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Bicameralism in Former Yugoslav Republics: Influences and Perspectives

ABSTRACT: *This study examines the concept of bicameralism in the former Yugoslav republics, exploring its role and potential within these societies, which are mostly considered complex and heterogeneous. Bicameralism, which can be a tool for balancing interests in divided societies, has been approached differently across the former Yugoslav states. While countries such as Slovenia maintain a bicameral system, others such as Croatia and Serbia have largely favoured unicameral solutions. By analysing historical and theoretical arguments, this study explores whether a second chamber could enhance democratic processes by representing diverse societal interests or if it is unnecessary in unitary states. Additionally, the study examines alternative mechanisms to bicameralism, assessing their effectiveness in achieving the same goals.*

KEYWORDS: *bicameralism, unicameralism, divided societies, former Yugoslav republics, diversity, constitutional engineering*

1. Introduction

In its recently published report, the Venice Commission has stated that bicameralism is a response to the socio-political demands of modern societies, and that some global trends (e.g. democratic backsliding)¹ demonstrate a new and increasing interest in this institutional mechanism.² Indeed, bicameralism is one of the topics that has sparked various discussions for centuries. Almost all theoretical debates on this issue are framed in terms of pros and cons. However, the question of whether to choose

1 Venice Commission (2024) 'Report on Bicameralism' [Online]. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2024\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2024)007-e) (Accessed: 21 October 2024), p. 28.

2 Ibid., p. 3.

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a solution where the parliament has one or two chambers is not only a theoretical matter but also a highly practical one. Choosing one option over the other means opting between two concepts of democracy.³ The debate between unicameralists and bicameralists somewhat quieted down towards the end of the 20th century, only to be revived in the 1990s when new constitutional solutions began to be sought by countries of the former real-socialist bloc.⁴ Another reason for the renewed interest in this topic can be found in the increased scientific focus on finding new constitutional solutions that would adapt to very complex, heterogeneous, and often divided societies. The second half of the 20th century and the era of globalisation opened up a field for so-called constitutional engineering.⁵ Various models of bicameralism for the new “environment” are also part of this tendency in constitutional law and political science.

Interestingly, most Eastern European countries in the process of democratic transition have not embraced bicameralism as one of the tools for improving democracy, while other European countries have.⁶ What makes the situation even more paradoxical is that in most of these Central and Eastern European countries, traditions of bicameralism exist. The former Yugoslav republics constitute a notable example.⁷ These states shared a common history for 70 years, first as the Kingdom of Yugoslavia, and later as socialist Yugoslavia. The first state was unitary, while the latter was federal. After the breakup of Yugoslavia, the new states faced, among other things, the question of how to organise their institutions. The question of parliamentary structure is particularly interesting from a research perspective, as the states have responded to this question in very different ways. Accordingly, Slovenia and Croatia adopted a bicameral solution. However, Slovenia is quite specific because it opted for the so-called socio-economic bicameralism. Croatia introduced the second chamber as a territorial representation of counties, but in the 2001 reform, the parliament was transformed into a unicameral one. Serbia and Montenegro, as members of the Federal Republic of Yugoslavia (later the State Union of Serbia and Montenegro), opted for a unicameral parliament. They retained such solutions in their constitutions after the dissolution of the State Union of Serbia and Montenegro. Macedonia did the same. However, not only at the time of constitution drafting but also later, the issue of a bicameral parliament was often raised, and in some countries,

3 Petrov, 2017, p. 44.

4 Ibid.

5 A pertinent example is the work of Arend Lijphart. See: Lijphart, 1984; Lijphart, 1999.

6 Venice Commission (2024) ‘Report on Bicameralism’ [Online]. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2024\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2024)007-e) (Accessed: 21 October 2024), p. 9.

7 Under the term “former Yugoslav republics” in this paper, I refer to Serbia, Montenegro, North Macedonia, BiH, Croatia, and Slovenia.

formal proposals were made to amend the constitution in this regard. In Bosnia and Herzegovina (hereinafter: BiH), the solution of a bicameral parliament is the only undisputed one because it is a federal state. All this evidence clearly shows that the former Yugoslavia is a “perfect research field”, as it encapsulates all the questions related to the structure of parliament – from the purpose of the second chamber, its position, and competences, to the way members are elected.

The main question in this study concerns the need for the existence of a second chamber in the former Yugoslav states, based on past experience and current solutions. Broadly speaking, the assumption is that all the societies under consideration are heterogeneous, some less so, and some deeply divided. The assumption, as stated by Von Achenbach, is:

“to constitute a democratic order based on freedom and equality, the political system of a society needs to reflect its complexity. Processes of collective decision-making need to allow for the political expression of societal differentiation and diversity. Bicameralism is a crucial mechanism in this regard. Most basically, bicameralism means a diversification of political institutions. It establishes yet another layer of structural complexity within the legislative branch and the actual law-making procedure. It diffuses and decenters legislative power. It allows for expressing certain aspects of political pluralism and disagreement”.⁸

Based on these assumptions, the aim is to determine whether a bicameral parliament in the former Yugoslav states can be an additional instrument in the development of democratic institutions or if it is truly unnecessary. First, the study addresses the conceptual question of the purpose of bicameralism, particularly from the perspective of its suitability in heterogeneous (ethnically, culturally etc.) societies, as well as in unitary states (all former Yugoslav states, except BiH, are unitary). Then, the common traditions of the six mentioned states are examined. The study specifically analyses the examples of Slovenia (the only country that still has a bicameral parliament); Croatia, which once had one but later replaced it with a unicameral system; and Serbia, which has a very strong unicameral tradition, though the question of the second chamber has been raised multiple times throughout history. Finally, conclusions are drawn on the possible advantages of introducing a second chamber to respect the complex structure of society.

8 Von Achenbach, 2014.

2.

Notion of Bicameralism

The term bicameralism in a broader sense exists when a parliament is composed of two chambers,⁹ regardless of the relationship between the chambers. However, in a narrower sense, bicameralism exists when there is a bicameral system. It exists when the chambers must jointly decide on certain issues and are equal in matters of joint jurisdiction.¹⁰ Therefore, the essence of bicameral decision-making is that no decision can be made without the agreement of both chambers. Such a system, where the chambers are equal, is also called egalitarian bicameralism. In cases where one chamber is given precedence, it is referred to as non-egalitarian bicameralism.¹¹

2.1. Types of Bicameralism

The Venice Commission distinguishes between several types of second chambers based on the mode of election and nature of representation: the federal second chamber; the second chamber of a regionalised and decentralised state; the second chamber constituted on the principle of popular representation; and in the fourth category, second chambers constituted on other organisational principles.¹²

The federal second chamber is implied in federal states. Originating from the Connecticut Compromise¹³ in the USA, it allows for the representation of both the citizens of the federation (who are represented in the second chamber) and the federal units. However, in this study, we are interested in the second chambers in unitary states. The fundamental question is whether a second chamber makes sense if the state is unitary. The theoretical basis for this argument lies in the idea of popular sovereignty

9 Out of 190 national parliaments in the world, 78 are bicameral and 112 are unicameral (National Parliaments (2024) Interparliamentary Union [Online]. Available at: <https://www.ipu.org/national-parliaments>; Accessed: 10 September 2024)

10 Petrov, 2017, p. 48.

11 Marković, 2015, pp. 298–299.

12 Venice Commission (2024) 'Report on Bicameralism' [Online]. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2024\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2024)007-e) (Accessed: 21 October 2024), pp. 11–15.

13 The Connecticut Compromise of 1787 represents a compromise on the bicameral structure of the legislature of the United States of America, which managed to satisfy the interests of large states such as Virginia, as well as smaller ones such as New Jersey. The essence of the compromise was that while the Lower House would be elected on a popular basis, proportionate to the electorate as a whole, the Senate would provide equal representation for the states irrespective of their size. Palermo and Kessler, 2017, p. 167.

by Jean-Jacques Rousseau.¹⁴ From this idea, it is concluded that if the people as a whole are sovereign, they must be represented as such, in a unified manner.

However, today, many unitary states also have a second chamber to represent other interests. Thus, citizens of territorial units of a unitary, decentralised state can be represented. Elections for such a second chamber can be either indirect or direct. It is common for the elections to be indirect, and in this case, the second chamber is somewhat weaker than the first. The idea is that an individual citizen appears in a dual capacity: as a citizen of the state (and as such, represented in the lower chamber) and as a citizen of a territorial unit within the state (and as such, represented in the upper chamber).

However, there are cases where both chambers are directly elected. A typical example is Romania, where both the lower and upper chambers (the Senate) are directly elected using the same electoral system.¹⁵ In the Czech Republic, the lower chamber is elected using a proportional system, while the upper chamber is elected using a majoritarian electoral system.¹⁶ Such a structure of chambers can be quite controversial. Namely, if the upper chamber exists to represent specific interests that are not represented in the lower chamber, then having two identical chambers with the same electoral base is rather illogical and does not contribute to respecting the plurality of interests. This duplication lacks a clear logical foundation.

Finally, besides being a member of a community as a citizen, an individual simultaneously has other identities:¹⁷ based on their profession, linguistic community, and religious community, among other such aspects. In this sense, the second chamber can be a political space where the voices of those in various professions, social classes, and linguistic communities can be heard. This group includes the Irish Senate or the Slovenian National Council. This is the basis of the so-called socio-economic bicameralism.¹⁸ The main issue with such a second chamber lies in whether it is truly possible to isolate it from political influences. Additionally, it is often emphasised that historical examples of socio-economic bicameralism have not proven very successful.¹⁹ However, they existed in socialist countries, which means the basic prerequisite was missing: democratic pluralism.

14 Petrov, 2017, p. 44.

15 Ilić, 2022, pp. 217–218.

16 Ibid., p. 133.

17 Venice Commission (2024) 'Report on Bicameralism' [Online]. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2024\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2024)007-e) (Accessed: 21 October 2024), pp. 8–9.

18 Ibid.

19 Leaving aside corporatist assemblies in fascist regimes, such as the Council of Fascists and Corporations in Mussolini's Italy and the Corporative Chamber in Salazar's Portugal, the attempts by Charles de Gaulle in France in the 1960s to reduce the powers of the Senate and transform it into a mixed chamber (*Chambre mixte*) also proved unsuccessful (Marković, 2015, p. 297).

What particularly interests us is the theoretical arguments in favour of the existence of a second chamber to ensure the representation of as many different interests as possible and to secure the normal functioning of interests in heterogeneous societies.

2.2. Bicameralism in Heterogeneous Societies – Theoretical Approach

Numerous authors, especially in the late 20th and early 21st centuries, have highlighted the many advantages of bicameralism from different perspectives. Unlike classic arguments in favour or against it, the newer theory of bicameralism has been largely examined through the application of political methods. One of the most important questions in the field of constitutional law concerns the issue of constitutional engineering – how to create specific constitutional institutions and mechanisms.²⁰ For instance, Lijphart, who offered solutions for heterogeneous societies and proposed a comprehensive framework for systems of consociational democracy, emphasised that bicameralism is one of the key features of this system.²¹ As Bulmer notes, this is entirely consistent with the principle of consensual democracy that seeks to involve as many people as possible in governance.²² Moreover, it aligns with the idea that the second chamber should include various socio-cultural minorities, as they should have the right to veto laws that they see as unsuitable for their needs or as a threat.²³ Bruce Ackerman points out that, ‘although constitutional engineering may be tricky, a second chamber may enhance the deliberative character of political life. Talking over a measure twice may well expose serious difficulties and generate useful reformulations of ill-considered initiatives. The two-step process provides a breathing space in which to reconsider the nature of our civic obligations to one another’.²⁴ He, of course, raises a question that must be seriously analysed in each individual system: ‘does adding complexity and opacity without providing much in the way of extra deliberative engagement worth it’.²⁵

20 Milosavljević and Popović, 2019, pp. 216–217.

21 Lijphart, 1999, pp. 200–211.

22 Bulmer, 2011, p. 116.

23 Bulmer, 2011, p. 117.

24 Ackerman, 2000, p. 684.

25 Ibid., p. 687. At the beginning of the 20th century, one of the main arguments of bicameralists was that unicameral systems were very rare in democratic states. However, after World War II, some countries with a very stable and long democratic tradition abolished their second chamber, such as Denmark in 1963, Sweden in 1969, and Iceland in 1991. (Venice Commission (2024) ‘Report on Bicameralism’ [Online]. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2024\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2024)007-e) (Accessed: 21 October 2024), p. 5).

For this study, the key argument derives from the purpose of bicameralism. Undoubtedly, any constitutional institute or mechanism must meet the needs of a particular society. Bicameralism can serve as a significant barrier against the absolute power of a single chamber. It appears, provided it is appropriately composed, as a safeguard against the tyranny of the majority. Bulmer notes the importance of having mechanisms that protect socio-cultural minorities in the context of the relationship between the popular and parliamentary majority.²⁶ Pettit reasons similarly. Discussing the possibilities of limiting power in the decision-making process, he distinguishes between substantive and procedural limitations. One aspect of the latter is the introduction of a second chamber, and the basic argument is that it allows for the representation of as many people's interests as possible.²⁷

Finally, in analysing the advantages of the bicameral system, the Venice Commission also highlights the argument of representing those interests that are not fully represented in the lower chamber. This allows for the institutionalised representation of diverse interests.²⁸ Additionally, another commonly cited advantage is the regulation of community tensions.²⁹ As stated by Von Achenbach:

“an increase in nationalist or regionalist sentiments, growing political polarization within society, popular disappointment with the politics and politicians of a first chamber and the executive, experiences of gridlock and inefficiency of the legislature, or perceptions of regional economic imbalances within a nation can all alter the public's attitudes towards the complex representative claims embodied in a bicameral system”.³⁰

Political transitions are always accompanied by various regulatory mechanisms, among which bicameralism can be one. However, precisely in the context of the aforementioned constitutional engineering, an argument against bicameralism can also be offered. Instead of a bicameral parliamentary structure, other institutional mechanisms can be considered. They are simpler and cheaper (as the second

26 Bulmer, 2011, p. 108.

27 Pettit, 2001, p. 168.

28 The most typical examples are the second chambers in Ireland and Slovenia. Ireland's bicameralism is asymmetrical in nature. The Seanad (second chamber) is intended to play an advisory and revising role rather than to be the equal of the popularly elected first chamber, that is, Dáil (Venice Commission (2024) 'Questionnaire for Report on Bicameralism – Ireland' [Online]. Available at: <https://www.venice.coe.int/files/Bicameralism/IRL-E.htm>; Accessed: 31 October 2024). In 2013, a referendum was held to abolish the second chamber, but it was unsuccessful. Finally, after decades of objections, the Seanad was reformed in 2020 (Ilić, 2022, pp. 179–183).

29 Venice Commission (2024) 'Report on Bicameralism' [Online]. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2024\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2024)007-e) (Accessed: 21 October 2024), p. 9.

30 Von Achenbach, 2014.

chamber incurs significant costs), and they avoid the possibility of potential deadlock in the work process.³¹ Comparing the advantages and disadvantages of a second chamber, particularly in the context of divided and heterogeneous societies, Bulmer concludes that strong egalitarian bicameralism in such societies would be a necessity, specifically to over-represent and thereby protect socio-cultural minorities. In relatively homogeneous societies, medium-strength bicameralism is desirable, but alternative mechanisms can be proposed. Finally, in homogeneous societies and small states, preference should be given to other mechanisms, such as minority-veto referendums³² designed to enable direct public participation.³³

This argument about the second chamber as a deliberative body that can represent as many interests as possible forms the basis of this research. Thus, using the example of former Yugoslav states, as well as the experiences of other countries, the question addressed is whether a second chamber can serve as an additional safeguard in heterogeneous societies.

3.

Idea of Bicameralism in Former Yugoslav Republics

The formation of the first Yugoslav state was accompanied by numerous disagreements among various political (and national) groups on diverse issues. As Marinković notes, if in the 19th century, the constitutional question was about how to limit the ruler, in the first Yugoslav state (i.e. the Kingdom of Serbs, Croats, and Slovenes, and later, the Kingdom of Yugoslavia), it took on a new dimension – whether the state should be unitary or federal.³⁴ The question of the form of governance was no less controversial, with proposals even for republican constitutions.³⁵ However, the first Constitution from the time of the Kingdom of Serbs, Croats, and Slovenes, the so-called St. Vitus Constitution of 1921 (*Vidovdanski ustav*), envisioned a unicameral parliament,³⁶ which certainly did not meet the needs of the highly heterogeneous

31 One example is the so-called minority-veto referendum mechanism. Neil McCormick drafted a constitution for an independent Scotland, and one of the proposals was the establishment of a single-chamber parliament. The purpose of this additional corrective instrument was to protect the parliamentary minority: 'Having a single-chamber Parliament was regarded by some commentators as risky, but our response was that a robust committee system coupled with blocking rights for a substantial minority would be sufficient security against the abuse of majority power' (cited in: Bulmer, 2011, p. 108).

32 This mechanism enables a parliamentary minority to impose a suspensive veto on laws, which are then subject to decision-making in a referendum. *Ibid.*, p. 107.

33 *Ibid.*, p. 119.

34 Marinković, 2020, p. 107.

35 For various constitutional drafts, see: Jovanović, 1932b, pp. 348–385.

36 See Art. 69 of the so-called St. Vitus Constitution.

society at the time. The second constitution, the so-called September Constitution from 1931, provided for a bicameral parliament. The Senate, as the second chamber, had two groups of members – those appointed by the king and those elected (Art. 50), with the matter of elections left to law. However, this chamber was more a tool in the hands of the king than an extension of the principle of the separation of powers or a check on the king's autocracy.³⁷

The second Yugoslav state was completely different, being federal and socialist. Instead of the separation of powers, a system of unity of powers was established, with the Assembly as the central body, while the vertical organisation of power was characterised by the principle of democratic centralism.³⁸ Under such conditions, all the constitutions (1946, 1953, 1963, and 1974) and constitutional law (adopted in 1953) of socialist Yugoslavia provided for the existence of multiple chambers. Moreover, this state conducted a sort of experiment in terms of the organisation of the second chamber by promoting the concept of socio-economic bicameralism and, simultaneously, introducing the multicameral system.

According to the 1946 Constitution, the assembly was organised following a pure federal bicameral model: the People's Council (*Veće naroda*) as the general representative body, and the Federal Council (*Savezno veće*) as the representative body of the federation as a unified political community.³⁹ In 1953, the Constitutional Law, which introduced the idea of self-management into the constitutional order, brought significant changes to the structure of the parliament. Alongside the Federal Council, the so-called Producers' Council (*Veće proizvođača*) was introduced. The Federal Council consisted of people's deputies elected by citizens in districts and cities based on general, equal, and direct suffrage, and people's deputies elected by the republican councils and provincial or regional councils from among their members (Art. 25). The Producers' Council consisted of people's deputies elected by producers employed in production, transport, and trade, proportionate to the participation of economic sectors in the total social product of the Federal People's Republic of Yugoslavia (Art. 26). The role of the newly introduced Producers' Council was to decide on all matters related to the economy, finance, labour, and social security.⁴⁰ The 1963 Constitution continued to deepen this Yugoslav experiment of self-management, which was reflected in the structure of the parliament, now comprising five chambers: the Federal Council (*Savezno veće*), Economic Council (*Privredno veće*), Educational-Cultural Council (*Prosvetno-kulturno veće*), Social-Health Council (*Socijalno-zdravstveno veće*), and Organisational-Political Council (*Organizaciono-političko veće*). The fundamental idea was to represent not only the interests of citizens but also other interests

37 See: Marinković, 2019, p. 57.

38 Ibid., p. 62.

39 Đorđević, 1982, p. 489.

40 Ibid., pp. 489–490.

in economic and non-economic spheres. Finally, the 1974 Constitution returned to a bicameral parliamentary structure. The Council of Republics and Provinces (*Veće republika i pokrajina*) was a typical federal chamber, while the Federal Council (*Savezno veće*) was constituted as a delegation of the working class.⁴¹

All the former Yugoslav states, with their legacy of strong socio-economic bicameralism but within the conditions of a one-party system and the absence of political pluralism, faced this heritage when they began adopting their constitutions during the breakup of the state. Macedonia and Montenegro opted for unicameral parliaments. In Montenegro, the issue of bicameralism was never seriously considered, which can be attributed to its small territory and population, as well as its strong unicameral tradition – factors that likely justify such a decision. Meanwhile, although Macedonia is a small country with approximately 2,000,000 inhabitants, in 2005, a discussion on transforming the parliament into a bicameral one was initiated. At that time, the VMRO-NP (Internal Macedonian Revolutionary Organisation – Peoples' Party) parliamentary group proposed such a solution, and the Democratic Party of Albanians did the same in 2010, albeit for different reasons.⁴² North Macedonia is an ethnically heterogeneous country with frequent internal conflicts between members of different nationalities (particularly North Macedonians and Albanians), which is where the reasons for introducing a second chamber should be sought. The party representing the interests of the Albanian minority particularly advocates for such a solution to ensure the representation of this minority and provide an institutional framework for expressing its own interests.⁴³

Finally, BiH will be considered briefly in this study because it is a federal state, and true federations without bicameralism do not exist. BiH⁴⁴ is a federal state composed of two federal units (so-called entities): the Federation of BiH and Republika

41 Ibid., p. 493.

42 Venice Commission (2024) 'Questionnaire for Report on Bicameralism – North Macedonia' [Online]. Available at: <https://www.venice.coe.int/files/Unicameral/MKD-E.htm> (Accessed: 21 October 2024).

43 Ibid.

44 The Constitution of BiH of 1995 has a specific legal nature, as it is not the product of a constituent power vested in the people. From a formal perspective, the Constitution of this state was adopted as Annex IV of the Dayton Peace Agreement of 1995, which brought an end to the war in BiH.

Srpska.⁴⁵ Both of these entities have adopted their own constitutions,⁴⁶ which, in accordance with the provisions of the federal constitution, must be consistent with it.⁴⁷ The federal parliament (Parliamentary Assembly of BiH/*Parlamentarna skupština Bosne i Hercegovine*) is bicameral and consists of the House of Representatives (*Predstavnički dom*) and House of Peoples (*Dom naroda*) (Art. IV of the Constitution of BiH). The House of Representatives represents the citizens and has 42 members, who are directly elected by citizens from the entities, with two-thirds elected from the territory of the Federation and one-third from the territory of Republika Srpska (Art. IV.2 of the Constitution of BiH). The House of Peoples can conditionally be described as the upper chamber; however, unlike comparative models where the upper chamber represents federal units, in BiH, this chamber represents the constituent peoples.⁴⁸ It has 15 members, of whom 10 are from the Federation of BiH (five Croats and five Bosniaks) and five from Republika Srpska as representatives of the Serbs (Art. IV.1 of the Constitution of BiH).

Certainly, the efficiency of the federal parliament's work, the organisation of federal units, and the extent of their competencies are very significant issues, especially considering the difficulties in the functioning of this state. However, these issues fall outside the scope of this research. As previously noted, the broader question guiding this study concerns the need for a second chamber in unitary states, examined through the example of the former Yugoslav states, all of which, except BiH, are unitary.

Therefore, the following sections analyse in detail the examples of Slovenia, which has a second chamber; Croatia, which had one but abolished it in 2001; and Serbia, which has a strong unicameral tradition, though the issue of bicameralism has always been more or less present throughout its history.

45 By an arbitral decision of 1999, the Brčko District was established as a separate political-territorial unit, which some authors have characterised as an unconstitutional act, given that no corresponding revision of the federal constitution, explicitly providing for two entities, was carried out. The highest legal act of the Brčko District is the Statute. Marković, 2012, pp. 170–171; 173.

46 The Constitution of the Federation of BiH was adopted in 1994, and the Constitution of Republika Srpska in 1992, although both have been amended several times following the adoption of the Dayton Agreement. The National Assembly of Republika Srpska (*Narodna skupština*) is unicameral (Art. 71 of the Constitution of Republika Srpska), while the Parliament of the Federation of BiH (*Parlament Federacije Bosne i Hercegovine*) is bicameral and consists of the House of Representatives (*Predstavnički dom*) and House of Peoples (*Dom naroda*) (Art. IV.A.a of the Constitution of the Federation of BiH).

47 Marković, 2012, p. 158.

48 Ibid., p. 97.

3.1. Slovenia – “Unusual” Second Chamber

After the breakup of the former common state, Slovenia adopted a new constitution in 1991. The decision to establish a bicameral parliamentary structure was very interesting, as Slovenia opted for socio-economic bicameralism.⁴⁹ The Constitutional Commission for drafting the constitution presented two proposals with two different concepts of bicameralism,⁵⁰ but the one that envisioned the National Council as the second chamber prevailed, thus establishing non-egalitarian socio-economic bicameralism.⁵¹ According to the provisions of the Constitution, the parliament consists of two chambers: the National Assembly (*Državni zbor*) and National Council (*Državni svet*), where the first is directly elected and consists of 90 members representing the citizens of Slovenia (Art. 80), while the second has 40 members representing social, economic, professional, and local interests (Art. 96).

Some Eastern European countries (e.g. Romania) adopted a bicameral parliamentary structure after the collapse of socialism, arguing that this was a return to their democratic roots and traditions.⁵² In Slovenia's case, it cannot be said that there was any significant influence of an older tradition, as the country gained independence for the first time with the Constitution from 1991. However, it inherited the tradition of socio-economic bicameralism⁵³ from socialist Yugoslavia. Nevertheless, some authors note that the Bavarian Senate had a significant influence on the solution adopted in the Slovenian constitution.⁵⁴ Namely, from 1946 to 1999, the Bavarian Parliament consisted of two chambers, the second of which was a socio-economic senate with a composition similar to that of the Slovenian National Council.⁵⁵

The Slovenian Constitution detailed the electoral rules for the lower chamber, stipulating that members would be elected directly, with the electoral system left to be determined by law. The Constitution also provides that the Hungarian and Italian

49 Since the adoption of the Slovenian Constitution, there have been ongoing discussions about whether Slovenia actually has a bicameral parliament, as this is not explicitly stated in the Constitution. Such debates continued until the Constitutional Court of Slovenia issued its decision (Štrus and Brezovnik, 2023, p. 64).

50 The first envisaged an egalitarian form of bicameralism, while the second was based on a solution according to which the relationship between the chambers would be non-egalitarian. The latter solution was ultimately adopted (Ilić, 2022, p. 185).

51 Ibid.

52 Ibid., p. 212.

53 About socio-economic bicameralism, see: Marković, 2015, pp. 296–297.

54 See Ilić, 2022, p. 187.

55 Art. 34 of the Bavarian Constitution that was in force until 1999: ‘The Senate represents the social economic and cultural corporations and self governing units of the Land’.

ethnic communities have the right to one representative each (Art. 80, para. 3).⁵⁶ Meanwhile, Art. 96 specifies the number of members and composition of the upper chamber. It states that four members represent employees; four represent employers; four represent farmers, tradesmen, and independent professionals; six represent those engaged in non-economic activities; and 22 represent stakeholders with local interests. As can be seen, these are four large groups encompassing a wide variety of interests. The Constitution does not go into detail about how many representatives belong to each subgroup within the four main groups (e.g. who the representatives of non-economic activities are), leaving this to a special law.⁵⁷ Additionally, the Constitution clearly states that all 40 members must be elected, not appointed, but the method of election is also left to be regulated by law (Art. 98). Finally, the Constitution stipulates that the mandate of members of the upper chamber lasts for five years (Art. 98), unlike the four-year mandate of the lower chamber's representatives (Art. 81).

Regarding its competencies, evidently, the relationship between the two chambers is non-egalitarian. The upper chamber primarily plays an advisory role, unlike the lower chamber. It has the right to propose laws to the lower chamber, provide opinions to the National Assembly on matters within its jurisdiction, request the lower chamber to reconsider statutes prior to their proclamation, request the calling of a legislative referendum, and call for the establishment of a Parliamentary Inquiry into a matter of public importance (Art. 97). This overview of competencies clearly shows that the upper chamber does not participate in the debate or voting on laws.

56 The Hungarian and Italian ethnic communities are considered autochthonous minorities, even though there is no definition of that term in positive law. All other minorities have the status of non-autochthonous groups. Being entitled to the status of autochthonous groups means a stronger level of protection for them (for a detailed explanation, see Petričušić, 2004).

57 The law is called the Law on National Council (*Zakon o državnom svetu*). In the first group specified by the Constitution, there are four representatives of employees chosen by employee associations/trade unions (Arts. 26–27). Four representatives from the second group are selected by employers' associations (Arts. 24–25). The third group includes two representatives of farmers chosen by professional organisations of farmers organised at the national level; one representative of artisans chosen by professional organisations of artisans organised at the national level; and one representative of independent professionals selected by professional organisations of other professions, also organised at the national level (Arts. 28–33). From the fourth group, one seat belongs to representatives of universities chosen by the universities, one seat belongs to a representative in the field of education chosen by professional organisations of educational workers, one represents the field of research activities selected by professional organisations of researchers, one representative in the field of culture and sports, one representative from the healthcare field, and one representative from the field of social protection (Arts. 34–37). Finally, the fifth group consists of representatives with local interests who have 22 seats, with 22 electoral districts constituted for this purpose (Arts. 38–42).

It can propose laws, and a relatively strong tool in the hands of the Council is the suspensive veto.⁵⁸ However, the final decision is made by the lower chamber.

The competencies, composition, and structure of the second chamber in Slovenia demonstrate some significant theoretical advantages of this arrangement. Representing an individual not only as a citizen but also through their other roles significantly increases the degree of democracy and enhances the decision-making process. It is a fact that representatives of the chamber directly elected by all citizens today largely represent and defend the political interests of political parties. The representation of various social (economic and non-economic) interests only contributes to the parliament being a truly deliberative body. These interests are appropriately introduced into the sphere of political and institutional decision-making.⁵⁹

However, practice deviates from the theoretical model. Calls for reform of the Council have been heard for quite some time.⁶⁰ Discussions are mainly based on the argument that the Council lacks significant competencies, and this is one of the reasons for its inefficiency. Although Slovenian authors emphasise that it was designed not to make decisions but to advise the National Assembly,⁶¹ it is noted that the second chamber also lacks legitimacy.⁶² Meanwhile, the previously mentioned theoretical advantage of excluding political parties from the work of the second chamber has not been fully validated in practice. Namely, Štrus and Brezovnik point out that political parties play a significant role in the election of a considerable number of Council members.⁶³ These two authors recently conducted a study on bicameralism and the position of the second chamber of the Slovenian parliament, drawing some

58 Article 91: '...The National Council may require the National Assembly to reconsider any statute within 7 days of the same being enacted and prior to its proclamation. On the reconsideration of any statute, the same shall be deemed to be enacted if a majority of all elected Deputies of the National Assembly votes in favour of it, save where this Constitution requires a greater number of votes for enactment. Any such reconsideration of a statute by the National Assembly shall be final...'

59 Ilić, 2022, p. 187.

60 Štrus and Brezovnik, 2023, pp. 63–64. Although various objections are constantly emphasised, the only formal proposal was made in 2012, but without success. There were four main reasons enlisted in the proposal to abolish the National Council. The first reason was the improvement of effectiveness of the legislative process and the quality of the legislation adopted. The second reason was the simplification of the political system and state regulation. The third reason was the final resolution of the dilemma whether the parliament in Slovenia is bicameral or not. The last but not the least was the balance of public finances and reduction of public spending. Venice Commission (2024) 'Questionnaire for Report on Bicameralism – Slovenia' [Online]. Available at: <https://www.venice.coe.int/files/Bicameralism/SLO-E.htm> (Accessed: 21 October 2024).

61 Ibid., p. 65.

62 Lijphart has perceived legitimacy as a limited contributor to the strength of bicameralism but nevertheless claimed that a lack of legitimacy may render a second chamber unable to use its full powers (cited in: Štrus and Brezovnik, 2023, pp. 66–67).

63 Ibid., p. 69.

conclusions about possible issues in the functioning of this chamber. They highlight that distrust in the Council arises when it uses a suspensive veto or delays the legislative procedure, while public confidence in its work increases when, for example, it proposes laws. The public, therefore, gains confidence and the legitimacy of this body increases when it takes on a proactive role. They thus advise introducing mandatory consultations with civil society, regular public reporting, and stronger ties with the electoral base, among other such measures.⁶⁴ Accordingly, we can conclude that socio-economic bicameralism should not be dismissed lightly, as the problems in its functioning are mainly caused by inadequate institutional solutions that turn a chamber that *per definitionem* should advise and assist into a “surplus” that generates “costs”.⁶⁵

3.2. Croatia – “Unnecessary” Second Chamber

The 1990 Croatian Constitution provided for the existence of two chambers: the House of Representatives (*Zastupnički dom*) and House of Counties (*Županijski dom*) (Art. 70 of the Constitution). The House of Representatives is elected directly and serves as the general representative body of all citizens. Meanwhile, the House of Counties comprises citizens from each county (*županija*),⁶⁶ with each county's citizens directly electing three representatives. Additionally, the President of the Republic could appoint up to five members to the House of Counties as representatives of the Republic (particularly distinguished citizens). Finally, besides the elected and appointed members, the President of the Republic, upon the end of their term, becomes a lifelong member of this body, unless they explicitly renounce this duty (Art. 71 of the Constitution).

The term of office for members of both chambers is four years (Art. 72, para. 1 of the Constitution). Regarding the competencies of the House of Counties, despite having a stronger and more direct electoral base than the Slovenian parliament, its role is very similar to that of the Slovenian Council. It proposes laws and referendums to the House of Representatives; discusses and may give opinions on matters within the scope of the House of Representatives; provides prior opinions to the House of Representatives in the process of adopting the Constitution and laws governing national rights; and elaborates on the freedoms and rights of individuals and citizens

64 Ibid., pp. 71–72.

65 This was precisely one of the arguments for abolishing the Bavarian Senate.

66 According to the provisions of the 1990 Constitution, a county is a unit of local government and self-government. The areas of the counties are determined by law in such a way that they reflect historical, traffic, and economic factors and are capable of being natural self-governing entities within the Republic (Art. 131, para. 1).

established by the Constitution, electoral system, organisation, jurisdiction, and functioning of state bodies; as well as the organisation of local self-government and administration. Lastly, the House of Counties also holds a suspensive veto (Art. 81 of the Constitution). Unlike the Slovenian Council, which is entirely excluded from the process of constitutional changes, the Croatian House of Counties had an advisory role in that process (Art. 81, para. 1, point 3 of the Constitution).

At the turn of the century, Croatia began significant constitutional reforms aimed at changing the system of governance – from a semi-presidential to a parliamentary system. The most significant revision was carried out in 2000. Although there were ideas about abolishing the second chamber even then, this was executed a year later, in 2001.⁶⁷ The main arguments were those commonly faced by almost all second chambers subject to criticism – that it was inefficient, under party control that prevented it from truly representing regional interests, and essentially not structured to enable the representation of interests different from those represented in the lower house. It seems another problem was that the term length was the same.⁶⁸

The trend of abolishing second chambers in unitary states is evident. However, as in the case of Slovenia, the question is whether the arguments are truly justified. Undoubtedly, the existence of a second chamber incurs costs, but the question is whether it should be abolished for this reason or reformed instead. In both practical and theoretical terms, a second chamber serves as a brake in a positive sense, as an additional step in the legislative process, and in transitional countries where

67 For a detailed explanation, see: Smerdel, 2009. With the abolition of the second chamber, the unicameral parliament became a general representative body, meaning that counties were no longer represented in the parliament. Today, eight seats are reserved for members of minority groups (Croatia – Croatian Parliament (2024) Interparliamentary Union [Online]. Available at: <https://data.ipu.org/parliament/HR/HR-LC01/> (Accessed: 31 October 2024)). According to the provisions of the Constitutional Law on the Rights of National Minorities, as amended in 2010, members of national minorities constituting more than 1.5% of the total population of the Republic of Croatia are guaranteed at least one but no more than three seats based on general voting rights. Meanwhile, minorities constituting less than 1.5% of the population are guaranteed five representatives in the Parliament through special voting rights, in addition to general voting rights. In practice, this compromise has divided Croatia's minority population, which makes up approximately 10% of the total population, into two parts: a more homogenous group, composed of the Serbian minority, which is easier to mobilise during election campaigns and therefore only given general voting rights, and a more heterogeneous group of 21 other minorities, which are granted dual voting rights. However, the unresolved issue remains – namely, several national minorities compete for a single seat in the legislative body. An extreme example is that one representative may represent up to 12 national minorities, which undoubtedly fails to respect the right of all national minorities to equal representation. Article 17, para. 7 of the Law on the Election of Representatives to the Croatian Parliament stipulates that members of the Austrian, Bulgarian, German, Polish, Roma, Romanian, Rusyns, Russian, Turkish, Ukrainian, Vlach, and Jewish national minorities jointly elect one (highlighted by A.C.) representative to the Parliament. See Baketa and Kovačić, 2010, p. 12.

68 Bačić, 2007, pp. 102–103.

institutional abuse is common, additional mechanisms of institutional protection are necessary.

3.3. Serbia – “Without” a Second Chamber

As previously mentioned, the adoption of a bicameral system is conditioned by numerous factors, including historical experience and tradition. The past is not an isolated fact, mechanically separated from the present.⁶⁹ Their relationship is bidirectional. The legacy of the past represents a contextual framework that determines the scope of possible options.⁷⁰ If the past is seen in a positive light, it serves as a model; if it is viewed in a negative manner, it functions as a guide to avoid poor solutions. The past and present are necessarily intertwined. Therefore, in some cases, examining the issue of a bicameral system must necessarily reflect on the past.

The case of Serbia in this regard is particularly interesting. It shared the same tradition of bicameralism with other countries during the socialist era. However, the constitutional history of Serbia during the 19th and early 20th centuries undeniably demonstrates that the idea of bicameralism never held a significant place in constitutional practice. Nevertheless, constitutional law scholarship of that time in Serbia kept pace with European discussions on this issue.

This issue was first seriously raised before the adoption of the so-called Regency Constitution of 1869 (*Namesnički ustav*). Discussions on this issue took place in the constituent committees, but ultimately, the solution of a unicameral parliament was accepted.⁷¹ The issue arose for the second time in 1881. The constitutional question actually opened at the beginning of the 1880s, and discussions about a new constitution with numerous drafts continued practically until the adoption of the 1888 constitution. A known division remained from that era in constitutional law scholarship between supporters and opponents of the bicameral system. One of the supporters of the bicameral system, Professor of Constitutional Law Slobodan Jovanović, emphasised that a second chamber, including the intelligentsia, could help in the development of society. He saw that the failure to accept the bicameral system throughout the 19th century was due to the ongoing struggle between the king and the Assembly, logically leading the Assembly to want to turn itself into a “war machine”.⁷² He believed that some authors of that era supported unicameralism for practical reasons. They thought it was first necessary to strip the king of as much power as possible, and only then discuss advanced solutions for the organisation of

69 Dimitrijević, 2007, pp. 234–235; cited in: Cvetković, 2021, p. 4.

70 Ibid., p. 236; cited in: Ibid.

71 Jovanović, 1932a, p. 28.

72 Ibid., p. 48.

government.⁷³ The only time the bicameral system was introduced was in the 1901 Constitution, which was in effect for less than two years. The bicameral system in that Constitution was not the result of serious debates but was imposed by the king.⁷⁴

These 19th-century discussions are interesting because the debate about a unicameral or bicameral system then, as now, revolves around whether such a solution is necessary for a particular society. However, the preceding question is what the objective needs are. Thus, while one faction in 19th-century Serbia fought for greater parliamentary power, seeing the king as a significant threat, Jovanović emphasised the danger of parliamentary omnipotence.⁷⁵

Following the period of the Kingdom of Yugoslavia and “socialist constitutionalism”, where Serbia shared its “parliamentary history” with other former Yugoslav states, Serbia restored its liberal constitutionalism with the 1990 Constitution. This was a rather interesting situation because Serbia was a member of the two-member federation of the Federal Republic of Yugoslavia (*Savezna Republika Jugoslavija*),⁷⁶ but unlike the experience in the “second” Yugoslavia (Socialist Federal Republic of Yugoslavia/*Socijalistička Federativna Republika Jugoslavija*), where the parliamentary structure at the federal level was mostly mirrored at the level of federal units, Serbia adopted a unicameral system under the 1990 Constitution. However, owing to issues with the autonomous province of Kosovo and Metohija and the scope of its competencies, as well as with the other province of Vojvodina, a new question emerged, which occupied a certain place in constitutional life – regarding the regionalisation of the state. The 1970s in Europe were marked by the idea of the regional state, which represents a *tertium genus* compared with federal and unitary states.⁷⁷ In the 1990s, Serbian Professor of Constitutional Law Miodrag Jovičić proposed the regionalisation of Yugoslavia to overcome the issues related to the competencies of autonomous provinces and secessionist tendencies in Kosovo and Metohija, as well as problems in the functioning of the two-member federation.⁷⁸ In his draft of the so-called United Serbian Lands (*Ujedinjene Srpske Zemlje*),⁷⁹ he proposed the introduction of a bicam-

73 Ibid., pp. 55–58.

74 The bicameral National Representation consisted of the National Assembly and the Senate. The Assembly was elected directly, by secret ballot, on the basis of proportional representation system. Most of the Senate members were appointed by the king, and to those who were elected, a high census suffrage was applied, both for the active and passive right to vote. Marinković, 2019, p. 40.

75 Jovanović, 1932a, p. 76.

76 The Constitution of the Federal Republic of Yugoslavia was adopted in 1992. Serbia retained its 1990 Constitution. Under the conditions of the new federal arrangement, the Constitution of Montenegro, as a federal unit, was adopted in 1992, shortly after the adoption of the Constitution of the Federal Republic of Yugoslavia.

77 Palermo and Kessler, 2017, pp. 50–58.

78 Jovičić, 1996b, pp. 9–14.

79 Earlier that year, he published a constitutional study titled “Regional State”. See Jovičić, 1996a.

eral National Assembly. The House of Citizens (*Veće građana*) would have 120 directly elected members with a four-year mandate.⁸⁰ Meanwhile, in the House of Regions (*Veće regiona*), representatives of the regions would sit, elected in direct elections organised at the regional level. This would ensure the representation of the regions.⁸¹ Although Jovičić's proposal significantly contributed to the science of constitutional law in Serbia, it was never accepted. The 1990 Constitution provided for a unicameral National Assembly with 250 members, and the same solution is prescribed in the current 2006 Constitution. Since then, occasional proposals have been made to reduce the number of deputies,⁸² but not to introduce bicameral representation.

Serbia, with two autonomous provinces that are not represented in the national parliament, and with a large number of national minorities and a very complex ethnic issue in the past, theoretically appears as very suitable terrain for bicameralism. However, there seem to be two arguments in favour of a unicameral representation. First, Serbia has a very strong unicameral tradition, and therefore the citizens are not sufficiently familiar with the idea of bicameralism. Second, the unicameral parliament in 1990 was quite clearly intended to demonstrate a shift in paradigm from socialist constitutionalism and promote the concept of a single, unified representation, given that during socialism, the provinces of Kosovo and Metohija and Vojvodina had achieved a level of autonomy similar to federal units. Thus, unicameralism is a forced solution resulting from complex historical circumstances. As the issues with Kosovo and Metohija were not resolved at the time of the adoption of the 2006 Constitution, the idea of a unicameral National Assembly was maintained.

4. Conclusion

The trend of abolishing second chambers in unitary states is evident. However, the question remains whether the arguments for this trend are truly justified. Both practically and theoretically, a second chamber can serve as a valuable safeguard, adding an extra step in the legislative process. In the former Yugoslav republics, where institutional abuses are common, additional mechanisms for institutional

80 Ibid., p. 16.

81 Ibid., pp. 17–18.

82 At the beginning of 2011, a proposal to amend the constitution to reduce the number of members of parliament entered in parliamentary procedure, based on a petition from over 300,000 citizens. However, although this proposal came from (then) an opposition party, which came to power in 2012, the proposal was never even considered. See *Predlog za promenu Ustava ušao u proceduru* (2011) Radio-televizija Vojvodine, 15 March [Online]. Available at: https://www.rtv.rs/sr_lat/politika/predlog-za-promenu-ustava-usao-u-proceduru_243606.html (Accessed: 28 October 2024). See also: Pavlović, 2012, pp. 78–79.

protection are essential. In societies with divisions or inherited, unresolved conflicts, the crucial question is regarding which instruments are necessary for the democratisation process. These typically include mechanisms that consistently enforce the principle of separation of powers or protect citizens from state authority. In this study, the question addressed is whether bicameralism could serve as such a solution. The answer is complex. In countries such as Slovenia, the issue lies not in the mere existence of a bicameral parliament, nor is it certain that a unicameral parliament would address existing problems more effectively. This example suggests that a second chamber can serve as an additional step, a mechanism promoting deliberation, though only with proper institutional design.

Bulmer's assessment of the necessity of bicameralism, as previously mentioned, is generally accurate. In strongly divided societies, bicameralism is essential. In relatively homogeneous societies, moderate bicameralism is desirable, although alternative mechanisms may be proposed. Finally, in homogeneous societies and small states, preference should be given to other mechanisms. However, examples from former Yugoslav states show that this assessment must be more nuanced. For instance, in North Macedonia, there are strong divisions between ethnic communities; yet, a unicameral parliament aims to prevent further divisions. The size of the state must also be considered. Conversely, in Serbia, the unicameral parliament stems from tradition, which should be carefully considered, as the influence of tradition and historical circumstances can outweigh theoretical recommendations. The case of Croatia also illustrates that the insufficient maturity of the political system can create serious obstacles to bicameralism, which seeks to represent the interests of diverse territorial communities.

In conclusion, bicameralism, viewed theoretically, is a highly suitable tool for overcoming conflicts and enhancing the democratic process. It can facilitate the representation of multiple identities among citizens. After all, there is no doubt that the rule of law can only exist if citizens can pursue various and often conflicting interests within the community. The institutional structure must be designed to represent the broadest possible range of interests. However, alongside theoretical recommendations, particular attention must be paid to tradition, culture, history, and society's readiness to embrace certain solutions.

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