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2021 ELECTION'S DILEMMA: THE PROPORTIONAL SYSTEM FLAWLESS OR NOT

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Kosovo's early assembly elections on February 2021 highlighted two characteristics of the system: (1) that supermajorities can be achieved by a single political party, and (2) that the guaranteed assembly seats for minority communities can be put at risk by the communities themselves, where one larger community can vote to elect the representatives of another smaller community, thus outvoting the representatives that the smaller community actually supports. As to the first, although Kosovo has a pure proportional electoral system which favors small political parties, LVV arranged to gain almost 50% of the votes, guaranteeing them at least 58 seats in the Assembly. For many independent observers, this came as a result of the people becoming aware of their political power and from the anti-establishment movement arisen against those in power for the last 20 years. On the other hand, the early elections proved a silent flaw of a system initially designed to protect minorities; one that can risk the entire concept of the guaranteed quota. According to the final results, approximately 4 reserved seats (1 from the Bosnian community and 3 others from Roma, Ashkali, Egyptian and Gorani communities) were hijacked by Srpska Lista (SL), the biggest political party among the Serbian community in Kosovo. As reported by other minority communities, SL organized a number of its voters to vote for the two newly emerged political parties from Bosnian and Roma communities. As a result of these votes from the Serbian voters, these two Bosnian and Roma political parties gained seats in the assembly, whereas other Bosnian and Roma parties who received votes only from their community did not. Such an event was possible because of a silent gap in the rules of the election system, one which does not clearly state whether representatives of communities can be chosen by that community only.

As per the Constitution of Kosovo originating from the Ahtisaari plan, the Assembly consists of 120 representative seats in total. 100 seats are divided between the Albanian political parties which must pass a 5% threshold, and 20 seats are guaranteed for ethnic minority communities living in Kosovo that are not subject of a threshold, divided between Serbian, Roma, Ashkali, Egyptian, Turkish, Bosnian and Gorani communities. Out of these 20 seats, a minimum of 10 seats are guaranteed for the Serbian community (if the number of seats won is less than 10), and 10 seats are reserved for Roma, Ashkali, Egyptian, Turkish, Bosnian and Gorani communities (hereinafter "Other Communities"). According to Article 64 of the Constitution, 1 seat is guaranteed for the Roma community, 1 seat for the Ashkali community, 1 seat for the Egyptian community, and 1 additional seat awarded to either Roma, Ashkali or Egyptian (RAE) community with the highest support, 3 seats for the Bosnian community, 2 seats for the Turkish community and 1 seat for the Gorani community.

Although there is no threshold and the seats are guaranteed, political parties must have support in order to be part of the Assembly. Hence except registration, a party that aims to represent the interest of a given community, must participate in elections and compete with other "sister-parties" coming from the same community. The party gaining more votes among those registered as representing the given community, receives the seat(s) guaranteed for that community in the Assembly. The number of votes that political parties must gather to be represented depends from two main factors: first, the size of the community, and second, the number of political parties that are competing against each other for the same seat. According to the results from the last elections, the number of votes needed to gain seats in the Assembly for political parties of Other Communities is low, differing from 1078 to 7075 votes, therefore a small number of votes from the Serbian community can really make a difference in distorting their representation. According to the system political parties representing communities might be left

out of the Assembly if other sister-political parties (registered as representing the given community) perform better in elections.

In 2021 elections, it was reported that SL instructed Serbian voters to vote for two new initiatives, the Bosnian, Ujedinjena Zajednica – Adrijana Hodzic (UZ-AH) and the Roma, Romani Inicityativa (RI). The aim was to support the election of those MPs by using the community political party's quotas, and to prevent candidates from the incumbent political parties of those communities get reelected. It should be noted that both initiatives UZ-AH and RI were registered just weeks before elections.

Since this event represents an unprecedented development there are two points that we aim to highlight in this note. First, we share the opinion that this incident is challenging the reason behind the quotas, and risks the distortion of the representation of minority communities in the Assembly. Second, it is questioning the effectiveness of elections as a mechanism of accountability used by communities within their community political parties.

Narrative before & after elections

A month before the elections, journalists and civil society [activists reported claims of representatives from Serbian and Bosnian political parties](#) that SL planned to arrange votes for particular MPs candidates of Other Communities. It was reported that this arrangement by SL was done in order to be able to elect up to 7 MPs guaranteed for Other Communities. These claims were made initially by the Serbian [representatives of Progresivna Demokratska Stranka \(PDS\), Nenad Rashiq](#) and of [Srpski Demokratski Savez \(SDS\), Silavisa Petkoviq](#), by the Bosnian representatives of [SocialdemokratskijaUnija \(SDU\), Duda Balje](#) and of Nova Demokratska Stranka (NDS), Anesa Qolakoviq.

In the elections, 5 political parties were competing for 3 places reserved for the Bosnian community, while 9 were competing for 4 places reserved for the RAE community. During these elections 17 political choices were offered for Other Communities that constitute 5.4% of Kosovo's population (Roma 0.5%, Ashkali 0.9%, Egyptian 0.7%, Turkish 1.1%, Bosnian 1.6% and Gorani 0.6%). Hence, this contributes largely in the spreading of votes and lowers the support needed for communities to win reserved seats in the Assembly.

As warned, the new initiatives UZ-AH and RI emerged as winners. UZ-AH outperformed VAKAT and NDS (two of the biggest Bosnian political parties), winning one seat in the Assembly. While RI dominated over the Roma political parties and the RAE community, winning two seats in the Assembly. Shortly after the results, public reactions¹ appeared denouncing the distortion of representation for the Bosnian and Roma communities in Kosovo. Among others, [a member of the Bosnian community](#), offered interesting facts regarding the increase of number of votes for the Bosnian in these elections. According to these facts, the overall number of votes supporting SL compared to 2019 shrank for 10 thousand, and left many wondering whether these votes went for the Other Communities as warned.

It is claimed that UZ-AH and RI gained 80% of their votes in 10 municipalities with Serbian majority, and with a very small number of people registered as Roma and Bosnian communities. They argued that these political parties are only self-proclaimed Bosnian and/or Roma political parties and in fact they are controlled by SL. However, in this particular case the

¹Kallxo (2021), "Kosovo Bosnian CSOs: We do not accept as representatives those politicians who were elected by votes of other communities", link: <https://kallxo.com/lajm/ojq-te-boshnjake-te-kosoves-nuk-pranoime-si-perfagesues-ata-politikane-qe-u-zgjodhen-me-vota-te-komuniteteve-tjera/>; Koha (2021), "Berisha demands the annulment of votes in Serb communities where the Roma community does not live", link: <https://www.koha.net/arberi/259564/berisha-i-padrejte-mosreagimi-i-institucioneve-per-orkestrimin-e-votave-nga-lista-serbe/?fbclid=IwAR3sRuDQ11JguHEWqJvMEn2kG8g10z2sqxLmGQ7Ddr8qCefwetYWwnYn6I>; Koha (2021), "Civil society criticizes the silence over allegations of vote rigging by the Srpska Lista", link: <https://www.koha.net/arberi/259833/shoqeria-civile-kritikon-heshtjen-lidhur-me-dyshimet-per-manipulim-te-votave-nga-lista-serbe/>

representative of UZ-AH, Adriana Hodzic, denied these claims and public reactions and among others she claimed that her political party has no such agreement or support from SL.

After the results became final, political parties from the Bosnian and RAE community used their right for appeal at the Election Complaints and Appeals Panel (ECAP). ECAP partially approved the request of these two entities² and annulled the votes in those municipalities. With this decision the sharing of seats between the Bosnian and RAE community might change entirely, leaving RI with only one seat and UZ-AH without one. However, this decision is not final, since an appeal at the Supreme Court has already been submitted. The Supreme Court might either approve or annul the ECAP's decision.

Upcoming challenges

The scenario where the majority can arrange votes to dictate the representation of minorities raises provoking thoughts indeed. There are two important principles that need to be balanced, the free choice of vote and the participation for communities in the Assembly.

On these grounds, if the representation of communities is conditioned only through the votes of those communities, a restriction of the free choice of vote is evident. However, this was and might be the tool that saves the effectiveness of the quota for the communities. This construct supports the idea that ethnic communities can only be represented by pure ethnic political parties which are voted by the same ethnicity. And because of this structure, the political parties in Kosovo will continue to be divided purely into ethnicities. Hence, Albanians will vote for Albanians and will be represented by Albanian political parties, whereas Serbians by Serbian political parties, Bosnian by Bosnian political parties, and so on so forth. The risks of this solution, is that it is essentially divisive in ethnic basis; therefore it functions completely against the idea of integration.

On the other hand, if the right to vote is prioritized over the representation of communities, the effectiveness of the quota is at question. Initially, the recent example strangely induced by SL, cannot continue to guarantee the representation of communities in the Assembly, since the majority, if willing, will always have a possibility to distort minorities' representation. Therefore, their representation cannot be guaranteed either by the guaranteed seats, or by the fact that they have MPs with the same ethnicity, and neither by voting.

One would argue that these elections unveiled the potential flaws of the electoral system concerning the representation of minority political parties. However, this hassle can end by the Supreme Court's decision confirming the ECAP's verdict. Explaining once and for all, that the minorities are entitled to receive a mandate from the guaranteed seats only if they receive votes from areas/regions where their communities live, thus enabling effectively their participation in the Assembly. Though, if the Supreme Court decides to put in the forefront the right to vote, the guaranteed representation of communities might be jeopardized.

Accordingly, no matter the scenario, this might be the last wake up call for Kosovo's society to rethink the system of representation with the aim of making it less divisive and more integrative. While as for Kosovo's communities' this might be an alert to concentrate their political organization and voting preferences, since this might be the answer to their lack of political power. Hence, in the future communities must focus their political preference against these newly emerged political forces, if they feel that they do not represent them, as democracy only allows accountability through votes.

² ECAP (2021), Verdict nr.736/2021, link: <https://pzap.rks-gov.net/wp-content/uploads/2021/03/A736-2021-Vendim.pdf>; and ECAP (2021), VerdictAnr.656/2021, link: <https://pzap.rks-gov.net/wp-content/uploads/2021/03/A656-2021-Vendim.pdf>

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