



UDC 324+342.8(497.11)
Manuscript received: 30.06.2011.
Accepted for publishing: 26.07.2011.
Original scientific paper

Serbian Political Thought
No. 1/2011, Year III,
Vol. 3
pp. 63-86

Milan Jovanović
Faculty of Political Science, University of Belgrade

The Designing of Serbia's Electoral System

Abstract

Electoral system reforms in Serbia followed the practice of post-socialist states - they were frequent and they became the "eternal" issue of institutional design. A century and a half of electoral experience of alternating between the majoritarian and proportional formulas and frequent interventions of governments into the electoral process could not serve as a model at the beginning of redemocratization. External factors initially acted as an inspiration to a small number of domestic experts. In the second phase, their influence increases. Contextual factors had the largest influence. Round table was used only in electoral system redesign and, even then, only when the government power was weakened. Head of state and Constitutional Court represent the most active institutions intervening into the electoral system, initiating reforms or revoking certain provisions of the electoral law. Perception of the stakeholders' interests evolved along with the reforms. By positioning themselves in the parliament through the proportional electoral model with a closed list and with the right of the parties to allocate mandates as they wished regardless of the voting lists order, party elites have opposed all types of reforms that would emphasize personalization of elections. Election reforms in Serbia have been at a standstill for a decade. They are debated in professional and political circles. Negative effects of the current electoral system have been observed. Mechanisms available to designers, which serve to achieve goals and solve problems, are also known. The only thing missing is the power to transform them into electoral laws, as there is no political will to do so.

Keywords: elections, electoral system, political parties, reforms, majoritarian voting system, proportional system, constituencies, path-dependency, contextual factors.

1. Factors in Shaping Electoral Systems

Electoral systems theorists agree that four groups of factors play a crucial role in the design of electoral institutions. The first three focus

on historical, external and wider contextual determinants, while the fourth takes into account perception, or specifically, an assessment of strategic players' interests in the electoral process. Electoral systems are, of course, a result of all these factors, constantly exerting their influence with varying intensity. Thus, we will present the main characteristics of these factors as a matrix for the analysis of electoral system reform in Serbia.

Researchers who attach greater importance to historical factors in the design of electoral systems believe that "historical precedents are most likely to prove relevant: 1) if the historical experience is considered positive, 2) if it is not too removed from contemporary relevance and 3) if the decision makers are faced with the pressure of necessity of quick decision making" (Birch 2002: 12-13).

Experience of using foreign institutional models, whether conscious or influenced, is definitely as known to electoral systems constructors as the fact that "The only thing that can be predicted with certainty about the export of elections is that an electoral system will not work in the same way in its new settings as in its old." (Mackenzie 1957: 251). This warning, of course, by no means implies the absence of direct or indirect influence, more or less latent or open, low or high intensity, desired or invoked from within or imposed from outside.

In addition to the open views of electoral systems theorists, there were, certainly, the views of "experts" who, through different individual or party contacts, proposed a certain type of electoral system, trying to convince those in charge of adopting electoral laws that this was a surefire "recipe" for electoral victory. Far more common are examples in which domestic contractors in the construction of an electoral system use foreign models as examples, without any actual external advice or pressure. Finally, examples in which opinions from foreign experts and "experts" were used once the politicians had already reached their decision are not rare either, and such advice was then used to justify adopted solutions to convince the voters and the often disgruntled opposition that their chosen electoral model is compliant with the experiences of democratic countries. (Lijphart 1992: 218).

Still, it is evident that most post-socialist countries chose or adapted adequate electoral models indirectly, in a manner that cannot be reduced to simple transplanting or copying of electoral laws. It is more a case of adapting known models, more or less creatively. When it comes to pressure, it is more likely that such pressure was exerted unilaterally, but rather through appropriate international organizations monitoring electoral processes and electoral reforms in

post-communist countries. In addition, the transition process in post-socialist countries was initiated by old and new elites. Being that this was a conscious choice, use of external inspirations is a result of several factors which seem specific in the context of a given country, making it difficult to analyze and determine reliably to which extent a foreign model or influence had been dominant (Birch 2002: 13).

Impact of contextual factors is obviously unquestionable and requires no special proof and neither does the fact that it varies from country to country in line with social, cultural, historical, political or economic situation. Depending on specific conditions, certain elements of electoral law will go unnoticed. In other conditions, again, their specific character will make them the object of intense interest, numerous contentions and discussions.

But still, it is possible to formulate some general assumptions on the influence of these factors. Political conditions in post-socialist countries always represent an important contextual factor. Ethnic diversity, often neglected and suppressed in communist states, had a powerful impact on the shaping of electoral systems. Where this did not occur, post-communist countries were confronted with intense criticism, above all from OSCE, but also from numerous international and non-governmental organizations, as well as with a pressure to reform their electoral systems. Economic conditions have no direct impact on the shaping of an electoral system. Their influence is indirect and mostly reduced to limiting costs of election campaigns, aimed primarily at restricting the power of former communist parties or their transformed successors and then at preventing different forms of corruption or influence on representative bodies through campaign financing.

Acknowledgement of contextual variations from one country to another is important, as they contribute to the shaping of different perspectives and provide the only means to understanding the formation of interests and strategies of the stakeholders in selecting and reforming electoral systems. Contextual conditions shape the perception of consequences of different electoral system alternatives and can be a key factor in determining who will adopt which decision with regards to the electoral system and when.

Theories that explore the influence of political stakeholders in studying electoral systems are quite numerous and employ different empirical methods to verify this influence. This is why an analysis of design and reform of an electoral system must also take into account the interests of stakeholders. Generally, there are two distinct models based on the calculation of interests.

The first is based on defining those stakeholders who are involved in adopting strategic decisions on electoral rules - laws and other regulations. The second is based on the goals that individual stakeholders seek to achieve in this process. Thus, in states with formatted, well established party systems, theories have been elaborated based on observing political parties as main stakeholders, hence observing their interests as well (Bawn 1993: 965-89; Dunleavy 1995: 2-29). Some theorists used this model when analyzing countries in transition, such as Spain and Korea and the model's proved functional (Gunther 1989: 835-58). In post-socialist countries, this model was used by many researchers, seeking to explain the interest positions of individual stakeholders. A point of almost universal agreement in these explanations is a view that communist elites preferred the majoritarian electoral system, with single-mandate constituencies, as they saw it as an opportunity for a more effective use of their positions - organization, finances, human resources and experience. Conversely, opposition parties that were in the process of formation opted for the proportional model, believing that it would prevent the dispersion of their votes and voters (Geddes 1996: 15-42). According to this model, it may be concluded that both sides reached logical conclusions, interpreting their interests and goals based on their respective starting positions.

In addition to this model, certain authors used the model of maximizing mandates, proposed by K. Benoit et al. (Benoit 2001: 158-61). This model is based on the premises set by Stein Rokkan, proposing that an electoral system changes at the moment when a party or a coalition of parties supports an alternative that they believe will increase their share in the mandates, i.e. that the electoral system will not be changed when a party or a coalition of parties has a possibility to decide to adopt an alternative, but assesses that this change will not yield more mandates than the existing electoral system (Lijphart 1991: 69-84; Boix 1999: 609-624).

Parties are the main stakeholders in the electoral race. They play an irreplaceable role in post-communist countries as well, but their interests are not always coherent. This yields the basis for analysis of individual politicians' interests, in addition to the interests of parties and various political groups that strived to get organized and act. It is realistic to assume that the stakeholders the politicians in power will always give preference to an electoral system that satisfies their needs of strengthening their own political positions. Each reform of the electoral system, based on this perception of personal interest, which will be generated through collective stakeholders - political parties - will develop this interest ensuring that the reform will protect interests of the individual.

In addition to identifying the stakeholders to interpret the design and reform of an electoral system, it is necessary to recognize the goals that they seek to accomplish by this design. In theory, the scope of these goals can be very wide. In practice, it comes down to achieving as large a share in representative bodies as possible, i.e. the largest number of deputies in the parliament. Indisputably, the stakeholders will seek to establish a democratic electoral system, where this position can be interpreted using the “maximal fairness” or “sociotropic” model, in cases where interests of the population take precedence over one’s own interests. However, even with this - mainly theoretically identified - altruistic position, researchers must calculate in the presumption that even the most consistent among designers of electoral legislation will consider not only the ideal democratic electoral system - “the best”, “the most democratic”, “the fairest” etc. - but also the character of the results. In simpler terms, the researchers must presume that most stakeholders in the electoral system design process will view the general interest through the lens of their individual or group interests. Hence, the researchers use the maximum mandate model in explaining the goals of individual stakeholders (Remington 1996: 1253-79).

Researchers who considered issues of interests and goals and their impact on the design and reform of electoral systems differently approach the conduct of stakeholders during the first and second phase in the constituting of electoral systems in post-communist countries.

In the initial, the so-called “zero phase” or “inception phase” of transition, decisions adopted reflect changes in the regime. In post-communist countries, these decisions are taken in circumstances of poor institutionalization, high uncertainty of voting results and a universally professed pledge from all stakeholders that the electoral system must and should be a democratic one. Individuals integrate into parties, which in turn act as collective stakeholders in selecting institutions based on interests and objectives formulated in this manner. In other words, in the initial phase, there is a continual battle of personal and collective (party) interests in formulating the electoral system. Thus, according to M. Shugart, if politicians see a perspective for their careers in keeping political parties at a low level of development, allowing them room to satisfy the local interests of individual political figures, they will advocate a majoritarian voting system, single-mandate constituencies and a distribution of power with a strong, powerful state leader. Conversely, politicians who bind their careers to the strengthening of their political parties will sooner accept a proportional representation model, based on a weak state leader and the possibility of strengthening political parties. This author, in his research, correlates favouring certain electoral

systems with the manner of initiation of the democratic transition, i.e. with the rate and sequence of changes and on who (insiders or outsiders) participated in the decision making process (Shugart 1998: 13-17).

An extremely high level of uncertainty of election results, faced by the stakeholders in the initial phase of transition, produced an additional level of pressure. Main interest of the stakeholders in this phase is to survive the electoral race. This extreme uncertainty forced individual, but also collective stakeholders, to embrace the strategy that provided them with a parliamentary status in several ways, by using different variations of a mixed electoral system. This approach does not contradict Shugart's assumption on favouring single-mandate constituencies. For both collective and individual stakeholders, avoidance of defeat meant eliminating the conditions that could potentially lead to the loss of parliamentary status. For this reason, the possibility of taking part in the government was pushed aside, while keeping a position in parliament was the prime interest and goal. Hence, it was logical that most stakeholders would support the proportional electoral model, as it guaranteed fair possibilities for representation of all classes and political options (Shugart 1998: 28).

In the second phase, as soon as the newly established system began functioning, the context would be strategically changed. Insecurity decreases, stakeholders acquire knowledge - both positive and negative, their interests become clearer and the parliament represents the main decision making institution on potential electoral reforms. In this phase, electoral systems become "hard" for reform. Electoral system has produced certain effects; stakeholders, parties and individuals have learned their lessons; electoral institutions gain an attribute of "tradition" etc., all features of their "change-proof" nature more difficult to redesign entirely and reducing the possibility of electoral reform to adjustment of individual elements of the electoral system.

This "hard" to change position of electoral systems can be explained by structural factors and different interests. Structural factors are reflected in different formal obstacles, above all in constraints contained in constitutional provisions defining the character of the electoral system and requiring a qualified, usually two-thirds majority for its change. An impediment to electoral system redesign are reforms in the economic sphere which take priority, shifting reform efforts from the electoral system to other areas. Institutional inertia in the electoral system may also arise due to an assessment by elites in power that a reproduction of such institutional arrangements in the institutional system would guarantee, or at least render more probable, their own

reproduction, too. This is emphasized especially by the advocates of the "dependence path", who stress that those who gained power through the existing electoral regime will not care to have it reformed. Naturally, advocates of this theory do not imply that electoral institutions are absolutely closed to change. They point out that certain elements may be transformed under the influence of several factors - certain stakeholders can modify their interests through education and experience acquired, especially when it comes to adverse impacts; the elites may divide over the issue of electoral system reforms; changes may occur in the beliefs and expectations of stakeholders. Simply speaking, one cannot accept that the institutional design will remain unchangeable, at least not for long, as it is completely clear that reforms occur "not only when groups undertake steps towards reforming or abolishing designs which systematically provide privileges to their opponents, or when smaller groups, or groups less confident in their electorates, oppose the victory-focused design, but also when strong and confident groups intend to revise the design with low stakes...", naturally, aiming to boost the odds of their own victory (Dunleavy 1995: 20; Benoit 2000: 31-2).

In the second phase, the position of collective actors - political parties - also changes. They dominate in this phase of electoral system reform and their position and influence depends on internal unity and ideological disposition. In addition, in this phase they will have at their disposal more information about the geographic distribution of support they enjoy among the voters, their organisational network, their rivals' strength etc. Based on this, major parties will give precedence to electoral system that decreases party fragmentation in the parliament, advocating changes in constituencies, high threshold for election and those formulas for translating votes into mandates that will make this possible. Conversely, parties that do not find themselves in this position will favour either a majoritarian electoral system or a proportional representation system with smaller constituencies (Gerard 2001: 261).

In addition to the stakeholders' interests, influence of collective interests on electoral reform process should also be considered. There are opinions that requests for general system functionality and the need for strengthening market economy, general liberalization and general administrative efficiency influence the choice of an electoral system. Empirical facts do not always corroborate this assumption, since use of such arguments is irrational from the viewpoint of distributive institutions such as electoral systems, among other things (Carey 1995: 417-39; Katz 1980).

Year	ELECTORAL SYSTEM	
	Parliamentary elections Majoritarian, two rounds	Local - city/municipality elections
1990	Absolute majority in the first round	---
1992	Proportional 9 constituencies 5% threshold D'Hondt formula	Majoritarian, two rounds Absolute majority in the first round
1993	Proportional 9 constituencies 5% threshold D'Hondt formula	---
1996	---	Majoritarian Absolute majority in the first round
1997	Proportional 29 constituencies 5% threshold D'Hondt formula	---
2000	---	Majoritarian Relative majority
2001	Proportional Single constituency 5% threshold D'Hondt formula	---
2003	Proportional Single constituency 5% threshold D'Hondt formula	---
2004	---	Proportional Single constituency 3% threshold Natural threshold for minority parties Hare-Niemeyer formula
2007	Proportional Single constituency 5% threshold Natural threshold for minority lists D'Hondt formula	
2008	Proportional Single constituency 5% threshold D'Hondt formula	Proportional Single constituency 5% threshold D'Hondt formula

Table 1: Electoral system in Serbia 1990-2008.

2. Reform of the Electoral System in Serbia

In the two decades since reinstating democracy, Serbia has frequently and thoroughly adopted amendments to its electoral laws. Deputies to the National Assembly of Serbia were first elected through a two-round majoritarian electoral system, then through a proportional representation system with nine, 29 and one constituency. This also applies to the election of representatives to local government units. They were also elected through a two-round majoritarian system, then through a majoritarian electoral system with a relative majority, then through a proportional representation electoral system with a change in threshold and formulae used to transpose votes into seats in local representative bodies.

Reforms of the electoral system in Serbia in the last two decades followed the trend observed in other post-socialist countries in Eastern Europe as well. Not only was the basic model changing, but so were also the elements with major effect on the consequences that electoral systems produce in parliamentary and party systems. Further in this text, we will point to the character of the designing and redesigning of Serbia's electoral system in its narrower sense – running for office, constituencies, polling and translating votes into mandates - in the context of factors that influenced them.

2.1. Influence of Historical Factors

Prior to the outset of the re-democratization process in 1990, we can identify three stages in which it is productive to examine historical factors and the inspiration they provided to the stakeholders at the beginning of the transition.

Electoral practice of the Principality of Serbia and the Kingdom of Serbia, namely its first stage, began in 1858 with the first law governing the election of deputies into the National Assembly and ended in 1918. In these six decades, Serbia essentially had six electoral laws, alternating in cycles between majoritarian and proportional representation systems. Under the first law, one deputy was elected by every 500 tax payers. In county centres, this was done directly, through a majoritarian electoral system with a relative majority, by means of public voting; in districts, it was done indirectly, through trustees, using the same model. This model was adjusted in 1870, by introducing a two-round majoritarian electoral system with absolute majority. Two years following the adoption of the Constitution in 1888, which devoted one third of its

articles to electoral matters, an electoral law stipulating a transfer to a mixed electoral system was passed. In county centres, a two-round majoritarian system was applied, while a proportional representation system was applied in the districts - mandates were allocated based on a quotient, using the largest remainder model, which included in its distribution those lists that did not meet the quotient. Only four years later, this electoral model was substituted with the previous one. The Constitution from 1901 established a majoritarian system with large constituencies and voting by lists, which was applied only in a single electoral cycle, only to be replaced again by the previous model of a proportional electoral system. Constitution of 1903 reinstated the proportional electoral system established by the 1888 Constitution with one important novelty - votes for the lists that did not meet the quotient were attributed to the list that won the highest number of votes. This favoured majority, practically derogating proportionality, while the system thus produced the effects characteristic of a majoritarian model. This system would remain in force until 1918. Only the elections at the very beginning and the very end of this phase were spared from the direct interference of power-holding parties into the electoral process. All the other elections were characterized by massive violations of the electoral procedure - "... partly by force and then also, partly by various frauds" and "virtually with no freedom", the establishment used all known methods of influence - persecution of the opposition and their candidates, pressure and blackmail of voters, mass lay-offs and relocations of opposition voters and candidates in the civil service, etc. (for further information, see Ristić 1935: 71-211; Jovanović 1990; Protić 1911).

The second stage started with the elections for the Constitutional Assembly of the Kingdom of Serbs, Croats and Slovenes in 1920. The Law governing the election of deputies to the Constitutional Assembly was modelled after the electoral law of Serbia. The taxpayer census was abandoned - one deputy was elected by every 30,000 voters, women did not have the right to vote and the ballot was secret, by small rubber balls. Mandates were allocated using a quotient system, whereby the quotient was calculated by dividing the number of voters by the number of deputies elected in the given county. Unallocated mandates were distributed using the largest remainder method, including the lists that did not meet the quotient so as to ensure at least some representation for minorities (Jovanović 1924: 95-137; Pavlović 1939: 27-30). It is interesting that the Constitutional Assembly did not deal any further with the electoral system. Although it is evident from the proposals of most of the deputies and parties that took part in drafting the Constitution that they were advocating some variation of the

roportional electoral system (with the Socialist Club even advocating for a single constituency), the electoral system was not laid down in the Constitution. The Electoral Law from 1922 promoted a mixed electoral system. A certain number of deputies were elected in single-mandate constituencies by a relative majority, while others were elected through lists, using a quotient system in counties with a single list and d'Hondt formula if several lists participated in the allocation of mandates. Exclusion of the lists that failed to meet the quotient from the mandate allocation disfavoured minorities and small parties. The introduction of absolutist rule of King Aleksandar Karađorđević on January 5, 1929, outlawed political parties, while already in 1931 a public vote and a quasi proportional voting system were introduced. The list with the highest number of votes would automatically gained 3/5 of parliament seats. The purpose was to underscore the unitary character of the state and to curb the influence, and even representation, of regional parties. This was achieved by complicated requirements for the running of small, regional party lists (Pavlović 1939: 41).¹

The third phase refers to the period of socialist Yugoslavia. Immediately after the war, communist revolutionary authorities organized elections for a Constitutional Assembly, pursuant to a law that had a lot in common with the last electoral law of the Kingdom of Yugoslavia. The deputies of the lower house of parliament, Federal Assembly, were elected according to a majoritarian electoral system with a relative majority, whereas the deputies of the upper house, Assembly of the Peoples, were elected by a proportional electoral system using d'Hondt method. Opposition parties criticized the overall electoral atmosphere, citing arbitrary divestiture of voting rights, bias, illegitimacy of electoral bodies and complex and biased electoral model of proportional representation (Košunica 1990: 120-121). Communists suspended political pluralism after their victory, turning elections into a "single horse race", as there was only one candidate to vote for. Electoral contest was replaced by elaborate cadre combinatorics within the communist organization, while the voting itself was turned into a ritual activity of plebiscitary support to the system. This practice culminated in a system of delegates, derogating all principles of elections - directness, generality, equality and secrecy. Election participation was made more complex and mediated by a series of institutions that voters found complicated, hard to understand and which did not enable electing, but only voting.

1 Consequences of such an electoral model are best seen in the results of the last elections organized in line with this model, held in 1935. The list lead by the Prime Minister, M. Stojadinović, with 54% of the votes, got 306 seats, while the list of the opposition coalition, lead by V. Maček, with about 45% of the votes, was allocated only 67 seats in the parliament.

Less than a century of electoral practice filled with electoral models marked with serious limitations with regards to unbiased political competition, distorted proportionality, cumbersome candidature and constrained electoral rights shows that these historical models could not provide an inspiration for the designers in early 1990. If to this we add that this whole period passed under non-democratic regimes of different kinds, in which electoral processes were generally riddled with mass infringements of electoral rules, it yields an unfavourable impression on the influence of historical factors on the design of the electoral system in Serbia at the beginning of its redemocratization (Marković 2007: 263-264).² Actors had a rich historical experience at their disposal, but they were neither well acquainted with it, nor was it suitable for implementation. Firstly, because it was a distant experience. For 70 years, the function of elections was practically suspended or was implemented within a deformed electoral system. Secondly, the actors were not familiar with this rich experience, nor could it serve as a suitable model in the first phase of organizing the first pluralist free elections. Thirdly, the actors were not pressed for time to have to resort to some past electoral system.

Let us look at how the actors regard the experience they have acquired in the last two decades and how they use it to redesign today's electoral system. In the first phase, only the Socialist Party of Serbia (SPS) advocated the majoritarian voting system. All other parties demanded a proportional electoral system, with the exception of New Democracy - Movement for Serbia, which proposed a trench - type mixed electoral system. Today, SPS advocates the proportional voting system while certain (then) opposition parties and their leaders - major ruling parties of today - Democratic Party (DS) and its President, B. Tadić, as well as V. Pešić, an official of the Liberal-Democratic Party, for example - propose a majoritarian system as a mechanism for party democratization, more efficient functioning of political institutions and higher government responsibility. Direct experience is projected and used through a prism of candidate-maximizing.

2 From 1804 to 2004, Serbs "lived in democracy" only for 30 years, or 15% of their most recent bicentenial history. During the 20th century (1903-2003) the percentages were somewhat different. Approximately 26% of the time passed in democracy, 14% under totalitarian rule, 60% in different authoritarian regimes. The low percentage of time passed in democracy is not so striking when it comes to the 19th century. It should be taken into consideration that many West European countries lived under authoritarian rule at that time as well (e.g. Prussia/Germany or the Habsburg Empire). In the 20th century the percentages show a significant discrepancy between Serbia and all West European countries...

2.2. Influence of External Factors

There was no foreign influence on the constitution of a majoritarian electoral system in the election “phase zero” at the beginning of redemocratization. In a wider context, one could perhaps speak of inspiration. This electoral model was applied in most post-socialist countries at the beginning of transition. It also dominated in most countries created on the territory of the former SFR Yugoslavia. These were familiar examples to the electoral system designers which could have encouraged them to follow in others’ footsteps. Opting for the majoritarian electoral system was rather a result of the calculation of interests by the ruling party - SPS, than of external stimuli. SPS had inherited the infrastructure of the Communist League, its officials held all key positions in the state and in economy, they had a popular leader, S. Milošević, they boasted a large number of candidates capable of venturing into the electoral race dictated by a majoritarian formula. The opposition was at the very beginning of its formation in all aspects and could not concede to an electoral system that put it in an inferior position.

Reforms that took place in the second phase, through the redesign of the electoral system constituted at the beginning of redemocratization, bear far more reflections of foreign influence, primarily from international organizations such as OSCE and European Union. Through its specialized offices, observation missions in a number of electoral processes, support to non-governmental organizations working on electoral issues, education - OSCE would, in certain situations, stimulate debate, recommend amendments to electoral legislation and directly intervene in correcting electoral results. The mission of this organization contributed to preventing fraud in the 1996 elections for local self-government units, accepting appeals filed by the opposition (Rakić-Vodinelić 1997).

Each report of observation missions ended with recommendations for amendments to numerous normative provisions in the electoral system. Initially, they were primarily directed at improving compliance with the electoral procedure, equal conditions for running in elections, especially in terms of media coverage, election campaign funding, transparency of work of electoral bodies and control of elections. Only later did some of the recommendations focus on the central aspects of electoral law - candidature, proportionality, position of the citizens - voters with respect to the voting that should provide for direct elections in conditions of closed voting lists. In addition, ODIHR, specialized office

of the OSCE, made a list of recommendations for the improvement of electoral practices in Serbia.³

Recommendations of the Venice Commission should also be viewed in this context. This Commission exerted its influence on the electoral system by evaluating a whole range of draft laws and the Constitution adopted in 2006. Let us just recall that Venice Commission in its Report criticized provisions of Art. 102 par. 2 of the Constitution of the Republic of Serbia, which practically suspended the institute of free mandate.⁴ In addition, the Venice Commission positively assessed the Draft Law on Local Elections, which personalized the election of deputies; this draft, at present, has no support from political parties - neither those in power nor those of the opposition, since they wish to retain their influence over the election of deputies from their lists regardless of the will of their voters.

The questionnaire that the government institutions are required to complete, in the process of accession to the EU, contains several questions on electoral issues related to the constitution of the national parliament. They pertain exactly to the above-mentioned ODIHR recommendations and problematic constitutional provisions on mandates.

Finally, we should consider the broader context of redesigning the electoral systems in post-socialist states. Given that, as a rule of thumb, majoritarian formulas were abandoned in favour of mixed and/or proportional electoral systems, this fact was certainly known to the stakeholders who redesigned Serbia's electoral system. We do not claim that this fact directly gave impetus to reforms, but it certainly played a part in encouraging the opposition to insist on proportionality in the first place and subsequently the ruling majority to accept such a model, partly as a favour to the opposition and partly to conform with a general trend.

Foreign factors were not dominant in either the design or the redesign of electoral systems. In the reforms of Serbia's electoral system, the presence of foreign factors was more prominent and their influence stronger in the second phase. Serbia is not a country that could serve as an example of transplantation of political institutions and the same goes for its electoral system as well. But it is evident that key stakeholders -

3 Reports of the OSCE's election observation missions to Serbia can be viewed at www.osce.org/odihr-elections

4 "Under the terms stipulated by the Law, a deputy shall be free to irrevocably place his/her mandate at the disposal of the political party, at the proposal of which he/she had been elected a deputy", Constitution of the Republic of Serbia, 2006.

those who would decide on the electoral system - were acquainted with foreign examples and that they viewed them from the perspective of maximizing their position, both in terms of the number of votes in the elections and the number of seats in the parliament.

2.3. Influence of Contextual Factors

The influence of contextual factors on the shaping of Serbia's electoral systems is indisputable. In this text, we will focus on political, institutional and "unbiased" elements in a contextual framework.

Despite the fact that oppositional efforts of intellectuals, public figures, writers and artists formed a fledged-out network of groups opposinal views of the socialist system, at the beginning of redemocratization they failed to transform into opposition parties fast enough, nor did they stand together as a homogenous opposition block to the communists transformed into SPS. Hence the old elites, dictated not only the design of the electoral system, but also the design of the wider institutional system in "phase zero". A majoritarian electoral system turned the opposition into outsiders, but it did not boycott the first elections. Simply, the leading opposition parties, primarily the Serbian Renewal Movement (SPO), believed quite naively that the very fact that there is an election will dethrone the old elites. The strength of the reformed SPS and the support they enjoyed among the voters was completely ignored. In addition, ethnic minority parties, especially those of minorities that are numerous and geographically grouped together - Hungarians and Muslims/Bosniaks, did not object to the majoritarian voting formula as they were aware that it would perhaps offer much better chances for their representation in the parliament, as it actually did.

The creation of institutional pre-requisites for the first pluralist elections in Serbia occurred in a new constitutional atmosphere. Serbia was the only former Yugoslav republic that first adopted a Constitution that established basic human and civil rights, market economy, plural political system and the state setup consistent with the principles of the distribution of power. The other republics organized their first elections within the framework of their old constitutional institutions. The dilemma of "elections first, constitution later" of the reformed old elite was solved in a referendum - the citizens backed the option to adopt the Constitution first and then schedule multiparty elections. This referendum already suggested the outcome of the elections. It is important to note that, although the constitutional framework

was adopted by a practically single-party assembly consisting of the reformed communists, not only did it fail to prescribe the electoral system, but also did not establish the necessary majority for the adoption of electoral system legislation as had been the case in a whole series of other post-socialist countries. Therefore, normative conditions for any potential changes of the electoral system did not “nail down” the majoritarian voting system, which would later make it easier to replace by a proportional election system. This kind of constitutional reform gnawed at the legitimacy of political institutions and the opposition fiercely criticized the newly adopted Constitution. The then-opposition, 16 years later in the position of power, would amend the same Constitution, but its provisions on voting by lists and on the disposal of mandates by the lists that the deputies were elected from, left a lingering dilemma whether it practically prescribed or merely prejudged the proportional electoral system.

Another significant contextual factor of institutional character is reflected in the use of the institution of “round table”. “Phase zero” in Serbia went without a round table. The reformed old elites had the power to decide on the type of voting system by themselves. Less than two years later, the “round table” would substitute the majoritarian system with a proportional one with nine constituencies, closed blocked lists and a voting threshold of 5%. At that time, the opposition requested an extreme variation of the proportional electoral system, with a single constituency, but agreeing to a maximum of six.. The ruling SPS demanded 18 constituencies. The compromise was imposed by the Federal Prime Minister at the time, M. Panić (Jovanović 1997: 166-176). The regime honoured the decisions of the “round table” and transposed them into laws. The opposition did not sign the final document of this belated agreement, but did not boycott the elections in 1992 and 1993, which were held based on the agreed model. Evidence that the opposition supported the electoral law model that resulted from the “round table” can be seen in the 1997 election boycott, when the regime increased the number of constituencies from 9 to 29 without prior agreement with the opposition, turning large constituencies into medium and small constituencies, which created a distortion when transposing votes into mandates. The change of the electoral system in 2000, which instated a single constituency, is also the result of a specific “agreement”. Namely, after the election of V. Koštunica as the President of FR Yugoslavia, SPS agreed to the creation of the transitional government and to amendments to the Law on Elections, as a result of the pressure from the opposition, which, riding the crest of its victory on the federal level, wanted to validate its rating also in the republic-level institutions.

Institutions “uninterested” in contextual factors were also active in both phases in Serbia’s case. This can be seen from the examples of all three Presidents of the Republic. S. Milošević, as President of the Republic was the most active, promoting the majoritarian model, but he relented under opposition pressure and accepted the proportional electoral model, only to amend it again once he felt powerful to do so, trusting that electoral engineering of the constituencies would bring more votes to his party. President M. Milutinović did not get involved in the agreements between the opposition and the outgoing ruling party, at the time when single constituency system was introduced. The current President B. Tadić in his statements supports changes to the electoral system, aimed at reducing and consolidating political parties, guaranteeing free mandates and a majoritarian electoral system.

In addition to the heads of the state, among the “uninterested” institutions, activities of the Constitutional Court stand out. By its decisions it intervened several times, amending electoral laws by revoking some of its provisions. The provision stipulating that deputies could lose their seat in the parliament if they were expelled from their parties was declared non-constitutional. In addition, leaving a coalition could not constitute a reason for having a mandate revoked. The Constitutional Court revoked the provisions of the current Law on Local Elections, which had allowed parties to take blank letters of resignation from their candidates for deputies in units of local self-government and have them notarized in court, without allowing the deputies an option to withdraw such resignations. At the same time, the provision allowing parties to allocate mandates to candidates at their own discretion, regardless of the order stated on the lists, was also revoked. The first decision was initiated by petition of citizen T. Nikolić, otherwise President of the Serbian Progressive Party (SNS), which was created after his leaving the Serbian Radical Party (SRS) - a party that practiced taking blank resignations; he, as the Deputy President of this party “misplaced” these blank resignations, to protect his position in his newly-formed party - thus rendering this deformed constitutional mechanism, which the parties used to prevent “party hoppers”, pointless (Jovanović 2008b : 85-100).⁵

⁵ Decision of the Constitutional Court IUz no. 52/2008, Official Gazette no. 34 from May 21, 2010 (2008) Report on the imperative mandate and similar practices. European commission for democracy through law (Venice Commission), Study br. 488, [http://www.venice.coe.int/docs/2009/CDL-AD\(2009\)027-e.asp](http://www.venice.coe.int/docs/2009/CDL-AD(2009)027-e.asp) (30. nov. 2009)

Contextual factors are very diverse and require more detailed explanations. They had a far more intensive influence on shaping and redesign of the electoral system, modifying, at certain times, arguments for or against individual solutions in electoral laws.

2.4. Influence of the Perception of Interests

Key actors perceived their positions well and opted for a majoritarian (SPS) or proportional electoral system in the “phase zero”, for the reasons explained earlier. According to this, they remained within the matrix that had been observed in other post-socialist states as well. Nevertheless, in this phase, there were certain misperceptions among the opposition. Namely, opposition parties claimed, guided by theoretical paradigms, that application of a majoritarian formula would lead to a two-party system. This did not happen. The majoritarian system did produce, by fabricating majority, an over-representation of the socialists and under-representation of the opposition, but as many as 15 parties entered the parliament and parties of ethnic minorities of the Hungarian and Albanian communities (from South Serbia) were allocated a number of seats proportionate to their share in the total population. However, had the opposition’s proposal to have the first elections held according to a proportional electoral system with a single constituency been adopted, the parliament would have been composed from deputies of three parties - SPS, DS and SPO, ethnic minority parties - Democratic Party of Hungarians from Vojvodina and Party of Democratic Action of Albanians from South Serbia and probably some of the candidates from independent citizens groups. The opposition’s perception of the impact of proportional voting system was wrong. The socialists made the same mistake when they increased the number of constituencies from nine to 29, convinced that this would bring them the number of seats in the parliament sufficient to form the cabinet by themselves. This did not happen. Even with the boycott of the leading opposition parties, primarily DS, the socialists won fewer parliament seats than they would have had they opted for the proportional system version agreed with the opposition. Therefore, the parties did change electoral systems when they had that chance, guided by the strategy of maximizing the number of seats they would get, but this often backfired. The best example is the model of proportional representation with a single constituency (Jovanović 1997: 152-9).

Introduction of a proportional electoral system enabled the fragmented party system to be sustained, making it more difficult to achieve

majority and creating broad coalition governments. This practice has been present for the last decade and has recurred through 4 election cycles. In two legislatures, governments were formed through coalitions of hitherto greatest rivals, with SPS first supporting a minority government led by Prime Minister V. Koštunica, later to enter into a coalition government together with DS, G17+ and SPO. Consequences are metropolitanization of representation - approximately 100 deputies, or 40%, come from two major cities, Belgrade and Novi Sad, as well as governments with a large number of ministers, resulting in inefficiency and ineffectiveness in policy implementation (Jovanović 2008a : 114-130). Hence the emergence of ideas for reforming the electoral system, with the aim to reduce the level of fragmentation within the parliamentary system. We now get to the role of politicians as protagonists and to their perception of interests. In switching over to a majoritarian system, or at least in personalization of elections through open, non-blocked lists, large parties see a way to raise their competitiveness in the electoral race and allow voters to exert greater influence on the election of their representatives. Party elites of essentially all parties object to this, justifying their objections by the interest of their parties but, in essence, defending their own positions. One can hardly expect deputies, who had earned their parliamentary status thanks to closed party lists and support from the party leaders to vote for an electoral law that would expose them to a merciless, uncertain race in personalized voting, one which would certainly leave many of them without a desired re-election. Formally, the main stakeholders are the parties, but projected through them are strong personal and group interests of party elites who seek to mask their personal interest with that of their parties.

In post-establishment phase, from 1990-2000, changes in the electoral system were frequent. Hitherto ruling elites, old elites from the socialist era now transformed into SPS, were replaced by new elites; at that point, the electoral system became "hard" to change, despite evident problems resulting from the proportional electoral system, closed blocked lists, 5% voting threshold and d'Hondt formula. In the second phase, key stakeholders shifted positions. Socialists would not agree to a return to the majoritarian election system which was introduced by their will in "phase zero", Democrats - through statements by their President - advocate a majoritarian formula despite having led the opposition for a decade in their demand to introduce a proportional electoral system.

Such conduct of key stakeholders is a result of change in their perception of interests and maximization of mandates. SPS lost an enormous part of their voters and lacks sufficient capacities - possible

candidates that would be able to compete with the counter candidates in all single-mandate constituencies. They choose a proportional system - and not the one they had created with nine or 29 constituencies, but a pure proportionality with one constituency - motivated by mandate maximization. Democrats, whose electoral power has grown and who have reached the desired format, organisation-wise, in terms of activists, human resources and funds, now advocate a majoritarian voting system. Naturally, the stakeholders offer different justifications for their goals. SPS argues that it had agreed to do the opposition a favour when it introduced the proportional electoral system and the Democrats claim that a majoritarian system would decrease the number of parties and personalize politics, etc. Behind these disguised goals lie individual and collective interests. Advocating reforms now creates an added pressure on the parties. As soon as rivals start calling for a reform, the other side perceives that this would reduce their rating and resists the changes. In essence, socialists and smaller parties wish to preserve their parliamentary position and win as many mandates as it takes them to get, if not a position in the government, then at least some occasional influence. Democrats are becoming aware that their supporters will no longer stand for "coat-tail riding" by smaller parties, as this reinforces their coalition and blackmail potential; instead, they want an electoral formula that would reduce the fragmentation of the parliamentary party system, facilitate establishment of a parliamentary majority and lead to homogenous governments or coalition governments with fewer coalition partners.⁶

3. Conclusion

Reforms of the electoral system in Serbia followed the practice of post-socialist states - they were frequent, thorough and have become an eternal issue of institutional design in a broader sense.

6 "I am not in favour of changing the electoral system... no one is openly saying that it should be changed, either. But it can be guessed, especially as the wish of larger parties, for they always prefer a majoritarian system.". "Today, we have the electoral system that the opposition requested 18 years ago, and it would be unfair ... that there would be any notions of switching back to the majoritarian system". Ivica Dačić, President of the SPS, "Politika", December 25, 2010. "In Serbia and in countries in transition there should be as many people who have been directly elected as possible..." said Tadić, adding that he advocates the introduction of a majoritarian electoral system for the parliamentary elections. Boris Tadić, President of the DS, interview with the RTS, July 11, 2006., Tanjug.

At the outset of transition, Serbia had a century and a half of electoral experience. Electoral memory, however, could not prove inspiring for the designers. Cyclical alternations between majoritarian and proportional formulas with occasional combinations, distorted proportionality, frequent intervention of ruling parties in the electoral process and unfavourable broader institutional context could not serve as a model for the elites confronted with the challenge of choosing an election system at the beginning of redemocratization.

Foreign factors, in terms of direct pressure, were absent. Foreign experiences, especially those of post-socialist countries which had entered the transition earlier, as well as those of states emerging from the former socialist federation, were known and assessed from the position of party interests. Their influence was not direct. Foreign models were absent and there were no initiatives for transplanting electoral systems. External factors acted more as an inspiration to a small number of domestic experts. In the second phase, there is a larger influence of external factors, through the OSCE, but also through other organizations working in the field of capacity-building of democratic institutions. Their role is primarily advisory, but also direct.. An example is OSCE's arbitration in the 1996 local elections, which prevented the theft of votes and allowed opposition to exercise power in many large municipalities. Requests from the EU and its institutions to respect the institution of free mandate and revoke the practice of blank resignations, which had derogated the position of delegates, can also be viewed in this context.

Contextual factors were the most influential when it comes to the design and redesign of the electoral system in Serbia. Serbia is one of the very few post-socialist states and the only one among the former republics of the SFR Yugoslavia, to have held its first pluralist elections in the new constitutional framework adopted by a communist assembly. The old elites realized the need for reform and they dictated its pace. The "round table", as an institution from the group of contextual factors, only played a role in the redesign of the electoral system and even so, only when the ruling party had already been weakened and the opposition strengthened. The result was the introduction of a proportional electoral system which has been in force, with certain modification, for eighteen years. A sort of "pressure-driven" compromise" also occurred during the switch in the position of the President of FR Yugoslavia. With the victory of V. Košturnica and the defeat of S. Milošević, the new elite would dictate the transition to a purely proportional electoral model with a single constituency; henceforth, the electoral system would

become an institution difficult to change. Among contextual factors, actions by the head of the state and the Constitutional Court stand out, as the most active institutions intervening in electoral reforms. Heads of state acted by directly initiating reforms: S. Milošević through the party he led, M. Milutinović by passively observing the shaping of reforms outside the intuitions, i.e. outside the parliament, as the one in 2000, or B. Tadić by inspiring reforms in a broader context of political system reforms. Through its decisions, Constitutional Court intervened several times in electoral law. Twice it acted to protect the free mandate of the deputies from party usurpation, but also to protect the principle of direct elections, by prohibiting parties to allocate mandates from their lists outside of the order stated on the voting lists.

The perception of actors' interests changed throughout reforms. Parties, in principle, advocated majoritarian or proportional electoral systems, guided by the maximization of number of seats in the parliament. In "phase zero", ruling elites preferred the majoritarian electoral system as this gave them an advantage over the opposition, which was in the process of formation. The opposition, without an organisational, activist network and financial backing, with weak support among the voters and divided, saw its chance in concentrating the voting power through a proportional electoral system. They were wrong to opt for an extreme form of proportional representation with a single constituency, as this would introduce far fewer parties into parliament than the majoritarian electoral system would have done. By positioning themselves in the parliament through a proportional voting model with a closed list and with the right of the parties to allocate mandates as they pleased, irrespective of the listed order, the party elites became a barrier to electoral system changes. They oppose all types of reforms that would highlight personalization of the elections - majoritarian elections, but also open lists, alternative or preferential voting. Naturally, personal interest is disguised by party interests or by broader objectives, such as preservation of proportionality, representation of different interests in the parliament, unfavourable effects of sudden changes on the reforms that the majoritarian electoral model would bring about, etc. At the same time, the existing electoral system reinforces fragmentation of the parliamentary party system, compounding the creation of parliamentary majority, leading to cumbersome coalitions and incoherent governments lacking efficiency. But despite all this, the actors are failing to tackle changes of electoral institutes, by, for example, introducing a graded electoral threshold for coalitions, open voting lists etc, as any such proposition would lead to refusal of support to a coalition government.

Electoral reforms in Serbia have been at a standstill for a decade. They are debated in expert and political circles. Negative effects of the current electoral system have been observed. Some of the goals of key stakeholders - parties - are being projected. Mechanisms that would help achieve goals and solve problems are available to the designers. The only thing lacking is the power to transpose them into electoral law, as there is no political will to do so. It will be interesting to see if the impulse for change will again come under the influence of external, contextual or interest factors and how individual parties in this process will behave

Bibliography

(2009). CDL-EL(2009)012 Draft Law on the Election of Councillors of Serbia [http://www.venice.coe.int/docs/2009/CDL-EL\(2009\)012-e.pdf](http://www.venice.coe.int/docs/2009/CDL-EL(2009)012-e.pdf)

(2010) UPITNIK : Informacije koje Evropska komisija zahteva od Vlade Srbije u cilju pripreme Mišljenja o zahtevu Srbije za članstvo u Eropsku uniju (I Demokratija i vladavina prava, Skupština, pitanje br 13) http://www.seio.gov.rs/upload/documents/upitnik/master_upitnik_sr.pdf

Bawn, K. (1993). The Logic of Institutional Preferences: German Electoral Law as a Social Choice Outcome, *American Journal of Political Science*, 37(4): 965-989

Birch, S. et al. (2002) *Embodying Democracy - Electoral System Desing in Post - Communist Europe*. New York: Palgrave Macmillan

Benoit, K., Schiemann, J. (2001) 'Institutional Choice in New Democracies', in: *Journal of Theoretical Politics*, 13(2): 158-61.

Benoit, K. (2000). *A Theory of Electoral Systems*. Paper delivered at conference on Re-Thinking Democracy in the New Millennium, Houston, 16-19 February 2000.

Blais, A. and L. Massicotte (1997). 'Electoral Formulas: A Macroscopic Perspective', in: *European Journal of Political Research*, 32(1): 107-129.

Brady, H. and, C. Kaplan (1994). Eastern Europe and the Former Soviet Union. IN: David Butler and Austin Ranney (eds.) *Referendums Around the World: The Growing Use of Direct Democracy*. London: Macmillan

Boix, C. (1999) 'Setting the Rules of the Game : The Choice of Electoral Systems in Advanced Democracies', in: *American Political Science Review*, 93(3): 609-624.

Carey, J. and M. S. Shugart (1995) 'Incentives to Cultivate a Personal Vote: A Rank Ordering of Electoral Formulas, in: *Electoral Studies*, 14(4): 417-439.

Crampton, R.J. (1994) *Eastern Europe in the Twentieth Century*. London: Routledge

Dogan, M. (1978) 'Romania 1919-1938'. In: Myron W. and O. Regun (eds.) *Competitive Elections in Developing Countries*. Chapel Hill: Duke University Press

Dunleavy, P. and H. Margetts (1995). Understanding the Dynamics of Electoral Reform, *International Political Science Review*, 16 (1): 9-29.

Geddes, B. (1996) 'Initiation of New Democratic Institutions in Eastern Europe and Latin America.' In: A. Lijphart and C. H. Weisman, (eds.) *Institutional Design in New Democracies: Eastern Europe and Latin America*, Boulder: Westview Press.

Gerard A. (2001) 'Institutions, Path Dependence, and Democratic Consolidation', in: *Journal of Theoretical Politics*, 13(3): 249-269.

Gunther, R. (1989) 'Electoral Laws, Party Systems, and Elites: The Case of Spain', in: *American Political Science Review*, 83(3): 835-858.

Holmes, S. (1994) 'Designing Electoral Regimes : Introduction', in: *East European Constitutional Review*, 3(2): 39-42

Ishiyama, J. (1997). Transition Electoral Systems in Post-Communist Europe, *Political Science Quarterly*, 112(1), 98-101.