defined national minorities in different counties in relation to the total mentioned populations at the level of the whole FBiH

It can be stated that the population approximately equal to the national minority is significantly less represented in the Sarajevo Canton in relation to that population at the federal level, than is the case with the total population of Others in that canton and in the FBiH. This means that the relative representation of national minorities in the population, although high for the federal average, is still lower than the representation of other sub-categories within the entire category "Others". A similar syndrome was found in Una-Sana Canton, where the number of members of national minorities is extremely low, but within other sub-categories from the Other category, there are above-average numbers of citizens who declare themselves as Bosnians. The same data will be presented for the Republic of Srpska:

	Complete category "Others"	The most numerous national minorities and the most narrowly defined "Others"	Difference
Region of Banja Luka	45,87	52,19	+6,32
Region of Prijedor	14,18	12,62	-1,56
Region of Doboј	18,68	14,27	-4,41
Region of Bijeljina	12,55	11,30	-1,25
Region of East Sarajevo	4,16	3,28	-0,88
Region of Trebinje	4,56	6,34	+1,78
Republic of Srpska	100,00	100,00	0

Table 13 – Percentage of populations of "Others" and the most precisely defined national minorities in different counties in relation to the total mentioned populations at the level of the whole RS

In the Banja Luka region, the population nearest to the national minority is mostly concentrated in the RS, and in that region its share in relation to that population from the entity level is significantly higher than in the whole category "Others". This fact is also influenced by the fact that in this region there is a municipality with the largest share of the minority population in the whole of BiH – Prnjavor.

III

**Election models for members of the
Presidency of BiH and the House of
Peoples of the Parliamentary Assembly
of BiH pursuant to the Constitution
of BiH and the decisions of the
Constitutional Court of BiH and the
European Court of Human Rights**

Given that according to the BiH Constitution, there is no member of the BiH Presidency or caucus in the BiH Parliamentary Assembly that should specifically represent the category “Others”, i.e., citizens who do not belong to the constituent peoples, but are represented exclusively with one of the three constituent peoples – Bosniacs, Croats or Serbs, models for the election of members of the Presidency and the HP BiH PA in accordance with the BiH Constitution and decisions of the BiH Constitutional Court and the European Court of Human Rights will be presented immediately after the chapter on BiH. Models of specific representation of the “Others” in the homes of the peoples at the entity level will be presented in a separate chapter.

III-1) Constitutional-legal-political algorithm of the reform of the BiH election legislation

A) The supreme principle of the BiH Constitution

BiH is a federation of three constituent peoples, which, along with Others, are citizens of that state. Constitutiveness itself can be operationalized in several ways, from territorial federalism to non-territorially based consociational democracy and institutional autonomy, as well as their combinations. Regardless to this multitude of implementation possibilities, the fundamental and overriding principle of the BiH Constitution, and thus of the Dayton Agreement itself, is the **constitutiveness of the three peoples**.

In its decision U 5-98 from 2000, the Constitutional Court of BiH explicitly stated that **the constitutiveness of the three peoples and their mutual equality** is “the overriding principle of the Constitution of BiH”. Thus, this is the **principle and essence and spirit** of the BiH Constitution and the entire Dayton Peace Agreement. This means that all other constitutional principles, all legal norms and all legal acts must be harmonized with this principle, including the BiH Election Law, which operationalizes the application of this basic constitutional principle by electing legitimate representatives to BiH legislative and executive bodies. In short, all constitutions, constitutional provisions, laws and bylaws and regulations throughout BiH, including the entities, canton/counties and the Brčko District, **must fully comply** with the fundamental principle of the constitutiveness of the three peoples.

For the three peoples to be truly constituent, it is necessary to ensure: 1) **legitimate representation of the constituent peoples**, and 2) **the mutual equality of the constituent peoples**.

Legitimate representation of constituent peoples **is operationalized through the Election Law** which ensures that all three peoples can **independently elect their representatives to those bodies of government that according to the Constitution serve to represent and protect the constitutional rights of constituent peoples** (Presidency of BiH, House of Peoples of the Parliamentary Assembly of BiH, House of Peoples of the Parliament of FBiH, Council of Peoples of the National Assembly of RS).

Mutual equality of constituent peoples **is operationalized through parity in government bodies that according to the Constitution serve to represent and protect the rights of constituent peoples**, i.e., through a parity number of representatives in these government bodies (for example, one member of the BiH Presidency for each of the three constituent peoples, five delegates in each of the three caucuses in the House of Peoples of the BiH Parliament Assembly). If these political representatives are not legitimately elected, that is, if they are not independently elected by members of a certain peoples, which according to the Constitution should be represented without the participation of members of other two peoples who have the opportunity to elect their representatives, then it is not even possible to achieve mutual equality of the three constituent peoples. If Bosniac voters elect both Bosniac and Croatian members of the BiH Presidency, as happened in 2006, 2010 and 2018, it means that Bosniacs *de facto* have two members of the Presidency, while Croats do not have one. **This violated not only the principle of legal representation of the constituent peoples, but also the principle of mutual equality of the three constituent peoples, because in that case Bosniacs have more representatives at that level of government (2) than Serbs (1) and Croats (0).**

In its Decision U-23-14 (Ljubić) from 2016, the Constitutional Court of BiH explicitly states in Article 47 that the manner of election of political representatives can be regulated by the Election Law in various ways, but it is crucial that **„according to the general principle of democracy, the right to democratic decision-making is exercised through legitimate political representation which must be based on the democratic choice of those it represents and whose interests it represents. In this sense, the link between those it represents and their political representatives at all administrative-political levels is what gives legitimacy to community representatives. Therefore, only the legitimacy of representation creates the basis for real participation and decision-making.“**

In other words, the political representatives of one constituent people must be elected by the members of that people, without the possibility of members of one or the other

two peoples imposing their political representatives on them. This way, **the legitimate representation of the constituent peoples** is operationalized. The Constitutional Court of BiH reiterates this principle in Article 49 of the same decision: „**the right to democratic decision-making is exercised through legitimate political representation which must be based on the democratic choice of the community of citizens it represents and whose interests it represents.**“ Although the *Ljubić* decision itself is explicitly dedicated to the House of Peoples of the FBiH Parliament, the same principle applies at **all administrative and political levels**, as stated by the Constitutional Court in Article 47.

3Proportional representation of Bosniacs, Serbs and Croats as constituent peoples in BiH institutions, from five representatives of each people in the HP BiH PA, through two representatives of each people in the BiH Constitutional Court, to, among others, one representative of all three peoples in the BiH Presidency, the parity of the three constituent peoples is ensured, and thus, if these representatives are indeed legitimately elected, **the mutual equality of the constituent peoples.**

B) Why does BiH have a three-member Presidency?

BiH is complex state. This complexity is reflected, among other things, in the fact that BiH has a **bicameral parliament and a three-member Presidency**. The Parliamentary Assembly of BiH consists of: **the House of Representatives** (lower house), which directly elects 42 members from electoral units throughout BiH on the “one man one vote” principle, and **the House of Peoples**, which indirectly elects five representatives (delegates) of each of the three constituent people – Bosniacs, Serbs and Croats. Unlike the House of Representatives, which serves to represent all citizens, the House of Peoples serves to protect and represent the three constituent peoples explicitly mentioned in the preamble to the BiH Constitution (*Recalling the Basic Principles agreed in Geneva on 8 September 1995 and in New York on 26 September 1995, Bosniacs, Croats and Serbs, as constituent peoples (along with Others), and the citizens of Bosnia and Herzegovina hereby determine the Constitution of Bosnia and Herzegovina*). The House of Peoples is the body through which **the fundamental and overriding principle of the BiH Constitution** – the principle of constitutiveness of the three peoples and their mutual equality – **is operationalized in the BiH Parliamentary Assembly, that is, in the legislature.**

Similarly, in **the BiH Constitutional Court**, that is, in the BiH judiciary, with three foreign judges appointed by the President of the European Court of Human Rights, there

are two representatives of each, Bosniacs, Serbs and Croats. This ensured **parity and operationalized mutual equality of the three constituent peoples in the judiciary.**

BiH has a **three-member Presidency** because each of the three members of the Presidency represents one constituent people. This **operationalizes the overriding principle of the BiH Constitution – the constituency and mutual equality of the three peoples – in the executive branch,** with parity in the Council of Ministers.

If, by any chance, BiH was a simple state in which only one nation is constituent, like Slovenia, in that case, it would be a national state of that nation and would have one civil demos, as well as the institution of the President, not a three-member Presidency. Therefore, **the Presidency of BiH is not intended to represent citizens as the owners of BiH citizenship of, because if it were, BiH would have one President and not a three-member Presidency.** Also, **the Presidency of BiH is not intended to represent the entities, because if it were, the Presidency would not have three members but two,** as many as the entities. Therefore, the three-member Presidency of BiH is intended to represent the three constituent peoples. Therefore, **in accordance with the BiH Constitution, each constituent people must be able to independently and freely elect its representative in the three-member Presidency – Serbs Serb, Croats Croat, and Bosniacs Bosniac member.**

C) Inadequate interpretation of Article V of the BiH Constitution

Constitutional and legal problems related to the (in)ability of candidacy of all BiH citizens for members of the Presidency of BiH primarily stem from inadequate interpretation of the Article V of the Constitution of BiH. Based on the misinterpretation of the mentioned article, controversial articles of the BiH Election Law and official documents of the Central Election Commission were created, which led to a number of constitutional, legal, electoral and political problems. Therefore, the solution to the mentioned problems should, among other things, be sought in the correct interpretation of Article V of the Constitution of BiH. The framework for interpretation, among others, was clearly and unambiguously established by the Constitutional Court of BiH when in the so-called Decision on the Constituency (I-5/98) from 2000, it declared the principle of *constituency of peoples* to be overriding or fundamental principle of the BiH Constitution. It necessarily follows that all other constitutional principles, as well as all constitutional and legal norms, including the norms of the BiH Election Law, should be harmonized with the principle of constitutiveness and the immanent equality of the constituent peoples.

The original Article V of the Constitution of BiH in English reads *The Presidency of Bosnia and Herzegovina shall consist of **three Members: one Bosniac and one Croat, each directly elected from the territory of the Federation, and one Serb directly elected from the territory of Republic of Srpska.***

The correct translation into Croatian is as follows: *Predsjedništvo Bosne i Hercegovine će se sastojati od **tri člana: jednoga bošnjačkog i jednoga hrvatskog, svaki izravno izabran s teritorije Federacije, i jednoga srpskog izravno izabranog s teritorija Republike Srpske.***

The correct translation also clearly testifies on a semantic level that the Presidency of BiH consists of one Bosniac member, one Croat member and one Serb member. Given that the continuation of the article states that these members are elected (in elections), it is clear that these are Bosniac, Croatian and Serbian **representatives** in the Presidency of BiH. The Bosniac member represents Bosniacs, the Croatian member represents Croats, and the Serbian member represents Serbs in the three-member Presidency of BiH.

In addition, Article V.2.d explicitly states “Croat member” and “Bosniac Member” of the BiH Presidency:

*(...) that is, to the Bosniac Delegates of the House of Peoples of the Federation, if the declaration was made by the **Bosniac member**; or to the Croatian Delegates in the House of Peoples of the Federation If the declaration was made by **Croatian member.***

In the **unofficial**, widely used and publicly accepted reference translation of the BiH Constitution, Article V reads: *The Presidency of BiH consists of **three members: one Bosniac and one Croat, each elected directly from the Federation, and one Serb directly elected from the territory of Republic of Srpska.***

D) Who do the members of the Presidency represent?

The role of the three members of the BiH Presidency is specific, because in addition to each of the three members of the Presidency representing their constituent people (Croatian member Croats, Bosniac member Bosniacs, and Serbian member Serbs), they also represent citizens of the electoral unit in which they were elected (RS for Serb member, FBiH for Croat and Bosniac member). This was stated by the Constitutional Court of BiH in Article 65 of Decision U-5-98 from 2000.

Although the members of the Presidency have a **dual role** of representing the citizens of entities and representing the constituent peoples, it is clear that they **must be legitimately elected by constituent people they represent**, that is, they must have greater support from that constituent people than other candidates who aspire to represent the same people. Furthermore, it is important to emphasize the current way of electing members of the Presidency is only one of possible ways to operationalize the constitutiveness of the peoples, which is currently insufficient and deficient due to the vagueness of the Election Law when it comes to the election of the Croat member of the Presidency of BiH. Alternative methods of elections are completely legitimate and legal, and the fact that the current Election Law does not ensure the legitimacy of political representatives and mutual equality of constituent peoples makes it necessary to update it and introduce a more precise election model that will not leave the law vague and electoral engineering possible.

This was stated by the Constitutional Court of BiH in the decision *Čolak* (U-3-17) in Article 39, when it assessed that the proposal to amend the election law for the Presidency of BiH sent to the parliamentary procedure of the BiH PA by HNS parties to be in accordance with the BiH Constitution: “Furthermore, the Draft Law is based on the same principles as in the BiH Constitution and Election Law as the existing solutions, according to which one Bosniac and one Croat are elected as members of the Presidency of BiH from the territory of the FBiH. **The offered solution regulates in a different way only the procedure of their election, which should ensure, as stated in the explanation of the proposal, the general principle of democracy that one people does not elect representatives to another people, i.e., that each constituent people elects its representatives in the legislature.**” The Constitutional Court declared that the offered proposal was therefore constitutional and did not jeopardize the Bosniac vital national interest.

Therefore, any model of election law that ensures that one Croatian and one Bosniac member of the Presidency are elected from the territory of FBiH, and which fulfils the overriding principle of equality and constitutiveness of the three peoples, is constitutional, legitimate and legal. **Simply put, the current vague Election Law must be updated in order to ensure the constitutiveness of all three peoples, as well as the possibility of legitimate representation of the constituent peoples.**

The answer to the question of who is represented by the Croatian member of the Presidency of BiH is also simple – he **represents primarily the Croat people in BiH who he represents and whose interests he advocates, and from whose electoral will he**

draws his legitimacy. This was explicitly stated by the Constitutional Court of BiH in Article 47 of Decision U-23-14 (Ljubić). In the second line, he/she also represents the citizens from the electoral unit in which he was elected, considering that this electoral unit can be freely defined in any way in the FBiH. It would not be unconstitutional to establish special electoral unit in the FBiH to elect the Croatian and Bosniac member of the Presidency, if this ensures that each member must receive the majority of support of the people he/she represents in the BiH Presidency.

The constituency of the peoples and their mutual equality is the reason why the Croatian member of the Presidency must have Croatian legitimacy and the support of a relative majority of the Croatian electorate. Furthermore, the connection between Croats as a constituent people and the Croatian member of the Presidency of BiH as their representative is specified in **Article V 2. d)** of the Constitution of BiH, which reads:

*d) A dissenting Member of the Presidency may declare a Presidency Decision to be destructive of a vital interest of the Entity from the territory from which he was elected, provided that he does so within three days of its adoption. Such a Decision shall be referred immediately to the National Assembly of the Republic of Srpska, if the declaration was made by the Member from that territory; to the Bosniac Delegates of House of Peoples of the Federation, if the declaration was made by the Bosniac Member; or to the **Croat Delegates of that body, if the declaration was made by the Croat member.** If the declaration is confirmed by a two-thirds vote of those persons within ten 10 of the referral, the challenged Presidency Decision shall not take effect.*

As this article of the BiH Constitution clearly states, the Croat member of the BiH Presidency refers to the Croat Caucus in the House of Peoples of the FBiH Parliament in case of veto, which makes it undeniably clear that in that case he/she must have Croatian electoral legitimacy, just like the delegates in the Croat Caucus in the House of Peoples. If it was simply a Croat from the FBiH who represents only that entity, then this procedure would be confirmed by the House of Representatives of the FBiH Parliament. As this is an explicitly Croatian representative, elected in the FBiH, he **must have Croatian legitimacy in order to protect the Croatian national interest in the BiH Presidency** through the institution of an entity veto.

The reason why this veto is called entity is due to the fact that, from the creation of the Constitution until 2002, when the High Representatives Petritsch and Ashdown only partially implemented the decision of the BiH Constitutional Court U-5-98 from 2000, only Bosniac and Croats were constituent peoples in the FBiH, and only Serbs in RS.

Then all three peoples became constituent in both entities, and the entity veto became *de facto* national veto, although only its official name was never changed.

Article V 2. d) of the BiH Constitution is very important because it undoubtedly answers the question: Who do the political representatives in the Presidency of BiH represent? They **primarily represent the constituent peoples**, whose interests they protect through a system of vetoing the decisions of the Presidency of BiH.

Furthermore, this article is important in exposing the fraud of part of the political and professional-academic elite in BiH. The expression „**Member of the Presidency from the ranks of the Croatian people**“. This expression is **not only inaccurate, but also unconstitutional**. Namely, Article V 2. e) of BiH Constitution clearly states that he/she is a „**Croat member of the Presidency of BiH**“, and not a „member of the Presidency from the ranks of the Croatian people“, or a „member of the Presidency of BiH – a Croat“.

The reason for the popularization of the term “Member of the Presidency from the ranks of the Croatian people” is, as we have already stated, in the mistranslation of the first indent of Article V of the Constitution of BiH from the original in English. The words „**Bosniac**“, „**Croat**“ and „**Serb**“ denote **adjectives, not nouns**. The longer form of the sentence in which these are mentioned would be „... **one Bosniac Member and one Croat Member, ... and one Serb Member**“, that is, one Bosniac member (of the Presidency) and one Croatian member (of the Presidency)...and one Serbian member of the Presidency. **If it were nouns, instead of “one”, the indefinite article “a” would be used in front of nouns**. Since it is an adjective (Bosniac, Croatian, Serbian) in front of the noun “member”, it is clear that it is a Bosniac / Croatian / Serbian representative. This is further confirmed in Article V 2. d) of the Constitution of BiH which clearly states that he/she is a Bosniac/Croatian/Serbian member of the Presidency.

Furthermore, even without that, it would be easy to conclude that this is the Croatian member, that is, a representative of Croats living in BiH, and not “one Croat“. As the Constitutional Court itself has stated several times in previous decisions, legitimate political representation must be based on the democratic choice of those whom that representative represents and whose interests he/she represents. In the case of the Croatian member of the Presidency, it is the Croats as a constituent people in BiH, and the Croat member of the Presidency is their representative who represents and protects their interests, *inter alia*, through the entity veto system explained in Article V 2. e) of the BiH Constitution.

A wrong, unfounded and unconstitutional interpretation that he/she is a member of the Presidency from the ranks of the Croatian people would suggest that he/she is the Croat in the Presidency, that is, that by being a Croat (or declaring himself such) he/she can become the Croat member of the Presidency even if he/she was elected by Bosniacs. This is not true, because BiH is **a representative democracy, not an affiliate democracy**. The fact that someone is a Croat **by nationality does not qualify him/her or give him/her the legitimacy to politically represent the people** to whom he/she belongs. Moreover, nowhere in the BiH Constitution does it say that the Croatian representative, that is, the Croat member of the BiH Presidency, must be a Croat by nationality.

Only a person elected by Croats as a separate electoral unit (specific demos) in free and democratic elections has the legitimacy to represent Croats. **Representatives represent those who elect them.**

If Croats choose to be represented by a candidate “from the ranks” of the Serb or Bosniac people, or from the ranks of the Roma or Jewish national minority, that candidate is a fully legitimate Croatian representative. Legitimacy comes from those who elect and not from those who are elected. Therefore, if a candidate “from the ranks” of the Croatian people is elected by Bosniacs, he/she is not a legitimate Croat but a legitimate Bosniac representative.

The interpretation that “one Croat” from Article V of the BiH Constitution, which speaks of the composition of the three-member Presidency, is in fact “a member” or “from the ranks” of the Croatian people is completely meaningless because it can in no way be harmonized with the principle of constitutiveness of the people nor with the principles of representative democracy.

Although this is not precisely defined by the BiH Constitution, in accordance with the democratic right to vote and stand for election, it is correct to conclude that Serbs from the FBiH have the right to participate in the election of Croatian and Bosniac member of the Presidency. The same goes for members of the group of Other peoples and citizens. Given that **the legitimacy of the members of the Presidency derives from those who elect and not from those who are elected**, it is quite logical and constitutional to claim that it is in accordance with the BiH Constitution that a Serb, or a member of the Others from the FBiH run for Croatian or Bosniac member of the Presidency. This enabled both Serbs and Others from the FBiH to be able to vote and be elected to the Presidency of BiH. This would meet the decisions S Jedić-Finci, Zornić and Šlaku in the part related to the Presidency.

So, a separate virtual electoral unit for the election of the Croat member of the Presidency of BiH from the FBiH consists of all Croats from the FBiH, as also Serbs and Others from the FBiH who choose to vote for the Croat member. The same applies to the Bosniac member of the Presidency. Therefore, in accordance with the Constitution of BiH and its basic principle of the constitutiveness of the people, it is legitimate when Serbs or Others from the FBiH vote for the Croat member of the Presidency. It is not legitimate, nor is it constitutional, for Bosniacs to vote for the Croat member. If the Croat member of the Presidency of BiH were elected by the majority Bosniac vote, it would be a direct violation of the principle of constitutiveness and the corresponding principle of legitimate representation of the constituent people. In that case, we would have two Bosniac members in the Presidency of BiH and not a single Croatian. **Such a practice is not only unconstitutional in BiH, but unthinkable in any other complex state.**

E) Who are the members of the Presidency of BiH?

Following the mentioned inadequate interpretation of the unofficial translation from the English original of Article V of the Constitution of BiH, in the spirit of “affiliate” and not representative democracy, Article 8.1. and Article 8.2. of the Election Law of BiH, and Article 4.19 were created.

Interpretation of constitutional principles and certain articles of the Constitution of BiH on the basis of which Articles 4.19, 8.1 and 8.2 we consider insufficiently harmonized with the basic principles of constituency of peoples and their mutual equality, i.e., insufficiently aligned with decisions of the Constitutional Court of BiH: **U-5/98 (“constitutionality”)** and **U-23/14 (“Ljubić”)**.

We also refer to Article 1.2 of the Constitution of BiH: *“Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections.”* The basic principle of democracy is that power belongs to the people and derives from the people, which according to Article 1.2 of the BiH Constitution means that BiH is a representative, and not a affiliate democracy

Therefore, in accordance with:

- analysis of the legal and political context in which the Dayton Agreement was signed and the Constitution of BiH was created as its integral part (Annex 4),
- logical-rational analysis of the context and internal logic of the Dayton Agreement and the Constitution of BiH

- decisions of the Constitutional Court of BiH U 5/98 („**constitutionality**“) and U-23/14 („**Ljubić**“), i.e., fundamental and overriding principles of the Constitution of BiH, principles of constitutiveness of peoples and their mutual equality
- the fact that BiH is defined by its own constitution as a „representative, and not an affiliate democracy“

The IDPI’s model is based on the interpretation of the unofficial translation from the English original of Article V of the BiH Constitution, according to which „one Bosniac/Bosniac member“, „one Croat/ Croatian member“ and „one Serb/Serbian member“ are **primarily representatives** of Bosniacs, Croats and Serbs in the three-member Presidency, and not necessarily and only their **members**.

This means that it is **not necessary** that, for example, a candidate for “one Bosniac” **personally declares** himself/herself as a Bosniac, but that a legitimate candidate for “one Bosniac” in the Presidency of BiH can be **any BiH citizen** with the right to vote, **regardless of** whether he/she declares himself/herself as Bosniac, Croat, Serb, Roma, Jew, or any other member of the Other peoples. This interpretation applies not only to members of the Presidency of BiH, but also to other authorities intended for collective representation (the House of Peoples of the BiH PA and the FBiH Parliament, and RS Council of Peoples).

This interpretation of certain constitutional principles and norms (without amendments to the BiH Constitution) enables every BiH citizen with the right to vote, without the obligation to personally declare his/her national (non)affiliation, to run for the BiH Presidency, i.e., „one Bosniac“, „one Croat“ and „one Serb“ in the three-member Presidency of BiH, including Dervo **Sejdić**, Jakob **Finci**, Azra **Zornić** and Samir Šlaku, that is, all members of the group of Other peoples and citizens. In addition to the fact that they were allowed **to run** for all three members of the Presidency of BiH, Dervo Sejdić, Jakob Finci, Azra Zornić and Samir Šlaku, by the decision of **ECtHR**, it should also be possible to elect them as members of the Presidency of BiH. This brings us to the question of **who has the right to elect which member of the Presidency of BiH?**

F) Who elects and who should elect the members of the Presidency of BiH?

In order to answer the previous question accurately and unambiguously, it is necessary to recall the basic principles of representative democracy

Constitution of BiH, Article I.2.: „ *Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections.*“

The basic principle of democracy is: **Power derives from the people and belongs to the people.** In accordance with Article I. 2. *Bosnia and Herzegovina is democratic state*, that is, a state in which **power derives from the people and belongs to the people.** The people, as the holder of power, through the process of free and democratic elections, elect their political representatives and authorize them to represent them and rule on their behalf. This form of democracy defined in Article I.2. of the BiH Constitution constitutional-legal and political science theories call “**representative democracy**”.

It is evident from the preamble of the BiH Constitution that the drafter of the Constitution named/designated Bosniacs, Croats and Serbs as **constituent people**. Thus, the BiH Constitution gave each of the constituent peoples the status of a “**specific demos**” or “**people from which democratic and legitimate government derives**”. Therefore, **each constituent people forms a separate electoral unit, a specific demos**, from which the political representatives of that constituent people are elected to bodies of collective representation (Presidency of BiH, Houses of Peoples of the BiH PA and FBiH Parliament, RS Council of Peoples).

The legality and legitimacy of democratic government is acquired **in elections** in which the “people from who democratic and legitimate government originate” elect their political representatives/delegates. In BiH, in addition to **citizens as a state demos**, there are three constituent peoples from which democratic and legitimate government derives. **Each of the three constituent peoples is, therefore, a “specific demos”** that elects its legitimate representatives for those authorities that the BiH Constitution intended to represent the constituent peoples: the Presidency of BiH and the homes of the (constituent) peoples.

G) Specific demoi for the election of representatives in the Presidency of BiH

Considering that the Presidency of BiH has **three members** and that the members of the Presidency are elected in elections, this unequivocally indicates the **three specific demoi**, of which each specific demos elects its democratic and legitimate representative in the Presidency of BiH. It is clear from the constitutional norm “one Bosniac”, “one Croat”, and “one Serb” that the three specific *demoi* from which the democratic

and legitimate three-member Presidency of BiH derives is, i.e., in our interpretation, “Bosniac member”, “Croatian member” and “Serbian member”.

If we connect the mentioned constitutional norm with the preamble of the Constitution which states that **Bosniacs, Croats and Serbs have the status of constituent peoples**, i.e., specific peoples (demos) from which democratic and legitimate power derives, then it can be unequivocally and undeniably concluded that there is **relationship of election and representation** between, for example, “Croats as a constituent people” and “one Croat” as a member of the Presidency of BiH. At the same time, the democratic legitimacy of “one Croat” does not stem from whether he **declared himself/herself a Croat** or not, but from the fact that he/she was elected by **members of a specific Croatian demos** and thus gave him/her the legitimacy to represent their political interests.

In order for “one Croat” to be a democratically legitimate member of the Presidency of BiH, it is necessary that this legitimacy derives **from the majority electoral political will of a specific Croatian demos**, and, as we have already stated, “one Croat” **can be** declared as Croat, and **it does not have to** be a condition of his legitimacy – it is possible, but not necessary, and definitely **not inevitable condition** of legitimacy of “one Croat” as the member of the three-member BiH Presidency. Therefore, any citizen of the FBiH can be a candidate for the position of “one Croat” in the three-member Presidency of BiH, **regardless of** whether he/she declares himself/herself as a member of one of the three constituent peoples, group of Others, or citizens, or simply declares as ethnically undeclared, respectively, a “citizen of BiH”. Therefore, Dervo **Sejdić**, Jakob **Finci**, Azra **Zornić**, and Samir Šlaku can also be candidates for “one Croat”.

Analogous to the above, it is valid for both Bosniacs and Serbs, that is, “one Bosniac” and “one Serb”. We used “one Croat” as an example because Croats, as a constituent people, are significantly fewer than Serbs, and significantly fewer than Bosniacs with whom they share an entity from which “one Bosniac” and “one Croat” are elected. The fact that Bosniacs make up **70.40% of the population/voters** of the FBiH, and Croats only **22.44 %**, allows Bosniacs to elect “one Bosniac” and “one Croat” from the FBiH entity to the BiH Presidency in accordance with – in some provisions disputed but still valid – BiH Election Law. Even in a situation where **all Croats** from the FBiH would vote for, for example, candidate A for “one Croat”, he/she could not be elected if Bosniacs decided to vote for, for example, candidate B for “one Croat”. At the same time, Croats cannot influence the election of “one Bosniac” at all – it is enough for Bosniacs to give 32% of their votes to one candidate for “one Croat” and to distribute

the remaining 68% to the remaining candidates for “one Bosniac”. So, without the possibility of being significantly influenced by anyone else, Bosniacs can elect **two of the three** members of the BiH Presidency, and Croats are not guaranteed the opportunity to elect **any**.

This has already happened three times, in the mandates 2006-2010, 2010-2014 and 2018-2022. When Bosniacs had their two representatives in the three-member Presidency of BiH, Serbs one, and Croats had no representatives. This grossly violates the “**overriding principle**” of the BiH Constitution, the principle of the constitutiveness of the people, because it is reflected in the fact that people can **freely** and independently elect its legitimate political representatives, i.e., the principle of mutual **equality** of the constituent peoples was grossly violated because Bosniacs, as appointed by the BiH Constitution, may have two members in the three-member Presidency of BiH, and Croats, as constituent peoples appointed by the BiH Constitution, cannot have any member.

In addition to representing **the majority electoral political will** of Croats as constituent people, “one Croat” as a member of the three-member Presidency of BiH is **not only a representative of Croats** from FBiH, but **also Serbs and members of group of Others** and citizens from the FBiH territory. Given that in the FBiH Bosniacs exercise their constituency by electing “one Bosniac” to the Presidency of BiH, and Croats “one Croat”, Serbs and members of the group of Others and citizens of the FBiH should also be able to participate in election of BiH Presidency members. Since Serbs and Others from the FBiH **do not have a specific representative** in the Presidency of BiH, they **can choose which** member of the Presidency of BiH will they vote for and who will represent them and represent their interests. Therefore, Serbs and Others from the FBiH can also vote for “one Bosniac” or “one Croat” in the Presidency of BiH.

Therefore, the „**specific demos**“ for the election of „**one Bosniac/Bosniac member**” in the three-member Presidency of BiH are:

- All citizens from the FBiH Entity who freely and independently identified themselves as Bosniacs on the census (70.40% of the total number of population/voters of FBiH)
- Serbs and Others from the FBiH Entity who decide to vote for “one Bosniac” (from 0% to 7.16% of the total population/voters of FBiH)
- All Bosniacs and some of Others from the Brčko District who decide to vote for “one Bosniac”

And the “**specific demos**” for the election of “**one Croat/Croatian member**” in the three-member Presidency of BiH are:

- All citizens from the FBiH Entity who freely and independently identified themselves as Croats on the census (22.44% of the total population/voters of FBiH)
- Serbs and Others from the FBiH Entity who decide to vote for “one Croat” (from 0% to 7.16% of the total population/voters of FBiH)
- All Croats and some of Others from the Brčko District who decide to vote for “one Croat”

Analogously, the “**specific demos**” for the election of “**one Serb/Serbian member**” in the three-member Presidency of BiH are:

- All citizens from the RS Entity who freely and independently identified themselves as Serbs on the census (81.51% of the total population/voters of the RS)
- All Bosniacs, Croats and Others from the RS Entity (18.49% of the total population/voters of RS)
- All Serbs and some of Others from the Brčko District who decide to vote for “one Serb”

Members of the constituent peoples of the FBiH, except Serbs, can **only** vote for, conditionally speaking, their member of the BiH Presidency because he/she is primarily an expression of their specific electoral will, and **should not** vote for members of the other two constituent peoples because they violate the principle of constitutiveness and mutual equality of the constituent peoples. This does not apply to Bosniacs and Croats from the RS, as they cannot vote for, conditionally speaking, specifically their member of the Presidency. Serbs and Others from the FBiH can choose to vote for “one Bosniac” or “one Croat” because they also cannot vote for, conditionally speaking, specifically their member of the Presidency.

The possibility for Ilijaz **Pilav** as a Bosniac from RS to run for “one Bosniac” in the Presidency of BiH and to vote for him, as required by the decision of the **ECtHR**, is brought by **IDPI’s model P2** (Presidency of BiH). The specificity of this model is the possibility that Bosniacs from FBiH and BD can vote for “one Bosniac”, but also Bosniacs from RS, just as Croats from FBiH, RS and BD can vote for “one Croat”, and Serbs from RS, BD and FBiH can vote for “one Serb”. Members of the group of Others and

citizens, regardless of which entity they live in, can vote for each of the three members of the Presidency of BiH of their choice.

H) Disputable articles of the BiH Election Law and consequences

Article 8.1

*(1) The members of the Presidency of Bosnia and Herzegovina (hereinafter: the Presidency of BiH), directly elected from the territory of the Federation of Bosnia and Herzegovina – **one Bosniac 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 Federation of BiH may vote for **either the Bosniac or Croat** Member of the Presidency, but not for both. The Bosniac and Croat candidate that gets the highest number of votes among candidates from the same constituent people shall be elected.*

*(2) The member of the Presidency of BiH that shall be directly elected from the territory of Republic of Srpska – **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.*

Article 4.19

*(4) The candidate list shall contain the name and surname of every candidate on the list, their personal identification number (JMBG number), permanent residence address, **declared affiliation to a particular constituent people or group of "Others"**, signature of the president of the political party or signature of the authorized person of the coalition to represent before the Central Election Commission of BiH. The proposal of the list shall be accompanied by a statement of each of the candidates on the list of acceptance of candidacy and a statement that there are no obstacles referred to in Article 1.8 paragraph (1) and Article 1.10 paragraph (1) item 5 of this Law. These declarations and statements must be certified in the way prescribed by law or by the competent Municipal Election Commission.*

*(5) **The declaration of affiliation to the constituent people or group of Others** referred to in paragraph (4) of this Article shall be used as **the grounds for the exercise of the right to hold an elected or appointed position for which the condition is a declaration of affiliation to the constituent people or group of Others** in the election cycle for which the list of candidates has been submitted.*

(6) *The candidate shall be entitled not to declare his/her affiliation to the constituent people or a group of “Others” on the candidate list, however **non-declaration shall be considered as waiver of the right** to an elected or appointed position for which the declaration of affiliation to the constituent people or group of “Others” is a condition.*

Based on the interpretation of Articles 8.1 and 4.19 of the Election Law of BiH, the official CEC document necessary for candidacy was created -- summary **Candidate List** in which the column on the national declaration must be filled in: „**In the column „Declaration of affiliation to the constituent people or a group of “Others”” is necessary to mark one of the statements: a) BOSNIAC b) CROAT c) SERB d) OTHERS.** In addition to this document, without which it is not possible to run in the General Elections in BiH, and without filling the column „Declaration of affiliation to the constituent people or a group of Others” it is not possible to run for any position intended to represent the constituent peoples and Others, there is also a document **Statement**, which must be attached to the **Candidate List for the election of a member of the Presidency of BiH.** In this Statement, it is necessary to fill in the part that reads: „I accept the candidacy in the 2018 General Elections and **declare myself as: Bosniac, Croat, Serb (mark).**”

According to the IDPI’s proposal, the disputed articles of the BiH Election Law should read:

Article 8.1

(1) *The members of the Presidency of Bosnia and Herzegovina (hereinafter: the Presidency of BiH), directly elected from the territory of the Federation of Bosnia and Herzegovina – **one Bosniac and one Croatian**, 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 Federation of BiH may vote for **either a Bosniac or a Croatian** Member of the Presidency, but not for both. The Bosniac and Croat candidate that gets the highest number of **election points** among candidates from the same constituent people shall be elected.*

(2) *The member of the Presidency of BiH that shall be directly elected from the territory of Republic of Srpska – **one Serbian** 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.*

Article 4.19

(4) *The candidate list shall contain the name and surname of every candidate on the list, their personal identification number (JMBG number), permanent residence address, **declaration on the representation of the constituent people or group of Others**, signature of the president of the political party, or signature of the authorized person of the coalition to represent before the Central Election Commission of BiH. The proposal of the list shall be accompanied by a statement of each of the candidates on the list of acceptance of candidacy and a statement that there are no obstacles referred to in Article 1.8 paragraph (1) and Article 1.10 paragraph (1) item 5 of this Law. These declarations and statements must be certified in the way prescribed by law or by the competent Municipal Election Commission.*

(5) *The declaration of representation of the constituent people or group of Others referred to in paragraph (4) of this Article shall be used as **the grounds for exercise of rights to hold an elected or appointed position for which the condition is a declaration of representation of the constituent people or group of Others** in the election cycle for which the list of candidates has been submitted.*

(6) *The candidate **shall be entitled not to declare his/her representation of the constituent people or a group of "Others" on the candidate list, however non-declaration shall be considered as waiver of the right to an elected or appointed position for which the declaration of representation of the constituent people or group of Others is a condition.***

According to the IDPI's proposal, the collective Candidate List should contain the following formulation: „ **In the column „Declaration of representation of the constituent people or a group of Others” is necessary to mark one of the statements: a) BOSNIAC b) CROAT c) SERB d) OTHERS**

The Statement that must be attached to the Candidate List for election of a member of the Presidency of Bosnia and Herzegovina should read: „ I accept the candidacy in the General Elections and undertake to represent: **Bosniacs and Others, Croats and Others, Serbs and Others** (mark)”.

Candidates who declare themselves as Bosniacs in the collective Candidacy List could run to represent Bosniacs and Others in the Presidency of BiH, those who declare themselves as Croats – Croats and Others, and Serbs – Serbs and Others.

That statement should literally read:

I am running for:

A) The Bosniac member of the Presidency of BiH and I undertake to represent Bosniacs and all Others who will vote for me.

B) The Croat member of the Presidency of BiH and I undertake to represent the Croats and all Others who will vote for me.

C) The Serb member of the Presidency of BiH and I undertake to represent Serbs and all Others who will vote for me.

This would enable the implementation of the decisions of the ECtHR Sejdić-Finci, Zornić and Šlaku for the Presidency of BiH.

III-2) IDPI's models of BiH election legislation reform – Model P

A) Main features of IDPI's model P1

The Presidency of BiH		The Presidency of BiH	
IDPI's model P1	Requests for amendments	IDPI's proposal P1	Resolves decisions
Amendments to the BiH Election Law	YES	Ljubić	YES
Amendments to CEC documents	YES	Sejdić-Finci	YES
Amendments to the BiH Constitution	NO	Zornić	YES
Amendments to the FBiH Constitution	/	Šlaku	YES
Amendments to the RS Constitution	/	Pilav	NO
		Pudarić	NO

The BiH Presidency is composed of **three members**: Bosniac, Croat and Serb. Instead of the current method by which the Bosniac and Croat members of the Presidency of BiH are elected from the FBiH Entity as a single specific demos, a new method of election is introduced, which is based on:

- Three specific *demos* in BiH** (two in FBiH) for the election of members of the Presidency of BiH and the principle that **members of the Presidency are representatives**, but not necessarily **members of the constituent peoples**.

2. Bosniac and Croatian Coefficients of Election Points (**CEP**) for each of the eleven electoral units (ten counties and Brčko District).

The Serb member of the BiH Presidency is elected from the RS in the same way as before. This proposal only further explains who the specific demos is for the election of the Serb member of the BiH Presidency.

B) Three specific demoi in the IDPI's model P2

The election of members of the Presidency of BiH is done by **direct election, on the same lists and the same procedure as before**, which means that all voters in FBiH will still be able to vote for any candidate for Bosniac or Croat member. Specific *demoi* are used for subsequent mathematical models for calculating Election Points.

Specific demos for the election of the Bosniac member of the Presidency of BiH

– All Bosniacs in FBiH and BD, all Serbs in FBiH who decide to vote for the Bosniac member, and all Others in FBiH and BD who decide to vote for the Bosniac member of the Presidency of BiH.

Specific demos for the election of the Croat member of the Presidency BiH

– All Croats in FBiH and DB, all Serbs in FBiH who decide to vote for Croat member, and all Others in FBiH and DB who decide to vote for the Croat member of the Presidency of BiH.

Specific demos for the election of the Serb member of the Presidency of BiH

– All Serbs in RS and DB, all Bosniacs, Croats and Others in RS, and all Others in DB who decide to vote for the Serb member of the Presidency of BiH.

C) Who can run as a candidate in the IDPI's model P1?

The provisions of the BiH Election Law and official documents of the Central Election Commission according to which candidates must declare their **affiliation to one constituent people or group of Others are abolished**. Instead, provisions **are introduced** to which candidates declare **for which position they are running**, for example for the Croat member of the Presidency of BiH.

Therefore, regardless of their own national (non)affiliation, **every citizen can be a candidate for any member of the Presidency of BiH**, because the members of the

Presidency are **representatives, but not necessarily members of that people**. This implements the decisions “**Sejdić-Finci**“, „**Zornić**“ and „**Šlaku**“ for the Presidency of BiH. There is no reason why a Roma, a Jew or an undeclared citizen should not be able to represent Croats in the BiH Presidency (either Serbs or Bosniacs) if they receive the majority support of the constituent people they want to represent. **The legitimacy of representation in the Presidency of BiH stems from the electoral will of those who elect, and not from the nationality of the person elected.**

D) Who can vote for whom in the IDPI's model P1?

Members of one specific demos for the Presidency of BiH should not vote for representatives of another specific demos. For example, Bosniacs in the FBiH and DB as members of a specific demos for the election of a Bosniac member of the BiH Presidency should not vote for a Croat member of the Presidency, **as they already have the opportunity to elect the Bosniac member of the Presidency.** Serbs and Others from FBiH may vote for Bosniac or Croat member of Presidency, just as Bosniacs, Croats and Other from RS may vote for Serb member of Presidency. All citizens, therefore, who are not able to vote for a member of the Presidency who represents the people to which they belong must not only be allowed but must have the right to choose which member of the Presidency to vote for in the entity of which they are citizens.

On the other hand, citizens who have the opportunity to vote for a member of the Presidency who represents the people they belong to in that body should not vote for a member of the Presidency who represents other peoples. IDPI's models do not prevent them from **drawing new boundaries of electoral units, further complicating the electoral process, and asking voters to declare themselves nationally at the polling station.** Instead, since they should not in principle vote for a representative of another people in the Presidency if they can vote for a representative of their own, IDPI's models **limit and demotivate them in such an act by a system of Coefficients of Election Points (CEP).** Therefore, these models are relatively inclusive and allow some influence of voters from other constituent peoples and Others on the election of individual members of the Presidency, but do not allow that influence to be decisive, because it violates the overriding principle of the BiH Constitution – the principle of constitutiveness and mutual equality.

E) Coefficients of election points (CEP) in IDPI's model P1

Each of the 11 electoral units (counties in FBiH and Brčko District) receives a certain **coefficient of election points (CEP)** for the election of the Bosniac and Croat members of the Presidency of BiH. Coefficients of election points are obtained based on the share (percentage) of members of a certain constituent people in a particular electoral unit in relation to the total number of members of a certain constituent people in FBiH and DB and is updated after each census.

Out of **515.135** Croats in FBiH and DB, **17.520** Croats live in Sarajevo Canton (SC). Therefore, **the Croatian CEP in SC** is $(17.520/515.135) \times 100 = \mathbf{3,40}$.

In this way, it is ensured that, for example, one Croat in the Sarajevo Canton has **the same value of a vote** as one Croat in the West-Herzegovina County (the same applies to one Bosniac).

According to the results of the 2013 Census, the Bosniac and Croatian CEP by electoral units is:

Electoral unit	Bosniac coefficient of election points	Croatian coefficient of election points
Una-Sana Canton	15,40	0,99
Posavina County	0,52	6,52
Tuzla Canton	24,56	4,58
Zenica-Doboj Canton	18,74	8,51
Bosnian-Podrinje Canton	1,40	0,01
Central Bosnia Canton	9,18	18,95
Herzegovina-Neretva County	5,76	22,96
West-Herzegovina County	0,04	18,19
Sarajevo Canton	21,69	3,40
Herzeg-Bosnia County	0,50	12,54
Brčko District	2,21	3,35
In total	100	100

Table 14 – Coefficients of election points (CEP) in IPDI's model P1

The procedure for calculating the election result for the Croat member of the Presidency is as follows:

1. Addition of votes of all Croatian candidates in one electoral unit (sum is **100% of votes** for the Croat member of the Presidency).

2. Calculation of the percentage of each Croatian candidate in relation to 100% of the votes for the Croat member of the Presidency in one electoral unit.
3. Application of the formula for calculating the election points of each of the candidates in each electoral unit (counties and BD):

$$\text{Total points of candidate A} = (\text{percentage of votes of candidate A} / 100) \times \text{CEP of electoral unit}$$

4. Addition of Candidate A election points in all counties and Brčko District
5. Application of the same procedure to all Croatian candidates.

The same procedure applies to all B candidates in relation to their 100% of the votes.

	Komšić	Čović	Zelenika	Falatar	Ivanković-Lijanović	In total
Total number of votes	66.931	3.300	1.554	6.942	568	79.295
Percentage of votes won	84,41%	4,16%	1,96%	8,75%	0,72%	100,00%
Election points won	2,87	0,14	0,07	0,30	0,02	3,40

Table 15 – Example of calculating election points for the Croat member of the Presidency of BiH in the Sarajevo Canton based on the results of the 2018 elections

III-3) IDPI's models of BiH election legislation reform – Model P2

A) Main features of the IDPI's model P2

The Presidency of BiH		The Presidency of BiH	
IDPI's model P2	Requests for amendments	IDPI's proposal P2	Resolves decisions
Amendments to the BiH Election Law	YES	Ljubić	YES
Amendments to CEC documents	YES	Sejdić-Finci	YES
Amendments to the BiH Constitution	YES	Zornić	YES
Amendments to the FBiH Constitution	/	Šlaku	YES
Amendments to the RS Constitution	/	Pilav	YES
		Pudarić	YES

In Model P2 the **basic principles** (possibility of all citizens with the right to vote to run and vote for holders of all public offices, and treatment of members of the Presidency of BiH as representatives, and not necessarily members of the constituent peoples) are the same as in **Model P1**. The same is the model **for calculating election points**, which is based on the **percentage** of members of each of the constituent peoples in **each of the electoral units in relation to the total number** of members of each of these peoples, this time throughout BiH, not in FBiH and Brčko District as in Model P1.

The composition of specific *demoi* is different, as Model P2 **removes the constitutional obstacle** for Bosniacs from RS to vote for Bosniac, Croats from RS to vote for Croat, and Serbs from FBiH to vote for Serb member of the Presidency. Therefore, literally **all members** of each of the constituent peoples **in the entire territory of BiH, together with the Others who are left with the possibility of choosing** a member to vote for, make each of three specific *demoi* for the election of the appropriate member of the Presidency. Given that the model is applied to the entire territory of BiH, **the counties in the FBiH and the Brčko District are jointed by the RS as an electoral unit.**

The BiH Presidency is composed of three members: **Bosniac, Croatian and Serbian.**

Instead of the current method where **Bosniac** and Croat members of the Presidency are elected from the territory of FBiH and **Serb** from the territory of RS, with this model **all three members are elected on the entire BiH territory** through:

1. **Three specific *demoi* in BiH for the election of members of the Presidency of BiH on the entire territory of BiH.**
2. **Bosniac, Croatian and Serbian Coefficient of Election Points (CEP) for each of the twelve electoral units (ten counties, Brčko District and Republic of Srpska).**

B) Three specific *demoi* in the IDPI's model P2

The election of members of the Presidency of BiH is done by **direct election, where the voters of each specific demos choose a candidate from the electoral list of that specific demos.**

Specific demos for the election of the Bosniac member of the Presidency of BiH – All Bosniacs in BiH and all Others who decide to vote for the Bosniac member of the Presidency.

Specific demos for the election of the Croatian member of the Presidency of BiH

– All Croats in BiH and all Others who decide to vote for the Croat member of the Presidency.

Specific demos for the election of the Serbian member of the Presidency of BiH

– All Serbs in BiH and all Others who decide to vote for the Serb member of the Presidency.

C) Who can run as a candidate in the IDPI's model P2?

The provisions of the Election Law of BiH and official documents of the Central Election Commission according to which candidates must declare their **affiliation to the constituent people** in the candidacy form are abolished, and the provisions on declaring **for which position the candidate is running** are introduced. Therefore, everyone, regardless of their own national (non)affiliation, can be a candidate for any member of the Presidency, because the members of the Presidency are **representatives, but not necessarily members of that people**.

Constitutional amendments change the principle that a Serb member is elected directly from the territory of RS, and Bosniac and Croat from the territory of FBiH, and introduces the principle that **all three members are elected throughout BiH**, which implements the decision “**Pilav and Pudarić**” of the European Court of Human Rights.

Given that a member of each constituent people is able to elect its own member of the Presidency, members of one constituent people should not vote for representatives of another constituent people. For example, Bosniacs should not vote for a Croat or Serb member of the Presidency, as they already have the opportunity to elect a Bosniac member of the Presidency. The Others can choose which member of the Presidency to vote for. **All citizens, therefore, have the opportunity to vote and run for the Presidency of BiH.**

D) Coefficients of election points (CEP) in IDPI's model P2

Each of the 12 electoral units (counties in FBiH, Brčko District and Republic of Srpska) receives a certain **coefficient of election points** (CEP) for the election of the Bosniac, Croat and Serb members of the Presidency of BiH.

Coefficients of election points (**B, C and S**) are obtained based on the share (percentage) of members of a certain constituent people in each electoral unit in relation to the total number of members of a certain constituent people in BiH and are updated after each census.

According to the results of the 2013 Census, B,C and S CEP by electoral units is:

Electoral unit	Boasnian coefficient of election points	Croatian coefficient of election points	Serbian coefficient of election points
Una-Sana Canton	13,90	0,93	0,78
Posavina County	0,47	6,17	0,08
Tuzla Canton	22,17	4,33	0,65
Zenica-Doboj Canton	16,92	8,04	0,51
Bosnian-Podrinje Canton	1,26	0,01	0,08
Central Bosnia Canton	8,29	17,92	0,28
Herzegovina-Neretva County	5,20	21,71	0,59
West-Herzegovina County	0,04	17,20	0,01
Sarajevo Canton	19,59	3,22	1,22
Herzeg-Bosnia County	0,45	11,86	1,00
Brčko District	2,00	3,17	2,66
Republic of Srpska	9,71	5,44	92,14
In total	100	100	100

Table 16 – Coefficient of election points (CEP) in IDPI’s model P 2

The procedure for calculating the election results for the Croat member of the Presidency is as follows:

1. Addition of votes of all Croat candidates in one electoral unit (sum is **100%** of votes for the Croat member of the Presidency)
2. Calculation of the percentage of each Croat candidate in relation to 100% of the votes for the Croat member of the Presidency in one electoral unit
3. Application of the formula for calculating the election points of each of the candidates in each electoral unit (counties, BD and RS):

$$\text{Election points of candidate A} = (\text{percentage of votes of candidate A} / 100) \times \text{electoral unit's CEP}$$

4. Addition of election points in all cantons, Brčko District and the Republic of Srpska of Candidate A
5. Application of the same procedure to all Croatian candidates.

The same procedure applies to all B and S candidates in relation to their 100% of the votes.

III-4) Application of IDPI's model P1 of the reform of the election legislation of BiH to the previous elections – simulations

Electoral unit	Komšić	Jović	Ljubić	Ivanković-Lijanović	Jurišić	Javor-Korjenić
USC	0,55	0,12	0,14	0,11	0,05	0,02
PC	0,52	2,84	1,98	0,66	0,50	0,02
TC	3,62	0,31	0,09	0,47	0,07	0,03
ZDC	4,20	1,84	0,82	1,04	0,54	0,06
BPC	0,00	0,00	0,00	0,00	0,00	0,00
CBC	3,42	9,21	3,44	1,38	1,41	0,09
HNC	3,20	8,70	8,08	1,02	1,87	0,09
WHC	0,33	6,67	6,48	1,55	3,15	0,02
SC	2,68	0,20	0,10	0,30	0,08	0,04
C10	0,96	3,52	4,90	0,90	2,13	0,13
BD	0,65	1,80	0,57	0,18	0,13	0,02
Total election points	20,13	35,22	26,60	7,61	9,92	0,52

Table 17 – Example of calculating election points for the Croat member of the Presidency of BiH based on the results of the 2006 elections

Electoral unit	Komšić	Krišto	Raguž	Ivanković-Lijanović	Galić P.	Kutle	Galić F.
USC	0,84	0,02	0,02	0,10	0,00	0,00	0,00
PC	1,30	3,25	1,67	0,24	0,03	0,01	0,01
TC	4,08	0,21	0,08	0,19	0,01	0,01	0,00
ZDC	6,18	0,73	0,44	1,11	0,01	0,01	0,01
BPC	0,00	0,00	0,00	0,00	0,00	0,00	0,00
CBC	7,79	5,82	3,36	1,90	0,04	0,02	0,02
HNC	6,67	9,44	5,37	1,35	0,05	0,03	0,05
WHC	0,29	10,60	4,97	2,16	0,07	0,04	0,07
SC	2,87	0,10	0,16	0,25	0,01	0,01	0,01
HBC	1,11	6,68	3,02	1,50	0,15	0,04	0,04
BD	1,83	1,10	0,35	0,02	0,03	0,00	0,01
Total el. pts.	32,98	37,96	19,43	8,81	0,41	0,18	0,23

Table 18 – Example of calculating election points for the Croat member of the Presidency of BiH based on the results of the 2010 elections

Electoral unit	Čović	Raguž	Budimir	Popović
USC	0,12	0,22	0,49	0,16
PC	3,54	2,54	0,34	0,10
TC	1,17	2,44	0,51	0,46
ZDC	3,57	4,02	0,45	0,47
BPC	0,00	0,00	0,00	0,00
CBC	12,29	5,70	0,69	0,28
HNC	14,99	6,41	1,39	0,18
WHC	13,81	3,38	0,96	0,05
SC	0,27	2,83	0,17	0,14
HBC	7,78	4,10	0,47	0,20
BD	2,25	0,86	0,11	0,13
Total election points	59,78	32,48	5,57	2,17

Table 19 – Example of calculating election points for the Croat member of the Presidency of BiH based on the results of the 2014 elections

Electoral unit	Komšić	Čović	Zelenika	Falatar	Ivanković-Lijanović
USC	0,86	0,04	0,01	0,03	0,04
PC	0,91	4,79	0,65	0,07	0,11
TC	3,94	0,36	0,05	0,19	0,05
ZDC	6,21	1,63	0,21	0,32	0,14
BPC	0,00	0,00	0,00	0,00	0,00
CBC	6,43	10,34	1,31	0,53	0,35
HNC	5,33	14,56	2,48	0,47	0,13
WHC	0,15	15,43	2,32	0,10	0,19
SC	2,87	0,14	0,07	0,30	0,02
C10	0,94	8,08	2,84	0,12	0,57
BD	1,55	1,55	0,18	0,04	0,03
Total election points	29,19	56,92	10,10	2,16	1,63

Table 20 – Example of calculating election points for the Croat member of the Presidency of BiH based on the results of the 2018 elections

Electoral unit	Džaferović	Bećirović	Radončić	Hadžikadić	Šepić	Jerlagić	Ukupno
USC	22.551	22.552	5.842	5.296	6.000	511	62.752
PC	903	727	509	147	38	22	2.346
TC	45.519	62.371	21.683	13.527	2.780	2.899	148.779
ZDC	42.736	31.470	11.487	8.092	12.566	2.099	108.450
BPC	2.850	2.723	1.035	750	434	437	8.229
CBC	29.089	17.315	5.573	3.094	1.840	923	57.834
HNC	15.861	9.694	4.354	2.602	1.013	623	34.147
WHC	32	78	41	22	13	6	192
SC	43.120	42.063	22.156	22.935	4.634	1.491	136.399
HBC	1.227	615	264	113	87	81	2.387
BD	3.786	2.049	1.246	391	82	387	7.941
Total election points	207.674	191.657	74.190	56.969	29.487	9.479	569.456
Percentage of votes won	36,47 %	33,66 %	13,03 %	10,00 %	5,18 %	1,66 %	100 %

Table 21 – The results of the elections for the Bosniac member of the Presidency of BiH according to the results of 2018⁷¹

Electoral unit	Džaferović	Bećirović	Radončić	Hadžikadić	Šepić	Jerlagić
USC	5,53	5,53	1,43	1,30	1,47	0,13
PC	0,20	0,16	0,11	0,03	0,01	0,00
TC	7,51	10,29	3,58	2,23	0,46	0,48
ZDC	7,39	5,44	1,99	1,40	2,17	0,36
BPC	0,48	0,46	0,18	0,13	0,07	0,07
CBC	4,62	2,75	0,88	0,49	0,29	0,15
HNC	2,67	1,63	0,73	0,44	0,17	0,11
WHC	0,01	0,02	0,01	0,01	0,00	0,00
SC	6,86	6,69	3,52	3,65	0,74	0,24
HBC	0,26	0,13	0,06	0,02	0,02	0,02
BD	1,06	0,57	0,35	0,11	0,02	0,11
Total election points	36,58	33,68	12,84	9,81	5,43	1,66

Table 22 – Example of calculating election points for the Bosniac member of the Presidency of BiH based on the results of the 2018 election

⁷¹ Central Election Commission, https://izbori.ba/Rezultati_izbora?resId=25&langId=3#/1/1/0/0/701

The simulations show that in all election cycles since 2006, the IDPI’s model P1 would change the election results for the Croat member of the BiH Presidency, except in 2014, when the winner was a candidate who really had the support of the majority of Croats in FBiH. In the case of the analysed elections for the Bosniac member in 2018 the difference between the percentage of votes won by individual candidates and the number of their election points is negligible. This confirms that the model faithfully conveys the will of the voters expressed in the elections, except in cases of brutal national engineering that occurred during the election of the Croat member of the Presidency of BiH in 2006, 2010 and 2018.

III-5) IDPI’s models of BiH election legislation reform– Model HP2

A) Main features of IDPI’s model HP2

House of Peoples of the Parliamentary Assembly of BiH		House of Peoples of the Parliamentary Assembly of BiH	
IDPI’s model HP2	Requests for amendments	IDPI’s proposal HP2	Resolves decisions
Amendments to the BiH Election Law	YES	Ljubić	YES
Amendments to CEC documents	YES	Sejdić-Finci	YES
Amendments to the BiH Constitution	YES	Zornić	YES
Amendments to the FBiH Constitution	/	Šlaku	YES
Amendments to the RS Constitution	/	Pilav	YES
		Pudarić	YES

As before, the House of Peoples of the Parliamentary Assembly of BiH consists of **three caucuses: Bosniac People Caucus, Croat People Caucus and Serb People Caucus**.

Instead of the current method by which the delegates of these caucuses are elected by the delegates in the Caucus of Croats and Caucus of Bosniacs of the House of Peoples of the FBiH Parliament, and deputies (delegates) of the National Assembly of the RS, a **new, direct method of election** is introduced, based on:

- 1. Three specific *demoi* in BiH for the election on the entire territory of BiH** of delegates in the Caucuses of Bosniacs, Croats and Serbs and the principle that the delegates in those caucuses are necessarily representatives, but not necessarily members of the constituent peoples.

2. **Bosniac, Croatian and Serbian Coefficient of election points (CEP)** for each of the **twelve electoral units** (ten counties, Brčko District and Republic of Srpska).

B) Three specific demos in IDPI's model HP2

The election of delegates in the House of Peoples of the Parliamentary Assembly of BiH is done by direct **election, in which the voters of each specific demos vote for candidates from the electoral list of that specific demos.**

Specific demos for the election of Bosniac delegates HP BiH PA – All Bosniacs in BiH and all Others who decide to vote for delegates in the Caucus of Bosniacs of the BiH PA.

Specific demos for the election of Croatian delegates HP BiH PA – All Croats in BiH and all Others who decide to vote for delegates in the Caucus of Croats of the BiH PA.

Specific demos for the election of Serbian delegates HP BiH PA – All Serbs in BiH and all Others who decide to vote for delegates in the Caucus of Serbs of the BiH PA.

The provision of the CEC according to which candidates must sign a **declaration of affiliation to the constituent people** in the candidate form is repealed. The model envisages that everyone, regardless of their national (non)affiliation, can be candidate for delegate in any caucus of the BiH PA, because its members are **representatives, but not necessarily members of the people they represent.**

Constitutional amendments change the principle that the Serb Caucus is elected in RS NA, and the Croat and Bosniac caucuses in the House of Peoples of the FBiH Parliament and introduces the principle that all three members are elected directly on the entire territory of BiH, which implements the **“Pilav and Pudarić” decision of the European Court of Human Rights.** Since everyone is able to elect delegates in their caucus of HP BiH PA, members of any specific demos for HP BiH PA should not vote for representatives of another specific demos. For example, Bosniacs as members of a specific demos for the election of the Bosniac Caucus in HP BiH PA should not vote for delegates in the Croat Caucus, since they already have the opportunity to elect delegates to the Caucus of Bosniacs. Therefore, all citizens are able to vote and be elected.

C) Coefficient of election points (CEP) in IDPI's model HP2

Each of the 12 electoral units (counties in FBiH, Brčko District and Republic of Srpska) receives a certain **coefficient of election points (CEP)** for the election of the Bosniac Caucus, Croat Caucus and Serb Caucus in the BiH PA.

Coefficients of election points (**Bosniac, Croatian and Serbian**) are obtained based on the share (percentage) of members of a particular constituent people in each electoral unit in relation to the total number of members of that constituent people in BiH and is updated after each census. In this way, it is ensured that every Croat in the Sarajevo Canton has the same value of vote as one Croat in the Herzegovina-Neretva County (the same applies to every Bosniac and every Serb in every administrative-territorial unit).

According to the results of 2013 Census, the Bosniac, Croatian and Serbian CEP by electoral unit is:

Electoral unit	Bosniac coefficient of election points	Croatian coefficient of election points	Serbian coefficient of election points
Una-Sana Canton	13,90	0,93	0,78
Posavina County	0,47	6,17	0,08
Tuzla Canton	22,17	4,33	0,65
Zenica-Doboj Canton	16,92	8,04	0,51
Bosnian-Podrinje Canton	1,26	0,01	0,08
Central Bosnia Canton	8,29	17,92	0,28
Herzegovina-Neretva County	5,20	21,71	0,59
West-Herzegovina County	0,04	17,20	0,01
Sarajevo Canton	19,59	3,22	1,22
Herzeg-Bosnia County	0,45	11,86	1,00
Brčko District	2,00	3,17	2,66
Republic of Srpska	9,71	5,44	92,14
In total	100	100	100

Table 23 – Coefficients of election points (CEP) in IDPI's model HP2

Voters of each specific demos vote using the ballot paper for the appropriate HP BiH PA caucus by marking the candidate list on that ballot paper they want to vote for. After the election process, the election points received by each list in each electoral unit are calculated by multiplying the CEP (Bosniac, Croatian and Serbian) of a particular electoral unit by the share of votes of a certain list in relation to all list of that specific demos.

The CEC does calculation for all electoral units, and the won electoral points are added up for each list of candidates for the respective caucus. Mandates are allocated in the same way as in Model HP1, except that **the PEP's of the representatives in the Grand Electoral College are not added up, but the results of direct elections in all 12 electoral units**, according to theirs CEP's.

III-6) Conclusion on models that give Others the opportunity to run as candidates and vote, but do not relate specifically to the election of their representatives

Main features of the IDPI's model P 1:

- Implements the Ljubić decision of the BiH Constitutional Court and the Sejd-đić-Finci, Zornić and Šlaku ECtHR decisions at the level of the BiH Presidency;
- Enables all citizens with the right to vote to elect and be elected to the Presidency of BiH;
- Ensures equal value of vote for all Croats (and Bosniacs) regardless of the electoral unit in which they live;
- Ensures the legitimacy of representation in the Presidency of BiH;
- No amendments to the BiH Constitution are required for implementation.

Main features of the IDPI's model P 2:

- Implementation requires amendments to the BiH Constitution, but this model implements all decisions (Ljubić decision of the BiH Constitutional Court and Sejd-đić-Finci, Zornić, Šlaku and Pilav and Pudarić ECtHR decisions) at the level of the BiH Presidency;

- Enables all citizens with the right to vote to elect and be elected to the Presidency of BiH;
- Ensures equal value of vote for all Croats (both Bosniacs and Serbs) regardless of which electoral unit they live in;
- Ensures the legitimacy of representation in the Presidency of BiH.

Main features of IDPI model HP 2:

- Implementation requires amendments to the BiH Constitution, but this model implements all decisions (Ljubić decision of the BiH Constitutional Court and Sejdić-Finci, Zornić and Pilav and Pudarić ECtHR decisions) at the level of the HP BiH PA;
- Enables everyone to vote and be elected to the HP BiH PA;
- Ensures equal value of the vote for all Croats (both Bosniacs and Serbs) regardless of which electoral unit they live in;
- Ensures the legitimacy of representation in the HP BiH PA.

IV
Croatia

IV-1) Political representation of national minorities in the Republic of Croatia

A) Establishment of a minority representation model

At the outset, it should be emphasized that the purpose of this chapter is to present a brief genesis of the political representation of minority communities in the Republic of Croatia from independence to the contemporary context. The focus of the analysis is on the state legislative level, i.e., the former House of Representatives and the current Croatian Parliament. There will be no word about the county and local level of representation of minorities or other branches of government, i.e., the representation of members of national minorities in the bodies and institutions of the executive and judicial authorities. Furthermore, the chapter does not deal with certain forms of cultural autonomy, religious rights, education, etc., nor with the consideration of certain forms of territorial autonomy: federalization, regionalization, communities of municipalities, etc.

On the initial transition period, the Republic of Croatia faced the need to regulate the rights of those peoples who in the former common state were an integral part of the constitutional order, even through the framework of constitutiveness, while in new circumstances they found themselves in minority position. In the situation of dissolution of the multinational federation with hitherto unresolved interethnic relations, and especially the outbreak of war conflicts, this issue was of the highest state importance, but also the most politically sensitive one. „Croatia is one of the countries that have regulated the position and rights of national minorities by a special law“⁷², and Croatia started this practice in 1991. Namely, the Constitution of the Republic of Croatia in Article 15 which explicitly guarantees equality to members of national minorities, explicitly states: „Equality and protection of the rights of national minorities are regulated by a constitutional law adopted in accordance with the procedure for the adoption of organic laws.“⁷³ Furthermore, Article 83 states: “Laws (organic laws) regulating the rights of national minorities shall be adopted by the Croatian Parliament by a two-thirds majority of all members.“⁷⁴ Thus, from the very beginning of democratic political practice, the Republic of Croatia has decided to invest particularly strong political legitimacy in organic laws regulating the rights of national minorities so that their implementation and protection would not depend on changes in political constellations. The first such law, passed in 1991, was amended already the following

72 Tatalović, S., *National Minorities in Croatia*, Stina Split, 2005., p. 45.

73 Constitution of the Republic of Croatia, Official Gazzette, No. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01 i 55/01 – consolidated text, Article 15. p. 2.

74 Ibid., Article 83. p. 1.

year, then in 1999 and 2000, and finally replaced by the new Constitutional Law on the Rights of National Minorities in the Republic of Croatia of 2002.⁷⁵ This sequence of amendments to organic laws represents the first phase of the development of minority rights in the initial phase of the democratic transition of the political system.

What should be emphasized, related to the topic of political representation of national minorities, is the 1992 Law which introduced the participation of minority representatives in representative and other bodies of government. Until then, only one election cycle was held that did not recognize the special mechanisms of minority representation. This was the first multi-party election in 1990 in which an absolute majority electoral system was used to create a stable government. Political representation of minority communities was not regulated by a separate model but could only be done through the representation of minority representatives among candidates in electoral units. „The problem of political representation of minorities has been reduced to the representation of territorially concentrated minorities that are grouped regionally to a larger extent. This attitude is to some extent inconsistent, not only because minorities are not only territorially determined, but also because this type of representation requires the existence of political parties.“⁷⁶

Two years later, elections held for the House of Representatives introduced a model of minority representation for the first time. The electoral system according to which the elections were held in 1992 can be characterized as the so-called segmented or trench electoral system.⁷⁷ Representatives are elected in completely separate segments: proportional and major electoral systems, each of which elects 60 deputies, with additional mandates reserved by a special election procedure reserved for members of national (ethnic) minorities.⁷⁸ For members of the Serbian national minority, the law prescribed that since it is above 8% of the total population, “it has the right to proportional representation“⁷⁹, if this proportional representation is not achieved by electoral procedure, then candidates from the list of parties that have been elected to the parliament in accordance with their results shall be appointed from the ranks of those peoples. Minority communities as listed: Italian, Hungarian, Czech, Slovaks, Russians, Ukrainians, German and Austrians are guaranteed five seats. Thus, the mechanism of reserved seats was introduced into the political system of Croatia. „Reserved seats are pre-guaranteed

75 Cf. Smerdel, B., Sokol, S., Constitutional Law, Official Gazette, Zagreb, 2009., p. 117.

76 Grdešić, I., “Election in Croatia: voters, evaluations, preferences”, in: Grdešić, I., Kasapović, M., Šiber, I., Zakošek, N. (ed.), Croatian Parliamentary Elections ‘90., Naprijed, Zagreb, 1991., p. 78.

77 Cf. Zakošek, N., Political System of the Republic of Croatia, Faculty of Political Science, Zagreb, 2002, p. 19.

78 Cf. Ibid., p. 20.

79 Ibid.

mandates for representatives of racial, ethnic, religious or other minority groups in national parliaments, which are not acquired according to the general rules of election that apply to other actors but according to the special and privileged customs.⁸⁰

As for the election procedure itself, the election was conducted in special electoral units by a majority of votes. Members of minorities had two votes, one for party lists at the state level, and the other for special minority units. Such a possibility was explicitly enshrined in 2000 in the Article 15 of the Constitution, which states: „In addition to universal suffrage, the law may provide members of national minorities with a special right to elect their representatives to the Croatian Parliament.“⁸¹ It should be noted that there was no law regulating such election practice, but it was carried out on the instructions of the State Election Commission.⁸²

The next important change in electoral legislation occurred in 1995. It should be taken into account that the war events significantly changed the population composition of the Republic of Croatia, which was reflected in the electoral legislation. Other minority communities remained with the existing representative model of guaranteed five seats in special electoral units, while for one Serbian electoral unit, the provision on proportional filling with candidates from party lists was abolished and a special electoral unit was introduced as for the other minorities. For the Serbian community, this meant reducing the number of delegates from 13 to 3.⁸³ New amendments to the election law made in 1999, regarding minority representation, brought significant changes. Namely, the dual right to vote for minority voters was abolished, as all other citizens had one vote, so they had to decide whether to use it when voting for party lists in general electoral units or for minority candidates in special electoral units.⁸⁴ A Jewish minority has been added to the community of national minorities represented by the fifth mandate (Ruthenians, Ukrainians, Austrians and Germans). The biggest backlash in the political representation was experienced by the Serbian national minority, whose previous number of three guaranteed mandates was reduced to one mandate. Thus, the once most numerous and proportionately represented national minority was reduced to the same status as other legally specified minorities. There were five guaranteed seats in the law: one each for the Serbian, Italian and Hungarian minorities: one for Czechs and Slovaks: and one for members of the Austrian, German, Ruthenian, Ukrainian, and Jewish national minorities.

80 Kasapović, M., *Them and Us*, Večernji list, Zagreb, 2014., p. 111.

81 Constitution of the RH, Article 15. p. 3.

82 Cf. Zakošek, N., *op. cit.*, p. 25.

83 Cf. *Ibid.*, p. 23.

84 Cf. *Ibid.*, p. 26.

It is important to point out that throughout the post-war period there was significant pressure from the international community to ensure and improve the process of political representation of minority communities in the Republic of Croatia, and their representation in the legislature. The ratification of the Framework Convention for the Protection of National minorities from 1997 contributed to this process, as did bilateral agreements with neighbouring countries governing minority rights: Hungary in 1995, Italy in 1996 and the Agreement on Normalization of Relations between Croatia and Yugoslavia in 1996. „Minority problems in the newly formed states, such as the Republic of Croatia, were quickly identified by the European institutions (European Union, Council of Europe, Organization for Security and Co-operation in Europe), who are starting to use them as a means of pressure to force a country to act in accordance with democratic standards at the domestic and international levels.“⁸⁵ International influence began to grow stronger as Croatia became more serious about European integration processes.

B) The period of democratic establishment

At the beginning of the new millennium, the Republic of Croatia entered a new period of democratic transition, which is primarily characterized by changes in the political system and the transition to a parliamentary form of organization. This change was conditioned by the change of the political constellation, as well as the opening of the perspective of accession processes for membership in the European Union. After Croatia began serious activities aimed at gaining candidate status and starting the negotiation process with the European Union, the issue of the status and political representation of national minorities has taken a significant role. Representatives of the European Commission paid special attention to the representation of minority representatives in the Croatian Parliament. An important element in this process is the signing of the Stabilization and Association Agreement in December 2001, in which Croatia undertook to regulate the status of national minorities by constitutional law.

As previously mentioned, already in the 1990s, such a practice included organic laws, the implementation of which was hampered by war. However, the constitutional law preceded by two laws from 2000 that significantly improved the general position of minority communities in Croatia, the Law on the Use of Languages and Scripts of

⁸⁵ Tatalović, S., „The position of national minorities in the Republic of Croatia“, in: Bašić, G. i dr. (ed.), *Demokratija i nacionalne manjine*, Ethnicity Research Centre, Belgrade, 2002., p. 233.

National Minorities in the Republic of Croatia and the Law on Education in the Language and Script of National Minorities.⁸⁶ Their adoption is directly based on the Article 15 of the Constitution, which explicitly states: „Members of all national minorities are guaranteed freedom of expression, freedom to use their language and script and cultural autonomy.“⁸⁷ The adoption of the Constitutional Law was preceded by the 2001 Census, which found that the total population of the Republic of Croatia in the period from 1991 to 2001 decreased by about 7.25%, while the share of members of the majority Croatian people in the total population increased by 11.53%, the share of members of national minorities in the total population of the Republic of Croatia decreased by about 50% and amounted to 7.47%. Although other national minorities recorded a decline, by far the largest decline in the number of inhabitants was recorded for the Serbian national minority, which was reduced to 2/3 of the pre-war population.

Considering all aforementioned circumstances, at the time, on 13 December 2002, the Government passed the Constitutional Law on the Rights of National Minorities, which further defined minority rights and expanded the scope of their political representation. „National minority, in terms of this Constitutional Law, is a group of Croatian citizens whose members are traditionally residing in the territory of the Republic of Croatia, and have ethnic, linguistic, cultural and/or religious characteristics different from other citizens and driven by the desire to preserve these characteristics.“⁸⁸ This law established the Council of National Minorities as an advisory body at the state level consisting of representatives of all national minorities and assists the Government on minority issues. Also, Councils of National Minorities have been introduced at the local and regional level to ensure the effective representation of minority communities in local and regional self-government units. The Article 7 of the Constitutional Law clearly and unambiguously emphasises the rights of persons belonging to national minorities that they can exercise individually or collectively, and in the light of political representation, it is worth pointing out the Point 8 which regulates „ representation in representative bodies at the state and local level, and in administrative and judicial bodies.“⁸⁹

The most significant change passed by the Constitutional Law relates to the number of guaranteed minority seats in Parliament, which has been increased from five to eight. This change is regulated in the Article 19: „(2) Members of national minorities

86 Cf. Tatalović, S., *National Minorities ...*, p. 47.

87 Constitution ..., Article 15. p. 4.

88 Constitutional Law on the Rights of National Minorities, *Official Gazzette*, 155/2002, Article 5.

89 *Ibid.*, Article 7.

elect at least five and at most eight of their representatives in special electoral unit, in accordance with the law on the election of representatives to the Croatian Parliament, which cannot diminish the acquired rights of national minorities. (3) Members of national minorities who participate in the total population of the Republic of Croatia with more than 1.5% of the population are guaranteed at least one, and at most three seats of members of that national minority, in accordance with the Law on the Election of Representatives to the Croatian Parliament. (4) Members of national minorities who participate in the total population of the Republic of Croatia with less than 1.5% of the population have the right to elect at least four representatives of national minorities, in accordance with the Law on the Election of Representatives to the Croatian Parliament.⁹⁰

This actually meant that only members of the Serbian national minority, given that they exceed 1.5% of the total population, are entitled to a maximum of 3 representatives, while the other mentioned minorities have a guaranteed one representative each. This returned the situation to the level of the 1995 election cycle. However, the method of adding minority communities to the constitutional and legal framework has created the problem of distinguishing between “new minorities”, those citizens who once belonged to the peoples of Yugoslavia and have now become minority identities within the Republic of Croatia.⁹¹ (Tatalović, 2002: 234). The period of gaining independence served as a kind of dividing line, and all minority communities that treasured this heritage position from the period of the former Yugoslavia were considered traditional national minorities. „According to this criterion, two groups of minorities can be distinguished : (a) minorities with traditional minority status (for several decades), and (b) the newly formed minorities that became such when Croatia gained state independence in 1991.”⁹²

The drafters of the Constitution decided to explicitly identify minority communities, and this practice has persisted to this day. The first version of the Constitution puts the Republic of Croatia in the status of “national state of the Croatian people and state of members of other peoples and minorities, who are its citizens: Serbs, Muslims, Slovenes, Czechs, Slovaks, Italians, Hungarians, Jews and others.”⁹³ In 1997, it was reformulated into „...and state of indigenous national minorities“, and Germans, Austrians, Ukrainians and Ruthenians were added, while Slovenes and Muslims were excluded from

90 Ibid., Article 19. p. 2-4.

91 Tatalović, S., Position ..., p. 262.

92 Ibid.

93 Jakešević, R., Tatalović, S., Lacović, T., “Forms of political representation of national minorities in Croatia – problems of the functionality of councils and representatives”, *Political Perspectives*, vol. 5, 2015., No. 3, p. 15

the definition.⁹⁴ Then, 9 more were added to the list of 7 constitutionally recognized minorities, including Bosniacs, Albanians and Slovenes. The 2010 constitutional changes listed as many as 22 national minorities, with Bosniacs in place of Muslims. The problem of the criteria of “traditional minorities” was in principle resolved by the Law on Amendments to the Law on Elections of Representatives to the Croatian National Parliament from 2003, in which the adjective “indigenous” was deleted from its articles.

As for the changes in the model of political representation of minorities, things have been moving in the direction of their more inclusive participation after the changes in the electoral legislation in 2003. When it comes to the procedure of electing minority representatives, it takes place through the “majority electoral system according to which the mandate is won by the candidate for whom the majority of voters belonging to national minorities vote for in the election”⁹⁵ The elections are organized in the XII electoral unit, which consists of the entire territory of Croatia, within which members of a specific minority have the opportunity to vote for their representative. Given the limited number of mandates and the large number of formally recognized minorities, certain minorities are grouped together to provide a common representative. The Article 17 of the Law on Election of Representatives to the Croatian Parliament states which minorities have the right to be represented in the Croatian Parliament. Thus, members of the Serbian minority elect three representatives, Hungarians one, Italians one, Czechs and Slovaks one. „Members of the Austrian, Bulgarian, German, Polish, Roma, Romanian, Ruthenian, Russian, Turkish, Ukrainian, Vlach and Jewish national minorities elect one member of parliament together. Members of the Albanian, Bosniac, Montenegrin, Macedonian and Slovenian national minorities elect one member of parliament together.”⁹⁶ A minor difference is the provision that members of the listed groups of minorities who together give one representative do not have the possibility of independently nominating their deputy, but it automatically becomes the candidate with the second largest number of votes, while members of the Serbian, Hungarian, Italian, Czech and Slovak minorities nominate their deputies who are elected together with them. Potential candidates must collect 100 signatures and can be nominated by parties, associations or voters themselves. The Article 46 of the Law prescribes the manner of election: „Members of national minorities referred to in the Article 17 of this Law shall elect representatives to Parliament by individual choice, so

94 Cf. Ibid.

95 Ceranić, V., “Political representation of national minorities in the constitutional order of the Republic of Croatia: Decision of the Constitutional Court of the Republic of Croatia No. U-I-3597/2010 et al. 1, no. U-I-3786/2010 et al. 2 and No. U-I-120/2011 et al.”, *Pravnik*, vol. 45, 2011., No. 1, p. 167.

96 Law on Election of Representatives to the Croatian parliament, *Official Gazzette*, 120/2011, Article. 17. p. 5-6.

that the candidate who receives the largest number of votes shall be elected. If two or more candidates won the same number of votes, the election is repeated.⁹⁷

Despite many amendments aimed at improving minority political participation, the issue of motivating minority voters to participate in special election procedures remains. Such a trend of „extremely low turnout“⁹⁸ began with the 2000 election cycle, which followed the “old rules” by which members of minority communities had to choose which electoral process to participate in, the general or special minor one. „In this electoral process, members of national minorities were discriminated against in relation to the elections held so far, when they could vote for both general and minority candidate lists.“⁹⁹ Such an election procedure significantly demotivated minority voters to participate in special minority elections and redirected most of their participation to general electoral units. The figures show that “in the 3 January 2000 Parliamentary Elections, voters/members of national minorities largely opted to vote in ten electoral units in which representatives from the “general” candidate lists of political parties or their coalition were elected, and not for voting in the special XII electoral unit for the election of representatives of national minorities.”¹⁰⁰ Although at a first glance dual voting right seems to be an important tool in conducting political representation of minority groups, the question arises as to its plausibility if minority voters prefer to cast their ballots on party lists in general elections.

„The Venice Commission considers that reserved seats and special minority representation are temporary solutions that should facilitate the political integration of minorities in post-conflict societies and newly created states, and then be abolished.“¹⁰¹ If we start from the assumption that special electoral units and guaranteed seats are a means of temporarily protection of minority communities and their political rights from majority domination and creating opportunities to articulate minority demands and interests, then disinterest in participating in a special election cycle should be a warning. Amendment to the Constitution from 2000, which introduced the provision of the Article 5 paragraph 3 that the law may, in addition to universal suffrage, grant special suffrage to members of national minorities¹⁰², opened the door to the possibility of reintroducing dual suffrage, which would appear in the next amendment to the Constitutional Law.

97 Ibid. Article 46.

98 Tatalović, S., *National Minorities ...*, p. 54..

99 Tatalović, S., *Position ...*, p. 272.

100Ibid., p. 275.

101 Kasapović, M., *op. cit.*, p. 112.

102 Cf. Tatalović, S., *National Minorities ...*, p. 53.

C) Consolidation of the representative model

In June 2008, the Government of the Republic of Croatia sent to Brussels an Action Plan for the Implementation of the Constitutional Law on the Rights of National Minorities. The latter arose as a result of the aspiration to exercise, even better and more fully, all the rights of national minorities guaranteed by the Constitutional Law on the Rights of National Minorities. During the negotiation process for accession to the European Union, Croatia tried to further establish mechanisms for the protection of minority rights, even in the direction of their political representation. In 2010, an initiative to amend the Constitutional Law on the Rights of National Minorities emerged. In June 2010, the Croatian Parliament passed amendments to the Constitutional Law that gave members of national minorities who participated in the total population less than 1.5%, in addition to the general electorate, the additional right to vote. This change caused an avalanche of reactions on the domestic political scene.

The decision was definitely preceded by the dissatisfaction of minority representatives with the low turnout situation, where due to the lack of dual voting rights, minority voters often chose to participate in regular general electoral units. The ruling coalition, in agreement with the representatives of the minorities, decided to introduce a differentiated solution, which would satisfy all parties. Agreement between the two largest parties to guarantee 3 seats to minorities with a population percentage of more than 1.5%, with Serbs being the only ones to exceed the prescribed threshold of 5%, while other minorities are given additional minority rights in addition to universal suffrage.¹⁰³ This gives virtually all other minority communities, which have reached 22 since then, dual voting rights, which would eliminate initial dissatisfaction with the need for a selection between general and special minority elections. The Article 3 of this amendment regulates this as follows: “National minorities that participate in the population of the Republic of Croatia with less than 1.5% of the population, in addition to the universal suffrage, have the right to elect five representatives of national minorities on the basis of special suffrage, in special electoral units, which cannot reduce the acquired rights of national minorities, in accordance with the Law Governing the Election of Representatives to the Croatian Parliament.”¹⁰⁴ Thus, it was considered that positive discrimination of minority voters would enable the elimination of their electoral fragmentation and increase the inclusiveness of the democratic process.

103 Cf. Baketa, N., Kovačić, M., “Who and how represents national minorities”, Political analyses, vol. 1, 2010., No. 3, p. 12.

104 Constitutional Law on Amendments to the Constitutional Law on the Rights of National Minorities, Official Gazette, 80/2010, Article 1. P. 3.

When it comes to the largest national minority in Croatia, the solution was even more controversial. Namely, the Article 2 of the Decision on Amendments to the Constitutional Law states: „National minorities that participate in the population of the Republic of Croatia with more than 1.5% of the population on the day this Constitutional Law enters into force shall be guaranteed at least three seats of members of that national minority in the Croatian Parliament, who achieve their representativeness based on the general election right on party list of that minority or the lists proposed by the voters of that minority, in accordance with the Law on Governing the Election of Representatives to the Croatian Parliament.“¹⁰⁵ Therefore, members of the Serbian national minority should not have dual voting rights because they will elect their representatives in general electoral units, and no longer in a special XII electoral unit. Three guaranteed representatives of the Serbian national minority would be elected in ten general electoral units, so that Serbian voters would not have to opt for lists as before. Based on that, the Election Law had to be adjusted in order to be in line with the constitutional law, which makes significant changes in the Article 40. „If the candidate lists of the Serbian national minority did not win three seats in Parliament on the basis of determined election results, in accordance with the Article 40 of this Law, seats up to the guaranteed number shall be determined on the basis of the total number of votes of each candidate list in all electoral units. Guaranteed seats are won by the candidate list of the Serbian national minority that received the largest number of votes. If one of the lists of the Serbian national minority won the right to one seat in the Parliament based on the determined election results, the candidate list of the Serbian national minority that won the highest number of votes in other electoral units gets three guaranteed seats. If the lists of the Serbian national minority exercised the right to two seats in Parliament on the basis of the determined election results, the candidate list of the Serbian national minority that achieved the highest number of votes in other electoral units receives two guaranteed seats.“¹⁰⁶

This provision opened the possibility of theoretically obtaining 4 seats for the representatives of the Serbian national minority, but more importantly, it thoroughly violated the proportionality and value of the vote in those electoral units in which they would be elected. Thus, an attempt was made to introduce the so-called “premium model” for the Serbian national minority.¹⁰⁷ Simplified, this model would allow the strongest Serbian party or election list to “pick up” all three seats, if no Serbian delegate is elected on regular basis. So, there is no possibility of proportional distribution

105 *Ibid.*, p. 2.

106 Ceranić, V., *op. cit.*, p. 176.

107 Cf. Kasapović, M., *op. cit.*, p. 199.

of three mandates, but the winner wins all three. This was in favour of the strongest Serbian party and seriously reduced the possibility of electing other parties or lists in the former XII electoral unit, because unlike the entire territory of Croatia, they now need extremely large and focused support within individual electoral units. An attempt was made to secure an additional fourth mandate for the Serbian minority so that winning one mandate in one of the general electoral units would not deprive the premium mandate but would leave them with three mandates. Even if some party wins a seat in a general electoral unit, the main prize of three seats is won by the party with the most votes in total.¹⁰⁸

If the main problem of political representation of minorities in Croatia was the split between the two electoral processes, and consequently low turnout in special minority elections, then “this issue is resolved so that members of the Serbian minority will not have to choose, because they have only universal suffrage as all citizens, while members of the other minorities will have dual voting right, so they can declare themselves as members of national minorities and as citizens of the Republic of Croatia. In the literature this principle is called “the concept of a dominant minority.”¹⁰⁹

Controversies caused by amendments to the Constitutional Law were soon resolved by a decision of the Constitutional Court. Namely, in 2011, the Constitutional Court partially rejected the amendments and ordered the application of the provisions of the previous law that passed the constitutionality test. The Constitutional Court found that “the Constitution of the Republic of Croatia does not allow the law to guarantee and determine in advance the number of guaranteed seats for any minority and on any basis (including ethnic and national) within the general electoral system.”¹¹⁰ This entailed the consequence of the mandatory harmonization of electoral legislation with the provisions of the previous version of the Constitutional Law. “The Constitutional Court found that the disputed provisions of the amendment to the 2010 Law on Election of Representatives to the Croatian Parliament do not pass the constitutionality test, because the main legal source of electoral legislation in the Republic of Croatia in this matter is so closely related to repealed amendments to the Constitutional Law on Amendments to the Constitutional Law on the Rights of National Minorities, that together they form organic unity.”¹¹¹ The Court ordered that the next election cycle is to be conducted in accordance with the rules for the representation of national mino-

108 Cf. *Ibid.*, p. 200.

109 Baketa, N., Kovačić, M., *op. cit.*, p. 12.

110 Jakešević, R., Tatalović, S., Lacović, T., *op. cit.*, p. 19.

111 Ceranić, V., *op. cit.*, p. 177.

rities that were in force before the amendments. This, at least for now, completed the political and legal consolidation of the model of political representation of national minorities in the Croatian Parliament, and the next election cycles were conducted according to the same model without significant changes. The dual right to vote was abolished, while the election of the representatives of the Serbian national minority was returned to the framework of special suffrage within the XII electoral unit, and the number of reserved seats remained unchanged.

Despite the fact that the model of minority representation has experienced a certain consolidation and “coherence” of the whole system, it is far from ideal and in the future, it will certainly be necessary to address the issues of its shortcomings. First of all, the two initial transition phases were marked by the importance of international influence, especially in addressing minority issues and rights. “Therefore, the level of political will to implement certain adopted legal solutions varied in different periods, given that the influence of an external factor was crucial in their adoption.”¹¹² In the meantime, Croatia has met almost all significant foreign policy goals and become an integral part of the Euro-Atlantic political structure. Thus, the possibility of external influence diminished, so the importance of preserving or improving political representation of minorities became exclusively an internal political issue, but also a reflection of external democratic inclusion. Only when the model of minority representation becomes a daily political issue in terms of the efficient functioning of the political system, then it is possible to expect certain interventions in the existing model. For now, the problem of low voter turnout and lack of motivation for political participation of national minority voters remains, which is most visible in the case of persistent vacancies in the Council of National Minorities in some areas.

The problem of low turnout of members of minorities in the elections to the Croatian Parliament produces an additional problem, and that is the discrepancy of the value of votes. “There is no legal threshold that candidates must cross in order to be elected. This, in practice, means that one can enter the Parliament with a few votes. Thus, in the 2003 elections, a representative of a national minority entered Parliament with only 265 votes.”¹¹³ This discrepancy is manifested not only in relation to the representatives of other national minorities, but especially in relation to the representatives elected in general electoral units who carry electoral legitimacy with much more votes won. At the principle level, this seriously violates the fundamental democratic principle of equal value of the vote.

112 Jakešević, R., Tatalović, S., Lacović, T., op. cit., str. 12.

113 Baketa, N., Kovačić, M., op. cit., p. 13.

Another important problem is the grouping of several national minorities under a single electoral body, whereby one representative represents the voters of several national communities. An extreme example are the representatives who, by the act of election, must represent the interests and be representatives of twelve national communities: Austrian, Bulgarian, German, Polish, Roma, Romanian, Ruthenian, Russian, Turkish, Ukrainian, Vlach and Jewish national minorities. “The existing legal models of political representation of minorities in the Croatian Parliament are not entirely sufficient and satisfactory solutions. This is most evident in the manner of electing representatives of national minorities without any legal threshold, which significantly jeopardizes their legitimacy, as well as in the constant, “structural” underrepresentation of certain minorities.”¹¹⁴ Representatives of national minorities, regardless of the number of votes received and electoral legitimacy, have exactly the same right as all other representatives, they form a traditional joint caucus and often participate in the government.

Notwithstanding these shortcomings and issues, the model of legitimate special representation of national minorities through reserved seats, and election through a special electoral unit is certainly an example of an inclusive political system. As such, and in the European Union itself, it is one of the brightest examples of how national minorities are recognized as political entities, and how their genuine political will can be effectively articulated and presented without the hegemony of the majority people.

IV-2) Representation and territorial distribution of national minorities and other citizens in the Republic of Croatia

In the period covered by this study, two official Population Censuses were held in the Republic of Croatia – 2001 and 2011. Here, at the state and county level will be shown the percentage representation of: a) Croats, b) members of national minorities who have guaranteed representatives in the Croatian Parliament, and c) other categories of the population (members of minorities who do not have guaranteed representatives, nationally undeclared citizens and those whose nationality is unknown). Then, the percentage representation by counties of members of certain national minorities will be shown, grouped in accordance with parliamentary mandates guaranteed by the Law on Election of Representatives to the Croatian Parliament, according to the results of the first and second censuses.

¹¹⁴ Ibid., p. 14.

County	2001	2011	Difference
Zagreb County	96,18	97,05	+0,87
Krapina-Zagorje County	98,44	98,84	+0,40
Sisak-Moslavina County	82,10	82,39	+0,29
Karlovac County	84,27	86,11	+1,84
Varaždin County	97,68	97,86	+0,18
Koprivnica-Križevci County	95,97	96,20	+0,23
Bjelovar-Bilogora County	82,56	84,82	+2,26
Primorje-Gorski Kotar County	84,59	86,34	+1,75
Lika-Senj County	86,15	84,15	-2,00
Virovitica-Podravina County	89,47	91,82	+2,35
Požega-Slavonia County	88,68	90,38	+1,70
Brod-Posavina County	93,98	94,99	+1,01
Zadar County	93,30	92,57	-0,73
Osijek-Baranja County	83,89	85,89	+2,00
Šibenik-Knin County	88,44	87,39	-1,05
Vukovar-Syrmia County	78,27	79,17	+0,90
Split-Dalmatia County	96,30	97,08	+0,78
Istria County	71,88	68,33	-3,55
Dubrovnik-Neretva County	93,29	94,37	+1,08
Međimurje County	95,20	93,80	-1,40
City of Zagreb	91,94	93,14	+1,20
Republic of Croatia	89,63	90,42	+0,79

Table 24 – Percentage representation of Croats in counties according to the 2001 and 2011 censuses¹¹⁵

In the whole of the Republic of Croatia, the percentage of Croats between the two censuses increased by 0.79%. In the 2001 census, in 10 of 21 counties (including the City of Zagreb), the percentage of Croats was higher than at the level of the entire Republic of Croatia, and in the 2011 census in 11 counties. **Virovitica-Podravina County** has moved from the category of counties with a below-average percentage of Croats to the category of those with an above-average percentage. A comparative overview of the other 20 counties regarding the percentage of Croats and its fluctuation between the two censuses is as follows:

¹¹⁵ Croatian Bureau of Statistics, 12. Population distribution by ethnicity, by cities/municipalities, 2001 Census 2001. (https://www.dzs.hr/hrv/censuses/census2001/Popis/H01_02_02/H01_02_02.html), 2. Population distribution by ethnicity, by cities/municipalities, 2011 Census 2011. (https://www.dzs.hr/hrv/censuses/census2011/results/htm/H01_01_04/h01_01_04_RH.html)

Below RH average		Change in percentage representation	
		Below RH average	RH average or above
Percentage re- presentation	Average in RH or above	Krapina-Zagorje County Varaždin County Split-Dalmatija County Koprivnica-Križevci County Međimurje County Zadar County	Zagreb County Brod-Posavina County Dubrovnik-Neretva County City of Zagreb
	Below average in RH	Šibenik-Knin County Lika-Senj County Sisak-Moslavina County Istria County	Požega-Slavonia County Primorje-Gorski Kotar County Karlovac County Osijek-Baranja County Bjelovar-Bilogora County Vukovar-Syrmia County

Table 25 – Grouping of counties by percentage of Croats according to the 2001 and 2011 censuses

The first group of counties, in which the percentage of Croats was above average in both censuses as well as its rise between the two censuses, is the **City of Zagreb and Zagreb County**, where intensive “Croatization” is probably caused by the immigration of Croats from other parts of Croatia, as well as from BiH. It is also probably the case with the **Dubrovnik-Neretva County** (possibly with a slightly larger share of Croats from Herzegovina), while in the **Brod-Posavina County** the most likely influence is the immigration of Croats from Bosnian Posavina.

In the second group of counties, in which the percentage of Croats was below average in both censuses, but its rise between the two censuses is above average, there are three counties bordering Virovitica-Podravina County. In these counties – **Požega-Slavonia County, Osijek-Baranja County, and Bjelovar-Bilogora County** – the rise in the percentage of Croats led to its transition from the below-average to above-average group according to this criterion in 2001. The same is with another county in Slavonia – **Vukovar-Syrmia**. It is evident that in the eastern parts of the Republic of Croatia, there has been a syndrome of increasing the share of Croats in the total population. Given the decline in the total population of these counties between the two censuses, the increase in the percentage of Croats in them is probably due to the decline in the number of members of national minorities and other categories of citizens, rather than the immigration of Croats themselves. In addition, this group also includes **Karlovac County**, similar to the mentioned Slavonian counties in terms of the declining total population, and **Primorje-Gorski Kotar County**, where the reasons for the increase in the percentage of Croats are probably similar to those in the City of Zagreb and Zagreb County.

In the third group of counties, in which the percentage of Croats was above average in both censuses, but its increase between the two censuses is below average, there are four counties from north-western Croatia – **Krapina-Zagorje County, Varaždin County, Koprivnica-Križevci County, and Međimurje**. In Međimurje County, the percentage of Croats even noticeably decreased. In addition to them, there are two Dalmatian counties – **Split-Dalmatia County**, where the increase in the percentage of Croats is below average, and **Zadar**, where the percentage has fallen.

Šibenik-Knin County and **Lika-Senj County** belong to the fourth group of counties, in which the percentage of Croats was below average in both censuses, as well as its increase between the two censuses. In these two, the percentage of Croats fell significantly, and in **Sisak-Moslavina County**, it slightly increased. **Istrian County** marks the largest decline in the percentage of Croats in the entire Republic of Croatia.

The following is an overview of the percentage of national minorities with guaranteed representatives according to the 2001 and 2011 censuses:

County	2001.	2011.	Difference
Zagreb County	2,05	2,24	+0,19
Krapina-Zagorje County	0,75	0,81	+0,06
Sisak-Moslavina County	14,05	15,86	+1,81
Karlovac County	12,39	11,93	-0,46
Varaždin County	1,37	1,51	+0,14
Koprivnica-Križevci County	2,72	3,34	+0,62
Bjelovar-Bilogora County	14,46	13,77	-0,69
Primorje-Gorski Kotar County	9,73	10,72	+0,99
Lika-Senj County	12,21	14,78	+2,57
Virovitica-Podravina County	8,05	7,11	-0,94
Požega-Slavonia County	9,33	8,50	-0,83
Brod-Posavina County	4,29	4,33	+0,04
Zadar County	4,72	6,35	+1,63
Osijek-Baranja County	13,86	13,02	-0,84
Šibenik-Knin County	9,97	11,68	+1,71
Vukovar-Syrmia County	19,41	19,83	+0,42
Split-Dalmatia County	2,23	2,19	-0,04
Istria County	15,10	16,19	+1,09
Dubrovnik-Neretva County	4,49	4,45	-0,04

Međimurje County	3,62	5,73	+2,11
City of Zagreb	5,14	5,25	+0,11
Republic of Croatia	7,47	7,66	+0,19

Table 26 – Percentage representation in counties of members of national minorities with guaranteed representatives according to the 2001 and 2011 censuses¹¹⁶

Throughout the Republic of Croatia, the percentage of persons belonging to national minorities between the two censuses increased by 0.19%. In the 2001 Census, in 11 of 21 counties (including the City of Zagreb), the percentage of members of national minorities with guaranteed mandates in the Croatian Parliament was higher than at the level of the entire Republic of Croatia, and in the 2011 Census in 10 counties. **Virovitica-Podravina County** has moved from the category of counties with an above-average percentage of members of these national minorities to the category of those with below-average percentages. A comparative overview of the other 20 counties in terms of the percentage of members of these national minorities and its fluctuation between the two censuses is as follows:

Below RH average		Change in percentage representation	
		Below RH average	RH average or above
Percentage representation	Average in RH or above	Bjelovar-Bilogora County Osijek-Baranja County Karlovac County Požega-Slavonia County	Vukovar-Syrmia County Istria County Sisak-Moslavina County Lika-Senj County Šibenik-Knin County Primorje-Gorski Kotar County
	Below average in RH	City of Zagreb Dubrovnik-Neretva County Brod-Posavina County Split-Dalmatia County Zagreb County Varaždin County Krapina-Zagorje County	Međimurje County Zadar County Koprivnica-Križevci County

Table 27 – Grouping of counties by percentage representation of national minorities with guaranteed representatives according to the 2001 and 2011 censuses

In the first group of counties, in which the percentage of members of national minorities with guaranteed representatives was above average in both censuses, as well as its increase between the two censuses, there are four counties classified in the fourth group during the analysis of the percentage of Croats – **Istria, Sisak-Moslavina County, Lika-Senj County, and Šibenik-Knin County**. In these counties, therefore, the above-average growth of the percentage of otherwise above-average members of national

116 Ibid.

minorities is accompanied by a simultaneous decline or a slight increase in the otherwise below-average percentage of Croats. However, **Vukovar-Syrmia and Primorje-Gorski Kotar counties** are in this group, where a significant increase in the percentage of (below-average) Croats and (above-average) minorities has been identified, which leads to the conclusion that these trends are due to a sharp decline in the percentage of other categories of the population (members of minorities who do not have guaranteed representatives, nationally undeclared citizens, and those whose nationality is unknown). In other words, in these two counties, there has been a strong increase in the percentage of nationally declared citizens, both Croats, and members of national minorities.

In the second group of counties, in which the percentage of members of national minorities with guaranteed representatives is below average in both censuses, but its increase between the two censuses is above average, there are three counties that were classified in the third group – **Međimurje County and Zadar County** in which the percentage of Croats fell between the two censuses, and **Koprivnica-Križevci County**, in which it increased slightly. However, a significant increase in the percentage of members of national minorities in these counties did not lead to a higher percentage of them than the national average, but it is indicative in terms of the direction of demographic development.

In the third group of counties, in which the percentage of members of national minorities with guaranteed representatives was above average in both censuses, but its increase between the two censuses is below average, there are four counties that were classified in the second group – **Bjelovar-Bilogora County, Osijek-Baranja County, Karlovac County, and Požega-Slavonia County**. In these counties, therefore, the above-average decline in the percentage of otherwise above-average members of national minorities is accompanied by a simultaneous sharp rise in the otherwise below-average percentage of Croats.

The fourth group of counties, in which the percentage of members of national minorities with guaranteed representatives was below average in both censuses, as well as its increase between the two censuses, includes all four counties that were classified in the first group – **the City of Zagreb, Dubrovnik-Neretva County, Brod-Posavina County, and Zagreb County**, and three that were classified in the third group – **Split-Dalmatia County, Varaždin County, and Krapina-Zagorje County**.

The following is an overview of the percentage of other categories of the population which do not belong to Croats or national minorities with guaranteed representatives according to the 2001 and 2011 censuses:

County	2001.	2011.	Difference
Zagreb County	1,77	0,71	-1,06
Krapina-Zagorje County	0,81	0,35	-0,46
Sisak-Moslavina County	3,85	1,75	-2,10
Karlovac County	3,34	1,96	-1,38
Varaždin County	0,95	0,63	-0,32
Koprivnica-Križevci County	1,31	0,46	-0,85
Bjelovar-Bilogora County	2,98	1,41	-1,57
Primorje-Gorski Kotar County	5,68	2,94	-2,74
Lika-Senj County	1,64	1,07	-0,57
Virovitica-Podravina County	2,48	1,07	-1,41
Požega-Slavonia County	1,99	1,12	-0,87
Brod-Posavina County	1,73	0,68	-1,05
Zadar-County	1,98	1,08	-0,90
Osijek-Baranja County	2,25	1,09	-1,16
Šibenik-Knin County	1,59	0,93	-0,66
Vukovar-Srijem County	2,32	1,00	-1,32
Split-Dalmatia County	1,47	0,73	-0,74
Istria County	13,02	15,48	+2,46
Dubrovnik-Neretva County	2,22	1,18	-1,04
Međimurje County	1,18	0,47	-0,71
City of Zagreb	2,92	1,61	-1,31
Republic of Croatia	2,90	1,92	-0,98

Table 28 – Percentage representation in counties of Croatian citizens who are not Croats or members of national minorities with guaranteed representatives according to the 2001 and 2011 censuses¹¹⁷

Across the Republic of Croatia, the percentage of other categories of citizens between the two censuses fell by 0.98%. In the 2001 Census, in 6 out of 21 counties (including the City of Zagreb), the percentage of other categories of citizens was higher than at the level of the entire Republic of Croatia. In the 2011 Census, **Sisak-Moslavina County, Bjelovar-Bilogora County, and the City of Zagreb** moved from the category of counties with the below-average percentage of other categories of citizens to the category of those with above-average percentages. A comparative overview of the other 18 counties in terms of the percentage of other categories of citizens and its fluctuation between the two censuses is as follows:

¹¹⁷ Ibid.

Below RH average		Change in percentage representation	
		Below RH average	RH average or above
Percentage representation	Average in RH or above	Primorje-Gorski Kotar County Karlovac County	Istria County
	Below average in RH	Virovitica-podravina County Dubrovnik-Neretva County Osijek-Baranja County Vukovar-Syrmia County Zagreb County Brod-Posavina County	Požega-Slavonia County Zadar County Lika-Senj County Šibenik-Knin County Split-Dalmatia County Koprivnica-Križevci County Međimurje County Varaždin County Krapina-Zagorje County

Table 29 – grouping of counties by percentage representation of Croatian citizens who are not Croats or members of national minorities with guaranteed representatives according to the 2001 and 2011 censuses

In the first group of counties, in which the percentage of other categories of citizens was above average in both censuses, as well as its increase between the two censuses, there is only one – **Istria County**, in which a simultaneous decline in the percentage of Croats and an increase in the percentage of national minorities is noticed.

In the second group of counties, in which the percentage of other categories of citizens is below average in both censuses, but its decline between the two censuses is also below average, are **Požega-Slavonia Count, Zadar, Lika-Senj, Šibenik-Knin, Split-Dalmatia, Koprivnica-Križevci, Međimurje, Varaždin and Krapina-Zagorje counties**.

In the third group of counties, in which the percentage of other categories of citizens was above average in both censuses, but its decline between the two censuses was also above average, there are only **Karlovac County**, where the percentage of Croats rose above average and the percentage of national minorities fell, and **Primorje-Gorski Kotar County**, where the percentage of Croats and members of national minorities has grown above average. It can be said that the process of a kind of increase in the national commitment of citizens (“nationalization”) is noticeable.

In the fourth group of counties, in which the percentage of other categories of citizens was below average in both censuses, as well as its increase between the two censuses, there are only counties in which the percentage of Croats increased above average – **Virovitica-Podravina, Osijek-Baranja, Brod-Posavina, Dubrovnik-Neretva and Zagreb counties**. In these counties, the percentage of members of national minorities rose below average or even fell. The same is with **Vukovar-Syrmia County**, where the percentage of Croats and national minorities rose above average, and we can identify it as the syndrome of “nationalization” as in **Primorje-Gorski Kotar County**.

The share of the Serbian national minority in the total population of the Republic of Croatia between the two censuses decreased by 0.18%, the Hungarian by 0.04%, the Italian by 0.02%, and the Czech and Slovak also by 0.02%. On the other hand, the share of the Austrian, Bulgarian, German, Polish, Roma, Romanian, Ruthenians, Russian, Turkish, Ukrainian, Vlach, and Jewish minorities increased by 0.21%, and the sum of the Albanian, Bosniac, Montenegrin, Macedonian and Slovenian minorities by 0.28%. The described changes, and above all the representation of individual minorities, vary significantly in different counties. Data on the percentage of national minorities with guaranteed representatives according to the 2001 and 2011 censuses will be provided first for the Serbian national minority:

County	2001	2011	Difference
Zagreb County	0,88	0,86	-0,02
Krapina-Zagorje County	0,16	0,16	0,00
Sisak-Moslavina County	11,66	12,18	+0,52
Karlovac County	11,04	10,40	-0,64
Varaždin County	0,41	0,40	-0,01
Koprivnica-Križevci County	1,93	1,90	-0,03
Bjelovar-Bilogora County	7,08	6,31	-0,77
Primorje-Gorski Kotar County	4,91	5,03	+0,12
Lika-Senj County	11,54	13,65	+2,12
Virovitica-Podravina County	7,08	6,06	-1,02
Požega-Slavonia County	6,54	6,00	-0,54
Brod-Posavina County	3,02	2,60	-0,42
Zadar County	3,53	4,81	+1,28
Osijek-Baranja County	8,73	7,76	-0,97
Šibenik-Knin County	9,06	10,53	+1,47
Vukovar-Syrmia County	15,45	15,50	+0,05
Split-Dalmatia County	1,19	1,05	-0,14
Istria County	3,20	3,46	+0,26
Dubrovnik-Neretva County	1,96	1,71	-0,25
Međimurje County	0,21	0,22	+0,01
City of Zagreb	2,41	2,22	-0,19
Republic of Croatia	4,54	4,36	-0,18

Table 30 – percentage representation in the counties of the Serbian national minority according to the 2001 and 2011 censuses¹¹⁸

118 Ibid.

The most numerous national minority recorded the most significant increase in population representation in the counties in western Croatia – Lika-Senj, Šibenik-Knin, Zadar, Sisak-Moslavina, Istria and Primorje-Gorski Kotar counties, and the largest decline in Virovitica-Podravina, Osijek-Baranja, Bjelovar-Bilogora, Karlovac, Pože-ga-Slavonia and Brod-Posavina counties in the north and east of the country, and in the total population, it decreased by 0.18%.

The following are data on the percentage representation of the Hungarian national minority according to the 2001 and 2011 censuses:

County	2001	2011	Difference
Zagreb County	0,05	0,05	0,00
Krapina-Zagorje County	0,02	0,05	+0,03
Sisak-Moslavina County	0,08	0,07	-0,01
Karlovac County	0,02	0,02	0,00
Varaždin County	0,03	0,03	0,00
Koprivnica-Križevci County	0,09	0,08	-0,01
Bjelovar-Bilogora County	0,89	0,74	-0,15
Primorje-Gorski Kotar County	0,17	0,16	-0,01
Lika-Senj County	0,03	0,04	+0,01
Virovitica-Podravina County	0,27	0,24	-0,03
Požega Slavonia County	0,26	0,21	-0,05
Brod-Posavina County	0,05	0,04	-0,01
Zadar County	0,05	0,06	+0,01
Osijek-Baranja County	2,96	2,70	-0,26
Šibenik-Knin County	0,06	0,06	0,00
Vukovar-Syrmia County	1,00	0,94	-0,06
Split-Dalmatia County	0,06	0,05	-0,01
Istria County	0,26	0,23	-0,03
Dubrovnik-Neretva County	0,07	0,06	-0,01
Međimurje County	0,06	0,06	0,00
City of Zagreb	0,11	0,10	-0,01
Republic of Croatia	0,37	0,33	-0,04

Table 31 – Percentage representation in the counties of the Hungarian national minority according to the 2001 and 2011 censuses¹¹⁹

119 Ibid.

The Hungarian minority recorded a decline in representation in all three counties in which it is represented above average, in which its population is extremely concentrated, in Osijek-Baranja County and Bjelovar-Bilogora County slightly higher, and in Vukovar-Srijem moderately.

The following are data on the percentage of the Italian national minority according to the 2001 and 2011 censuses:

County	2001	2011	Difference
Zagreb County	0,01	0,02	+0,01
Krapina-Zagorje County	0,00	0,01	+0,01
Sisak-Moslavina County	0,10	0,11	+0,01
Karlovac County	0,01	0,01	0,00
Varaždin County	0,01	0,01	0,00
Koprivnica-Križevci County	0,01	0,01	0,00
Bjelovar-Bilogora	0,06	0,06	0,00
Primorje-Gorski Kotar County	1,16	1,16	0,00
Lika-Senj County	0,01	0,01	0,00
Virovitica-Podravina County	0,01	0,01	0,00
Požega-Slavonia County	0,92	0,76	-0,16
Brod-Posavina County	0,02	0,03	+0,01
Zadar County	0,07	0,07	0,00
Osijek-Baranja County	0,01	0,01	0,00
Šibenik-Knin County	0,03	0,04	+0,01
Vukovar-Syrmia County	0,00	0,00	0,00
Split-Dalmatia County	0,02	0,03	+0,01
Istria County	6,92	6,03	-0,89
Dubrovnik-Neretva County	0,04	0,04	0,00
Međimurje County	0,00	0,01	+0,01
City of Zagreb	0,04	0,05	+0,01
Republic of Croatia	0,44	0,42	-0,02

Table 32 – Percentage representation in the counties of the Italian national minority according to the 2001 and 2011 censuses

The Italian minority is also strongly concentrated in three counties, primarily Istria, where it recorded a noticeable decline in representation, more moderate in Požega-Slavonia, while in Primorje-Gorski Kotar, it showed stability.

The following are data on the percentage representation of the Czech and Slovak national minorities according to the 2001 and 2011 censuses:

County	2001	2011	Difference
Zagreb County	0,10	0,10	0,00
Krapina-Zagorje County	0,03	0,02	-0,01
Sisak-Moslavina County	0,49	0,46	-0,03
Karlovac County	0,02	0,02	0,00
Varaždin County	0,02	0,02	0,00
Koprivnica-Križevci County	0,03	0,04	+0,01
Bjelovar-Bilogora County	5,36	5,28	-0,08
Primorje-Gorski Kotar County	0,09	0,11	+0,02
Lika-Senj County	0,03	0,04	+0,01
Virovitica-Podravina County	0,12	0,17	+0,05
Požega-Slavonia County	1,04	0,95	-0,09
Brod-Posavina County	0,08	0,07	-0,01
Zadar County	0,05	0,07	+0,02
Osijek-Baranja County	0,67	0,77	+0,10
Šibenik-Knin County	0,06	0,06	0,00
Vukovar-Syrmia County	0,67	0,68	+0,01
Split-Dalmatia County	0,05	0,07	+0,02
Istria County	0,12	0,13	+0,01
Dubrovnik-Neretva County	0,04	0,06	+0,02
Međimurje County	0,03	0,03	0,00
City of Zagreb	0,12	0,14	+0,02
Republic of Croatia	0,35	0,33	-0,02

Table 33 – Percentage representation in the counties of the Czech and Slovak national minorities according to the 2001 and 2011 censuses¹²⁰

Czechs and Slovaks are slightly more dispersed than Hungarians and Italians. Among the counties in which they are concentrated above average, Czechs and Slovaks recorded a decline in representation, i.e., in their key Bjelovar-Bilogora, Sisak-Moslavina, and Požega-Slavonia counties, while they recorded an increase in Vukovar-Syrmia and Osijek-Baranja counties.

The following are data on the percentage representation of the Austrian, Bulgarian, German, Polish, Roma, Romanian, Ruthenian, Russian, Turkish, Ukrainian, Vlach, and Jewish national minorities according to the 2001 and 2011 censuses:

¹²⁰ Ibid.

County	2001	2011	Difference
Zagreb County	0,15	0,20	+0,05
Krapina-Zagorje County	0,04	0,09	+0,05
Sisak-Moslavina County	0,62	1,10	+0,48
Karlovac County	0,07	0,10	+0,03
Varaždin County	0,29	0,49	+0,20
Koprivnica-Križevci County	0,18	0,89	+0,71
Bjelovar-Bilogora County	0,24	0,48	+0,24
Primorje-Gorski Kotar County	0,42	0,64	+0,22
Lika-Senj County	0,10	0,18	+0,08
Virovitica-Podravina County	0,06	0,09	+0,03
Požega-Slavonia County	0,16	0,14	-0,02
Brod-Posavina County	0,61	1,00	+0,39
Zadar County	0,16	0,21	+0,05
Osijek-Baranja County	0,77	1,02	+0,25
Šibenik-Knin County	0,12	0,20	+0,07
Vukovar-Syrmia County	1,31	1,29	-0,02
Split-Dalmatia County	0,13	0,14	+0,01
Istria County	0,57	0,77	+0,20
Dubrovnik-Neretva County	0,15	0,19	+0,04
Međimurje County	2,65	4,72	+2,07
City of Zagreb	0,48	0,61	+0,13
Republic of Croatia	0,45	0,66	+0,21

Table 34 – Percentage representation in the counties of the Austrian, Bulgarian, German, Polish, Roma, Romanian, Ruthenian, Russian, Turkish, Ukrainian, Vlach and Jewish national minorities according to the 2001 and 2011 censuses¹²¹

These minorities are taken collectively, dispersed throughout the territory of Croatia similar to the Serbian minority, and are represented above average in a slightly larger number of counties. In all of them, except Vukovar-Syrmia County, they recorded a noticeable increase in representation – in Sisak-Moslavina County, Brod-Posavina County, Osijek-Baranja County, and Istria County. They recorded the largest increase in the county in which they are most strongly represented, Međimurje, while Koprivnica-Križevci County moved from the group of below-average in terms of representation of these minorities, due to their strong growth, to the group of above-average, while the opposite happened in Zagreb. The whole group of these minorities at the level of Croatia increased by 0.21%.

121 Ibid.

The following are data on the percentage representation of the Albanian, Bosniac, Montenegrin, Macedonian, and Slovene national minorities according to the 2001 and 2011 censuses:

County	2001	2011	Difference
Zagreb County	0,84	1,02	+0,18
Krapina-Zagorje County	0,48	0,51	+0,03
Sisak-Moslavina County	1,10	1,94	+0,84
Karlovac County	1,19	1,35	+0,16
Varaždin County	0,58	0,55	-0,03
Koprivnica-Križevci County	0,47	0,42	-0,05
Bjelovar-Bilogora County	0,84	0,93	+0,09
Primorje-Gorski Kotar County	2,98	3,63	+0,65
Lika-Senj County	0,48	0,86	+0,38
Virovitica-Podravina County	0,50	0,54	+0,04
Požega-Slavonia County	0,40	0,44	+0,04
Brod-Posavina County	0,49	0,60	+0,11
Zadar County	0,86	1,14	+0,28
Osijek-Baranja County	0,73	0,74	+0,01
Šibenik-Knin County	0,68	0,82	+0,14
Vukovar-Syrmia County	0,96	1,39	+0,43
Split-Dalmatia County	0,75	0,85	+0,10
Istria County	4,02	5,56	+1,54
Dubrovnik-Neretva County	2,22	2,40	+0,18
Međimurje County	0,68	0,71	+0,03
City of Zagreb	1,98	2,14	+0,16
Republic of Croatia	1,32	1,60	+0,28

Table 35 – Percentage representation in the counties of the Albanian, Bosniac, Montenegrin, Macedonian, and Slovene national minorities according to the 2001 and 2011 censuses¹²²

The sum of these minorities increased even more strongly than the sum of the previous ones in terms of the percentage of representation in the population of Croatia – by 0.28%. Among the counties in which they are above average, they achieved an above-average increase in Istria and Primorje-Gorski Kotar counties, while in Dubrovnik-Neretva County and the City of Zagreb, this increase is below average. According to the representation of this group of minorities, the Sisak-Moslavina County has moved from the category of below-average to the category of above-average, and their increase is above-average in Vukovar-Srijem County as well.

¹²² Ibid.

IV-3) Turnout in the elections to the Croatian Parliament for members of national members

The problem of low turnout of members of national minorities in the elections to the Croatian Parliament has already been identified, as they have to choose between voting for general lists of candidates in electoral units and voting for candidates in a special, XII. electoral unit. This phenomenon is to be analysed in terms of geographical distribution among the most territorially dispersed minorities: Serbs, as well as collectively taken minorities that give one representative each – Austrian, Bulgarian, German, Polish, Roma, Romanian, Ruthenian, Russian, Turkish, Ukrainian, Vlach and Jewish on the one hand, and Albanian, Bosniac, Montenegrin, Macedonian and Slovene on the other. Their turnout in 2015, 2016, and 2020 elections will be analysed, first for the Serbian national minority:

County	2015	2016	2020 ¹²³	Difference 2015 – 2020
Zagreb County	4,31	3,04	1,48	-2,83
Krapina-Zagorje County	0	1,32	0	0
Sisak-Moslavina County	14,94	13,88	9,82	-5,12
Karlovac County	16,37	16,15	9,36	-7,01
Varaždin County	7,58	10,32	2,65	-4,93
Koprivnica-Križevci County	7,35	5,79	3,64	-3,71
Bjelovar-Bilogora County	9,38	7,72	5,65	-3,73
Primorje-Gorski Kotar County	9,17	7,72	4,47	-4,70
Lika-Senj County	3,30	23,45	17,28	+13,98
Virovitica-Posravina County	11,60	9,96	2,55	-9,05
Požega-Slavonia County	12,02	11,04	7,35	-4,67
Brod-Posavina County	9,22	7,39	6,67	-2,55
Zadar County	6,37	11,79	8,27	+1,90
Osijek-Baranja County	19,29	16,30	10,33	-8,96
Šibenik-Knin County	29,59	28,51	20,35	-9,24
Vukovar-Syrmia County	24,09	21,88	17,17	-6,92
Split-Dalmatia County	3,47	2,88	2,06	-1,41
Istria County	6,25	4,32	2,67	-3,58
Dubrovnik-Neretva County	4,29	3,08	1,77	-2,52

123 The State Electoral Commission for the 2020 elections did not publish data on the total number of voters on the voter lists of individual national minorities, and therefore, the turnout was calculated in relation to the number of voters on these lists for the 2016 elections. Considering the estimate that the number of voters on the voter lists increased in the period 2016-2020 (based on the analogy with the period 2015-2016), it can be assumed that the turnout in 2020 was lower than shown in the tables, these 2020 response data are purely indicative, not exact.

Međimurje County	4,86	3,68	2,45	-2,41
City of Zagreb	5,12	3,95	2,51	-2,61
Republic of Croatia	14,54	14,01	9,68	-4,86

Table 36 – Turnout of members of the Serbian national minority in the elections for the Croatian Parliament in 2015, 2016 and 2020¹²⁴

The turnout of the largest national minority in the parliamentary elections is extremely low, and in addition, it is in constant decline, given the methodology used in the statistical calculation, probably higher than shown in the table. The only exceptions are Lika-Senj County, where there was an increase in the turnout of Serbs in 2016, probably due to increased involvement of their parties and activists, and to a lesser extent Zadar County, both of which had their numbers in percentage of population rise between two censuses. However, the turnout of Serbs in the elections has fallen sharply in Šibenik-Knin County, where the percentage of Serbs between the two censuses has also risen markedly, as is the case in Vukovar-Syrmia County. The turnout of Serbs in the elections has also fallen sharply in counties where their share of the population has also fallen significantly – Karlovac, Virovitica-Podravina, and Osijek-Baranja counties.

County	2015	2016	2020	Difference 2015 – 2020
Zagreb County	9,78	6,38	6,12	-3,66
Krapina-zagorje County	6,38	7,69	7,69	+1,31
Sisak-Moslavina County	55,14	40,38	58,87	+3,73
Karlovac County	5,81	1,04	9,38	+3,57
Varaždin County	36,67	42,52	68,76	+32,09
Koprivnica-Križevci County	57,87	43,45	58,85	+0,98
Bjelovar-Bilogora County	21,78	23,85	40,37	+18,59
Primorje-Gorski Kotar County	24,88	19,25	15,60	-9,28
Lika-Senj County	0	1,89	0	0
Virovitica-Podravina County	2,70	0	9,52	+6,82
Požega-Slavonia County	11,11	8,00	2,00	-9,11
Brod-Posavina County	37,96	24,29	52,46	+14,50
Zadar County	2,54	1,69	0,85	-1,69
Osijek-Baranja County	37,60	25,83	31,11	-6,49

124 State Electoral Commission, Election results for the Croatian Parliament 2015. (<https://www.izbori.hr/arhiva-izbora/index.html#/app/parlament-2015>), Election results for the Croatian Parliament 2016 (<https://www.izbori.hr/arhiva-izbora/index.html#/app/parlament-2016>), Election results for the Croatian Parliament 2020 (<https://www.izbori.hr/arhiva-izbora/index.html#/app/parlament-2020>)

Šibenik-Knin County	0	0	0	0
Vukovar-Syrmia County	17,41	9,75	5,88	-11,53
Split-Dalmatia County	3,48	2,06	3,29	-0,19
Istria County	19,65	7,89	23,38	+3,73
Dubrovnik-Neretva County	1,61	1,41	0	-1,61
Međimurje County	51,96	50,38	60,24	+8,28
City of Zagreb	25,32	14,43	11,65	-13,67
Republic of Croatia	33,07	25,79	32,37	-0,70

Table 37 – Turnout of members of the Austrian, Bulgarian, German, Polish, Roma, Romanian, Ruthenian, Russian, Turkish, Ukrainian, Vlach and Jewish national minorities in the elections for the Croatian Parliament in 2015, 2016 and 2020¹²⁵

The turnout of members of this group of national minorities is somewhat more stable than that of the Serbs, with noticeable oscillations – a significant decline in 2016 and a certain recovery, although smaller than shown in the table, in the 2020 elections. The strongest increase in turnout was recorded in Međimurje County, where their percentage in the population is the largest and with the largest increase between the two censuses. Then, the second strongest increase was marked in Varaždin and Bjelovar-Bilogora counties, where their share in the population and its fluctuation are close to average. The turnout of members of these minorities is also above average and quite stable in Sisak-Moslavina and Koprivnica-Križevci counties. Brod-Posavina marks an above-average turnout with a tendency for a noticeable increase. Osijek-Baranja County has quite a high turnout with a slightly more pronounced decline. The biggest drop in their turnout was in Vukovar-Syrmia County and the City of Zagreb.

County	2015	2016	2020	Difference 2015 – 2020
Zagreb County	12,72	14,09	15,34	+2,62
Krapina-Zagorje County	5,75	4,32	3,51	-2,24
Sisak-Moslavina County	32,48	33,02	25,15	-7,33
Karlovac County	24,20	24,16	26,75	+2,55
Varaždin County	13,26	10,07	5,76	-7,51
Koprivnica-Križevci County	8,76	6,48	8,87	+0,11
Bjelovar-Bilogora County	17,03	18,77	13,68	-3,35
Primorje-Gorski Kotar County	14,92	16,45	18,03	+3,11
Lika-Senj County	3,31	5,95	14,05	+10,74
Virovitica-Podravina County	12,73	3,88	10,34	-2,39

125 Ibid.

Požega-Slavonia County	8,02	7,78	9,58	+1,56
Brod-Posavina County	12,88	11,28	10,15	-2,73
Zadar County	14,51	17,61	20,38	+5,87
Osijek-Baranja County	8,90	8,33	9,40	+0,50
Šibenik-Knin County	9,92	15,48	10,71	+0,79
Vukovar-Syrmia County	33,31	24,29	29,36	-3,95
Split-Dalmatia County	6,48	9,14	11,50	+5,02
Istria County	23,19	23,50	27,28	+4,09
Dubrovnik-Neretva County	18,89	18,86	18,64	-0,25
Međimurje County	5,79	8,16	4,66	-1,13
City of Zagreb	13,07	16,08	14,68	+1,61
Republic of Croatia	16,31	17,24	17,80	+1,49

Table 38 – Turnout of members of the Albanian, Bosniac, Montenegrin, Macedonian and Slovenian national minorities in the elections to the Croatian Parliament in 2015, 2016 and 2020¹²⁶

The turnout in the elections of this minority group is quite stable and with a tendency for a moderate growth. However, the strongest turnout growth in Lika-Senj, Zadar, and Split-Dalmatia counties should be interpreted in accordance with the fact that these minorities are rather underrepresented in the censuses, and the turnout is probably increased by stronger engagement of their parties and activists in those counties. Primorje-Gorski Kotar County and Istria County also have an above-average increase in turnout, possibly related to their rather high share of the population. The largest drop in turnout was recorded in Varaždin County, where they are underrepresented, but also in Sisak-Moslavina County, where their representation went from below average, due to a strong increase between the two censuses, to above average.

126 Ibid.

V
Belgium

As there are no legally recognized national minorities at all, Belgium can serve as an example to Bosnia and Herzegovina in regulating the rights and mutual relations of its constituent units – linguistically based Communities. In this area, however, Belgian federalism, which originally combines territorially and non-territorially based institutional arrangements, is a valuable source of arrangements that could in some form be applied to relations among the constituent peoples of BiH.

V-1) National and linguistic composition, and historical development of the Kingdom of Belgium

The Kingdom of Belgium (Dutch: Koninkrijk België; French: Royaume de Belgique; German: Königreich Belgien) is the country in western Europe, bordering the Netherlands in the north, Germany in the east, Luxembourg in the southeast, and France in the southwest, and has access to the North Sea in the northwest. It covers an area of 30,689 km² and has 11,521,238 inhabitants¹²⁷. With 375.42 inhabitants per km², it is one of the most densely populated European countries.

Belgium has three official languages: Dutch, French, and German. Numerous unofficial minority languages are also spoken. As no official data on this are collected during the census¹²⁸, there are no official statistics on the distribution or use of the three official languages of Belgium or their dialects. However, different criteria, including the language(s) of the parents or education, or the status of the second language of foreigners living in Belgium, may suggest numerical ratios of persons speaking these languages. It is estimated that 60% of the Belgian population are native speakers of Dutch (often referred to as Flemish), and 40% of the population are native French speakers. French-speaking Belgians are often called Walloons, although French-speaking Belgians in Brussels do not call themselves that. It is estimated that the total number of native Dutch speakers is around 6.23 million, and they are concentrated in the Flanders region, while there are 3.32 million native French speakers in Wallonia and around 870,000 (or 85%) in the officially bilingual region of Brussels. The German-speaking community consists of 73,000 people in the east of the Walloon Region, and another 23,000 German-speaking people live in municipalities near the official border of their Community.

127 Statbel, Belgian Statistical Office, estimate 1. 1. 2021. <https://statbel.fgov.be/en/themes/population/structure-population>

128 Official data on language affiliation were collected in Belgium from 1846 to 1947 (Goetvinck Karla, Documentatiecentrum Vlaamse Rand 2009, <https://www.docu.vlaamserand.be/node/12921>)

The geographical concentration of the populations that speak these languages in the Belgian regions is visible, which is similar to the situation in BiH. The most noticeable difference is that in Belgium, initiatives for identity-based decentralization come from the Flemish community, who are a numerical majority. Their arguments are based on the need to protect that community from economic exploitation, given that the regions where this community is numerically dominant are much more developed today in comparison to the national average. The difference in relation to BiH is the relative religious homogeneity of the population, which is predominantly Catholic, so intra-Belgian divisions are primarily national-linguistic, while politically relevant elements of religious divisions are reduced to a generally stronger influence of the Church among Flemish, and a higher degree of secularization among francophone citizens.

Belgium lies on the cultural crossroads of Germanic and Roman Europe, whose political and cultural interaction is one of the key determinants of the entire European history since the Ancient times. That position conditioned its historical, cultural and demographic development and today's lingual division. These characteristics of the population of Belgium and its cultural history find their reflection in both their state institutions and political history. The capital Brussels is a bilingual area even though the majority of its population speaks French. Linguistic and national pluralism based on it, has often caused serious political problems throughout Belgian history. Despite frequent crises, including systemic ones, the country has achieved a degree of stability through consistent and original federalization. It was sufficient for the two most important supranational organizations that bring together developed democracies, the European Union and NATO, to place their administrative headquarters in Belgium.

After Roman rule, during which the Celtic population was largely Romanized, the territory of present-day Belgium was also inhabited by Germans and became part of Francia. After its disintegration, it was the subject of disputes between Germany and France, but in the 10th century, it became a part of the predominantly German Holy Roman Empire. Even within that empire, which underwent a centuries-long process of disintegration, Belgium was often the subject of controversy and war conflicts among European powers, including England and France, as well as a means to achieve a balance between them. In the late Middle Ages, urban trade and crafts were developing, which attracted even more attention from large states. After the collapse of the first powerful Duchy of Burgundy to which Belgium belonged in the 15th century, its rulers bequeathed its entire territory to the Habsburg dynasty due to protection from the increasingly powerful and centralized neighbouring France. After the division of that

dynasty, the whole of former Burgundy with present-day Belgium became part of the Spanish branch, despite the absence of any territorial connection with Spain.

The fact that the country found itself close to the border between predominantly Catholic and Protestant areas influenced the further dynamics of the turbulent Belgian history. The Protestant Reformation threatened Spanish supremacy during the 16th century, which resulted in the Dutch Revolution. That revolution grew into a war for independence in the northernmost, ethnically Germanic parts of then-Spanish Burgundy, where Calvin's version of Protestantism prevailed. It was not until 1648 that Spain recognized the independence of the United Provinces, i.e., today's Netherlands, on whose territory a numerically significant but politically subordinate Catholic minority remained. However, the territory of present-day Belgium, with the almost full consent of the dominant Catholic elites, further united by the Counter-Reformation, remained under Spanish rule. It included religious Dutch (Flemish) and Walloon (French), North Brabant, and part of northern Flanders, which had hitherto been aspired to by the Dutch.

Its southern border was defined in also protracted wars with expansive France, which threatened Spanish Belgium and the independent Netherlands during the 17th century. After the War of the Spanish Succession in 1713, Spain was weaker, and Belgium came into possession of the Austrian branch of the Habsburgs although it had no territorial continuity with other Austrian countries. Partly, Great Britain had its influence, as it feared further French expansion. However, at the beginning of the epoch of civil revolutions and national movements, the uprising of 1789 and the proclamation of the short-lived United States of Belgium showed an anti-Austrian mood. Due to the rapid military expansion of revolutionary France, Belgium was annexed to the French Republic in 1797.

After a period of annexation by revolutionary and Napoleonic France, Belgium was annexed to the United Kingdom of the Netherlands at the Congress of Vienna in 1815, under King William I of the Netherlands, a Calvinist not only religiously but also politically. This state was part of an international system formed by Austria, Russia, and especially Great Britain, to prevent the re-expansion of French power in Europe. After the revolutions in Paris and Brussels in 1830, when the new, again revolutionary but not expansionist, French authorities pledged not to expand their borders at the expense of European states, the great powers agreed at a conference in London to form the independent Kingdom of Belgium under the German dynasty of Saxony-Coburg-Gotha. It was not until 1839 that it secured its current border with the Netherlands after a period of border conflicts.

In the new kingdom, as during French rule, secular-liberal Francophone elites, further strengthened by strong industrialization in the southern parts of the country during the 19th century, dominated the conservative Flemish, who became increasingly attached to the Catholic Church. At that time, the state government was not prone to Catholic Church. The Flemish language, despite the Flemish numerical majority in the entire population of Belgium but not in the political, economic, and cultural elite, was added to French as an official language only in 1898. It achieved full equality in the third and fourth decades of the 20th century, among other things, due to the pressure of the Flemings, who, like most conscripts, bore the brunt of the First World War. In any case, the Flemings, whose existence as a people has been an undeniable social fact since at least the 14th century, were placed in a distinctly subordinate position in unitary Belgium under Walloon domination.

By the end of the 19th century, the linguistic division in the political sphere was articulated primarily as a conflict between predominantly Walloon liberals and predominantly Flemish Catholic conservatives. The division was further complicated when in 1893, under pressure from the strengthening socialists, universal, though not equal, suffrage was introduced for men, making Francophones a minority among voters and the population. As a result, in addition to Flemish, the Walloon movement for political and cultural autonomy gradually strengthened. It opened space for later compromises, although strong currents in favour of state centralism and national unitarism remained among the Walloons.

Although Belgium declared neutral in both the First and Second World Wars, Germany occupied it in 1914 (which motivated Great Britain to enter the war). Belgium was under occupation until the armistice of 1918 and again in 1940 (as before, because of easier penetration into France). The second occupation was abolished by the successful operations of British troops in Flanders and American troops in Wallonia. The world wars also deepened national and linguistic divisions, as the German occupiers in both wars tried to amortize the resistance movement by deepening national divisions.

In 1947, Belgium concluded a customs union with the Netherlands and Luxembourg – the Benelux. The pioneering role of this country in European and integration processes, through which the turbulent European history was so often broken, quickly continued. Belgium participated in the formation of NATO in 1949, the European Coal and Steel Community in 1951, the European Economic Community in 1957, and the European Union in 1992. As part of the accelerated process of decolonization, it withdrew from its only colony – the Belgian Congo, in 1960. However, it intervened militarily there with the French army in 1977.

V-2) The functioning modes of the Belgian system of territorial and non-territorial federalism

Belgium's current political system has emerged through several successive comprehensive state reforms (1962-63, 1970, 1980, 1988-89, 1993, 2001, and 2011) that transformed the country from a unitary to a federal one. The monarch (king) is at the head of the state and promulgates laws and thus, has the right to legislative sanctions and is also the holder of executive power. Each of his acts must have the signature of the competent minister. He is the king and the supreme commander of the army. The current king Philip had succeeded to the throne in 2013 after the abdication of his father Albert II. The government is the main body of the executive branch, headed by the prime minister. It is accountable to Parliament for its work. Also, it resigns to Parliament if there is a vote of no confidence. A parity system of government with an equal number of Flemish and Walloon ministers is mandatory.

Legislative power is vested in a bicameral parliament consisting of the House of Representatives and the Senate. The House of Representatives has 150 members elected by the citizens directly for four years. The Senate has 60 members, of which 50 senators are elected by assemblies from levels of government lower than the state, and 10 are co-optive members. The term of the Senate also lasts four years.

A) Levels of division of powers and delimitation of powers of individual levels

Belgium is a federal state, consisting of:

- **Three communities** – Flemish (Vlaamse Gemeenschap), Francophone (Communauté française) and German (Deutschsprachige Gemeinschaft), established by the legal changes of 1970, as cultural communities with cultural competences. The changes of 1980 established them as Communities, which, in addition to culture, also have competences in health and youth policy fields.
- **Three regions**– Flanders (Vlaams Gewest) and Wallonia (Région wallonne), established by the legal changes from 1980, as well as the Brussels-Capital Region (Région de Bruxelles-Capitale / Brussels Hoofdstedelijk Gewest), established by the changes from 1988/89, divided into provinces, and provinces into municipalities, and
- **Four language areas** – the Dutch language area, the French language area, the German language area and the bilingual Brussels-Capital area, introduced by legal changes in 1962. and 1963.



Map of the Flemish community
(capital city Brussels, earlier Mechelen
in Province Antwerp)



Map of the Francophone community
(capital city Brussels)



Map of the German community
(capital city Eupen in province Liège)



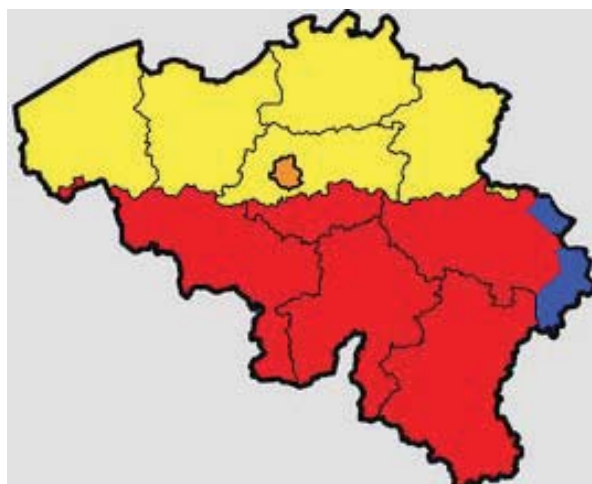
Map of the region Flanders
(capital city Brussels, earlier
Mechelen in Province Antwerp)



Map of region Wallonia
(capital city Namur in Province Namur)



Map of region Brussels-Capital



Unified map of language areas and provinces – Dutch (yellow), French (red), German (blue) and Bilingual Brussels-Capital area (orange); the borders of provinces are marked with black lines.

These forms of division overlap, i.e., each area in the country is classified within each division. The geographical boundaries of all the entities established by these divisions are completely clear. The regions of Flanders and Wallonia consist of five provinces each. The Brussels-Capital Region is divided only into municipalities, surrounded by the territory of Flanders, while about 85% of its population are Francophones. The Fourth State Reform of 1993 defined Belgium as a “federal state consisting of Communities and Regions”. Its powers and share in tax collection increased, while the first direct elections for their representative bodies were held in 1995. Until then, the traditional province of Brabant was divided into Flemish Brabant and Walloon Brabant according to purely national-linguistic criteria.

Language areas do not have their own institutions and powers but exist as a constitutionally defined factual geographical framework that serve as a model for the constitution of other units of federalist decentralization and their delimitation. Constitutionally institutionalized Communities are mostly geographically determined, so their existence and powers are legally not based exclusively on population groups but primarily on certain clearly defined geographical – administrative areas. The Flemish Community and its legal powers coincide territorially with the Dutch-speaking area and the Flanders Region but also include the lingual Brussels-Capital Bilingual Language area, which coincides with the equally named region. The Francophone community also coincides with the French-speaking area, the Walloon Region, and the Brussels-Capital Region. Finally, the German community encompasses the German-speaking area and part of one of the provinces (Liège) within the Walloon region.

As both the Flemish and Walloon communities also have powers in the Brussels-Capital Region, they do not have a predetermined number of persons living under their

jurisdiction. The German Community is the only one with a territory over which it has exclusive competence in the capacity of the Community, as the Walloon Region has transferred its respective regional powers to the territory of nine municipalities within it. The disproportion in the area and population of certain regions is emphasized, as shown in the following table:

Region	Region Flanders	Region Wallonia	Region Brussels-Capital
Surface	13.625 km ²	16.901 km ²	162,4 km ²
% of the total area of Belgium	44.40%	55.10%	0.50%
Population (official estimate in 2021)	6.629.143	3.645.243	1.218.255
% of the total of Belgian population	57,68%	31,72%	10.60%

Table 39 – Territorial size and population of three Belgian regions¹²⁹

The Flanders region has a single assembly and government. Their decisions apply to the affairs of that region, but also to the Flemish Community and the Dutch-speaking area. At the same time, Flemish delegates from the Brussels-Capital Region cannot influence decisions concerning only the Flanders Region, but only those concerning the Flemish Community and the Dutch-speaking area. All laws passed by the Flemish Parliament must therefore indicate whether they apply only to the Region, the Community or both.

On the other hand, the Walloon Region and the Francophone Community have separate assemblies and governments. The Francophone Community is composed of Francophone representatives of the Walloon Region and the Brussels-Capital Region Assembly and ministers in the Walloon Region Government that often serve as ministers in the Francophone Community. It is the asymmetric solution to the relationship between the two Communities and the two Regions. It can probably be explained by the higher degree of commitment of Flemish political actors to the community territorialization and protection of their rights and the inclination of Walloon actors to separate issues of territorial regionalization and cultural rights institutionally and symbolically¹³⁰.

The Belgian Federal Government retains a significant “common heritage”, which includes the justice, defence (Belgian Army), federal police, social security, public debt and other aspects of public finances, nuclear energy, and state-owned companies such as

¹²⁹ Statbel, Belgian Statistical Office, estimate 1 January 2021 <https://statbel.fgov.be/en/themes/population/structure-population>

¹³⁰ Kris Deschouwer, Ethnic structure, inequality and governance of the public sector in Belgium, <https://cdn.unirid.org/assets/library/papers/pdf-files/deschou.pdf>

the Belgian Railways that are an exception to the transport that has been transferred to regional jurisdiction, and the Belgian Post which has been privatized from the federal level of government. The state retained significant powers in the areas of health, internal affairs, and foreign affairs, primarily representing the country in the EU and NATO and fulfilling its own and the obligations of lower levels of government in these organizations. In the field of education, the state determines the minimum mandatory content and minimum criteria for acquiring educational qualifications.

The following table shows for all the listed entities the scope of their competencies in relation to other entities, which includes the competencies of their assemblies/parliaments and governments (in the case of the federal state and federal units – Communities and Regions) or councils and executive colleges (in the case of provinces and municipalities). Entities written in *Italics* do not have their own special legislative/representative and executive institutions – arrondissements because the units are exclusively administrative (deconcentration, not decentralization of power), language areas because they primarily define the language regime in municipalities in their territory; the Region of Flanders because its powers are exercised by the Flemish Community.

Federal state	1	Kingdom of Belgium												
Communities	3	Flemish community					French community					German comm.		
Regions	3	Region Flanders					Region Brussels-Capital		Region Wallonia					
<i>Language areas</i>	4	<i>Dutch</i>					<i>Bilingual</i>		<i>French</i>				<i>German</i>	
Provinces	10	West Flanders	East Flanders	Antwerp	Limburg	Flem. Brabant	–	Wallon. Brabant	Hainaut	Luxembourg	Namur	Liège		
Arrondissements	43	8	6	3	3	2	1	1	7	5	3	4		
Municipalities	589	64	65	70	44	65	19	27	69	44	38	75	9	

Table 40 – Distribution and overlap of competencies of different levels of government in Belgium

Communities have powers within linguistically defined geographical areas concerning primarily linguistically relevant issues. These issues personally concern individuals belonging to different communities, i.e., culture (including audiovisual media), education, and the official use of language. Extending powers to personal issues that are less

directly related to language use concerns lower levels of health care, youth protection, social protection, family support, immigrant issues, etc.

The powers of the regions are exclusively territorially defined and relate to the economy, employment, agriculture, water supply, housing, public works, energy, transport, environmental protection, spatial planning, lending, and foreign trade. Regional authorities also control public services under the jurisdiction of provinces, municipalities, and inter-municipal communities in their territory. In some areas, competences are divided, and different government levels may be partially involved. Each of the mentioned levels of government has individual powers in the areas of scientific research and international cooperation on issues within its competence.

B) Composition and election of the legislature

The complexity of the population identity and the constitutional structure of Belgium is also reflected in the constitution of its highest representative body at the state level. 79 delegates from five electoral units with a Flemish majority, 49 delegates from five electoral units with a Francophone majority and 22 delegates from the bilingual constituency of Brussels-Halle-Vilvoorde are elected to the House of Representatives of the Federal Parliament. The dominance of Flemish-majority electoral units is noticeable (52.67%), although given that this House, as in BiH and other federal states, is elected in accordance with or at least approximately to a “one man, one vote” principle, this dominance is noticeably lower than the share of the population of the Region of Flanders in the total population of Belgium (57.68%).

The Federal Parliament also includes the Senate (upper house of parliament, analogous to the House of Peoples in BiH), which has been elected indirectly since 2014. There are 29 senators appointed by the Flemish Parliament from its ranks, ten senators appointed by the French Community Parliament, and eight senators appointed by the Parliament of Wallonia. Two senators are appointed among members of the French language group of the Parliament of the Brussels-Capital Region from their own ranks. One senator is appointed by the Parliament of the German Community¹³¹. To ensure legitimate and proportionate representation within the communities themselves, the Constitution stipulates that at least one of the 29 Flemish community senators, and six of the 20 French-speaking senators, must be elected from the Brussels-Capital region.

¹³¹ Official page of the Belgian Senate, <https://www.senate.be/english/SenateCompoEN.html>

The current Senate convocation, elected and constituted after the 2019 federal and regional elections, is as follows¹³²:

Party	Language group	Party in the European Parliament	Number of senators elected in parliaments	Number of co-opted senators	In total (% within language group)
N-VA (New Flemish Alliance)	Dutch	The European Conservatives and Reformists	8	1	9 (25,71)
Vlaams Belang (Flemish interest)	Dutch	Identity and Democracy	6	1	7 (20,00)
CD&V (Christian Democratic and Flemish)	Dutch	European People's Party	4	1	5 (14,29)
Open Vld (Open Flemish Liberals and Democrats)	Dutch	Renew Europe	4	1	5 (14,29)
Groen (Green)	Dutch	Group of the Greens – European Free Alliance	3	1	4 (11,43)
sp.a (Anders Socialist Party)	Dutch	Progressive Alliance of Socialists and Democrats	3	1	4 (11,43)
PVDA (Worker's Party of Belgium)	Dutch	The Left group in the European Parliament – GUE/NGL	1	0	1 (2,22)
In total Dutch group			29	6	35 (58,33% Senate)
PS (Socialist Party)	French	Progressive Alliance of Socialists and Democrats	6	1	7 (29,17)
MR (Reformist movement)	French	Renew Europe	5	1	6 (25,00)
Ecolo	French	Group of the Greens – European Free Alliance	4	1	5 (20,83)
PTB (Workers' Party of Belgium)	French	The Left group in the European Parliament – GUE/NGL	3	1	4 (16,67)
cdH (Les Engagés)	French	European People's Party	2	0	2 (8,33)
In total French group			20	4	24 (40,00% Senate)
PFF (The Party for Freedom and Progress)	German	Renew Europe	1	0	1 (100%)
German group			1	0	1 (1,67% Senate)
In total			50	10	60 (100,00)

Table 41 – Composition of the Belgian Senate after the 2019 elections

132 Official page of the Belgian Senate <https://www.senate.be/www/?Mlval=/WieIsWie/LijstDerSenatoren&LANG=fr>

The Flemish Parliament consists of 118 members of the Flemish Parliament and six members of the Dutch Language Group of the Parliament of the Brussels-Capital Region. For the comparison with the composition of the Senate, the convocation of the Flemish Parliament elected in 2019 is shown:

Party	Party in the European Parliament	Number of delegates	Percentage of delegates
N-VA (New Flemish Alliance)	European Conservatives and Reformists	35	28,23
Vlaams Belang (Flemish Interest)	Identity and Democracy	23	18,55
CD&V (Christian Democratic and Flemish)	European People's Party	19	15,32
Open Vld (Open Flemish Liberals and Democrats)	Renew Europe	16	12,90
Groen (Green)	Group of the Greens – European Free Alliance	14	11,29
sp.a (Anders Socialist Party)	Progressive Alliance of Socialists and Democrats	13	10,48
PTB (Workers' Party of Belgium)	The Left group in the European Parliament – GUE/NGL	4	3,23
In total		124	100,00

Table 42 – Composition of Flemish Parliament after the 2019 elections

The Parliament of the French Community is composed of 75 members of the Parliament of the Walloon Region and 19 members of the French language group of the Parliament of the Brussels-Capital Region:

Party	Party in the European Parliament	Number of delegates	Percentage of delegates
PS (Socialist Party)	Progressive Alliance of Socialists and Democrats	28	29,79
MR (Reformist Movement)	Renew Europe	23	24,45
Ecolo	Group of Greens – European Free Alliance	16	17,03
PTB (Workers' Party of Belgium)	The Left group in the European Parliament – GUE/NGL	13	13,83
cdH ((Les Engagés)	European People's Party	11	11,71
DéFI	/	3	3,19
In total		94	100,00

Table 43 – Composition of the Parliament of the French Community after the 2019 elections

It can be noticed that the patterns of political support of citizens for the parties are quite stable. However, francophone voters from Brussels who support the local DéFI party, which represent their specific interests in the French Parliament, also support the environmental and leftist option in the Senate elections. There is also a significant disproportion of support for parties of different political orientations in relation to the wider political spectrum of the European Parliament within the two Communities. Within the Flemish Community, support for the two far-right parties (N-VA and Vlaams Belang) is very close to the absolute majority of citizens who voted. Within the French Community, the Moderate Left Party (PS) and the Liberal Centre (MR) alone have more than half the votes.

V-3) Specifics of the Brussels-Capital Region as an example of the application of non-territorial federalism, primarily in identity-relevant areas

Within the Brussels-Capital Region, the Flemish and French communities have their institutions that act as an “intermediary level” between the authorities of these communities and the provision of public services, as they are under the authority of community bodies and superior to municipal bodies.

The Flemish Community Commission (Vlaamse Gemeenschapscommissie, VGC¹³³) is the representative of the authorities of its Community in the Brussels-Capital Region. The Commission is under the authority of the Flemish Parliament. Its Council consists of representatives belonging to the Dutch language group in the Brussels Regional Parliament, while its executive bodies consist of two Flemish ministers and one Flemish Secretary in the Government of the Brussels-Capital Region. The VGC was established by a special Constitutional Law in 1989. Its competencies include culture, education, health, and living standards of the Flemings in the Region. It is estimated that around 200.000 inhabitants of the Brussels-Capital Region who enjoy its services are mostly Dutch-speaking people but also a significant number of immigrants. However, some of VGC’s competencies are limited, e.g., it has no authority over hospitals.

Legally, the VGC is responsible for institutions run by the Flemish Community rather than for specific Dutch-speaking individuals in Brussels. It is because no official Flemish citizenship has been established. The VGC also took over all the commitments of the Flemish Community of Brussels from the former Province of Brabant when it was divided. It has no legislative power, unlike the commissions of the other two communities.

133 Official website of the VGC, <https://www.vgc.be/wie-zijn-wij/vlaamse-gemeenschapscommissie>

French Community Commission (Commission communautaire française – COCOF¹³⁴) is the representative of the authorities of its Community in the Brussels-Capital Region. In 2001, the Assembly of the Commission of the French Community unofficially changed its name to Parlement francophone bruxellois (Francophone Parliament of Brussels). Unlike the Flemish Community Commission, COCOF received legislative powers in some areas (tourism and health care) from the French Community.

Besides these two, there is Common Community Commission¹³⁵ (Commission communautaire commune, Gemeenschappelijke Gemeenschapscommissie), a body acting in cases in which the Brussels-Capital Region itself exercises the powers of the communities. In these situations, there is no longer a need for a legislative process to protect the interests of communities (in practice – the Flemish Communities, whose members are fewer in the Region). The Common Community Commission is also responsible for matters relating to the Communities in Brussels, which are common to the French Community and the Flemish Community, and to institutions that exercise the competences of the two Communities but do not belong exclusively to either. Examples of this are the bilingual hospitals in the Region. The primary responsibilities of the Common Community Commission include health policy (curative and preventive protection) and assistance to individuals (youth protection, social protection, family support, provision of services to immigrants, etc.).

The Common Community Commission consists of the Council, the Joint Assembly, and the Executive Body – the Joint Board. The Joint Assembly consists of members of the Council of the Flemish Community Commission and the Assembly of the French Community Commission. It is equal in rank to the Parliament of the Brussels-Capital Region. The Joint Assembly brings together all members of the Government of the Brussels-Capital Region except the Secretary of State and is chaired by the Prime Minister of that Region, who nevertheless has only an advisory role in this body. As a result, two Francophones and two Flemish members have the right to vote in decision-making.

The Joint Assembly carries out legislative activity through “ordinance”, which has the same legal force as laws and regulations. However, it may be suspended by the Belgian Federal Government if they see it as jeopardizing Brussels’ role as Belgium’s capital or its international role as the capital city of the European Union. The adoption of the ordinance requires the presence of a majority of representatives and an absolute majority of votes in favour of the proposal. Also, it requires a majority of the representatives belonging to both language groups.

134 Official website of the COCOF, <https://ccf.brussels/>

135 Official website, <http://www.ccc-ggc.irisnet.be/>

VI

Models of political representation of national minorities in BiH

Based on the previously presented analyses in this part of the study, models for the political representation of members of national minorities in BiH will be proposed. The first model will be dedicated to their representation within the broader category of Others, which is still part of the BiH political system at the entity level, within the HP FBiH PA and the RS Council of Peoples. This model (HP1) is fully compatible with the previously explained models for legitimate representation of constituent peoples in the Presidency of BiH (P1 and P2) and the HP BiH PA. Like these models, it allows Others to run and vote for these bodies, but without the possibility of their election of representatives who would specifically represent the Others in those bodies.

The second model (HR) is more conceptually consistent but involves amending the Entity Constitution. This model implies the abolition of the caucuses of Others in the HP FBiH PA and the Council of Peoples of the RS, given that these bodies are dedicated to the specific representation of the constituent peoples themselves. In addition, members of national minorities would no longer be treated under the Others category, which would be abolished, and its members would exercise their active and passive right to vote like all other citizens, with respect to virtually all BiH authorities, but would no longer be presented as a separate category, as has been the case since 2002. Instead, members of national minorities would be treated as a special category, as in Croatia, and would receive reserved seats in the lower houses – the House of Representatives of the BiH PA, the House of Representatives of the FBiH PA, and the RS National Assembly.

VI-1) IDPI's models of BiH election legislation reform – Model HP1

A) Main features of IDPI's model HP1

House of Peoples of the Parliament of FBiH		House of Peoples of the Parliament of FBiH	
IDPI MODEL HP1	Requires amendments	IDPI MODEL HP1	Resolves decisions
Amendments to the BiH Election Law	YES	Ljubić	YES
Amendments to CEC documents	YES	Sejdić-Finci	YES
Amendments to the BiH Constitution	NO	Zornić	YES
Amendments to the FBiH Constitution	/	Šlaku	YES
Amendments to the RS Constitution	/	Pilav	NO
		Pudarić	NO

House of Peoples of the Parliament of FBiH (hereinafter – *HP FBiH PA*) consists of **four caucuses**: Bosniac People Caucus, Croat People Caucus, Serb People Caucus and Caucus of Others.

Instead of the current method by which the delegates of these clubs are elected from the cantonal assemblies, the decisions made by these assemblies within **the already set quotas of delegates of individual constituent peoples and Others**, a new method of election is introduced, based on:

1. **Four specific *demoi* in FBiH** for the election of delegates in the Caucuses of Bosniacs, Croats, Serbs and Others and the **principle that the delegates in these caucuses are necessarily representatives**, but not necessarily **members of the constituent peoples and Others**.
2. 2 Bosniac, Croatian and Serbian **Coefficients of election points (CEP)** and Coefficients of election points (CEP) of Others for each of the ten electoral units (**ten counties**).
3. **Personal election coefficients (PEC)** of elected representatives which, after direct elections, the CEC assigns to each representative in all ten cantonal assemblies.
4. **Four major electoral colleges** that elect delegates to the appropriate HP FBiH PA caucus using PECs.

B) Four specific *demoi* in the IDPI's model HP1

The election of delegates to the HP FBiH PA is still done by **indirect election**, a procedure in which representatives of cantonal assemblies belonging to one of the specific *demoi* select candidates from the electoral list of that specific demos.

The specific demos for the election of Bosniac delegates in the HP FBiH PA are all Bosniacs in the FBiH, who make that election through representatives of cantonal assemblies who have freely declared themselves as Bosniacs.

The specific demos for the election of Croatian delegates in the HP FBiH PA are all Croats in the FBiH, who make that election through representatives of cantonal assemblies who have freely declared themselves as Croats.

The specific demos for the election of Serbian delegates in the HP FBiH PA are all

Serbs in the FBiH, who make that election through representatives of cantonal assemblies who have freely declared themselves as Serbs.

The specific demos for the election of delegates of Others in the HP FBiH PA are all Others in the FBiH, who make that election through representatives of cantonal assemblies who have freely declared themselves as Others.

The provision of the Central Election Commission (CEC), requiring candidates to sign **a declaration of affiliation with the constituent people or the Others**, is repealed. The model envisages that everyone, regardless of their national (non)affiliation, can be a candidate for delegate in any caucus of HP FBiH PA because their members are **representatives, but not necessarily members of that people or Others**. It implements the decisions “**Sejdić-Finci**” and “**Zornić**” for the HP FBiH PA. There is no reason why a Roma, Jew, or nationally undeclared citizen could not represent Croats in the HP FBiH PA (or Serbs or Bosniacs or Others) if they receive the majority support of the constituent people or Others they want to represent. **The legitimacy of representation in the HP FBiH PA stems from the electoral will of those who elect and not from the nationality of the person elected.**

C) Coefficients of election points (CEP) in IDPI's model HP1

Each of the **10 electoral units (counties in FBiH)** receives a **certain coefficient of election points (CEP)** for the election of delegates to the Caucus of Bosniacs, the Caucus of Croats, the Caucus of Serbs and the Caucus of Others in the HP FBiH PA. Coefficients of election points are obtained based on the share (percentage) of members of a certain constituent people and Others in each electoral unit in relation to the total number of members of a certain constituent people and Others in the entire FBiH, and is updated after each census. In this way, it is ensured that, for example, every Croat in the Sarajevo Canton has the same vote value as a Croat in the Herzegovina-Neretva County or any other county (the same applies to Bosniacs, Serbs and Others).

For example, there are a total of 1,562,372 Bosniacs in the FBiH and 346,575 Bosniacs in the Sarajevo Canton (SK). Therefore, the Bosniac CEP in SK is $(346.575 / 1.562.372) \times 100 = 22.18$ CEP.

Out of 497,883 Croats in FBiH, 17,520 Croats live in Sarajevo Canton (SK). Therefore, the Croatian CEP in SK is $(17,520 / 497,883) \times 100 = 3.52$ CEP.

According to the results of the 2013 Census, the Bosniac, Croat, Serb CEP and CEP of Others by electoral units are:

Electoral unit	Bosniac coefficient of election points	Croatian coefficient of election points	Serbian coefficient of election points	Coefficient of election points of Others
Una-Sana Canton	15,75	1,02	14,95	13,40
Posavina County	0,53	6,75	1,47	0,75
Tuzla Canton	25,11	4,74	12,48	21,50
Zenica-Doboj Canton	19,17	8,80	9,80	15,25
Bosnian-Podrinje Canton	1,43	0,01	1,57	0,50
Central Bosnia Canton	9,39	19,60	5,38	7,19
Herzegovina-Neretva County	5,89	23,76	11,37	5,15
West-Herzegovina County	0,04	18,82	0,18	0,35
Sarajevo Canton	22,18	3,52	23,52	35,34
Herzeg Bosnia County	0,51	12,98	19,28	0,57
In total	100	100	100	100

Table 44 – Coefficients of election points (CEP) in IDPI's model HP1

D) Personal election coefficients (PEC) in IDPI's model HP1

The coefficients of election points (Bosniac, Croatian, Serbian, and Others) in each county are divided by the number of elected Bosniac, Croatian and Serbian representatives and representatives of Others in the cantonal assembly. Therefore, the Bosniac coefficient of electoral points for that particular canton is divided by the number of Bosniac representatives in that canton (the same applies to Croats, Serbs, and Others). The obtained numbers are Personal Election Coefficients (PECs) available to delegates in the electoral college to which they belong (Bosniac delegates in the Bosniac major electoral college, Croatian delegates in the Croatian major electoral college, Serbian delegates in the major Serbian electoral college, and delegates of Others in the major electoral college of Others).

For example, if the Bosniac coefficient of electoral points in Una-Sana Canton is **15.75**, **Croatian 1.02**, **Serbian 14.95** and of **Others 13.40**, and **25 Bosniacs**, **1 Croat**, **2 Serbs**, and **2 Others** are elected to the Assembly, then:

Each member of the **Bosniac People Caucus in the Assembly of Una-Sana Canton** has a $15.75 / 25 = 0.63$ **personal electoral coefficient** with which he enters the Bosniac major electoral college that elects delegates of the Bosniac People Caucus in the House of Peoples.

Each member of the **Croat People Caucus in the Assembly of Una-Sana Canton** has a $1.02 / 1 = 1.02$ **personal electoral coefficient** for the Croatian major electoral college that elects the delegates of the Croat People Caucus in the House of Peoples.

Each member of the **Serb People Caucus in the Assembly of the Una-Sana Canton** has a $14.95 / 2 = 7.48$ **personal electoral coefficient** for the Serbian major electoral college, which elects the delegates of the Serb People Caucus in the House of Peoples.

Each member of the **Caucus of others in the Assembly of Una-Sana Canton** has a $13.40 / 2 = 6.70$ **personal electoral coefficient** for a major electoral college that elects delegates of the Caucus of Others in the House of Peoples.

The PEC represents **the value of the vote that each delegate will bring to his/her major electoral college.**

All Bosniac delegates from the Una-Sana Canton will bring 15.75 PECs in the Bosniac major electoral college, which is proportional to the number of Bosniacs in the Una-Sana Canton in relation to the total number of Bosniacs in the entire FBiH.

It ensures **the equal value of the electoral vote** within each constituent people and the Others as a **separate virtual electoral unit** for the HP FBiH PA, because one Bosniac, **no matter in which canton he lives**, has the same value of the vote. The same goes for Croats, Serbs, and Others.

This system also ensures that **Others can elect their delegates from all counties**, while under the old system they could only elect them in five counties.

E) Major elective colleges in IDPI's model HP1

After the CEC calculates and assigns the PEC to each cantonal representative in the FBiH for his/her electoral college, they form **four large electoral colleges to elect delegates to the four HP FBiH PA Caucuses.**

The Bosniac Major electoral college is composed of all Bosniac delegates from all ten cantonal assemblies and elects 17 delegates for the HP FBiH PA **Bosniac People Caucus**.

The Croatian major electoral college is composed of all Croatian delegates from all ten cantonal assemblies and elects 17 delegates for the **Croat People Caucus** in HP FBiH PA.

The Serbian Major Electoral College consists of all Serbian delegates from all ten cantonal assemblies and elects 17 delegates for the **Serb People Caucus** in HP FBiH PA.

The major electoral college of the Others consists of all delegates of the Others from all ten cantonal assemblies and elects seven delegates for the **Caucus of Others** in HP FBiH PA.

The total number of PECs of all delegates in each of the major election colleges is 100.

Representatives in large election colleges meet on the day determined by the CEC in the FBiH Parliament, and one by one, in alphabetical order (Bosniac, then Croatian, then Other, then Serbian), large electoral colleges elect 17 delegates to the caucus of the appropriate constituent people by secret ballot to HP FBiH PA or seven delegates in the case of Others.

Before voting, political parties, coalitions, and independent delegates decide on their ranked electoral lists. Each elected representative of any cantonal assembly may form his or her electoral list or join the electoral list of a group of independent representatives, a political party, or a coalition. Multiple parties can form a joint list, and delegates who are part of a particular party do not have to join that party's list but can form their own list if they wish. The electoral list consists of ranked names and surnames of cantonal representatives (from one to 17, and if the list is formed by less than 17 representatives, then from one to the number of delegates who form the list).

The CEC then prepares ballots with all lists and the PEC for each delegate who votes with their ballot. Then, it distributes the appropriate ballots to all delegates. Then, all delegates choose the electoral lists on the ballot that they want to assign their PEC and return the ballot to the CEC. It ensures that, for example, a Croat from Sarajevo or a Bosniac from Livno can be elected to the HP FBiH PA.

Voting is still secret, as CEC members add up the results, and cantonal delegates do not know who voted for whom. The CEC summarizes the PECs for each electoral list and creates a table in which all lists are arranged according to the total number of the won PECs.

Then, according to the D’Hondt method (division with 1, 2, 3, 4, 5, ...) and the PEC, the mandates won are calculated. For example, if a list has won six seats, then the first six ranked delegates on that list enter the appropriate HP FBiH PA caucus.

If a certain large electoral college does not have at least 17 delegates (or seven in the case of Others) and cannot elect all 17 (or seven in the case of Others) delegates to the HP FBiH PA caucus, then as many delegates are elected as possible (all delegates in that electoral college automatically go to the appropriate caucus of HP FBiH PA).

For example, if only 13 of the 17 Serbian delegates are elected, the remaining four delegates are elected so that all municipal councillors, who are members of those constituent people (Serbs in this case) in the FBiH, form an *ad hoc* electoral college and vote by secret ballot by “one councillor – one vote” principle and elect the remaining delegates in the HP FBiH PA.

The RS Council of the Peoples could be elected on the same principles, with the Grand Electoral College consisting of members of the National Assembly from the ranks of Others, and their CEP would depend on the territory of which statistical regions were elected:

	Percentage of Others in relation to the total population of Others in RS
Region of Banja Luka	45,87
Region of Prijedor	14,18
Region of Dobož	18,68
Region of Bijeljina	12,55
Region of East Sarajevo	4,16
Region of Trebinje	4,56
Republic of Srpska	100,00

Table 45 – Coefficients of election points (CEP) that can be applied to the election of representatives in the RS Council of Peoples

VI-2) IDPI's models of the reform of the electoral legislation of BiH – Model HR

This model implies the abolition of the caucuses of Others in the House of Peoples of Parliament and the Council of Peoples of RS. This means that the words “and seven delegates from the ranks of Others”, are deleted from the FBiH Constitution, from Article 6, paragraph 2, the number “fifty-eight” is changed to “fifty-one”, and the entire paragraph 3 (“Others have the right to participate equally in the majority voting procedure”) is deleted. In addition, the words “and the election of deputies from the rank of Others shall be regulated by law” shall be deleted from paragraph 4 of the Article 8.

In the Constitution of Republic of Srpska, in the Article 69 the words “Chairman of the Council of the People” are deleted, and in the Article 71, the words “and four members from the ranks of Others” and “Others have the right to participate equally in the majority voting procedure” are deleted, while in the Article 135 the words “and Others” as well. The provisions concerning the representation of Others in the executive and judiciary power would not change in any of the entity constitutions.

National minorities would be represented in the House of Representatives of the BiH Parliamentary Assembly. With the current number of delegates, it is not possible to ensure this representation while respecting the principle of proportionality, given that there are 42 delegates in that House. Also, there are 0.75% members of national minorities in BiH according to the 2013 Census, and according to that principle, they could have only 0,32 in the House of Representatives, which is statistically below one term. However, due to the above-described poor institutional position of national minorities, the principle of positive discrimination should be applied, and one mandate should be reserved for electoral lists of parties, or coalitions of parties that register as national minority parties before the election year. Citizens who would register to vote for minority lists until the conclusion of the voter list would have the right to vote for such electoral lists, following the example of the mechanism applied in Croatia. However, due to the extremely small percentage of members of minorities in BiH, it is not possible to ensure diversified representation of different minorities according to the Croatian model, but the introduction of a guaranteed mandate would be a great improvement over the current situation.

A mandate reserved for representatives of national minorities would be ensured by reducing the number of compensatory mandates reserved for parties that did not win seats in the House of Representatives of the BiH PA and exceeded the 3% electoral threshold in one of the entities. In the Federation, the number of such seats is seven,

and in the RS five. The entity within which a quota would be allocated for national minorities depends on which minority electoral list won a higher percentage of votes at the level of the entity in whose territory it ran.

The same principle would ensure the representation of minorities at the entity level. There are 98 delegates in the HR FBiH PA, and 0.77% of members of national minorities live in that entity according to the census, and 0.75% of seats that should be allocated to them according to the principle of proportionality and statistically represents one mandate, as a result of which the principle of positive discrimination should not be applied to them. The situation is similar in the RS, where the National Assembly has 83 delegates, the minority is 0.70% of the population, and they need to be provided with 0.58% of seats, which is statistically one mandate.

For comparison, according to the last processed census, 7.66% of its population are members of national minorities with guaranteed seats in the Croatian Parliament, which has 151 members, and strict application of the principle of proportionality would mean reserving 12 seats for these minorities instead of the current 8. However, this study is not recommending that, due to the previously described controversies with the value of votes in the election of minority representatives, as well as due to the extremely poor turnout of members of national minorities to the election of their representatives to these reserved seats.

In the HR FBiH PA, one reserved minority mandate would be secured at the expense of compensatory mandates, which according to the BiH Election Law are between 23% and 27%, which means between 23 and 26 mandates. The same principle would be applied in the RS National Assembly, where the number of compensatory mandates can range between 19 and 22.

Paragraph 3 of the Article 10.1 (“At least four members of each constituent people will be represented in the House of Representatives of the Parliament of the Federation of BiH”) and paragraph 2 of the Article 11.1 (“At least four members of each constituent people will be represented in the National Assembly”) would be deleted from the BiH Election Law, as it is necessary to ensure the legitimate representation of the constituent peoples in the upper houses by applying one of the models presented earlier, and the lower houses should be consistently defined and constituted as bodies in which national (non)affiliation is completely irrelevant.

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