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THE COMPOSITION OF THE NATIONAL ASSEMBLY OF SERBIA: Challenges and Obstacles**

Abstract: *Given that political parties participate in the formation, structuring and activity of the parliament, their presence has had a dual impact on the National Assembly of Serbia in the past three decades. On the one hand, their influence has been reflected on the internal structure and efficiency of parliamentary work. On the other hand, the party system combined with the electoral model has left its mark on the mode of political representation. The paper focuses on the impact the political parties have had on the National Assembly in the Republic of Serbia, particularly their influence on the internal organization of the Assembly and the effectiveness in the parliamentary process. The main goal is to explore the normative framework and parliamentary practice in order to analyze the actual prospects of the National Assembly to meet the basic postulates for exercising effective national representation. The main question is whether the Assembly, relying on its constitutional autonomy, is able to achieve the goals of the “working parliament” and the political representation of all citizens. The problem develops around the extent to which the people’s representation is capable of exercising its constitutional functions if it does not support and protect the differentiated political will of the people. The aim is to point out to the possibilities provided by the normative framework and the need for successful parliamentary practice in exercising parliamentary autonomy. Parliamentary autonomy is necessary not only for good internal organization of parliament and effectiveness in the parliamentary process but also in terms of strengthening the National Assembly’s external impact and position towards the holders of the executive power. The subject matter of analysis are the activities of political parties in parliament, observed*

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through the work of parliamentary groups and parliamentary committees, as well as a lack of the parliamentary opposition guarantees.

Keywords: *Serbian National Assembly, political parties, parliamentary opposition, parliamentary committees.*

1. Introduction

At the end of the 20th century, the basic postulate of liberal democracy, embodied in the majority rule, were subject to structural changes, not only in the countries that accepted the liberal principles in the last wave of constitutionalization but also in the countries with a long-standing tradition of multipartism. In the latter, there have been significant changes in the understanding of constitutionalism, whose conceptual framework no longer entails the identification of the parliamentary majority with the electorate, or the political majority with the entire nation. Parliament is not a monolithic representative body because the elected representatives establish an independent political group within the national representation (Borchert, 1977: 221).

As for the Serbian National Assembly, the past thirty-year period of multipartism seems to have been insufficient for instituting structural changes in the representative democracy in Serbia. Instead of ignoring opposing political views, it is important to support and protect the plurality of citizens' political will. To this effect, there is a need to create a relevant normative framework and to develop good practices in exercising parliamentary autonomy; it which would ensure participation of different political groups in parliament, with special emphasis on protection and legal guarantees for the operation of the parliamentary opposition.

The advancement of parliamentary autonomy should ensue in two directions: external and internal. External autonomy is embodied in the parliament's position in the constitutional construction of the separation of powers, primarily in relation to the executive authorities. Internal autonomy is embodied in the independence and sovereign capacity of parliament to organize its work and ensure the efficient implementation of the parliamentary procedure. The internal parliamentary organization cannot change the established relations between the parliamentary majority and minority; so, it does not directly affect the decision-making power. However, the political will of the elected representatives is reflected in the internal parliamentary organization and it is later confirmed in the plenary session. Thus, there is an opinion that parliament is becoming increasingly "powerless" in proportion to the time spent in plenary sessions (Beyme, 2000: 53). Hence, the contemporary European representative systems are mainly profiled as a "working" rather than a "talking" assembly, performing

most of the work in parliamentary committees which provide better conditions for reasoned discussion and obtaining expert opinions.

In order to research the multi-party system in Serbia, several areas will be analyzed in the paper. The first aspect refers to the organization of political parties in parliament, including the role of parliamentary groups in the National Assembly internal structure. Special attention will be given to the minimum requirement for the composition of parliamentary group, which should include a minimum of five deputies; this requirement has been in force almost continuously throughout the three decades of multipartism in Serbia, with the exception of the first two legislative terms (1990-1994) when the minimum requirement was ten deputies. This rule is not a technical one because it can be used to directly influence the political composition of the parliament, but also to act indirectly on the party system. The main focus of a second part is the organization and composition of parliamentary committees, which have retained the characteristics of cumbersome, inert and inefficient parliamentary bodies. The third part is dedicated to the analysis the (non)existing normative framework of parliamentary opposition, which is followed by a comparative analysis of this issue in European parliamentary systems. The primary feature of the political structure in the National Assembly is the absence of the parliamentary opposition guarantees, as well as undeveloped parliamentary practice. Such circumstances have had a significant impact on the institutionalization of the parliamentary opposition.

2. Political Groups in the Serbian National Assembly

From the political parties' point of view, the parliament is the highest constitutional authority which should be won in order to achieve their own political goals through political action in a parliamentary procedure (Henke, 1972: 97-99). The political parties' activities are organized through parliamentary groups that bring together elected representatives of the same political orientation. The status of parliamentary groups in the Serbian National Assembly is indirectly regulated by the Constitution and directly by the Parliamentary Rules of Procedure.¹

In comparative law, the minimum limit for constituting a parliamentary group is different, but the primary requirement regarding this condition is to prevent excessive fragmentation of parliament and ensure a regular course of parliamentary work. The Serbian National Assembly includes 250 deputies (MPs). In a short period from 1990 to 1994, it was allowed to form a parliamentary group with

1 In the Constitution of Serbia (2006), the phrase "representatives from the electoral lists of candidates" was introduced in two provisions (Art. 112.3. and Art. 127.1).

at least ten deputies; after this period, the minimum requirement was lowered to five deputies. Thus, it was possible to organize a large number of parliamentary groups, ranging from five groups in the first legislative term (1991-1993) to as many as fifteen groups in the eleventh legislative term (2016-2020). This fragmentation is an indicator of the configuration of the party system after the introduction of multipartism in Serbia in 1990.²

In the first legislative assembly (1991-1993), constituted after the first multi-party elections (the majority voting in single-member constituencies, in a two-round (double-ballot) system), five parliamentary groups were formed. One political party, the Socialist Party of Serbia, won a convincing parliamentary majority and independently formed a group of 184 deputies (77.6% of parliamentary seats).³ In contrast to the parliamentary majority, there was the fragmented parliamentary opposition, given the fact that the Serbian Renewal Movement with 19 deputies (7,6% seats) was the only opposition party capable of forming an independent parliamentary group. As the other political parties represented in the National Assembly did not meet the formal requirement, three parliamentary groups were formed by joining the deputies from different opposition parties.⁴

The introduction of the proportional representation in 1992 directly affected the political profile of the National Assembly. After the early parliamentary elections, seven parliamentary groups were formed in the second legislative

2 S. Orlović explains the fragmentation of the Serbian party system as follows: “In Serbia, political divisions are not long-lasting... and stable. Due to the fragmentation of parties, the party system instability and electoral volatility, these divisions can hardly be perceived as long-standing and stable but they are by no means “frozen” (Orlović, 2011: 38). Observing the period after the changes in 2000, D. Spasojević points out that the party system was fragmented despite the establishment of a relatively bipolar relationship during the “anti-Milosevic” campaign: “Elections failed to address the key issues encountered by post-communist societies but they were a necessary step in the democratization of these systems. Therefore, it comes as no surprise that this polarized (relatively bipolar) system was soon permeated with new political divisions.” (Spasojević, 2011: 108)

3 In the initial multipartism, the majority election system caused an extremely low “index of proportionality”. The majority political party won 40% of the popular vote in elections and was entitled to 77.6% of the parliamentary seats, which indicates a high degree of discrepancy between the voters’ will ‘ and the political structure of parliament (Vasović, Goati, 1993:193).

4 According to V. Goati, the first parliamentary elections in Serbia were characterized by “a highly competitive selection process, given that only 14 out of about 50 parties that nominated candidates in the parliamentary elections managed to secure seats in parliament.” Based on a comparative analysis of the situation in the Republic of Serbia and the Republic of Montenegro, V. Goati points out: “Most of other “dwarf” (meteorite) parties in both republics quietly disappeared from the political stage, whereas some new parties kept springing up like mushrooms after the rain” (Goati, 2013: 27).

term (1993-1994). After a short parliamentary term, the National Assembly was dissolved in 1993 and new parliamentary elections were held. In the third legislative term (1994-1997), seven parliamentary groups were formed. In the fourth legislative term (1997-2001), there were seven parliamentary groups, two of which subsequently were disassembled. At the beginning of the fifth legislative term (2001-2004), there were four parliamentary groups but during the year 2001 the parliamentary majority split into two groups. After the dissolution of the National Assembly in 2003, six parliamentary groups were formed in the sixth legislative term (2004-2007). In the summer of 2005, seven deputies were independent deputies, who were not affiliated with any parliamentary group..

Following the adoption of the new Constitution in 2006, parliamentary elections were held on January 2007. The seventh legislative assembly (2007-2008) was constituted in February 2007 and its term lasted for just over a year; in this short period, eight parliamentary groups were formed. Following the early parliamentary elections held in 2008, the eighth legislative assembly (2008-2012) was constituted on 11 June 2008. In this period, ten parliamentary groups were formed, while two MPs had the status of an independent deputy. In the ninth legislative term (2012-2014), as many as 14 parliamentary groups were formed and a total of 12 deputies remained outside the political party organization, acting as independent deputies.

In the tenth legislative term (2014-2016), eleven parliamentary groups were formed and seven deputies acted independently. At the beginning of the eleventh legislative term (2016-2020), sixteen parliamentary groups were formed.⁵ During the eleventh legislative term, some changes were made in the structure of parliamentary groups because some groups were dissolved even though their founders and party members were still active in the National Assembly. Completely new parliamentary groups were formed with deputies who resigned from the political parties that initially nominated them, and abused the absence of legal sanction within the free parliamentary mandate. The number of parliamentary groups dropped to fourteen, while the number of independent deputies increased to 22.⁶

Finally, after the parliamentary elections in 2020, nine parliamentary groups have been formed in the twelfth legislative term (2020-to date). Yet, it should

5 *Informator o radu* (The National Assembly Bulletin), Narodna skupština Republike Srbije, 2018. Available at: <http://www.parlament.gov.rs/upload/documents/Informator%20Lat.pdf>, (7.03.2021)

6 Source: Poslaničke grupe (Parliamentary groups), Narodna skupština Republike Srbije; available at <http://www.parlament.gov.rs/narodna-skupstina-/sastav/poslanicke-grupe/poslanicke-grupe.901.html> (7.3.2021)

be noted that a large number of opposition parties did not participate in these elections.

Since the introduction of the multi-party system, the number of parliamentary groups has constantly been on the rise, from five parliamentary groups in the first legislative term (except for a short period when the initial four groups established after the 2000 elections were disassembled and subsequently reorganized into seven groups) to 15 groups in the eleventh legislative term (2016-2020). This trend is completely contrary to the common expectations that the party system will be consolidated over a longer period of time and that stable parliamentary parties will be profiled. Moreover, in the past three decades, the balance of power within the parliament has not been progressing in the direction of stabilization. Quite the reverse, instead of promoting more balanced relations among the parliamentary groups, the trend of nourishing a huge disparity between them (which was most prominent in the first legislative assembly) has resurfaced in recent parliamentary assemblies. The largest increase in the strength of parliamentary groups was recorded in the first legislative term (1990-1992), when the majority group won 77.6% of parliamentary seats as compared to 7.6% of seats won by the second largest group in the Assembly. In the tenth legislative term (2014-2016), the ratio was significantly shifted in favor of the first two parliamentary groups that made up the governmental majority by winning 63.2% of seats and 17.6% of seats (respectively), as compared to the third largest group which won 7.6% of seats. In the eleventh legislative term (2016-2020), this ratio was 41.6% of seats for the parliamentary majority versus 8.8% of independent deputies. In addition to the prominent fragmentation of the parliament, the eleventh legislative term shows an increase in the number of independent deputies (a total of 22); as an independent group, they are equal in strength to the second largest parliamentary group (8.8%).

In all legislative assemblies (except for the first one which was based on the majority election system), the number of parliamentary groups did not correspond to the number of electoral lists for which the citizens voted in the proportional election system. Apart from the fragmented coalition electoral lists, the parliamentary groups from the single electoral list were dissolved or reorganized into new ones. The internal parliamentary structure shows that flexible rules of procedure (especially the minimum requirement for the composition of a parliamentary group) and the absence of strong-fast "rules of the game" have led to a distortion of the voters' electoral will. It could be concluded that internal profiling was the issue targeted in all legislative terms, regardless of the political profile of the National Assembly. The minimal number of parliamentary group members directly caused an increase in the number of groups, which ultimately

contributed to weakening the National Assembly authority not only internally but also externally (in relation to the executive branch).

3. Parliamentary Committees

In comparative parliamentary practice, the activity and initiative of parliamentary committees are considered to be a reflection of a strong parliamentary opposition.⁷ Modern European parliaments get the prefix “working assembly” because a good part of their work is done in committees, whose structure and activities resemble “mini assemblies”. Committees do not act only according to the majority rule; they are also protectors of minority rights in parliament as well as the “microcosm” of the Assembly (Mattson, Strøm, 1995: 249). With the development of parliamentarism, the committees gain ever wider powers, such as the initiative to pass or amend the law, and even to make a final decision on the so-called undisputed bill,⁸ the power to amend or supplement the government bill if the committee adopts the amendment, the power of self-determination of the committee’s agenda, and the power of holding public hearings with the possibility of inviting independent experts. In terms of the number and structure of committees in comparative systems, it follows the profile of governmental departments.⁹

Since the introduction of the multi-party system, the political profile of the National Assembly has been reflected on its internal organization and effectiveness of its work. According to the formal criteria, the National Assembly aspired to the position of a “working” assembly because, until the adoption of the new Parliamentary Rules of Procedure (2010), as many as 30 permanent committees were organized. The scope of their work was not strictly related to a particular ministry because their number exceeded the number of ministerial departments. Considering that the Assembly mostly acted in the plenum, while the committees did not take the initiative and action towards the line ministries, the goal was not achieved. A good deal of work in the plenum and in the committees was not completed. Despite the large number of standing committees, the number of

7 In Sweden, the right of initiative held by committees is considered to be primarily a tool in the hands of the opposition; thus, this type of initiative is at full disposal of the opposition (McCann, 2006: 443).

8 Committees in the parliaments of Austria, Iceland, Sweden and Switzerland have the right of initiative, but this possibility is completely excluded in the parliaments of the United Kingdom, Denmark, France, Ireland and the Netherlands (Damgaard, 1995: 285-286)

9 In most Western European countries, the number of committees ranges between 10 and 20, with the exception of Denmark and the Netherlands, which have a larger number of committees, while France and Greece have six standing committees each. (Damgaard, 1995: 261-263)

meetings indicated that their activity was below expectations;¹⁰ so, the National Assembly exercised its function mainly as a “discussion” forum.

After the adoption of the new Rules of Procedure in 2010, the number of committees was reduced from 30 to 19 standing parliamentary bodies. However, the structure of the committees shows they do not meet the principle of the so-called working parliament. The main function of the committee is to ensure internal parliamentary autonomy and efficiency of parliamentary processes, but also to protect the autonomy from the external influences, especially in relation to the executive power, by taking initiative and reviewing proposals originating from the government. This function was not exercised in the National Assembly due to the absence of guarantees for the action of the parliamentary opposition. Parliamentary committees, as expert and working bodies, should be structured to enable parliament to provide a relevant response to government policy. The deputies’ work in committees should strengthen the National Assembly and limit the government’s influence on parliamentary affairs.

The basic functions of parliamentary committees (such as expertise, intimacy and support)¹¹ were not exercised due to the large number of committees, which caused unnecessary intertwining of their competencies; their composition hindered the efficient work and effective influence. Given that a minimum of five deputies can form a parliamentary group, it is not possible for such political miniatures to meet the criterion of expertise because they do not have a sufficient number of deputies who can competently participate in the committee work. In addition, a small parliamentary group does not have the capacity to invite external associates; the fragmentation of parliament alienates experts because of the danger of abuse and the political game they do not want to “play” as independent experts.

The structure and membership of the committee only formally meet the criteria set before the modern parliament. All parliamentary groups are represented

10 Before the number of standing committees was reduced, the average performance was very low. As many as 18 committees held less than five sessions per year over a four-year period (2006-2010), while five committees held less than two sessions on average per year. (Source: Skupštinski informatori za 2006. i 2010. godinu (The National Assembly bulletins for 2006 and 2010), <http://www.parlament.gov.rs/upload/documents/Informator%20Lat.pdf>)

11 Expertise presupposes that the committee members are elected from among the deputies according to the criteria of expertise so that the committee acts as a body of experts that permanently deals with certain issues in the parliamentary procedure. The internal relations indicate that a relatively small group of MPs of different political affiliations sitting on a committee can reach an agreement more easily than political groups in the entire parliament. Support means that the committees are referred to experts in certain areas, which means that committees can base their proposals on professional expertise and research, instead of being merely guided by political reasons (Hague, Harrop, 2004: 251).

in the standing committees in proportion to their strength, whereby the rule has been established that a Member of Parliament may be a member of several committees. Under the Parliamentary Rules of Procedure, if a parliamentary group does not want to exercise the right to allocate seats, the final composition of a committee will include the number of committee members appointed by other parliamentary groups. The deputies decide on the list of candidates for committee members by voting publically for the entire list, which is approved by a simple majority of the total number of deputies. The number of seats in the standing committees is 315 (each committee has 17 members, except for the Security Services Control Committee, which has 9 members). It means that deputies hold seats in at least two (or more) committees. In this way, small parliamentary groups may have the same representative in several standing committees, which does not contribute to strengthening their capacity. Thus, for example, in the eighth legislative term which had 30 parliamentary committees with over 460 seats, some parliamentary groups that bring together less than 5% of MPs were represented in the membership of as many as 80% of standing committees.

The Parliamentary Rules of Procedure do not regulate the issue of distribution of presidential positions in committees among parliamentary groups. Comparative parliamentary practice shows that the positions of chairmen of some standing committees (such as the finance and budget committee) are reserved for representatives of the parliamentary opposition. Although there have been examples in Serbia of allocating these seats to minority representatives, this good practice has not been maintained.

The new parliamentary construction in European countries has made the committee seat important for all participants in the parliamentary process. In the modern “parliamentarism of political parties”, which has taken the place of “parliamentarism of prominent individuals”,¹² committees have become important because of the influence that members of parliament (MPs) and parliamentary groups exert through them. In this way, albeit indirectly, it contributes to preserving the content of the free parliamentary mandate. When an MP leaves a parliamentary group or a political party, he loses his influential seat in the parliamentary committee and retains the position of an independent member until the expiry of the parliamentary mandate. This is the common problem that is encountered by the “new” democracies, including Serbia. The need to maintain party discipline in the modern parliament is quite clear but it does not enjoy direct

12 Until the mid-20th century, the idealized image of democracy based on individual representation prevailed. Only after the Second World War did parliamentary democracy develop in parallel with “party democracy” and began to take advantage of party representation in parliament (Müller, 2000: 309).

legal protection in case of a free mandate. Due to the importance and influence of parliamentary committees in Western European systems, political parties are allowed to recall their representatives in the committee; then, MPs lose twice (the parliamentary group seat and the committee seat) but remain in parliament as an independent deputy until the term of office expires.¹³ Fraction discipline thus receives an effective means of legal protection, which is not in conflict with the proclaimed principle of a free mandate. In the National Assembly of Serbia, this mechanism has not been put into effect; parliamentary autonomy has been neglected at the expense of political games that ensure unconditional support to parliament not only to the government, but also to the head of state. In the last thirty years, parliamentary life in Serbia has not developed a good practice where MPs would enjoy a free mandate with the obligation to be accountable to their voters and not to political parties. That is why the Serbian parliament remained in the firm embrace of the executive without the intention to use its autonomy and strengthen its position in the separation of powers.

4. The Parliamentary Opposition

The quality of democracy is the power of citizens which is exercised as the power of the majority through its “functionally capable government”. Given that there is an unbreakable link between democracy and disagreement, the principle of majority is the main but not the only principle of democracy (Bobio, 1990: 62-63). The existence of the opposition in the national representation is not only a political but also a constitutive element of democracy (Maunz, Zippelius, 1994: 65-67). Citizens need to have realistic alternatives, which can be the subject of their disagreements, in order to finally opt for one right. A functionally capable parliamentary democracy presupposes a stable ruling majority and an influential parliamentary opposition. The opposition allows the public to assess government policy and express criticism, thus becoming the initiator and the guarantor of accountability of the parliamentary majority. The existence of an institutionalized opposition is proof of the pluralistic nature of the political system. Apart from the political significance of the phenomenon of opposition, it is necessary to consider its legal understanding because simply transferring the political concept to the legal field does not give results. Parliamentary opposition as an essential element of parliamentary democracy has acquired a new and authentic meaning in the modern constitutional sense.

Traditional constitutions have only established the preconditions for the legal notion of the opposition, while the legislator is bound to normatively regulate

13 For example, Austria, Belgium, Denmark, Finland, Germany, Greece, Iceland, Luxembourg, the Netherlands, Spain (Beyme, 2000: 53).

this concept; in some counties, such as Germany, it is formulated through the decision of the Constitutional Court.¹⁴ However, despite the normative regulation, the problem appears in the parliamentary practice, which requires the concretization of the legal concept of the opposition in the organizational and functional sense. Legally speaking, the notion of opposition cannot be equated with the position of a minority in parliament. It is obvious in the situation of the so-called minority governments, when concluding a political agreement in terms of providing support to the government. So, how shall we classify a parliamentary group when it does not personally participate in the government, or has a political strategy opposite to the government's one, but enables or supports the government nomination? How reliable are the criteria for distinguishing between the opposition and the parliamentary majority when certain members of the parliamentary group (either from the opposition or the ruling majority) provide support for the election of the government or hinder the vote of no confidence? These issues affect the legal (organizational and functional) dimensions of the parliamentary system and its constitutional definition. If opposition groups enjoy certain rights, such as the right to equal opportunities in the parliamentary procedure, the principle of publicity and the right to the so-called opposition addendum, then their identity in legal terms must be clearly established. The faction that supports the government (*ad personam* and *de facto*) enjoys the privileges of the parliamentary majority and cannot demand the exercise of the opposition rights.

The criterion of electoral relationship, i.e. the support provided to the government during the elections, is not completely reliable. If the secrecy of elections is prescribed, then it is technically impossible to determine the status of deputies and their mutual relations in parliament. On the other hand, a current relationship does not have to be permanently maintained. Even when an MP supports the election of the government or its head, and does not participate in it, the parliamentary group can run with its opposition program during the term of office. The parliamentary control function can only to some extent serve as a parameter on the position of the parliamentary group and its members. Providing support to the government in the vote of no confidence is not always a sure sign of realignment to the government majority but it may simply be an expression of disagreement with the proposer, i.e. with another opposition group in parliament. It occurs in case the opposition is divided in their attitude towards the government. The general notion of a parliamentary/legislative majority also cannot be a reliable criterion as it does not coincide with the

14 The Federal Constitutional Court of Germany interpreted Art. 21 of the Basic Law as an element of the libertarian democratic order providing "the right to form and act as the opposition" (Cancik, 1998: 627).

concept of political majority that supports the government. They can develop different political strategies; parliamentary groups can support a particular bill for various reasons, even when it comes from the government. Participation in budgeting, for example, is not seen as supporting the government and does not change the nature of the opposition group.

Since different opposition strategies are allowed, it is difficult to assess the nature of a parliamentary group solely on the basis of formal elements. Therefore, it is necessary to supplement the formal assumptions with a material criterion. Although it may seem voluntary, the criterion of self-assessment of MPs and their group in parliament should be a reliable element in determining the nature of the opposition or the character of the ruling majority. The independence of deputies and the principle of a free parliamentary mandate provide a constitutional framework for this material element to determine the legal concept of the opposition (Cancik, 1998: 627). However, as the true meaning of one's assessment is obtained *ex post*, a combination of all relevant parameters is necessary to obtain the right answer. As much as one of these relations proves to be the most striking (such as the lack of government support), it alone is not enough to legally determine the oppositional nature of the parliamentary group.

Taking into account the complexity of the legal concept of the opposition, it can be said that the Serbian constitutional system has not even started searching for an answer to this question. The National Assembly has not reached the anticipated outcomes by enacting the rules that should ensure the functioning of parliamentarism: a guarantee of the voters' electoral will, a guarantee of freedom of thought and conscience of elected representatives, the protection of minority status, the right to equal opportunities for opposition inside and outside parliament. Despite the adoption of two constitutions (1990, 2006) and significant political changes during the three decades of multipartism, the parliamentary opposition has been institutionalized (Pejić, 2019: 51-55). In the National Assembly, as well as in the state-controlled media, the opposition has never had equal opportunities and it was not fairly allocated influential, primarily financial resources. According to the Rules of Procedure, parliamentary services are available to all parliamentary groups; yet, the parliamentary opposition has not had any influence either in the parliamentary plenum or in parliamentary committees. Its activity has also been hampered by an emerging distortion in the Serbian parliamentary life, embodied in parliamentary obstruction by the majority, which prevents or limits the participation of the opposition in the discussion and the legislative initiative. Although the right to speak and allocate time to opposition groups and MPs is the primary form of protection in parliamentary proceedings, the absence of guarantees has placed

all non-government parliamentary groups at a disadvantage as compared to the majority parliamentary group.

In comparative systems, in order to compensate for the weak position of minority parliamentary groups, the legal mechanism has been established to strengthen them. Namely, the original legitimacy that the parliament received through elections should be constantly confirmed through the so-called contextual legitimacy during the parliamentary process. Thus, in two European parliaments, the United Kingdom and Portugal, the opposition is given a fixed number of days when it can open a current issue and hold a debate on the same issue (Wiberg, 1995: 209). After the constitutional revision in Portugal (1990), the opposition (a parliamentary group that gathers one-tenth of the total number of deputies) was allowed to edit the agenda of a parliamentary plenary session. The opposition in the British Parliament has twenty "opposition days" to propose the topic for the parliamentary debate. The largest opposition party claims seventeen days, while the third-largest party in the House of Commons is given three days to propose the topic for debate.

In the Serbian National Assembly, there are no formal obstacles for deputies to submit any legal proposal but, in practice, they are actually prevented from exercising this right. Any proposal that does not come from the government must go through a government instance which recommends to the parliament to adopt or reject the proposal. Neither the representatives of the parliamentary minority nor the members of the parliamentary majority (who most often support the Government proposals and do not present their own initiatives) are interested in initiating the legislative process. Finally, in some parliamentary sessions, the number of legislative acts adopted in urgent procedure significantly exceeds the number of laws adopted in ordinary procedure; notably, all of them were proposed by the Government.¹⁵

The absence of institutionalization of the parliamentary opposition has led to a disturbance in the relations between the legislature (parliament) and the government, to the detriment of the highest representative body in the country. Instead of securing the status of the opposition and its critical attitude towards the government, which could use constructive alternatives to influence government policy, parliament has become a meeting place for the opposition and the government, the latter of which governs parliament through "its" parliamentary majority. The parliamentary opposition that scrutinizes, criticizes, and thus corrects the government activity is much more important than the one that overthrows the government at any cost. It is a natural mechanism that ma-

15 Informator Narodne skupštine 2006-2010. (The National Assembly Bulletin 2006-2010), available at <http://www.parlament.sr.gov.yu/content/cir/index.asp>

intains the constitutional power and empowers the representative body to check on the executive branch as holders of political power (Burdeau, Hamon, Troper, 1995: 593). The conflict is not an end in itself and, when it occurs, it is resolved by a final decision of the parliamentary majority. Parliamentary questions are an expression of the individual action of the deputies and a reflection of the strength of the opposition groups. In the Serbian National Assembly, the activity of the deputies in asking parliamentary questions has been almost negligible or nonexistent in the latest legislative assemblies. By contrast, in comparative systems,¹⁶ the number of parliamentary questions asked is measured in tens of thousands; for this reason, rules have been established that prevent the abuse of parliamentary questions for propaganda purposes and the misuse of the budget at the detriment of all tax-paying citizens.

In new democracies, the parliamentary opposition has some common characteristics that indicate its institutional fluidity that develops in conditions of relatively weak parliaments and unstable party systems (Zajc, 2016: 20). In addition to being prone to the authoritarian rule, young democracies inevitably demonstrate a tendency to “majority dictatorship”. Thus, after the Second World War, there was a prominent need in Germany to establish the Federal Constitutional Court of Germany, which developed its strong position owing to the opposition as an inducer of control, not only political but also constitutional control.¹⁷ The German authors considered it essential that, in addition to the ruling majority, the opposition parties also have access to and may initiate constitutional review proceedings. Although the opposition is not institutionalized in the Basic Law of Germany and the constitutional law does not recognize the “opposition” as an authorized proposer, the opposition parties have at their disposal numerous procedural instruments for initiating constitutional court proceedings (Stüwe, 2006: 216). What is important for the German parliamentary system is that the Federal Constitutional Court in its decisions recognizes the Bundestag as the unique representative body that performs its constitutional functions. The

16 Before the amendments to the Rules of Procedure in 2006, the time for parliamentary questions was not regulated; questions were rare in the parliamentary practice. In the first decade following the introduction of multipartism (1990), 363 questions were asked in 1993 and 304 questions were posed in 1994, but only one-third of them were actually answered by the Government (Antonić, 1997: 197). The situation did not improve even after the year 2000; according to the parliamentary data in 2004, only 16 parliamentary questions were asked and half of them were answered; in the first half of 2005, only 20 questions were asked and 14 were answered. After the adoption of the new Rules of Procedure, the number of questions exceeded one hundred a year.

17 When K. Adenauer advocated for the strong power of the Constitutional Court in 1948, he had no idea that the Federal Constitutional Court of Germany would become a strong veto player in the political system a few years later (Stüwe, 2006: 215).

parliamentary opposition participates in the exercise of constitutional functions as much as the parliamentary majority, and this intra-parliamentary dualism does not violate the unity of the Bundestag as the representative authority. Therefore, the Constitutional Court emphasizes the legal argument for protecting the principle of the separation of powers, leaving aside the changing rules of the game between the majority and the opposition.¹⁸ Some German provinces have also provided constitutional guarantees to the parliamentary opposition. Thus, the Constitution of Schleswig-Holstein (art. 18) provides that the parliamentary opposition represents an essential component of parliamentary democracy. The task of the opposition is to “criticize the government’s program and government decisions” and to exercise control. To this end, the Constitution guarantees the “right to politically equal opportunities” and institutionalizes the parliamentary opposition by defining that the president of the strongest non-governmental faction in parliament shall become the leader of the opposition.¹⁹ The formation of an organized opposition constitutes a free and democratic constitutional order; in the opinion of the Federal Constitutional Court of Germany, the basic idea is open competition between different political forces inside and outside parliament, emphasizing that the opposition must not be obstructed.²⁰

In its reports, the Venice Commission has repeatedly pointed out to the problem of not only the political but also the parliamentary opposition in new democracies. In two reports, issued in 2011 and 2013,²¹ the Commission emphasized that the new systems were based on the assumption that “the majority can do whatever it wants to do because it is the majority”, emphasizing that this is an obvious fallacy of democracy, which may no means be reduced to the majority rule. The Commission warned that the majority rule must be limited by the constitution and by the law in order to ensure the envisaged guarantees and protect the interests of minorities. It is indisputable that the ruling majority “must not subdue the minority” during the parliamentary term of office, and that they must

18 Bundesverfassungsgericht, Headnotes to the Judgment of the Second Senate of 03 May 2016-2, be 4/14; https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2016/05/es20160503_2bve000414en.html (10.04.2021)

19 Verfassung des landes Schleswig-Holstein, Fassung vom 2. Dezember 2014; <http://www.gesetze-rechtsprechung.sh.juris.de/jportal/?quelle=jlink&query=Verf+SH&psml=bsshopr od.psml&max=true&aiz=true> (10.04.2021)

20 Bundesverfassungsgericht, Headnotes to the Judgement of the Second Senate of 03 May 2016-2, be 4/14. https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2016/05/es20160503_2bve000414en.html (10.04.2021)

21 The European Commission for Democracy through Law (Venice Commission), CDL-AD (2011) 001, § 74, CDL-AD (2013) 012, § 136, Council of Europe, Strasbourg, 2013; available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2013\)012-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2013)012-e) (10.04.2021)

“respect those who lost the elections” (CoE, 2013: 30). The Venice Commission warns of a worrying political trend that can be described by “the winner takes it all” formula, which has a detrimental effect on the balance of power (checks and balances) in representative democracy, ultimately aimed at limiting the power of the parliamentary majority. The weakness of the national representation in Serbia can be recognized in the general assessment of the Venice Commission that laws are adopted in rushed (urgent) proceedings, without genuine political debate. On the other hand, appointments and dismissals of public officials are exclusively conducted by the ruling majority, which is especially dangerous in cases involving prosecutors, judges, independent agencies and other bodies which should be autonomous and independent from the holders of political power. In accordance with the stated views of the Venice Commission, the nature of national representation in Serbia may be assessed as “reducing democracy to simple majoritarianism” (CoE, 2019: 3).²²

5. Conclusion

Observing the emergence and development of multipartism in Serbia in the past thirty years, it may be concluded that the National Assembly did not use the constitutionally guaranteed parliamentary autonomy. The external aspect of autonomy clearly indicates that the parliament, despite its constitutional character of the supreme representative authority, has remained completely in the shadow of the executive branch, irrespective of the (non)existence of balance of power between the parliamentary majority and minorities. The internal autonomy of parliament, referring to the course of decision-making processes, has actually served to ensure the unhindered work of the parliamentary majority and prevent obstruction by the opposition. However, in some of the past legislative assemblies, the parliamentary majority itself used instruments of obstruction and thus completely distorted parliamentary autonomy (for example, by introducing a host of amendments proposed by the ruling majority to prevent debate on the opposition amendments). Despite some attempts to institute good parliamentary practices, the past thirty years of multipartism and the practice of national representation in parliament lead to the conclusion that no fair-play

22 Although the Venice Commission stated in its previous reports that democracy in Europe is “stronger than ever before”, in the 2019 report the Commission pointed out that the processes were moving in a different direction and that relations between the majority and the opposition were becoming increasingly tense (European Commission for Democracy through Law (Venice Commission), „Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: A Checklist”, Adopted by the Venice Commission at its 119th Plenary Session (Venice, 21-22 June 2019), CoE, Strasbourg, 24 June 2019. Opinion No. 845 / 2016 CDL-AD(2019)015); available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)015-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)015-e) (10.04.2021)

rules have developed in relations between parliamentary groups, as a form of political organization within parliament.

The internal organization of the National Assembly indicates that the parliamentary committees have retained the status of bulky and inert parliamentary bodies. Reducing the number of standing committees from 30 to 19 has not yielded positive effects in the parliamentary process. The number of seats in all committees largely exceeds not only the total number of deputies but also the actual size and capacity of a small parliamentary group to participate in the work of all committees. If the structure of the committee proportionally corresponds to the strength of parliamentary groups in the National Assembly, we can hardly expect from the deputies to fully appreciate the powerful impact of a committee seat, particularly given the fact that members of miniature parliamentary groups sit on multiple committees.

Based on the insight into the political structure of all parliamentary assemblies (since 1990), we may reasonably raise the following question: why insist on the minimum condition of five deputies for the formation of a parliamentary group? The essence of this issue is not of a technical nature, but it is substantially important for structuring the parliament and profiling the party system. Consequently, the minimum requirement for the formation of a parliamentary group should be related to the applied electoral system. In Serbia, the proportional representation system with a five-per cent electoral threshold has been maintained for years, which entails 12 to 15 MP seats per electoral list, depending on the turnout and the number of votes cast. The parliamentary structure and proportional representation should be viewed in the context of political representation. Therefore, there are expectations that the minimum requirement (five deputies) for the formation of a parliamentary group would be increased. Thus, the fragmentation of parliament would be avoided and parliamentary groups with a larger number of deputies could no longer be used in behind-the-scenes actions to secure a parliamentary majority; yet, it does not mean that such abuse would be prevented in cases involving the individual (free) parliamentary mandate. The Rules of Procedure do not protect the parliamentary opposition. Thus, the legal guarantees for the minority should contribute to the stabilization of the internal structure of the National Assembly and the effectiveness of the parliamentary process.

References

- Adonis, A. (1996). *Parlament danas*. Podgorica: Unireks.
- Antonić, S. (1997). "Parlamentarizam u Jugoslaviji 1990-1996". *Arhiv za pravne i društvene nauke*. (2). 177-198.
- Beyme, K.v. (2000). *Parliamentary Democracy: Democratization, Destabilization, Reconsolidation 1789-1999*. London: Macmillan Press.
- Bobio, N. (1990). *Budućnost demokratije - Odbrana pravila igre*. Beograd: Libertas.
- Borchert, H. (1977). "Fraktion – eine eigenständige demokratisch legitimierte Repräsentation im parteienstaatlichen parlamentarischen System". *Archiv des öffentlichen Rechts*. Band 102. 210-242.
- Bundesverfassungsgericht, Headnotes to the Judgement of the Second Senate of 03 May 2016-2, be 4/14. Available at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2016/05/es20160503_2bve000414en.html
- Burdeau, G., Hamon F., Troper M., (1995). *Droit constitutionnel*. Paris: Presses Universitaires de France.
- Cancik, P. (1998). "Oppositionszugehörigkeit als Anspruchsvoraussetzung: Das Definitionsproblem der neuen Oppositionsregelungen". *Archiv des öffentlichen Rechts*. Band 123, (4). 623-645.
- Damgaard, E. (1995). "How parties control committee members". In: H. Döring (ed.), *Parliaments and majority rule in Western Europe*. New York: St. Martin's Press. 308-325.
- European Commission for Democracy through Law (Venice Commission), Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: A Checklist Adopted by the Venice Commission at its 119th Plenary Session (Venice, 21-22 June 2019), CoE, Strasbourg, 24 June 2019 Opinion No. 845/2016 CDL-AD(2019)015. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)015-e)
- European Commission for Democracy through Law (Venice Commission), CDL-AD (2011) 001, § 74, CDL-AD (2013) 012, § 136, Council of Europe, Strasbourg, 2013. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2013\)012-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2013)012-e)
- Goati, V. (2013). *Izbori u Srbiji i Crnoj Gori od 1990. do 2013. i u SRJ od 1992 do 2013*. Beograd: NDI, CeSID.
- Hague, R., Harrop, M. (2004). *Comparative Government and Politics: An Introduction*. London: Palgrave Macmillan.

Henke, W. (1972). *Das Recht der politischen Parteien*, Schwartz, Göttingen, 1972. Available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)015-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)015-e)

Informator o radu, Narodna skupština Republike Srbije, 2018. Available at: <http://www.parlament.gov.rs/upload/documents/Informator%20Lat.pdf>

Mattson, I., Strøm, K. (1995). "Parliamentary Committees". In: Döring, H. (ed.) *Parliaments and Majority Rule in Western Europe*. New York: St. Martin's Press. 249-307.

Maunz, Th., Zippelius, R. (1994). *Deutsches Staatsrecht*. München: C.H.Beck'sche Verlagsbuchhandlung.

McGann, A. (2006). "Social choice and comparing legislatures: Constitutional versus institutional constraints". *The Journal of Legislative Studies*. Vol. 12. No. 3-4. 443-461.

Mény, Y., Knapp, A. (1998). *Government and Politics in Western Europe: Britain, France, Italy, Germany*, Oxford: Oxford University Press.

Müller, W.C. (2000). "Political parties in parliamentary democracies: Making delegation and accountability work". *European Journal of Political Research*. Vol. 37. 309-333.

Orlović, S. (2011). "Partijski sistem Srbije". U: *Partije i izbori u Srbiji: 20 godina*. Beograd: Fakultet političkih nauka: Centar za demokratiju: Friedrich Ebert Stiftung. 11-70.

Pejić, I. (2019). "The Constitutional Rationalization of the Separation of Powers: The Case of Serbia". *Collection of Papers, Faculty of Law Niš*. 84. 45-62.

"Poslovník Narodne skupštine", *Službeni glasnik Republike Srbije*, br. 20/2012.

Spasojević, D. (2011). "Dinamika političkih rascepa u Srbiji 2000-2010". U: *Partije i izbori u Srbiji: 20 godina*. Beograd: Fakultet političkih nauka: Centar za demokratiju: Friedrich Ebert Stiftung. 105-117.

Stojilković, Z. (2007). "Partije u parlamentu", U: V.Pavlović, S.Orlović, ur. *Dileme i izazovi parlamentarizma*, Beograd: Fakultet političkih nauka.105-128.

Stüwe, K. (2006). "Bundesverfassungsgericht und Opposition". In R.C. van Ooyen, M.H.W. Möllers, (eds.) *Das Bundesverfassungsgericht im politischen System*. VS Verlag für Sozialwissenschaften. 215-228.

Thiébaud, J.L. (2000). "Forming and Maintaining Government Coalitions in the Fifth Republic". In: Müller, W.C. and Strøm, K. (eds.), *Coalition Governments in Western Europe*, Oxford: Oxford University Press. 498-528.

Ustav Republike Srbije, *Službeni glasnik Republike Srbije*, br. 98/2006.

Vasović, V., Goati, V. (1993). *Izbori i izborni sistemi*. Beograd: IBN, Radnička štampa.

Verfassung des landes Schleswig-Holstein, Fassung vom 2. Dezember 2014. Available at: <http://www.gesetze-rechtsprechung.sh.juris.de/jportal/?quelle=jlink&query=Verf+SH&psml=bsshoprod.psml&max=true&aiz=true>)

Wiberg, M. (1995). "Parliamentary Questioning: Control by Communication?". In: H. Döring (ed.) *Parliaments and Majority Rule in Western Europe*. St.Martin's Press. 179-222.

Zajc, D. (2016). "Role of opposition in contemporary parliamentary democracies – The case of Slovenia". *Journal of Comparative Politics*. Vol. 9. No. 1. 19-35.

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КОМПОЗИЦИЈА НАРОДНЕ СКУПШТИНЕ СРБИЈЕ: ИЗАЗОВИ И ПРЕПРЕКЕ

Резиме

С обзиром да политичке партије учествују у структурирању и раду парламента, њихово деловање од увођења политичког плурализма пре три деценије двоструко се одразило на Народну скупштину Србије. Са једне стране, њихов утицај се одразио на структурираност и ефикасност парламентарног рада, док је са друге стране, партијски систем у комбинацији са изборним моделом оставио печат на опсег и начин реализације политичке репрезентације. Предмет анализе у овом раду биће први аспект деловања политичких партија на народно представништво у Републици Србији, односно њихов утицај на унутрашњу организацију Народне скупштине са последицама у погледу деловности њеног рада. У раду се истражује нормативни оквир и парламентарна пракса у погледу стварних могућности Народне скупштине у испуњавању основних постулата за остваривање ефективног народног представништва. Кључно питање је да ли је Скупштина на темељу уставне аутономије у стању да истовремено оствари циљеве „радног парламента“ и политичког представништва свих грађана? Проблем се развија око тога у којој мери је народно представништво способно да остварује своје уставне функције уколико не подупире и штити диференцирану политичку вољу народа. Циљ је указати на могућности које пружа нормативни оквир, као и на потребу успешне парламентарне праксе у реализацији парламентарне аутономије. Парламентарна аутономија неопходна је не само ради добре унутрашње организације и ефикасности рада у парламентарном процесу, већ и према споља, у снажењу Народне скупштине према носиоцима извршне власти. Предмет анализе биће деловање политичких партија у парламенту преко посланичких група и скупштинских одбора, као и одсуство гаранција у погледу правне заштите парламентарне опозиције.

Кључне речи: Народна скупштина, политичке партије, парламентарна опозиција, парламентарни одбори.