In virtually every Central and Eastern European democracy, the design of electoral rules has been affected by the pressing need to reconcile the goal of representing all citizens in an equal, fair, and non-discriminatory manner, with the fact that –again, in virtually every case– citizenship happens to be a multiethnic reality. This poses the question of whether it is possible or not to reconcile the appeal to the principles of equality and non-discrimination, with the parallel resurrection of the national consciousness which ethnic minorities living in their territory have equally experienced since the demise of communism. While the proscription of any discrimination due to a citizen’s ethnic origin seems to be an absolutely essential feature of a democratic, rule-of-law State, the respect for and the promotion of ethnic pluralism seems to be an equally essential feature thereof, and –moreover– a key instrument for political stability and social cohesion.

At the beginning of the last decade, and within the framework of a collective reflection on the politics of national minority participation in post Communist Europe, ¹ I suggested a classification of the various manners in which the electoral legislation of the new post-Communist democracies were addressing the problem of the parliamentary representation of ethnic minorities, trying in some cases to reconcile these apparently –and, perhaps,

truly—contradictory goals, preferring in some others to clearly endorse one of them while marginalizing the other, or simply ignoring the issue as much as it allowed to be ignored. In that essay, 2 which was published in Spanish and Hungarian as well, 3 and that has been referred since in a number of articles and papers, 4 I argued that the treatment of national minorities in the electoral laws of post-Communist Europe had swung from an extreme hostility in the form of the laws prohibiting the creation of ethnically based parties, to an assumption of ethnic diversity so complete as to convert ethnic identification into the very basis of political representation, going through a number of intermediate strategies like hindering that representation, being indifferent towards it, facilitating it, and providing legal guarantees for its implementation.

More precisely, my argument at that point was that the approaches to ethnic pluralism that were to be found in this wide set of electoral rules could be classified in five groups, depending on the goals pursued and the strategies followed by the electoral law design. Moving from one extreme—the radical repression of ethnic pluralism, at least in the electoral scenario—to the other—the elevation of ethnic pluralism to the rank of a basic a Constitutional principle, and the consideration of ethnicity as a key instrument for political participation—, these strategies were the following:

1) Opposing ethnic minority representation. In Bieber’s words, 5 though “no single country in Central and South-Eastern Europe has completely prevented the representation of minorities in parliament since the introduction of multi-party systems in 1990. Nevertheless, reducing the

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5 Florian Bieber, “Regulating minority parties...”, cit., p. 106.
representation of minorities in the political system has been an implicit and at times explicit policy of numerous governments in post-communist Europe. This was the case of Albania, as well as Bulgaria, the only two countries in Central and Eastern Europe opposed as a matter of principle to the presence of ethnic minorities as such in their legislatures; as well as the case of Russia and other post-Soviet republics fearsome of getting involved in an endless process of disintegration as the result of the emergence of new ethno-nationalist parties, which did not go as far as to ban them, but nevertheless introduced in their electoral laws rules directed at making it harder for them –or de facto impossible–, to achieve parliamentary representation. 6 In Albania, Law No. 7556, of February 4, 1992, on Elections to the People's Assembly –heavily amended in the following years, and finally derogated by Law No. 8609, of May 8, 2000– 7 stated that citizens had the right to run for deputies either as representatives of a political party or a coalition, or as independents, a disposition which had to be brought into relation with the provisions of the 1991 Law on Political Parties, which in turn excluded from registration parties created on a religious, ethnic or regional basis. Similarly, the resistance against ethnic minority representation in Bulgaria was carried out jointly through the provisions contained in the July 12, 1991 Constitution and in the subsequent August 22, 1991 Electoral Law: while the former mandated in article 11.4 that “there shall be no political parties on ethnic, racial or religious lines, nor parties which seek the violent usurpation of state power”, the latter restricted candidate nominating and electoral campaigning only to political parties, which, in registering, were obviously bound by the above mentioned constitutional requirement. 8 In both cases the consequences of these legal limitations were that ethnic minority organizations –basically, those representing the Greek community in Albania (8% of the census in 1992), and the Turkish one in Bulgaria (8.5% of the census in 1992)– 9 were forced to disguise themselves as parties “for Human Rights Defense” or “for Rights and Freedoms” 10 in order become registered, and to convincingly argue their

6 The legal texts referred in the following pages have been compiled by Stephen B. Nix (Ed.), Election Law Compendium of Central and Eastern Europe, IFES/ACEEEO, Kiev, 1995. A wider selection of these laws, last updated in 2002, can still be found at the web page set up by the University of Essex “Political Transformation and the Electoral Process in Post-Communist Europe” Project at www.essex.ac.uk/elections (last retrieved 01.09.2012).


9 Here, and all through this text, figures relative to the population of the different ethnic minorities in the region have been taken from the The CIA Word Factbook of the appropriate year (available on-line at www.cia.gov/library/publications/the-world-factbook/index.html). Figures from other sources may vary.

commitment to the general interest of the country and to prove their openness towards citizens not belonging to these communities in order to defend themselves of the successive claims against their registration.

The strategies pursued by those countries that chose to marginalize, or de facto exclude, the representation of ethnic minorities in their legislatures were manifold. As Bieber has argued, 11 besides explicitly banning the creation of ethnic minority parties, several other less evident, but almost equally effective, strategies were available and became used for the same purpose. Among them, (a) excluding minorities from the political participation, or minimizing their presence in the census, through the application of restrictive citizenship laws; (b) introducing rules for party formation and for running candidates that were difficult to meet by ethnic minority parties; (c) practicing gerrymandering in the delimitation of electoral districts, in order to dilute the presence of ethnic minorities transferring them into mixed districts, or simply malapportioning those districts; and (d) applying electoral thresholds which were irremediably beyond reach for ethnic minority parties. The first strategy was ominously followed by Estonia and Latvia during most of the nineties, when laws passed in these newly independent States restricted citizenship to individuals who had lived, or whose ancestors had lived, in those States prior to their occupation by the USSR, consequently disenfranchising between one-third and over 40 per cent of the population –mostly of Russian origin– who had settled in these countries in Soviet times. 12 The second strategy was used in places like Russia, Ukraine and Moldova, which required the collection of signatures from a prescribed number of districts for a party to be registered, or for national or regional lists of candidates to be presented, thus precluding regionally concentrated minorities from being organized and/or represented at the national level. Gerrymandering and malapportionment aimed at reducing the representation of ethnic Albanians (22% of the census in 1998) was a permanent –though by no means exclusive– feature of Macedonian elections all through the nineties, since both the two-round majority system applied in the 1990 and 1994 elections, and the mixed one applied in the 1998 elections (with 35 seats elected from a national list by PR, and the remaining 85 in single member districts by two-round majority system) relied on a clearly biased apportionment in which the districts created in the predominantly Albanian municipalities averaged 25% more voters that those created in the predominantly Slavic part of the country. 13 In the case of Russian, while the 1995 law (featuring a mixed electoral system, with 225 seats elected by PR from a national list, and the other 225 from single

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11 Florian Bieber, “Regulating minority parties…”, cit., pp. 107 ss.
member districts by FPTP), remained applicable parties were not only required to produce at least 200,000 voters’ signatures, with the proviso that "no more than seven percent of the required total number of signatures" may be collected in the same subject of the Russian Federation, in order to put up a national list of candidates, but were also subject to a 5% threshold to gain seats from that list, a percentage plainly unattainable for any of the existing minorities in the country (namely, Tatars: 3’8%, Ukrainians: 3’0%, Chuvash: 1’2%, Bashkirs: 0’9% of the census in 1995).

2) Disregarding the issue of ethnic minority representation. This was the position adopted by those Central and East European countries which chose not to make exceptions in their electoral legislation to the basic constitutional principle of equality and non discrimination, either because they lacked any ethnic minorities whose presence may justify some kind of exception to this rule, or –conversely– because they indeed had sizable minorities with strong nationalistic tendencies, and therefore preferred to downplay the ethnic issue in the electoral context in order minimize the possibility of these minorities achieving a sizeable parliamentary representation. Among the first set of cases, the rather ethnically homogeneous Czech Republic (with Czechs currently representing 90’4% of the census) would probably be the best possible example, since neither the its Constitution nor its electoral law comprised any single disposition aimed at guaranteeing, preserving or enhancing their political representation, nor at making it more difficult to achieve. Also Hungary –one of the most ethnically homogeneous countries in the region (with Hungarians currently representing 92’3% of the census)– counted among the countries which overlooked the issue of ethnic minority representation as far as the election of the members of the National Assembly was concerned, though mechanisms aimed at making it easier to achieve at the local level were introduced, creating a very effective network of consultative bodies in order to help vertebrate minorities and let their demands be known. Slovakia could be a good example of the second case, since the radical adherence to the principle of non discrimination for ethnic reasons, and the refusal to grant any special treatment to the sizable Hungarian minority (currently 9’7% of the census) –and to other groups as Roma (1.7%) or Ruthenians (1’0%)– grounded in its Constitution and

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16 The Hungarian 1990 Local Elections Law exempted allowed ethnic minority candidates to appear as such in the ballot, and to write their name and the name of the organization whom they represented in their mother language, ordered the Hungarian public TV and Radio to set apart special programs for them, and stated that when a candidate belonging to an ethnic minority failed to be elected in a single member district, he would be considered so if the number of his votes were at least 2/3 of the number of votes obtained by the last elected candidate, and when elections were held using party lists with a proportional system, the first candidate in any given ethnic minority slate would also be elected provided that his list had obtained at least 2/3 of the votes obtained by the last ordinarily elected candidate.
electoral laws was probably due more to the fear of enhancing the political influence of ethnic Hungarians and giving grounds to their claim for territorial autonomy, than to a wholehearted appreciation of the value of equality.  

3) Supporting ethnic minority representation. In countries like Poland and, for a short while, Lithuania, electoral legislation was arranged to include clauses facilitating— but not entirely granting— the presence of ethnic minorities in Parliament, either through the introduction of exceptions from the requirements in order to field candidates, or through exceptions from the general electoral rules applicable for the distribution of seats, aimed at making it easier for ethnic minority parties to field candidates, and/or to get them elected. The first practice could be found in the Polish 1991 and 1993 Electoral Laws: 18 the former allowed organizations representing national minorities (Germans: 1.3%, Ukrainians: 0.6%, and Belorussian 0.5% of the census in 1992) to field candidates in any district of the country provided they were able to gather just 20,000 signatures, while these figure was 50,000 for ordinary parties; and also allowed them to put up a national list of candidates regardless of the number of district lists of candidates it had registered, while ordinary parties had to have lists registered in at least five of these districts. A legal reform passed in 1993 introduced in the Polish electoral system the second strategy as well, adding the possibility that ethnic minority parties be also dispensed either from the 5% threshold to obtain seats at the district level, or from the 7% threshold to get seats from the national list, two requirements that would have certainly made it impossible for them to get any representation in Parliament. Similarly, between 1992 and 1996 the Lithuanian electoral law, which featured a mixed electoral system in which half of the deputies were elected in single member districts on the basis of a two-rounds majority system while the other half were nationwide elected by PR with a 4% threshold, exempted ethnic minority parties (Russians 8.6%, Poles: 7.7%, Bielorussians: 1.5% of the census in 1992), from achieving this proportion of seats, and awarded seats to their candidates by just achieving the so-called Hare quota. 19

4) Granting ethnic minority representation. This even more supportive approach to the issue of ethnic minority representation in parliament was featured in the electoral laws of Romania, Slovenia and— for a short period— Croatia, all three countries whose Constitution and/or electoral legislation expressly granted ethnic minorities a minimum number of seats in the lower

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houses of their bicameral legislatures and—in some cases—also in their local representative bodies. In Romania, the March 14, 1990 Executive Decree which governed the first multiparty elections, establishing a proportional system, stated that organizations representing national minorities (among others, Hungarians: 8.9%, and Germans: 0.4% of the census in 1990) which did not manage to get the number of votes needed to obtain a seat at the Assembly of Deputies would be granted one deputy each, on the condition that they were the sole representatives of the said community. On that occasion, only three ethnic minority organizations—the Hungarian Democratic Union of Romania, which obtained almost a million votes, the Democratic Forum of the Germans and the Roma Democratic Union—managed to obtain representation on the basis of the votes collected but, in application of this rule, other nine ethnic minority organizations—Armenians, Bulgarians, Greeks, Lipovenians, Poles, Serbs, Slovaks, Turks and Ukrainians—were granted one seat each. Embraced and guaranteed by the December 1991 Constitution, this system became slightly limited by a new Law on July 15, 1992, which established that a national minority would only be granted representation provided that its candidacies "have obtained throughout the country at least five per cent of the average number of validly expressed votes throughout the country for the election of one deputy", and excluded from this privilege ethnic minority organizations which participated in the elections fully or partially integrated in broader coalitions with other political forces. 20 In Croatia the system introduced by the short-lived August 1992 Electoral Law also guaranteed a minimum representation in Parliament to all ethnic minorities, but differed from the Romanian system in that it acknowledged the existence of an specially significant minority—the Serbians (12% of the census in 1992)—and granted it not just a single seat but a share in the total number of seats proportional to its share in the overall population of the State. Hence, the Law created four special electoral units for Hungarians, Italians, Czechs-Slovaks-Russians-Ukrainians and Germans-Austrians, and regarding ethnic-Serbs it stated that in case their candidates were not elected in a number sufficient to match in the House their share in the overall population of the State, the number of the representatives of the House would be increased up to the number needed for the required representation to be attained, and candidates who had not been elected would be considered as elected in the order corresponding to the proportional success of each individual. The system lasted only until 1995, when a new electoral reform drastically reduced the parliamentary representation of the Serbian community, since only three seats in special districts were granted to it; a restriction further aggravated by the 1999 Electoral Code, by which the number of legally guaranteed ethnic minority representatives was reduced to only five, with the Serbian community entitled to just one seat. 21 Finally, it is worth noting that the 1991 Slovenian


Constitution grants the right of Hungarian and Italian minorities (0'4 and 0'2% of the census in 1991) – which, despite being historical inhabitants of the actual territory of Slovenia, are by no means the larger minorities in the country (since Croats represented 3% and Serbs 2% of the census in 1991) – to have a seat each in the 90-member National Assembly. 22 These deputies are elected exclusively from and by members of these communities, in special constituencies based in Koper/Capodistria for the Italian community and Murska Sobota for the Hungarian.

5) Making ethnicity the basis of political representation. It can easily be argued that the most radical example of ethnicity turned into the dominating factor of the entire political system – including political representation – comes from both pre- and – quite shockingly – also post-war Bosnia and Herzegovina. The November 1995 Dayton Peace Agreements, which still define the actual Bosnian political system, created a whole set of new political institutions comprising – among others – a bicameral Parliament, a collective Presidency, a cabinet and a Constitutional Court, all of them constructed on the basis of the existing ethnic divisions (Bosniaks estimated at 44%, Serbs at 33%, and Croats at 17% of the census in 1992), and justified by the need to establish a mutually satisfactory power-sharing system. Hence, the House of Peoples of the Parliamentary Assembly comprises fifteen members, five designated by the Republika Srpska National Assembly, five by the Croat delegates, and five by the Muslim delegates at the Federation of Bosnia and Herzegovina legislature; two thirds of the 42 members of the House of Representatives are directly elected from the territory of the Federation, with the remaining third being elected at the Republika Srpska; the collective Presidency has to be composed by a Bosniac, a Croat and a Serb, directly elected by the citizens in each of the two entities of the Republic; and the Cabinet has to be composed in a manner in which no more that two thirds of the ministers are citizens of the Federation, and deputy ministers necessarily belong to a different community to that of the corresponding Minister. Regarding the Constitutional Court four of its nine justices are to be appointed by the Federation legislature, another two by the Serbian legislature, and the remaining three by the European Court of Human Rights – surprisingly enough, among individuals who are not citizens of the Republic nor of any neighboring state. 23 Finally, the system includes a number of safeguards for the different ethnic communities, allowing them to block any piece of legislation or relevant political decision on the grounds that it might be harmful for their specific interests, therefore turning Bosnia from a democracy to an “ethnocracy”.


Franc Grad: “The Slovene Electoral System”, en Fulco Lanchester (ed.): La legislazione elettorale..., cit., pp. 245-266.

Now, ten years later, in a context in which democracy is already fully consolidated; where the then newly created States are have been entirely accepted by the international community; where European integration has advanced in such a decisive manner that ten of those former Communist States now belong to the European Union, and four other are in the way of joining it; where security, both internal and external, has been granted by a sweeping extension of NATO membership; and where the legacy of the armed conflicts which afflicted the Balkan area throughout the 1990s is gradually being overcome, it seems logical to anticipate that the perception of what an adequate treatment of ethnic pluralism in electoral legislation should be ought to have substantially changed. 24

Has it been the case? And if so: in which direction has this change happened? Why have these changes taken place? Which have been their consequences for the parliamentary representation of minorities? And, as a conclusion, which of the two conflicting principles – that of equality before the law, or that of respect for diversity – has finally been imposed or is, at least, in the process of being so?

Beginning with those countries characterized as hostile to the idea that ethnic minorities should enjoy a specific representation in the legislative branch, the formal changes verified in this regard in the last decade have been quite sensible in most cases, and have resulted into a stronger minority presence in the corresponding legislatures.

In Albania, and more significantly in Bulgaria, their most relevant ethnic minorities (the Greeks in the first case, the Turkish in the second) are now regularly represented in Parliament, and in some cases have even participated in the composition of their executives. This has been the result of their ability to overcome the legal obstacles for their operation as political parties, as well as of the steady support of their constituents. In Albania, the Unity for Human Rights Party, which obtained 1.2% of the votes in the 2009 elections has an MP; and in Bulgaria, the Movement for Rights and Freedoms, which in the 2009 elections garnered 14.5 votes, has 38 members, of which 33 were elected by the proportional system and the remaining five in single-member districts. The fact that these parties have been able to neutralize the

several legal attempts barring them from political life, are now fully consolidated, and have become an essential part of their countries’ political landscape—the Movement for Rights and Freedoms has been present in each and every legislature since the instauration of democracy, its last popular vote being a historical record—, alongside with the fact that they certainly do not enjoy any legal advantage when it comes to their chances of obtaining parliamentary representation, may somehow move these two cases to the following category, defined by the existence of ethnically blind electoral rules. This is indeed the case of Albania, where as a result of the internal as well as external pressures, a new law on political parties passed in 2000 lifted the ban on ethnic minority parties that had been theoretically in force since 1992; but it is not so evidently the case of Bulgaria, since the ban remains formally in force, and has indeed been applied when the much weaker Macedonian community has tried to establish its own political organizations.

In the cases of Estonia and Latvia, a rather consistent EU pressure—specially persuasive having in mind these countries bid for European Union membership during the first half of the last decade—, combined with the permanent presence of the OSCE High Commissioner on National Minorities has contributed to a gradual evolution towards a more inclusive interpretation of their very restrictive nationality laws. This has led to a gradual increase in the percentage of the population holding either Estonian or Latvian citizenship, a figure which now is in the range of 80%. As a consequence, the parliamentary presence of parties representing the interests of the Russian-speaker population has somehow increased: in Latvia, their share has risen from around 5-6 % in the early 1990s to approximately 20 % in this last decade; while in Estonia their electoral support has been somehow weaker, and their parliamentary representation an intermittent one.

In the case of Macedonia, the most relevant advance regarding the parliamentary representation of ethnic minorities came in 2002, when a set of three new laws—one for the election of members of Parliament, a second one on the electoral roll, and a third law on electoral districts—, was passed as a part of the comprehensive package of legislative measures adopted following the so-called Ohrid Peace Agreement, which in turn had put an end to the decade-long unrest of the Albanian community which had put the country on the brink of a civil war one year before. Drafted under US and EU


27 The English version of these three laws is available at International Foundation for Electoral Systems: Macedonian Electoral Laws, IFES, Skopje, 2002.

pressure, and with the participation of various international organizations active in the field of election monitoring, the new legislative package addressed most of the issues identified as problematic in previous electoral processes, and replaced the mixed system used in the previous election by one entirely proportional, on the basis of six 20-member constituencies, with no threshold. While the decision to expand the proportional features of the existing system responded to a recurring demand of the social-democratic opposition, the decision to redraw the electoral districts was intended to satisfy one of the most serious demands of the traditionally under-represented Albanian minority, as well as to minimize the potential for conflict that in each previous elections had been generated by the redrawing of the districts. In addition, the new laws also provided for the use of Albanian language either in the voting ballots and in the polling stations.

Among the countries which we initially labeled as neutral regarding ethnic minority representation in parliament, the most remarkable change has been the one so recently produced – and yet untested – in Hungary, as a result of the adoption of Act CCIII on the Elections of Members of Parliament of Hungary. The adoption of this new electoral code is part of the sweeping institutional reform now being carried out by the Orbán executive following the adoption of the new Hungarian Constitution on April 25, 2011, which required the revision of several cardinal laws and the adoption of some new ones. The new Electoral Law, replacing the one dating from 1989, was passed by Parliament on December 23, 2011 and came into force on January 1, 2012, though it will have to wait until the 2014 elections in order to be applied. Besides a radical reform of the existing electoral system, one of the oldest in the region, the new law has introduced an entirely new formula for the parliamentary representation of national minorities giving compliance to the mandate contained in Article 2.2 of the Constitution by which “Nationalities living in Hungary shall contribute to Parliament’s work as defined by a cardinal Act”, and at the same time completing the reforms initiated by the preceding Act CLXXIX on the Rights of Nationalities of Hungary. This law contained a list of recognized national minorities, and established the procedure for the constitution of nationality self-governing institutions. On the basis of these institutions, and according to Article 9(2) of the new Elections Act, nationality lists may be drawn up by nationality self-government institutions, provided that they are supported by at least one per cent, though never more than 1,500, of the voters registered with the nationality. Once they have been put up, such lists may enjoy no less than three advantages vis a vis other lists, since the five per cent threshold required to access Parliament is waived for them; they are entitled to one seat in Parliament if they secure at least one fourth of the electoral Hare’s quota; and in the case they do not, they are still entitled to a non-voting parliamentary spokesperson, who shall be the unsuccessful candidate ranked first on the nationality list – a move which appears to be even bolder having

29 Eben Friedman, "Electoral System Design and Minority Representation…", cit.

in mind the simultaneous reduction in the number of seats of the Hungarian legislature, which will shift from 386 to just 199–. Article 12(2) of the new Elections Act stipulates that voters registered as minority voters may vote for a candidate in a single-mandate district and either for the list of their nationality or for a party list at the constituency level, the choice of ballot to be carried out when registering in the nationality register.

Poland and Lithuania were originally branded as countries supporting, though not entirely granting, ethnic minority representation. In the case of Lithuania we have already mentioned that the legal advantage provided to national minority parties by the 1993 electoral law –the exemption from the 4% threshold in order to have access to the 70 seats awarded by proportional rule– had already been suppressed by the 1996 reform, which also raised this threshold to 5%. Both changes proved to be highly prejudicial for the representation of the Polish minority, the most important in the country, whose presence in the Seimas dropped from seven to just one seat in 1996 and two in 2000 and 2004, all of them obtained in single member districts, but also for Russians. 31 The unfairness of this situation has only aggravated in recent years, since the Electoral Action of Poles (currently 6’9% of the census) in Lithuania has been gradually increasing its electoral support and even featured a remarkable 4.80% of the vote in the 2008 elections, which was nevertheless insufficient to overcome the said threshold. As far as Poland is concern, the 2001 Electoral Law, which did away with the existing mixed electoral system introducing instead a fully proportional one in multimember constituencies shaped after the existing administrative divisions, chose to keep the advantage already enjoyed by national minority parties, thus maintaining the exemption from the 5% threshold required to all other parties –8% for coalitions– in order to gain access to the Sejm. This measure, however, has proven insufficient for the German Minority (currently 0’4% of the census) Party to retain its political influence, 32 since the number of its voters has been consistently decreasing and its parliamentary representation has dwindled from seven to just one MP; and was declared non applicable to the Silesian minority, so its impact has been quite reduced. The same move, albeit with more relevant consequences, happened in Serbia. The 2000 Law on the Election of Representatives of the Republic of Serbia, 33 which introduced a proportional system in a single national district with a 5% threshold, had as a side effect that no minority party was able to gain representation at the 2003 parliamentary elections. As a consequence, an amendment was introduced allowing national minority political parties to participate in the distribution of mandates even if they did not meet the said threshold, so they became

entitled to parliamentary representation provided they got at least 1/250 of the national vote, a measure which has since led to the regular representation of Hungarians (currently 3.8% of the census), Bosniaks (1.8%), Albanians and Roma (1.1%) in the Serbian National Assembly.

Among the three countries in which ethnic minority representation appeared to be secured either by the election law or by the Constitution itself, Slovenia has not altered its original design, so both the Hungarian and the Italian communities keep on enjoying a constitutionally-granted overrepresentation, which is not shared neither by the Serbs and the Croats –the largest minorities today– nor by the rest of the ethnic communities present in Slovenia. Nor has done so Romania, despite having significantly amended its Constitution in 2003, and its electoral law in 2004. 34 Hence, the registered parties and cultural associations representing the various ethnic minorities present in Romania (with since 1990 have grown from 11 to no less than 18, and now include Italians, Macedonians, Rusyns, Tatars, Jewish, Albanians, and Croats) keep on having a guaranteed seat in the lower house of the Romanian Parliament, provided they get as few as a couple thousand votes. A right never exercised by the Hungarian community, represented by the Democratic Union of Hungarians in Romania (UDMR/RMDSz), since this party has been able to permanently keep its sizeable parliamentary representation –currently: 22 deputies, and 20 senators– and even to gain a key political position which has been translated into several seats in the executive between 1996 and 2008, and again from 2009 on. 35 And as far as Croatia is concerned, the recurrent practice of changing its electoral system on the eve of every new election which characterized the first decade of its life as an independent State, and that with regard to the question of the representation of national minorities resulted in a generous regulation (that of 1992) which was progressively restricted by each new reform (1995-1999), has been perpetuated over the last decade too, but in the opposite direction. The last chapter of this endless succession of reforms and counter-reforms electoral effect was verified in 2003, 36 when the Croatian legislature adopted a new amendment of the electoral code giving a new wording to Article 16 and raising from five to eight the number of representatives attributed ex lege to ethnic minorities in the Sabor. Of these, three (two more than in the previous legislation) would be awarded to the Serb community (1.0% of the census in 2001), one to the Italians, one to the Hungarians, one to the Czech and Slovak communities, one to Austrians, Bulgarians, Germans, Poles, Roma, Romanians, Rusyns, Russians, Turks, Ukrainians, Vlachs and Jews, and another one for Albanians, Bosniacs, Montenegrins, Macedonians


and Slovenians (altogether, 2'9% of the census in 2001), who, consequently, have to “share” their parliamentary representation. In any case, citizens belonging to these communities have the choice between voting for a general candidate list or for the specific minority list, and a majority of them—at least, among the Serb community—usually opt for the general list, and not for those disputing their reserved seats.

It seems difficult to argue that these marginal increases in the presence of ethnic minority representatives both in the Romanian and in the Croatian parliament is the consequence of a substantial change in the approach of these countries to the issue of ethnic minority representation. In the case of Croatia, the change happens to be minimal, while in the case of Romania the increase in the number of ethnic minority representatives has been more the consequence of a better organization of these communities and a clearer vision of how influential their presence in parliament might become. Continuity happens to be rule in this case, too.

Anyway, this short list of countries has through the last decade been significantly expanded by the addition of two new cases, both coming from newly independent States: Montenegro and Kosovo. Montenegro, which became independent on June 3, 2006 on the basis of a referendum held earlier that year, and following a EU-sponsored agreement with Belgrade, opted for a list PR electoral system in a single national district with a 3% threshold for the election of its 81-member Skupština, but also established than five seats, to be elected in a especial electoral unit, would be reserved for the Albanian community (currently 5% of the census). This formula, which had been in use with minor changes since 1998, while the country remained a part of the Yugoslav Federation, has not lead to the formation of a single Albanian party, but helped a number of tiny factions survive, so at this moment and as a consequence of the 2009 elections, no less than four different Albanian parties sit at the Montenegrin legislature representing this community, while the mostly Montenegrin and pro-government European Montenegro party holds the fifth Albanian seat. In what amounts to an obvious, yet rather common discrimination, nor the very relevant Serbian community in Montenegro (32'0%), nor the less numerous communities of Bosniaks (7'8%), and Croats (1'1%), have any right to an specific parliamentary representation, so their presence in the Skupština can only be achieved on the basis of the votes gathered by the different ethnically-based parties, namely the Bosniak Party, the Croatian Civic Initiative, the New Serbian Democracy, and the mostly pro-Serbian Social Democratic Party of Montenegro.

With regard to Kosovo –whose unilateral declaration of independence dating from February 2008 is still far from being universally recognized, and has not even been so by all the EU States nor by those of the Balkan region–, its Constitution –also dating from 2008–, established, or confirmed the existence, of a wide range of mechanisms to ensure the representation of its minorities in the several political institutions that were about to be created by the new Republic. A design aimed not so much at meeting the demands of Serbia and the Serbian minority in Kosovo, whose opposition to Kosovo's independence was not and is not likely to placate with minor concessions, as
to satisfy the international community that had to ratify and secure it, and strongly inspired by the provisions of the so-called Ahtisaari Plan, deeply concerned about the rights of minorities and very adamant in Kosovo being conceived as a multinational State.

Thus, article 64 of the Kosovo Constitution created a 120-member Assembly, elected PR on the basis of a single national list, ordering that at least 20 of its seats would be reserved for the representation of ethnic minorities (altogether, 8% of the census in 2008), of which ten would necessarily be reserved for the Serbian community, four for the Roma, three for the Bosniaks, two for the Turks and one for the Gorani. The system, which had been set in motion already in 2001, allows members of these minorities to participate in the election of the non-reserved seats too, therefore duplicating their chances of getting parliamentary representation. After the elections of 12 December 2010, and despite the boycott of the Serbian population in the municipalities north of the Ibar River, the ten seats allocated to this community were distributed among the United Serbian List and the Independent Liberal Party, which also gained three additional seats from their national lists, and were subsequently invited to join the Thaci Government with three portfolios, while the remaining communities divided their vote among a myriad of small parties, often of a purely local nature.

On the other extreme of our classification, where the case of Bosnia and Herzegovina had been placed, the panorama has not been altered yet, but the fact that calls for a profound revision of the Dayton constitutional model are now more intense than ever before, and that there is even a landmark judicial decision pressing in that direction, makes it possible to foresee changes in a not too distant future. As we have already exposed, the prescriptions contained in the Dayton Peace Treaty imply that the three members of the collective Presidency are to be elected for a four year term by citizens belonging to the three major ethnic groups –or constituent nations– of the country (with Bosniaks representing 48%, Serbs 37%, and Croats 14.3% of the 2000 census), the most voted candidate in each constituency being elected regardless of the votes obtained by other candidates from other groups, while a similar thing happens at the legislative level. The fact that the Constitution of Bosnia and Herzegovina provides that only ethnic Bosniaks, Serbs and Croats can be elected members of Presidency, legally excluding citizens from other ethnic backgrounds, was brought before the European

37 In addition to this, the Constitution also mandated the creation of two specific bodies intended to increase the representation of minorities in the new Kosovar institutions: the so-called Consultative Council for Communities (article 60) which, operating under the authority of the President of the Republic, and with a representation of all Kosovar communities, will allow them to “comment at an early stage on legislative or policy initiatives that may be prepared by the Government, to suggest such initiatives, and to seek to have their views incorporated in the relevant projects and programs”, and the Committee on Rights and Interests of Communities (article 78), a permanent committee of the Assembly integrated by an equal number of Albeno-kosovar, Serbian, and other minorities representatives, and responsible for proposing legislation and other measures that respond to particular interests of the different communities, as well as to make recommendations on the draft laws submitted. On the new Kosovar institutions see Javier Jordá García, La disputa en torno al estatus final de Kosovo. Contexto, actores, propuestas e implicaciones, unpublished PhD Thesis, University of Valencia, Valencia, 2012, pp. 410-422.
Court of Human Rights by two Bosnian citizens of Roma and Jewish origin. In the landmark Sejdic and Finci v. Bosnia and Herzegovina December 21, 2009 decision, the Grand Chamber of the ECHR determined that applicants’ ineligibility to stand for election to the House of Peoples violated Article 14 of the European Convention on Human Rights (banning discrimination in the field of Convention rights) taken in conjunction with Article 3 of Protocol No. 1 (free elections), and that their ineligibility to stand for election to the Presidency violated Article 1 of Protocol No. 12 (general ban of discrimination). 38

Though Bosnia’s response to this ruling has been extremely slow and ambiguous, and it is not clear that the final outcome will be other that to increase the political rights of the citizens included in the “others” category, thus maintaining the comprehensive ethnification of Bosnian political institutions, it can be argued that the Sejdic-Finci decision, alongside with the gradual emergence of civic-oriented parties, and combined with the pressure from the European Union authorities on occasion of Bosnia’s accession talks, might become a starting point for a substantial change in the way politics are played in this country. 39

This rapid enumeration of legislative changes allows for the formulation of at least five conclusions.

The first is that the frequency and the relevance of the changes experienced in the very specific area of electoral legislation in which we are now focused have been, both in absolute and in relative terms, rather modest. Though some changes have indeed occurred, they have not been that many, and their potential for innovation has been rather limited, intended more at fine-tuning the existing systems of ethnic minority representation than at radically altering it. And this against a context in which other aspects of the electoral rules of the countries concerned have in several cases experienced important changes. It can be said, therefore, that against a background of an ongoing dispute about the rules of the electoral game, the issue of ethnic minority representation appears to be marginally more settled than others.

The second conclusion is that it is undeniable that most of the changes introduced with regard to the parliamentary representation of national minorities have been the consequence of predominantly internal political dynamics, related both with already well rooted positions regarding the political role that minorities ought to play, with the need to promote


39 On the reactions to the Sejdic-Finci decision, and the subsequent debate on the future of ethnopolitics in Bosnia, see Esma Kucukalic Ibrahimovic, “El lugar de «los Otros» en la Constitución de Bosnia y Herzegovina. La representación constitucional de las minorías y sus consecuencias sobre los derechos individuales”, Cuadernos Constitucionales No. 67/68 (2009) pp. 135-152.
governance fostering the stability of the executives, and with the desire to satisfy the demands of the international community in this regard.

In the third place, it is possible to distinguish some kind of geographic pattern regarding the treatment of ethnic minorities in this complex set of electoral laws, as it is revealed by the fact that the most generous legislations of the region are those to be found in the countries of the former Yugoslavia, namely, as shown by the examples of Bosnia, Kosovo, Montenegro, Croatia and Slovenia, and to a lesser extent also Serbia and Macedonia. This may be due to the fact that the recognition and inclusion of minorities and different ethnic groups was already a basic constitutional principle in Socialist Yugoslavia, and this legacy may have been transmitted to the newly independent states, but it may also be due to the strong interference of the European Union and other Western democracies in post-Yugoslav affairs during and after the conflicts erupted in the nineties–as the cases of Bosnia and Kosovo clearly show–, to the relevance of these communities in the states they are present, or to the importance of their official recognition in order to maintain good neighborly relations among them.

Fourthly, in can be argued that it is also possible to find a certain logic and a certain consistency in all this set of changes: indeed, they reveal, on the one hand, that the expulsion of ethnic minorities from the political life of the country on the grounds that their presence is detrimental to the principle of national sovereignty and involves a risk of rupture of the national unity is as unsustainable as it is its opposite: that citizens must remain attached to the ethnic community to which they belong and cannot participate in public affairs but as members of such community and through the participatory mechanisms articulated by it. It is not a coincidence that both the most downright hostile positions towards the presence of ethnic minorities in political life as well as those proposing a complete ethnification thereof have been already ruled out or, at least, are subject to the most severe criticism.

Hence, it seems arguable that we are moving toward intermediate positions, in which the aspiration of ethnic minorities to enjoy a significant presence in parliamentary life is in some cases treated with the same–and no less–respect of those of any other interest group or ideological tendency, or in which they may benefit from protection of the law when it is required to make it possible. Ultimately, the option for one or another strategy would have more to do with the peculiar situation of minorities themselves–and, in particular, with their relative size, and their capacity to vertebrate an autonomous political alternative; in other words: with their own capacity to remain influential in their country’s political scenario– that with any sort of ideologically motivated positioning for or against ethnic pluralism. In this sense it would be wrong to think that those States where the parliamentary representation of minorities is guaranteed by law possess a higher degree of respect for ethnic pluralism that that those others which only provide some relative advantages, or that these in turn are more generous towards minorities than those who apply a uniform rule for all kinds of candidates in their electoral legislation. At the end of the day the effectiveness of the parliamentary presence of ethnic minorities will depend much more on other aspects either belonging to the electoral system–like the magnitude of the
districts, the fairness of the apportionment of seats, the practice of a favorable or an unfavorable gerrymandering, the applicable electoral formula, or the existence or not of a legal threshold–, or regulated at a constitutional level –like size of the Assembly, or the requirements for the concession of nationality and voting rights–, or even related to political culture of the country –as the likelihood of coalition cabinet formation, the positioning of ethnically based parties at one or the other edge of the ideological spectrum, or their ability to keep hold of the vote of those who belong to that community, or even capture the vote of those who are not than on the specific regulation of ethnic minority representation contained in the applicable legislation.

The fifth and last conclusion of this essay is that, as the debate on whether or not ethnic minorities should enjoy parliamentary representation seems to be going into the background, and as their presence in the legislative chambers has become an absolutely regular feature –and even a permanent one in some cases– of the political life of the countries of Central and Eastern Europe, maybe it would be timely to move the focus of our analysis to the issue of their integration in the executives of these countries. The experience gained by formations such as The Movement for Rights and Freedoms in Bulgaria, the Democratic Union of Hungarians in Romania, the Alliance of Vojvodina Hungarians in Serbia, the Party of the Hungarian Coalition in Slovakia and, above all, that of the different Albanian partiers who have been succeeding one other in each and every of the governments formed in Macedonia since 1990, provide valuable data and also interesting experiences on which to sustain further research initiatives. 40

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