CHARACTERISTICS OF LOCAL AND PROVINCIAL ELECTION SYSTEM IN SERBIA

Darko Golić *

Abstract

Serbia does not have codified electoral legislation; however, there have been many attempts to secure conformity in selecting a manner of choosing the representatives and provincial members of assembly with the manner of choosing the members of Parliament. The manners are conceptually the same even though the levels differ, which would require some differences in the system. The local and provincial electoral systems in Serbia can be generally characterized as stable, modernized and in accordance with the standardized types of electoral decisions. They do not deviate from modern democratic demands, and all the disadvantages noted in the political aspect often overcome the possibilities of normativization and transcend legal issues. The changes that need to be made in terms of electoral solutions are: personalization of mandate, demonopolization of the nomination procedure and demetropolization of the representative units, at the same time ensuring that the generally accepted principles of free mandate are given a more adequate and normative definition.
Key words: provincial autonomy, local government, electoral system

I. Introduction

Since the year 1990, when the concept of local government and territorial autonomy was essentially changed, the local and the provincial electoral systems in Serbia[1] underwent several changes, thus altering the basic elements of their structures, with different results. The changes from the year 1990 have essentially altered both levels of territorial organization, from the communal towards a classic model of local government, and from parastatal towards a form of territorial autonomy unmarked by national symbols. Furthermore, delegate elections were abandoned, the multi-party system, as well as were the general, direct elections were reconstitutionalised. The frequency of further systematic changes, as well as the very nature of the issue, creates a need for them to be continually problematized and more debated upon in terms of the elements of the changes made. This is important due to the fact that the insufficiently politically stabilized electoral system makes evident the failures of existing solutions during every election. The electoral system cannot substantially repair the political system or political relations, as this enters into the area of the extrajudicial, but it can significantly reflect on the efficiency of local government systems and provincial autonomy,

* Darko Golić, PhD, Assistant Professor at the Faculty of Law for Commerce and Judiciary in Novi Sad, University Business Academy

[1] Even though the local and the provincial electoral systems are separate, taking into consideration their similarity, the need of a unified treatment of problematic issues and the need for a simpler rendition, "local and provincial electoral system" will be used as a term.

the stabilization of the political system, and improving their political content. The analysis will show whether the existing concept creates problems of systemic character, or if changes should be made in terms of correction, technical and logical completion, rather than fundamental revision of the system.

The electoral system as a whole, with several connected or mutually conditioned, and partially independent elements, includes a large number of issues regarding suffrage, scheduling elections, nominations, electoral records, constituencies (voting geometry), electoral campaign and information, finance, electoral body, voting procedure, control, electoral model (majoritarian, mixed or proportionate – electoral system in a narrow sense), the manner of mandate distribution and possibly the electoral consensus, the character of the representative mandate, which also includes the matter of its cessation and replacement, and protection of suffrage[2].

The local and the provincial electoral systems, are a part of local government system[3], i.e. provincial autonomy, which is why any serious debate on the electoral aspect includes a depiction of the basic features of the local government system and provincial autonomy, as it is significantly defined by them[4]. In this sense, while creating recommendations for possible changes, one must ensure that they reflect the characteristics of the system used in on the aforementioned government levels.

Serbia does not have codified electoral legislation, however, there have been many attempts to secure a conformity in selecting a manner of choosing the representatives and provincial members of assembly with the manner of choosing the members of Parliament. The manners are conceptually the same even though the levels differ, which would require some differences in the system. Besides, an appropriate application of law regulating the choice of members of parliament is expected concerning a whole list of issues unregulated by Law on local elections (Art. 58).[5]

[2] Suffrage means a set of legal norms that regulate the electoral system. It always regulates the choice of representative bodies and executive bodies where they are elected directly. Suffrage includes: 1) substantive law, 2) electoral law, 3) electoral geometry (constituents), 4) electoral mathematics (mandate allocation), 5) electoral technique (More in: M. Pajvančić, *Electoral law*, The Faculty of Law, Novi Sad, 2008, pg. 5–6).

[3] Kuzmanović points out that the basic feature of local self-government is that the citizens directly or through elected representatives govern and make decisions regarding local communities (R. Kuzmanović, "Institutions of direct democracy in the function of local self-government", Local self-government, vol. 5, no. 7–8, 2001, pg. 2).

[4] Marković states:"Most simply defined, local self-government is a form of deciding and governing of local communities, constituted on smaller parts of state territory, directly by its inhabitants or through the representatives chosen by them, as well as other local bodies." Considering that province has greater autonomy, with significantly wider normative jurisdiction, the significant of electoral aspect is also greater (R. Marković, *Constitutional law*, The faculty of Law, Belgrade, 2015, p. 405).

[5] Law on the Elections of Representatives"The Official Gazette of the Republic of Serbia" no 35/00, 57/03 – Act USRS, 72/03, st. law, 75/03 – corr. of st. law, 18/04, 85/05 – st. law and 101/05 st. law.

II. The basic characteristics of the local system of government

In Serbia there is a single tier, monotype government. The legal standing of all constituencies is the same, regardless of their size, the number of inhabitants or resources[6]. The only difference can be in the functions assigned or in the possibility given by the Constitution to choose the city executive body in a different way, which the Law on local government did not predict as a solution. These features result in a need for a unified electoral system. [7]The characteristics such as territorial organization, asymmetric decentralization, with autonomous provinces existing only in a part of the Republic, also determine the position of the local government. The size of constituencies is very uneven, as is the number of inhabitants, the development and the resources. Despite the demanded minimal number of 10 000 inhabitants, it was assumed while creating the territorial basis for elections that the municipalities existing at the time when the Law on territorial organization was passed will continue to exist, as well as that, due to geographic, economic or historical reasons, the status of a municipality can be achieved even without complying with the conditions for such, in terms of the number of the inhabitants. The number of the inhabitants, as well as other demographic characteristics were the determining factor in choosing the elective system. Unequable distribution of the inhabitants, low population of non-urban territories, geographic position of the urban parts etc., complicate the majoritarian voting system to the point of caricature. In this case, gerrymandering is inevitable. According to the Law on local government from 1991 (and 1999), there was a majoritarian voting system. The constituencies were decided by the municipal assemblies, taking into consideration the equitability of the voters, however, in the highland areas the constituencies can be determined by choosing a representative even with a lower number of voters. From the very start, this matter jeopardizes the guaranteed equality of voting rights. Affirmative action can hardly be based in determining convenience for the areas of suitable geographic characteristics, as it enables voting "engineering" (gerrymandering[8]).

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[6] Ivaništević states that the local self-government is a set of administrative (administrative jurisdiction, public services) and political institutions (assembly, boards, political organizations etc.), connected through a mechanism of government and action that is limited to the territory of local community, and which act as a relative autonomous whole, at the same functioning as a part of the state territorial system (S. Ivanišević, *The executive layer of local self-government*, The Faculty of Law, Zagreb, 1987, pg. 294).

[7] In comparative law, there are cases of different electoral systems used for different communities, so for example, in Poland, to select representatives in municipalities with less than 20 000 people, majority system is applied, and in municipalities with higher population, proportionate system is used (More in: M. Crnković, "Local self-government in Poland", The institute of Public Administration of Croatia, vol. 10, no. 4, 2010, pg. 1059–1080).

[8] Electoral systems in former socialist countries underwent intensive development, and even today it cannot be stated that each of them has a stable and generally accepted electoral system. Taking into consideration the uniqueness of territorial organization, the evolutionary road in Serbia, as well as in Croatia and Slovenia is similar to the process of institutionalization of the electoral system in other European countries that experienced transitional economy (More in: M. N. Janković, *Electoral systems of post-communist countries*, JP "The Official

The form of organization of local government is also of great importance for shaping the local electoral system. The Constitution provides the existence of an assembly system on a local level. However, the Law on local self-government somewhat "softens" this model of organization, meaning that it is modified with elements of a parliamentary system, with mayors and a municipal council as the executive body, and municipal government that has stronger ties to the council and the mayor than to the assembly. However, the largest number of functions are in the jurisdiction of the assembly, including the choice of the executive body. The existing legal solutions do not provide that the executive bodies are chosen directly, which makes this matter separate from the issue of local electoral systems. Every debate on such a solution needs to keep in mind the form of organization of the local body, determined by the Constitution, as well as the role and the nature of jurisdiction of the mayor. The assembly consists of directly selected representatives, who are chosen every four years. According to the Law on local self-government, the number of representatives is between 19 and 75[9]. To analyze the local electoral system, it is necessary to point out the constitutional obligation to secure a proportionate number of minority representatives in town and municipality assemblies, in accordance with the law.

Local electoral system is determined by the Law, on local elections from the year 2007[10]. However, the solutions it contains are not novelty. In most cases, they have already been applied both in local and state elections. The changes are more concerned with harmonizing the elective aspect with the remaining elements of local government system, or even with the decisions of the Constitutional court (Ruling no. 25/2008 from 24.4.2010). However, certain improvements can be seen in technical matters, deadlines and procedures. The analysis will show the accuracy in the theoretical observations that every model can be perfect in theory, but deficient in practice, which is why certain problems cannot be solved with normative solutions as they are a reflection of political relations, and that legal intervention into these matters only creates additional problems or dilemmas.

Some of the issues regarding the electoral system are directly regulated by the Constitution. Taking into consideration that the local electoral system is concerned exclusively with the matter of selecting the members of the representative body, the main issue deals with selecting between the classical, theoretically defined electoral models:

Gazette of SCG", Faculty of Political Sciences and the Institute for Political Studies, Belgrade, 2004, pg. 379–400).

[9] In Slovenia, the number of representatives is between 7 and 45, in Bulgaria 11 to 45, in the Czech Republic between 5 and 45 (in regional majorities 45 and 65), in Denmark between 25 and 31 (in municipalities with less than 20 000 inhabitants, the total is 9 representatives), in France that number is between 9 and 69, and in departments between 14 and 76, in Italy between 12 and 60 (over million inhabitants).

[10] „The Official Gazette of the Republic of Serbia", no. 129/2007, 34/2010 – Act of the Constitutional Court and 54/201.

majoritarian, proportionate and mixed. Most of the characteristics of the electoral system stems precisely from this issue.

III. Basic characteristics of provincial autonomy

In one of its principles, he Constitution of Serbia provides limiting of state power by citizen right to provincial autonomy and local self-government only subjected to the control of constitutionality and legality (Art. 12). Vertical organization of government is more closely regulated in the part of the Constitution dealing with territorial organization of the Republic. Taking into consideration the constitutional resolution on the Autonomous Province of Kosovo and Metohija (Art. 182) and its existing status, the paper deals with the issues solely related to the Autonomous Province of Vojvodina (APV). Articles 176, 179 and 180 of the Constitution are of special importance to the provincial electoral system. The right to provincial autonomy is granted to the citizens directly, or via freely elected representatives (Art. 176). The right to self-organization as one of the basic rights of an autonomous province (Art. 179), which consists of the authority to independently organize its governing bodies and services, the manner of their election, organization, authority and manner of work, is somewhat limited by the constitutionally specified form of organization of autonomous governments. Namely, the Constitution provides that the Assembly is the highest authority of the province, whose representatives are chosen directly, to a four year term (Art. 180). [11]This provision removes the possibility of establishing any form of bicameralism in the Provincial Assembly using the statute, or delegating the members of the Assembly, even though the Statute of APV in force before the Decision of the Constitutional Court established a quasi-bicameral form of APV assembly on the consociational[12] principle. The second limitation concerns the equitable representation of minorities in the Autonomous Province Assembly, which is determined by law[13]. All other matters relevant to the provincial bodies are established by its statute, as the highest legal act of the province[14]. The choice of the representatives in the Assembly is determined by Assembly decision.

[11] R. Marković states that with this act, the Constitution obliged the statute of the autonomous province to organize on a parliamentary principle (R. Marković, pg. 455).
[12] The Constitutional Court of Serbia determined that the Council of municipalities as it was arranged in the previous Statute of APV is contrary to the Serbian Constitution (Act no. IUo 360/2009, year 2013, pg. 128–130)
[13] The formulation in the Constitution can lead to a dilemma whether this refers to one of the minority rights guaranteed by the Constitution, the right to proportionate representation in the representative body, or if it refers to the possibility of legal regulation. The author leans towards the former definition, according to which, it is a binding instruction to the Legislator. The electoral solutions about the natural threshold for national minority political subject are generally based on this concept.
[14] M. Pajvančić, Commentary on the Constitution of the Republic of Serbia, Konrad-Adenauer foundation, Belgrade, 2009, pg. 231.

APV statute determines the organization of provincial bodies based on the principles of the assembly system of government. It is partially modified by the elements of a parliamentary system, according to which the Provincial government has somewhat higher authority than it is the case with the theoretical model of assembly system, as well as more independent position in relation to the Assembly, while the provincial administration is in closer contact with the provincial government rather than with the Assembly. It could be stated that the provincial government is the highest executive body of the Province, and not an executive body of the Assembly.

IV. Type of electoral system

The Law on local elections (Art. 7), the Law on the election of the members of the assembly (Art. 4), as well as the Provincial Assembly Decision (Art. 6), in their basic provisions determines a proportionate voting system, modifying it with other elements in order to moderate its basic shortcomings, such as existing of the legal consensus. Furthermore, a unified constituency, legal consensus requirements and the treatment of minority slates are all issues regulated identically. It is necessary to mention without debating upon the justifiability of such solutions, which are most often not even disputed, that the legislator[15] is not obliged to secure such uniformity. Here lie the essential differences between the constitutional concepts of organization of the state government, and the local and provincial levels of government. The level of the republic is regulated based on parliamentary principles (with minimal elements of the presidential model), while the local and the provincial level are regulated on the level of the assembly (with the elements of the parliamentary system). Besides, the constitutional concept of autonomous province and local self-government (the right of citizens to limit the state power, with legally established authority as regulated by the Constitution) implies a different model of electoral system, rather than identical, although it does not forbid it. However, political opportunities and relations, the lack of tradition, reasons of efficiency and economy, the need for coordinated practice, evading legal loopholes, adjusting the electoral system to the citizens and its simplification, all point to a the existing need for regulated or identical solutions. The complexity of the electoral system provokes a suspicion in the citizens, which leads to

[15] The term legislator is in this context used for the authority that passed the Act regulating this issue, meaning that it can be the National Assembly, APV Assembly or local constituent assembly, namely, the bearers of legislative function in the *material sense.*

abstinence in voting, a lack of mindfulness of the significance of the elections and the rights that accompany them, and it suits the complication of the political relations[16].

Taking into consideration the unevenness of the size and the population size amongst municipalities and cities in Serbia and within them, i.e. the fact that there are numerous municipalities with less than 10 000 inhabitants with particularly uneven population distribution, choosing majoritarian or mixed voting system seems complicated, expensive, potentially manipulative (nomination, changes in residence due to voting "engineering", voting rights, equality), irrational, even though it makes "metropolization" more difficult. This is particularly important taking into consideration the extreme number of local assembly members, and the necessary number of constituencies. On the level of APV, the ethnic structure of the population can be added to this debate, considering that a large number of ethnic units reside in APV, who are (unevenly) distributed over the entire territory of the Province. This is why bordering of the constituencies would necessarily complicate their adequate representation, which is best secured by having a singular constituency. Nevertheless, the emigration currents on its territory, and the social and economic features of the population combined with uneven metropolization, have a particular influence within the APV. If the basic justification for using a proportionate system is the intention to have a more representative presidential body, or the promise of the political structure of the assembly to show diversity during the elections, almost identical objections regarding "fragmentation", unprincipled coalitions, "mandate trading" and similar can be attributed to the majoritarian system (electoral candidate changes party affiliation the same way as an individual does, corruption is not conditioned by means of nomination, the principles of partisan candidacy result from the existing political opportunities and interests, and not from a deficiency in the electoral system etc.). Personalizing the mandate and an equitable territorial representation is not only a feature of the majoritarian system. Therefore, in order to secure the effects wanted, the proportionate system can be modified by other elements – by consensus, open lists, free mandate. Artificially created parliamentary homogeny and illegitimate jurisdictional government cannot be the ideal of the electoral legislative body.

In the lack of adequate limitations, the proportionate electoral system truly enables questioning of the directness of the elections. Closed electoral slate, with a specific constituency, a large number of candidates, the right of the political subjects to freely select representatives regardless their position in the list using the so called "blank resignations", is

[16] Marković states: "In theory and literature, the debate on the advantages and the disadvantages of the majority system and proportionate system is still not resolved. This is not possible without an insight into concrete social situation of the given state, its constitutional institution, political mentality of the citizens etc. This is why to claim a priori that one of the two systems is more democratic that the other is impossible, and especially to claim that it is undemocratic. "(P.Marković, pg. 241).

essentially reminiscent of indirect elections and bound mandate that transforms the representatives into partisan delegates. Removing such anomalies (as it is mainly done by the Decision of the Constitutional court), and using objective criteria to evaluate the concept of a unified constituency in large local self-government units or on the level of the Province, with necessary compensational mandates, would ensure representation in the assemblies according to citizen will. Furthermore, the surplus in the representation would be minimal, and the lack of representation would be disabled. [17]

The legislating body and APV Assembly, as well as on the level of the Republic, have decided in favor of a legal consensus as a form of limiting proportionate electoral system. The justifiability of the legal consensus is not a matter of dispute in the political nor in the expert public. There are certain differences in terms of its extent. Unlike in older solutions on the local level, where the threshold was 3%, the existing solutions are identical as when nominating members of parliament. Electoral slates which gained at least 5% of total votes participate in allocation of seats. It is somewhat rarer in comparative law to have a consensus determined by the percentage of voter turnout (determined relatively). It is more often determined according to the absolute amount. However, inequity in the elective body representation according to counties and cities makes such an option on the local level pointless. Furthermore, there are dilemmas whether there should be a unified consensus for all political subjects, or if there should be a sliding threshold, with larger numbers necessary for political party coalitions. This is not supported by any logical or legally acceptable argument. It is only a mere political projection and artificial creation of political relations, in which law should not interfere. The argument for this is enabling unnatural coalitions and manipulations while forming elective slates. [18]However, it is not upon the legislator to arbitrate into coalition structure. On the other hand, every political party is free to arrange the structure of their slate, so that even without official coalition it can contain representatives of other parties. Blocked electoral slates should eliminate every form of manipulation in terms of mandate allocation. A unified legal consensus stabilizes the political system, decreases the possibility that extreme political parties are represented in the assembly, decreases exaggerated fragmentation of the

[17] In most of the EU countries, the proportionate system is generally used, however, there are variations in the method of determining the mandates won. This is the case in Holland, Greece, Luxemburg (free lists), Sweden, Finland, Belgium, and Austria. However, there are certain modifications using the mixed system when choosing local representative bodies (Hungary, France, and Germany). (More on the models of decentralized electoral system in comparative law in: D. Blažić, System of local self-government, Faculty of Administrative and European Studies, Podgorica, 2011, pg. 69–77 and 164–171).

[18] Differential legal treatment was first applied in Greece, in the 1950s. Before this solution was revoked in the 1980s, to form a two-party coalition the census was 25%, and to form a three-party coalition 30% of votes were required. Even today, the differential treatment is applied in some former socialist countries, although not as frequently. For example, in Romania the census is 5% and 10%, in Poland 5% and 8% and in the Czech Republic the census is heightened for every additional party in the coalition (M. Jovanović, "Constituency, elective threshold and party system", Serbian Political Thought, vol. 13. no. 1–2, pg. 42).

assembly and similar, even if it does, in some measure, deviate from the ideal of the proportionate electoral system or lead to unprincipled grouping. However, in practice it has shown to be a necessity.

Mixed electoral system was used to select representatives in APV, until 06.6.2014. This meant that half of the representatives were chosen proportionately to the votes won, and the other half was selected using the majoritarian, two-round system, so that at least one representative was chosen from each constituency. Even though this electoral system was used in APV for a number of years, it has proven as extremely inadequate, with the possibility of manipulation. Therefore, a change was made in the manner the representatives in the APV Assembly are selected, and classical, proportionate model was introduced instead ("The National Gazette of AP Vojvodina, no. 23/2014). This model is conceptually the same, very similar in details with the model on the republic and the local level. In some details, the effort to better and more precisely regulate certain matters can be noted. [19]

Even though two basic types of electoral system are distinguished – the majoritarian and the proportionate, creating a mixed electoral system demonstrates an attempt to create a completely new, essentially unique electoral system with new quality and features, suitable to form political processes, political will and the political structure of power in a different way. Mixed electoral system gains its value only if it is justified by adequate circumstances concerning territorial organization and demographic features of territorial communities[20]. Even though this system can enable the representative body to be formed using all positively marked features of the majoritarian and the proportionate system, even by using superficial analysis it can established that it is a project more hybrid in nature, insufficiently theoretically

[19] Some of these solutions presuppose that nominating a family member to an electoral body is an impediment. The right to assign a member of the body conducting the election in the extended composition has the submitter of a confirmed and published electoral slate, who suggested at least half of the candidates of the total number of electable representatives, unlike in other levels where the required number is two thirds of the candidates. The chairman, the members and the secretary of the Provincial electoral committee, as well as their deputies must have a degree in law with at least three years of experience. It is forbidden to gather signatures for nomination in workplaces, as is any form of pressuring the citizens to support a candidate or an electoral slate with their signature.

[20] This system is applied in a number of municipalities in Hungary. In the municipalities with over 10 000 inhabitants, mixed system is applied. In municipalities with up to 25 000 inhabitants, 7 are chosen using the majoritarian, and 10 using the proportionate system. In those with 25 000 – 50 000 inhabitants, 9 are chosen using the majoritarian and 14 using the proportionate system. In those with up to 60 000 inhabitants, 10 are chosen using the majoritarian and 15 using the proportionate system. In municipalities with 60 000 to 70 000 inhabitants, 11 representatives are chosen using the majoritarian and 16 using the proportionate system. In municipalities with over 70 000 inhabitants, 16 (plus 1 for every 15 000 inhabitants) are chosen using the majoritarian and 11 (plus 1 for every 10 000 inhabitants) by using the proportionate system. The aim of such a system is to secure equitable democratic capacity of constituencies with prominent differences in the number of population and size. However, most representatives in the municipalities with mixed system are selected proportionately. To illustrate, it should be stated that Hungary has over 1 700 municipalities with number of inhabitants lower than one thousand, 1156 municipalities have between 1 000 and 5 000 inhabitants, 136 municipalities have between 5 000 and 10 000 inhabitants, 122 municipalities have over 10 000 inhabitants, 12 municipalities have between 50 000 and 100 000 inhabitants, 8 municipalities have between 100 000 and 500 000 inhabitants and only one municipality has over 500 000 inhabitants.

processed, very complex in practice, manipulative by nature and “institutionally inadequate”. The basic aim of it is to format electoral will according to a certain pattern or project, rather than to constitute authority on those principles that are the democratic standard accepted by every democratic community. This would mean that the structure of the assembly is in accordance with the will of the citizens in its basic form, without any legal or technical “acrobatics”, annexing, imposing of goals higher than the basic, which is to express the will of the citizens in the elections. Even in the case that the constituents are most optimally distributed, or that post-electoral coalitions are optimally constituted, this system is a caricature, a deviation and a negation of citizen will. Even worse, all of this is legitimized by adequate electoral procedure, in which the citizens, in smaller number, cast their vote without even realizing what the elections are truly about.

Mixed electoral system, which has as its aim to represent every local constituent in the representative body of the higher territorial unit, can be founded only where the basic units are the constitutive parts of a larger territorial community, or where a communal system of territorial-political organization is established vertically in the organization of the state. In this case, mixed electoral system can be a kind of replacement for the second house of the parliament. However, in the political-territorial system, where the local and the provincial levels of government are completely separate, where AP has no jurisdiction over the local self-government, where the original jurisdictions are fully separate, and the borders of the AP and local units of self-government are determined by law with the possibility of them being procedurally altered as regulated by law (Art. 182 and 188), with the obligation of a referendum declaration with different effect, any attempt to secure institutional connection of different levels, meaning that the province is to represent a form of connection and realization of higher common interests of the municipalities and the cities in its territory, is not founded, or necessary, or in accordance with the concept of territorial arrangement and vertical organization of government. Besides, the territory of local self-government units is regulated by law, and assembly elections for APV are regulated by provincial decisions that, in this case, are not executive acts but law in the material sense, which is why it is possible to imagine a different distribution of municipal and city territory, as well as the constituents that should represent them in the Provincial Assembly. The law regulating territorial organization cannot be “bound” by provincial electoral solutions. Furthermore, any artificial enlargement of political forces, apart from the generally accepted consensus, is a violence performed on the political will and delegitimization of government. Two party electoral system is not centrally imposed anywhere, instead it resulted from political relations, tradition, political

culture of certain community, and it is only affirmed by the somewhat formed electoral legislature.

Democracy, as a value on which the electoral system and organization of government is founded, is not a mere procedure, a regulated process, but it is a feature of quality. Every comparison of Assembly election results in previous cycles, i.e. the difference in the number of votes won by electoral slates in the first round and the number of mandates won after the second round, interpreted as voter will without any essential analysis, demonstrates that there is something wrong on the level of the legal norm that institutionalizes such a system. In this case, the possibility that the government is constituted, meaning that the assembly is selected in a way that deviates from citizen will, is sufficient to demonstrate that the election system is chosen wrongly, that it lacks quality and that a change is necessary, even if such a possibility is never realized[21]. Furthermore, it is necessary to keep in mind the traditionally lower interest of citizens that live in APV territory to attend elections, which is maximally expressed in the two round electoral system (as a rule, not only in Serbia, but in all European states), which is why we face the devastating fact regarding the number of citizens that truly constitute the government.

One example of possible manipulation is the creation of constituents. The tendency for the constituent to include an equal number of citizens is not possible. Furthermore, the electoral cycles are more frequent than population registries, population density and territorial disposition is unequal, the entirety of Serbia, and especially Vojvodina, is burdened by migration processes of an extremely negative direction and intensity, economic inequity, extremely particular ethnic structure, etc., despite which, or perhaps because, highly debatable mixed electoral system is applied precisely on the level of the APV. The assembly majority constituted by legal "engineering" has the opportunity to further increase its illegitimacy by creating constituents as suited to its needs.

The justification regarding the need for the representation of local self-government units or minorities in the representative body via the majoritarian system, is unfounded. The original and legal representation of minorities is secured via the proportionate system, where they can gain a mandate more easily as it includes a larger number of representatives chosen. Furthermore, in APV territory, no minority is grouped only on the territory of one or two municipalities, which would secure the participation in APV Assembly more easily. The principle of the majoritarian system forces them to group, create coalitions that are always characterized by deviating from authentic political stances and ideas, which in turn creates

[21] To illustrate, some numerical data or percentages can be listed. In the previous elections (2012), one electoral slate won 20.98% of votes, or using the proportionate principle 26.67% of the mandates, in the total number of mandates it has 48.33%.

additional political tension. Furthermore, in the case of a larger territorial diffusion of a minority, without dominant territorial grouping, concentration or low population, a situation can occur where the 60 representatives selected by the proportionate model do not include minority representatives, leading to the possibility that minorities are not included in AP Assembly at all, regardless that such is contrary to the Constitution (Art 180, par. 4 of the Constitution). The solution is national minority consensus. Also, there is no legal obligation for the representative body of a province to reflect the local self-government structure, nor is that enabled by the concept of government organization. The issue of equitable representation of individual parts is a political matter that every slate deals with in an attempt to draw citizen support in any way, even by offering a candidate from their area. Besides, proportionate electoral system offers a larger number of possibilities that remove negative consequences (constituencies, open registers, compensational mandates etc.)

Furthermore, mixed electoral system is significantly more expensive and complicated (reflected in the significantly larger number of invalid ballot papers). Also, it is clear that voter turnout is far lower and is characterized by a serious crisis of legitimacy. On top of that, this system is not understandable to the citizens, which is why their indecisiveness can be further manifested by voting differently.

In most European countries, proportionate electoral system is used on the local level. In some countries (e.g. France), different models are used on different levels of local self-government (mixed on the first, majoritarian on the second and proportionate on the third), which is justified by a particular need and the nature of different levels, but also by tradition of certain solutions. In Switzerland, which is by far the most representative form of direct citizen decision-making, various systems of the electively constituted representative body in the municipalities are present. In Hungary, there is a tradition of mixed electoral system, but it is modified with a voter turnout consensus (50% in the first round, and 25% in the second round). Having a consensus is a rule in most proportionate systems, however, it is not required in some as the representative body consists of a very small number of members. The examples of variable consensus are rarer (e.g. Greece). Traditionally, there is a mixed electoral system in Germany, but it is determined by tradition and a completely different organization of government (federal level, municipalities, mixed system of local self-government – two levels in the larger areas and one level in major cities). Furthermore, there is a string of limitations and corrections regarding the consensus. In Bulgaria, mixed electoral system is only applied in case of a smaller number of representatives (one eighth).

V. The nature of representative/member of assembly mandate

Representative and member of assembly candidates, can be nominated by registered political parties, coalitions of registered parties and citizen groups. Nominations are done via electoral slates. The possibility of individual nomination is not supported by law, and even though such option is present in some legislatures, it is not a feature of the proportionate system. The proponent must have at least a third of the total representative nominees on the electoral slate.

The condition to be eligible for elections is that the electoral slates have a signed support of at least 30 voters per proposition per candidate on the local electoral slate, or 6000 voters for provincial elections. In local constituencies with less than 20 000 voters, the electoral slates are established when at least 200 voters support them with their signatures. This solution deviates from the proclaimed standards of OSCE and the Venice Commission, whose recommendations are that the previous support should not exceed 1% of signatures of total voters per constituency. However, such solutions are justified by practice. Furthermore, transitional economies, which includes Serbia, have experienced an avalanche of political organizations whose presence in the elections complicated the political system, lead to numerous problems, and did not serve to democratically shape political will. The intention of the legislators was to make elections of political subjects more serious (and not more difficult), which does not serve to express citizen will. Propositions for a political party or citizen group can only be submitted by the authorized person. A proposition for a coalition can be submitted by two authorized persons at most, 15 days before the electoral date at the latest.

The electoral slates are closed and mostly remain restricted from the citizens, even though the electoral body is obliged to publish the collective roll with adequate information about the electors, and despite the fact that the citizens have the right to be informed about the electoral slates. Since the proportionate system was introduced, voter will has shifted towards choosing political parties and other similar subjects rather than electors. Even if in this sense the majoritarian electoral system is clearer, there is a possibility that the voters shift towards selecting candidates rather than an abstract political party list, even in the case of the proportionate system. Open electoral slates are an example of such a possibility, and they demand certain additional solutions. Closed electoral slates with unalterable order – blocked slates, became the norm as decided by the Constitutional Court. Earlier decision regarding the right of political subjects to independently select electors, who would occupy the representative and MP positions, almost completely eliminated the directness of the elections, as well as their basic quality. Taking into consideration the decisions on the nature of the mandates before the decision of the Constitutional Court, i.e. the decisions regarding the

manner of mandate allocation and "blank resignations", the free electoral mandate transformed into a delegate mandate of political parties. Any research into the topic would show that the majority of citizens do not understand the way electoral slates are formed, even though they are published. That decision is in no way related to candidate preference, as closed-list nominating is almost completely monopolized by political subjects, and therefore, active suffrage is limited.

The electoral slate needs to have at least one candidate amongst three consecutive candidates on the list (first three positions, the following three positions and so on), who is of the less represented gender. [22]If the electoral slate does not meet these conditions, it will be considered deficient, and the proponent will be asked (within 48 hours) to remove the shortcomings. If the proponent does not remove the shortcomings, electoral committee will not publish the electoral slate. If after the electoral slate is published, the candidate is declared incapacitated for duty by a legal decision, loses the citizenship, recedes from electorate, or in the case of death, the proponent of the electoral list loses the right to propose a new candidate. Normativization of such a situation would remove dilemmas in terms of legitimacy of electoral slates that had shortcomings.

One of the solutions, which begins to resemble standardization, is the principle of a free mandate. The mandate belongs to the person that won it, so the elected person represents the entire citizenship and not just the voters that casted the vote in the elector's favor. The elector bears responsibility only to the voters in the following election, they are under no obligation to file report of work, nor are they obliged to follow someone's instructions, nor is there a possibility that the mandate is withdrawn, not including the cases of re-election, criminal conviction, loss of conditions need for candidacy or a situation that cannot be combined with the mandate in a specific system of government organization. It is far from the truth to claim that the free mandate, in the absolute sense, is an indisputable value or a value, or a necessary benefit for the voters. There are limitations to the free mandate, as it can be revoked by the subject from whose slate the elector was chosen. Electoral law cannot regulate political relations, nor the relations within political parties. The parties themselves decide the criteria depending on which the nominees will be selected, while the citizens must have the option to be nominated independently of the political parties. Free mandate necessarily involves certain personalization of both the candidate and the mandate, considering that it

[22] M. Pajvančić states that the proportionate electoral system is more suitable to apply affirmative action for the less represented gender. He lists one of the shortcomings of the present system is that in the case that representative mandate is terminated, they are not necesserily replaced with a candidate of the same gender, rather than by the following candidate on the list. Taking into consideration that the slates are closed and blocked, this remark is completely valid. More in: M. Pajvančić, "Representing women and national minorities in local community assemblies", Polis – magazine for public politics, vol. 4, no. 9, 2015, pg 49–54.

cannot be revoked by those submitting the electoral slate without the consent of the person elected. Otherwise, revoking the mandate of a person who is not directly selected is no more harmful to citizen will than the possibility that such elected person represents voter interest and freely controls citizen will not granted to that person. In colloquial language, that is management without warrant.

Unlike in MP elections, where the Constitution allows the so called blank resignations, the Constitutional Court ruled them unconstitutional when it comes to electing representatives and deputies of APV Assembly. The mandate is terminated exclusively by the free will of the representative or the member of assembly, by premature end of assembly mandate, criminal conviction, and loss of electability or by violating the incompatibility of the functions. The mandate of the representative, or the member of APV Assembly is ended prematurely in case of: 1) resignation; 2) a decision made to prorogue the assembly of local self-government; 3) imprisonment without the possibility of parole for longer than six months by a legal verdict; 4) incapacitation for duty by a legal verdict; 5) assuming a position or a job incompatible with representative or member of assembly duty according to law (or according to the decision of the provincial assembly); 6) a change in habitation away from the territory of local self-government (or Province); 7) loss of citizenship; 8) death of the member of assembly. Even the cases of resignation are additionally specified, due to a possibility of misuse, primarily in deadlines and resignation procedures. The representative can submit resignation orally, during assembly session, or it can be submitted between two sessions only in the form of a notarized written statement. After the oral resignation, the Assembly, without delay, determines mandate termination. The resignation submitted between two sessions is decided by the Assembly in the following session. The representative can recall the resignation only until mandate termination is not confirmed by the Assembly. If the representative's mandate is terminated in cases of 2) to 8), the local self-government assembly determines the mandate termination in the first following session after the announcement of such a case. The representative submits the resignation, notarized by the competent authority, personally to the speaker of the self-government constituency, within three days of the notarization. The duty of the speaker of local self-government constituency is to include the resignation into the agenda in the following session, with the recommendation for it to be the first item.

When the mandate of a representative is terminated prematurely, the mandate is then given to the first following candidate from electoral slate that was not assigned such a function. When the mandate of a representative selected from an electoral slate of a coalition is terminated prematurely, the mandate is given to the first following candidate from the electoral slate that was not assigned such a function, from within the same political party. This

solution is a typical example of shaping electoral functions according to interests, as such case is neither "standardized", nor theoretically elaborated, nor suiting to the idea of a blocked list. In this way, voter will is shifted from direct to mediated. Relations within coalitions cannot be imposed on the voter will, they can only precede it. While assembling a coalition slate, political parties should keep in mind mutual relations, so that such is not done at the expense of the voters. This is also an example of closed list shortcomings, and it is especially impossible to combine with the idea of local elections.

So as to not limit the will of the electorate by decisions on incompatibility of duties in an absolute sense, the choice of the legislator is for there to be a possibility of "returning" to a terminated mandate. The candidate that was assigned a representative a member of assembly mandate in APV Assembly, and whose mandate was terminated due to entering the function of mayor or deputy mayor, can be reinstated in cases that: 1) the incompatible function was terminated; 2) there is an empty representative, i.e. member of assembly seat belonging to the same electoral slate; 3) the candidate submitted a request to grant mandate to the electoral committee.

When the term of service of a representative ends before the due date, and there is no candidate in the electoral role who did not receive a mandate, the mandate belongs to whomever submitted an electoral slate with the next highest quotient and did not receive a mandate. The term of service of the new representative lasts until the end of term of the previous representative. Before confirming the mandate, written agreement of acceptance is obtained from the candidate. Appeals to the Administrative Court are allowed to the decisions of the assembly regarding representative or member of assembly mandate termination, as well as to confirm the mandate of the new representative.

VI. Representation of national minorities

Members of national minorities and their political subjects, have certain privileges in the electoral system in accordance with constitutional guarantees of affirmative measures that ensure proportionate representation in local assemblies and the APV Assembly. Minority political parties and coalitions of minority parties are granted mandates even when they have less than 5% of total votes won. This decision obviously does not refer to citizen groups as well, and it is a consequence of the manner in which a party is declared a minority party. National minority political parties are those whose basic goal is to represent the interests of a national minority and to protect and improve rights of national minorities in accordance with international legal standards. Whether the submitter of electoral slate has the position of national minority party or coalition of national minority parties is decided by the electoral

committee. The same is done with the proposition of electoral slate when submitting electoral slate. This solution is heavily criticized and is an object of arbitrariness and malpractice in order to avoid consensus. Objectivizing the criteria to gain minority party status is a necessity. Otherwise, decisions on the consensus and the idea of special protection of minorities are significantly impaired. [23]The concept of guaranteed mandates is an alternative to the existing system of minority protection. Criticism of such solutions speaks of the dangers of national polarization and the disintegrative effect. In this sense, there are various justifications, criticisms and models, some of which could include electronic voting, special electoral slates, constituencies and similar. [24]

The public, as the only corrective measure of undesirable phenomena and their deformity, is not as significant in any of the transitional economies as it is in the countries with stable electoral systems, and in the countries where decisions are deeply embedded in tradition and even in political culture. A great challenge lies before political subjects in situations where there is a large number of political parties that cannot cross the legal census, yet participate in the elections. There is no mechanism to sanction the misuse of this right, or disable status manipulation. Therefore, it is necessary to formulate objective criteria regarding minority status of a political subject. These criteria cannot serve the purpose of making exercising the right of minorities more difficult. However, the misuse of this right and false representation is not in the interest of national minority members. Authentic representatives of national minorities are not necessarily only their countrymen, and although it is not upon the legislator to arbitrate in these matters, it is necessary to prevent manipulation and secure equal conditions for fair competition. Electoral conditions do not favor national polarization, as much as concrete opportunities and relations within a country do, especially those that in great measure concern electoral legislature. Electoral legislature must have special protection of

[23] In Croatia, there are solutions characteristic for their minority representation in local representative bodies. National minority representatives are guaranteed with equitable participation in local representative organs of local self-government. If minority members make up at least 5% of the total constituency population, and they are not represented through equitable calculations, they are guaranteed at least one representative seat. If adequate representation of minority members in the representative body of a constituency, as guaranteed by the Constitutional Law on national minority rights, is not achieved in the elections, the number of members of the constituency representative body will increase to a number sufficient to achieve equitable representation. In case that such is division is impossible, representation will be secured by using slates that did not pass the 5% consensus, and if representation is not achieved even in this case, additional elections will be called. Guaranteed seats exist in Romania, Slovenia (for Hungarian and Italian minority) and in Bosnia and Herzegovina.

[24] Orlović lists six models that ensure national minority representation in the assembly: 1) more favorable conditions of registration and nomination of minority electoral slates, 2) decreased or revoked census for minority slates, 3) determining borders of constituencies (where the minorities are geographically concentrated), 4) mandatory minority representation in electoral slates (in the constituencies of habitation), 5) reserved seats, 6) preferential voting (individual voting for candidates accompanied by voting for slates, poached, i.e. voting for candidates from different slates and transferable individual voting). (More in: S. Orlović, "Political representation of national minorities – Serbia through a comparative perspective", Emigrational and Ethical topics, vol. 27, no. 3, 2011, pg. 393–417).

minorities as its aim, since it is a constitutional and a political concept. However, protection of minorities cannot jeopardize the basic values of democratic elections, such as is directness and suffrage equality. Mathematical calculations used to fixate a number of minority mandates in advance is technically so complicated that its realization often leads to electoral "ghettoization" of minority voters. Therefore, the natural threshold for minority representatives should not be brought to question. However, it is necessary to supplement legal solutions and objectivize the conditions to achieve the aforementioned status. One of them would be that the slates must necessarily contain a minimal percentage of national minority members whose interests are in question. That number could be two thirds of suggested candidates or less in municipalities that have a large number of small national communities of low population.

VII. Conclusion

Local and provincial electoral systems in Serbia, can be characterized as stable, modernized and in accordance with standardized types of electoral solutions. They do not deviate from modern democratic demands, and all shortcomings in the political section of their functioning, such as unstable majorities, changes in political affiliation, fragmentation, metropolization, unequitable geographical representation and similar, mostly go beyond the possibilities of normativization and enter the realm of extrajudicial.

Considering that the electoral system in Serbia changed since the year 1990, and there were many attempts to implement the majoritarian and mixed system (in APV), it could be stated that the electoral model today should not be problematized, taking into consideration the political climate and the aforementioned experiences. The proportionate system has far deeper roots in the mind and the tradition of the citizens, than is the case with the majoritarian system. It is impossible to deem either of these systems as "better" than the other because they function in other countries, as it is a matter determined by a large number of extrajudicial factors. However, if there is a desire to secure democratic representation in the conditions existing in Serbia, constituted exclusively based on the original will of the voters, to evade overrepresentation, and enable democratic shaping of political will as guaranteed by the Constitution, the proportionate electoral system is the most fitting means of doing so. On the other hand, most of the theoretical objections at this system can be removed with a rational analysis of the practice, realistic needs and local self-government capacities, and experiences that exist in comparative law. The values of the possible changes of the electoral solutions are: personalization of mandate, demonopolization of the nomination procedure and

demetropolization of representative units, at the same time taking into consideration that the generally accepted principle of free mandate is more adequately and normatively defined.

Basic criticism of Serbia's electoral system, is that the citizens cast votes for political parties without knowing who will represent their interests after the elections, or have a representative function. Such a situation creates the absence of (political) responsibility in the representatives, their alienation from the voters (using standards of the free mandate), and complete depersonalization of the mandate. Furthermore, complete monopolization of nomination by political parties using closed electoral slates narrows the political will. Voter options are significantly decreased compared to the possible and desirable width of suffrage. The number of members in the representative body is also suited for criticism. This is most easily rectified on the local level. Although the local self-government in Serbia is one-tier, the number of representatives is amongst the highest in Europe. The volume and the nature of local self-government jurisdiction does not demand numerous representative bodies. Apart from creating significant expenses, which are an additional burden in the bad economic conditions and profuse financial potentials of numerous municipalities in Serbia, this masks the responsibility and suits exclusively to political parties and not to the need for a functional local self-government.

Easy replacement of bound mandate with a free mandate, without fulfilling previous assumptions, creates limitless possibilities of manipulation. Mandate trading has become such a frequent phenomenon that it obscures the entire electoral system. It became redundant, normalized, and pointless. Namely, the voters choose slates according to existing conception without knowing who is on it, without having any influence on who passes the elections or on evaluating the candidates present on the slates. After a mandate is allocated, the representative gains complete liberty of action unlimited by any moral or political considerations, as the voters did not cast the vote directly. Taking that into consideration, they are completely at liberty to shape their behavior according to interests. Their actions are not limited by any political sanctions as no disposition of political action was broken, since no such commitment was done prior to the elections. Their commitment to the electoral slate nominator – the political subject, cannot be of political disposition, as it can relate to the voters only in direct elections, since they are the carriers of active suffrage. Considering that in the phase of nomination the candidates are politically pledged only fictively, that obligation has no legal effect and it is not a political disposition that can be politically sanctioned. The frequency of such occurrence is devastating to the concept and the essence of elections, and carries with it enormous manipulative potential. The political structure of the representative body is changed multiple times during the mandate so it does not even resemble the one chosen by the citizens.

In such a situation, the citizens lose trust in the representative body. The lack of interest additionally weakens the political content of local self-government and the Provincial Assembly, as well as any sense of responsibility of their members. However, it would be extremely irresponsible to use such shortcomings as evidence against the proportionate electoral system. Such was already shown in the analysis of the mixed electoral system that was used in APV. Its basic characteristic is the unlimited possibility of overrepresentation, which means definite underrepresentation for a majority of political subjects and their citizens. Furthermore, majoritarian electoral systems are mostly accepted due to their tradition and not their particularly democratic potential.

Free representative mandate includes a change in selecting representatives and members of assembly. Impersonalized free mandate is more of an imitation rather than essence. Personalizing a mandate necessarily includes the ability of the voters to influence the electoral slate, whether it is constructed by them or if the candidates are evaluated according to their platform within the slate. In most European countries, assembling a slate is the right of political subjects that is modified with the option of citizen groups to publish their own lists. However, the voters must be given the option of influencing the choice of candidates. In a situation when there are closed slates, whether they are blocked or unblocked, they are abstract concepts for the citizens and the representatives are seen exclusively as partisan delegates. This should not be a feature of democratic elections. However, such possibilities are still found all across Europe. By implementing open electoral slates, with the possibility of the citizens to choose the candidates or the slates they wish, makes the electoral procedure more democratic and completes the width of suffrage. It can be said that this solution comprises two approaches, the role of political parties as basic subjects of nomination and the right of the voters to select the candidates and not the lists, since the candidates that win the mandate will perform the representative function and use it in a way they consider necessary, all the while taking into consideration their responsibility to the voters. These representatives would bear the responsibility for their work in the following elections, which becomes significantly more individual and recognizable. In this model, political parties independently determine the order of the candidates, but the voters are not bound by it. In the case of equal votes won, the order of the electoral slate is by choice, so that there is a corrective role of the parties in the electoral system, but it is significantly narrowed compared to the existing solutions. In the case of an extremely large number of local assemblies, the concept of open electoral slates is technically difficult to manage and from the standpoint of mandate personalization it is inefficient. The existing number of 19 to 75 assemblies, is extremely large from the standpoint of population number, the size, the jurisdiction and expenses. It is

amongst the most numerous in Europe. Therefore, if there is a desire to improve the content of local elections in a democratic way, there should be a necessary review of the existing number of representatives in municipalities and cities.

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