

Electoral Systems

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ABSTRACT

The present study compares the electoral systems of the eight countries analysed in this volume based on the specifics of Central Eastern Europe. As a starting point, the study examines the expectations of the electoral system, e.g. the purpose of displaying the will of the electorate as accurately as possible, ensuring stable governance, and aspects such as the size of the country, its traditions or other political considerations. The study undertakes a comparative analysis of the electoral systems of each country primarily on the following issues: how do the electoral system and the political system of a given country interact? How are active and passive voters defined? What are the social reasons for the parliamentary representation of minorities? What impact have these rules had on electoral systems? What common features and differences can be discovered in each national electoral system? How can a given electoral system be evaluated among proportional-majority systems? The chapter concludes that the regulation of electoral systems is always country-specific and in line with social and historical traditions. It is therefore not possible to mechanically take over the electoral system of other countries in any country as some of its elements will not necessarily be compatible with the specificities of the others. The history of the eight countries analysed (the legacy of communism, the 'problem' of nationality) shows several points of connection, even though their electoral systems are not uniform. Although most countries – in line with European trends – have proportional electoral systems, these have many different regulations. By comparison, in Hungary (or even in Romania), legislators took a completely different approach in defining the electoral systems after the change of regime. It can thus be stated that the definition of the electoral system is one of the most national issues, where standards can and should be set, but these standards only provide a basis for comparability rather than accountability.

KEYWORDS

electoral system, proportionality, majority elements, stable governance, political influence, active and passive suffrage.

1. Introduction

In a democratic state, the definition of the parliamentary electoral system¹ is of paramount importance as the indirect exercise of people's sovereignty is realised through the electoral system. The right to vote is, therefore, on the one hand, the body of

1 In my study, I examine the requirements for electoral systems only in relation to parliamentary elections.

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legislation that determines the way in which representative bodies (e.g. parliaments, local governments etc.) are set up.² This approach can also be considered as the material side of the right to vote (substantive law), as a kind of instrumental approach.³ On the other hand, the right to vote is a fundamental political right, which means the right to participate in power or conducting public affairs, and as such, it can be defined as the subjective side of the right to vote (subjective right): who has the right to vote and to stand as a candidate. Among the major international instruments, Art. 25 of the International Covenant on Civil and Political Rights (ICCPR) and Art. 21 of the Universal Declaration of Human Rights (UDHR) also deal with electoral systems. The ICCPR emphasises the possibility of voting in regular elections and – similar to UDHR – participating in the conduct of public affairs through its freely elected representatives.

The present study compares the electoral systems of the eight countries analysed in this volume (Poland, the Czech Republic, Slovakia, Hungary, Slovenia, Croatia, Serbia and Romania) based on the specifics of Central Eastern Europe. However, the comparison is not based on a static comparison of the electoral systems of each country but rather focuses on the similarities and differences that result from the systems analysed. As a starting point, we need to examine the requirements for electoral systems as well as the commonalities of the countries studied.

2. General characteristics of electoral systems – constitutional requirements of electoral systems

The principle of people's representation is a clearly highlighted issue in modern mass democracies. In this regard, representative democracy should be given priority over the means of direct democracy (such as a referendum); therefore, the electoral system used by a country in electing members of various representative bodies (primarily members of parliament) is of particular importance. The electoral system, as a key element of the constitutional-institutional system, significantly influences other elements of the political system, namely party structure and the system of power and government.⁴ Therefore, this section of the study focuses on the requirements that must be considered in the definition of electoral systems, which, in their interest, are considered constitutional and at the same time fair (and suitable for the social context in which they are used).

2 In jurisprudence, this approach to state organisation has been stronger for a long time as suffrage has not been a fundamental right for many years (Halász, 2018, p. 715).

3 Based on the instrumental approach, we see the right to vote as a means of establishing representative bodies and ensuring democratic legitimacy. To set up a body based on the principle of popular representation, it is essential that a section of the population has the right to vote (Ficzere, 2010, pp. 289–290).

The instrumental justification of passive suffrage would be as follows: as the establishment of representative bodies is essential, it is necessary for certain persons to become elected representatives; therefore, people must run as candidates as it would not be possible to hold elections without candidates (Bodnár, 2016, p. 8).

4 Fábíán, 1999, p. 53.

2.1. About electoral systems in general

Before analysing the main requirements of electoral systems, it is important to review their main basic types. Election systems are primarily those systems (and the methods and techniques associated with them) that are used to distribute mandates after the end of voting, that is, they determine which of the individual candidates will get a mandate or how many will get a mandate from the lists of party.⁵ On this basis, we can distinguish three basic electoral systems: the majority system, the proportional system and the mixed system. In the case of majority systems (which may be absolute or relative majority systems⁶), representation is based on an acquired majority. In contrast, in proportional systems, mandates are allocated in proportion to the votes, and this system seeks to create consistency between the votes cast and the mandates.⁷ In mixed electoral systems, a combination of the two principles of representation is implemented, the additional element of which is provided by the institution of compensation. Of course, these electoral systems⁸ do not always work according to their pure meaning, but they have many variants and combinations in the world, as seen in section 4 of the study for the countries studied.

Before further examining the requirements of these electoral systems, it is important to analyse the tendency of electoral systems of EU countries. The electoral systems of the EU member states can be grouped according to three major subtypes of electoral systems, according to which a proportional electoral system can be observed, e.g. in Austria,⁹ Belgium,¹⁰ Bulgaria,¹¹ Cyprus,¹² Denmark,¹³ Estonia¹⁴ and

5 Tóth, 2016, p. 202.

6 In the case of the former, a candidate who obtains more than 50% of the total votes cast obtain a mandate; however, in the case of the latter, it is sufficient for a candidate to obtain a majority of the votes cast. The advantage of an absolute majority system is that it can result in the most stable governance as the elected candidates enjoy broad support. A serious disadvantage, however, is that it does not always produce an end result since in the event of a more even distribution of votes, none of the candidates receives an absolute majority, and the fate of the mandate remains open. In contrast, the advantage of a relative majority system is that it is practically always effective (statistically very unlikely to have exactly two of the large number of votes cast for each candidate). The disadvantage, however, is that against the will of many voters (in our example, against three-fourths of the voters), someone is elected with few votes and that even in this system, all the votes that were not cast for the winner are lost.

7 The advantage of a proportional system is that it reflects the will of the electorate more accurately so that voters who remain in the minority are also represented. Another advantage is that a single vote will certainly be successful, i.e. there will be no need to organise another round, re-mobilising huge human and material resources. However, the disadvantage is that the representative body can become too fragmented, and many parties can get a mandate, which can make decision-making very difficult; further, it takes a disproportionate amount of time and energy to reach a consensus.

8 For more details on the nature of electoral systems, see Cservák, 2017, pp. 27–40.

9 Federal Law in National Council Elections Law 471/1992. 1–2. §.

10 See the Electoral Code of Belgium.

11 Gancheva, Musorlieva and Naykova, 2016, pp. 100–113.

12 Stumpf and László, 2018, p. 180.

13 Pap, 2007, p. 198.

14 Riigikogu Election Act.

Finland.¹⁵ Among the proportional electoral systems, it is important to highlight the electoral system in Greece. Of the 300 members of the Greek parliament (Vouli), 238 are elected in single and multi-member electoral districts (based on list voting), and 12 mandates are distributed on a party list. In addition, however, 50 parliamentary mandates are automatically awarded to the party that won the most votes in the election. This is known as the principle of ‘enhanced proportionality’, by which the system responds to the main flaw in proportional electoral systems: an overly fragmented parliament.¹⁶ Proportional electoral systems are also present in The Netherlands,¹⁷ Ireland,¹⁸ Latvia, Malta, Portugal, Spain, Sweden¹⁹ and Luxembourg.²⁰ A majority electoral system is used in, e.g. the United Kingdom²¹ and France.²² In addition to proportional electoral systems, the second most commonly used method in the European Union is the mixed electoral system, which seeks to combine the advantages of a proportional and majority system while eliminating their disadvantages. Such a system can be observed in Lithuania, Germany and Italy.

2.2. Constitutional considerations related to the definition of electoral systems

With regard to the various electoral systems, the primary question that arises is according to which criteria we can consider an electoral system to be constitutional or fair. Can these aspects be determined at all? Can there be an absolutely bad and absolutely good electoral system? What are the main directions of each electoral system? Based on the trends in the European Union,²³ one can observe the dominance of proportional systems. However, it can also be seen that, in addition to ensuring and increasing proportionality, some elements in the practice of individual countries seek to ensure stability at the same time (see, e.g., the Greek electoral system). It can also be considered as such that in several countries, smaller electoral districts are set up to strengthen the relationship between voters and members of parliament (even if more than one mandate is allocated in a given electoral district).²⁴

However, whatever system a country uses, it can be stated with great certainty that several aspects must be considered in its definition of the electoral system, i.e. several aspects will affect the operation of the system. In a study, Dieter Nohlen states that electoral systems can be designed in both a narrower and a broader sense. In his view, the concept of the electoral system is interpreted extremely broadly in the political debate on electoral systems, encompassing almost everything that affects

15 Finnish Election Law.

16 Stumpf and László, 2018, p. 184.

17 Act of 28 September 1989 containing new provisions governing the franchise and elections.

18 Irish Electoral Act XIX. Chapter 118–128. §.

19 Stumpf and László, 2018, pp. 186–193.

20 Loi Electorale No. 30 21 février 2003.

21 Representation of the People Act 1983.

22 See the Electoral Code.

23 Kurunczi and Szabó, 2020, pp. 787–788.

24 Fábíán, 1999, p. 60.

the electoral process.²⁵ Thus, e.g., elements that influence the electoral system are (1) the type of electoral system (majority-proportional-mixed), (2) the regulation of the process of becoming a candidate (e.g. that it is tied to a voter recommendation or just the payment of a financial deposit),²⁶ (3) the process of forming electoral districts,²⁷ (4) the definition of mandate allocation mechanisms²⁸ or (5) the electoral redress system²⁹ as well as (6) the requiring voters to participate in elections.³⁰

However, if we wish to examine the aspects that are essential for the establishment of a constitutional electoral system in general terms, then, instead of analysing the specific elements of electoral systems, we must examine this issue from a distance. As a hypothesis, we can state that an electoral system must ensure both the fullest representation of the will of the electorate and stable governance. In my view, the fulfillment of either condition is not in itself a sufficient condition of fair and well-functioning electoral systems.

In the context of electoral systems, the requirement of proportionality should be emphasised first. The principle of people's representation will be complied with primarily by the electoral system that best reflects the will of the voter. This is because a proportional electoral system can display the election result in the composition of the elected body in the most perfect way (as mandates are allocated in proportion to the number of votes cast). However, this aspect cannot and should not be seen as overriding as no electoral system will be better or worse because it enforces proportionality less. For example, a mixed electoral system will necessarily tip to the majority or proportional side. A good example of this is the comparison of the electoral systems of Germany and Hungary, which are often compared; yet proportionality can be perfectly observed in the case of the former and the predominance of majority elements in the case of the latter.³¹ In the context of the requirement of proportionality, the question is also whether it can be regarded as a necessary and essential condition. For example, the Hungarian Constitutional Court³² took the position that, according to the Basic Law, the electoral system does not necessarily have to be proportionate as the Basic Law does not include a provision on the proportion of proportional, majority or compensation subsystems of the electoral system.³³ At the same time, it can be

25 Nohlen, 1996, p. 7.

26 See, among others, Cserny, 2018, pp. 43–64.

27 Nohlen, 1996, p. 12.

28 Stumpf and László, 2018, pp. 176–195.

29 Temesi, 2018, pp. 195–210.

30 Some electoral models treat the exercise of the right to vote not only as a right but also as an obligation, thus sanctioning the absence of voting if there is a right to vote. Such can be observed, e.g., in Belgium. For more, see Cserny, 2018, p. 25. Belgium introduced compulsory voting in 1893. Art. 62 of the Belgian Constitution, providing that Belgian nationals must exercise their right to vote (Hallók, 2018, p. 121).

31 See, e.g., the so-called the institution of 'winner-compensation' in our country.

32 Decision 3141/2014. (V. 9.) AB of the Constitutional Court of Hungary.

33 Decision 3141/2014. (V. 9.) AB of the Constitutional Court of Hungary, Reasoning [39].

stated that an electoral system must strive to reflect the will of the voter as much as possible.

In addition to proportionality, the second important requirement for an electoral system is that its application should ensure a stable governing majority. According to the instrumental approach to suffrage, it can also be considered a tool for concluding and renewing the social contract (the indirect exercise of power by the subjects of people's sovereignty); thus, an electoral system that serves only proportionality and does not take the need for a stable governing majority into account will not be ideal in itself. If an electoral system results in a fragmented parliament (or other elected body), it can easily lead to government crises and thus to socio-economic crises. According to Tibor Ördögh, diverse parliaments demand the formation of coalition governments that can make the political system unstable.³⁴ Therefore, most electoral systems also include elements that help achieve stability. The Greek example, where the winning party gets an additional 50 seats to help governability, can also be considered as such, but the institution of 'winner compensation' appearing in the Hungarian electoral system can also serve as an example of this.³⁵

An additional requirement of electoral systems is that they should minimise the possibility of cheating (i.e. they should not allow manipulation). In this regard, especially the institutional elements of electoral systems must be considered – thus, e.g., the formation of electoral districts, the possibility of re-registration or voting by mobile ballot box or the ways in which votes are cast (see, e.g., the institution of voting in the letter).

Finally, as a fourth requirement, an electoral system must always be adapted to the social and cultural roots and organisation of the given country. According to Dieter Nohlen, social development and structure, political culture, power relations or even the behavioural patterns of the political elite all determine the structure of the electoral system.³⁶

Of course, the criteria of an electoral system can be determined based on other requirements. Thus, important criteria of an electoral system are that it must

1. provide appropriate legitimacy (that is, for the various social groups to recognise the electoral system, to accept the legitimacy of the power created by it);
2. ensure political integration (do not cause political polarisation in society by the debate over the electoral system);
3. properly represent the will of the voters (do not result in a result contrary to the will of the voters); and
4. result in representative government.³⁷

34 Ördögh, 2016, p. 104.

35 See the end of the study for more details on this institution.

36 Nohlen, 1996, p. 8.

37 Nohlen, 1996, p 30.

It is therefore important to emphasise that the criteria of electoral systems can be determined on the basis of any aspect (which, in addition to the above, can also be influenced by the size, traditions or even political considerations of a country³⁸); in any case, only the creation of a complex, multi-faceted system (which displays all the above requirements) will serve the fullest realisation of the principle of people's representation. For this reason, we can also state that the definition of an electoral system is one of the most national issues in the formation of constitutional order.

3. The challenge of a common 'heritage'

In the previous section, we established that the social environment of the state also plays an important role in defining an electoral system. The development of democracy in the countries of Central Eastern Europe after the change of regime was influenced by several factors.³⁹ One of the common historical starting points of these countries was the 'reckoning' of the communist heritage after the change of regime, that is, how and in what way these countries were able to start building a democracy.⁴⁰ In this matter, almost all countries kept in mind the importance of social dialogue, political compromises and peaceful transition (except Romania), primarily because wanted to avoid armed conflict.⁴¹ It is worth highlighting the Czech Republic in this context, where the social structure in the communist period was also determined primarily by civic culture, which also made the democratic transition easier.⁴² In Slovakia, on the other hand, the 'socialist culture' prevailed, and civic traditions withered. At the same time, during the regime change, both countries were characterised by peaceful political movements.⁴³ In contrast to the Czech Republic and Slovakia, the civil society in Romania had weak roots, and the centralised military system of state organisation was not conducive to independent initiatives.⁴⁴ As a result, the following party systems have developed in these countries. In the Czech Republic, a stable multi-party system developed after the change of regime, as opposed to Hungary, where a bipolar system developed in the 1990s and early 2000s. In Poland, the political situation became unstable after the transition, so as in Romania and Slovakia (albeit not to the same extent).⁴⁵ In Serbia, the opposition parties that emerged in the 1990s were formed primarily for anti-communist purposes; however, each party was also determined by the importance of national purpose.⁴⁶ The Croatian party system was clearly influenced

38 In this context, it is also important to note that changing certain elements of the electoral system can always change the balance of political power. See Szoboszlai, 1999, pp. 261–297.

39 Lanchester, 1996, pp. 104–109.

40 Fricz, 2017, pp. 40–41.

41 Balogh, 2012, p. 14.

42 Balogh, 2012, p. 16.

43 Balogh, 2012, p. 16.

44 Balogh, 2012, pp. 18–19.

45 Balogh, 2012, pp. 24–28.

46 Ördögh, 2016, p. 48.

by the South Slavic War of Independence. Although the system established in 1990 was stable during the war, its democratic nature was questionable.⁴⁷ In Slovenia, the period of democratisation began in 1989. At the same time, the parties formed after the communist era continued to be dominated by social democrats; thus, in the 90s, the political palette was mostly determined by such parties.⁴⁸

4. Electoral systems of the studied countries

The starting point of the social environment of the studied countries was the intention to break up with the communist system, which also affected the electoral system. At the same time – considering the aspects described in point 1 of this study – the systems of each country have taken different directions in many respects. Taking all this into account, it is advisable to compare the analysed systems along the following aspects:

1. How do the electoral system and the political system of a given country interact?
2. How are active and passive voters defined? What are the social reasons for the parliamentary representation of nationalities? What impact have these rules had on electoral systems?
3. What common features and differences can be discovered in each national electoral system? How can a given electoral system be evaluated among proportional-majority systems?

4.1. Interactions between political and electoral systems

An electoral system must always be adapted to the social and political system of a given country; therefore, how political and electoral systems affect each other should also be examined. With regard to electoral policy, it is widely accepted that the electoral system used by a country determines the party system of that state.⁴⁹ In addition, an electoral system also affects the role that the parliament is given for the functioning of the political system, that is, whether it primarily serves political representation or governance.⁵⁰ Thus, e.g., in all countries with a purely proportional system, where voters can only vote on a single list, party representation is emphasised. In Slovenia, e.g., there is a constant debate on whether the majority or mixed system should be used instead of the proportional system to achieve more stable governance,⁵¹ but there has never been the right political will for this change.⁵² In the case of Serbia,

47 Ördögh, 2016, p. 51.

48 Ördögh, 2016, p. 52.

49 Simon, 1997, p. 362.

50 Köröskényi and Tóth, 2005, p. 261.

51 For example, the abolition of constituencies and preferential votes emerged as a proposal. See M. R., 2020.

52 Ördögh, 2016, p. 104.

it is important to highlight that between 2000 and 2011, the order on the list was for information only, and party leadership was determined only a few days before the election; therefore, the role of parties increased significantly during this period.⁵³ Then, in 2011, the Serbian Constitutional Court ruled that parties could not change the order of the list.⁵⁴

Ethnic conflicts also have an impact in Serbia (especially in political life). The structure of the parties is characterised by a nationalist-civil opposition. This tension has somewhat eased since 2012, especially since the start of the EU accession processes.⁵⁵ The development of the Croatian party structure was also significantly influenced by the South Slavic conflict, Croatia's independence from Yugoslavia and the ensuing anti-Serb sentiment. In addition, regional policy is of great importance in Croatia. In the Croatian party system, regional parties are permanent members of the legislature.⁵⁶

4.2. Defining the suffrage

As stated in the introduction, the fundamental rights approach to suffrage is at least as important as the instrumental side. For whatever electoral system is typical of a country, the decision will not be made by the electoral system but by the voters. Even if an electoral system meets the constitutional requirement (e.g. it is also sufficiently proportionate and ensures a stable governing majority), but the range of persons entitled to vote is unduly narrow or excludes certain persons from the list of voters without appropriate guarantees, then the electoral system itself will necessarily be eroded.

In this respect, each of the countries examined requires citizenship and a certain age for parliamentary elections. This – except in Hungary – was determined to be the age of 18. In Hungary, the Basic Law uses the concept of adulthood, which can be linked to the age of 18 under civil law but is also available after the age of 16 by marriage with an official permit. It is important to highlight the issue of exclusion from the right to vote in this regard. In this respect, each country regulates in accordance with two main rules: lack of ability to judge and a ban on public affairs may justify exclusion. However, each country regulates this issue in different detail. Due to lack of ability to judge, most of the countries studied (except Hungary and the Czech Republic) use automatic exclusion (thus, it is not possible to restrict someone's ability to act but leave their right to vote). In this context, it is important to highlight that the Czech Constitutional Court ruled in 2010,⁵⁷ by which it is only possible to restrict the right to vote due to intellectual disability based on an individualised examination and

53 Ördögh, 2016, p. 104.

54 See: Decision of the Constitutional Court of Serbia IU p 42/2008, SGRS 28/2011.

55 Ördögh, 2016, pp. 57–58.

56 Ördögh, 2016, pp. 57–58.

57 See IV.ÚS 3102/08 of the Constitutional Court of the Czech Republic (12 July 2010).

as a general rule, according to which no one who is incapable of acting has the right to vote, does not apply.⁵⁸

Regarding the right to vote, it is also important to note that in the Czech Republic, Poland, Romania and Slovakia, the definition of passive suffrage⁵⁹ differs from the active voting age; e.g. in the Czech Republic, only those who are at least 21 years old have passive suffrage (and in the case of the Senate, they must be 40 years of age).⁶⁰ In Poland, only a person who is 21 years old can be elected to the Sejm as a representative, and to the Senate, only a person who has reached the age of 30.⁶¹ In Romania, only a person who is at least 23 years old can be elected as a member of parliament, and only one who is at least 33 years old becomes a senator.⁶² In Slovakia, only persons who have reached the age of 21 have passive suffrage.⁶³

The common social challenge of each of the countries studied is also the parliamentary representation of the minorities living in their country⁶⁴ (except in the Czech Republic and Slovakia, where this is not provided). Indeed, in countries where the proportion of minorities in relation to the majority of society is significant, in many cases, special rules must be applied to ensure their parliamentary representation.⁶⁵ In Poland, national minorities are facilitated when it comes to establishing a nationalities list.⁶⁶ If a national minority establishes a territorial list in at least five electoral districts, it also becomes entitled to establish a nationality list.⁶⁷ In Slovenia, 88 members of parliament are elected according to general rules, but two members are elected by the Italian and Hungarian communities in special electoral districts set up for this purpose. Representatives of national minorities are elected on the basis of preferential votes, and only a minimum of 30 members of the Italian or Hungarian community may nominate a minority candidate.⁶⁸ However, it is also important to note that voters of Italian and Hungarian nationality can vote not only for the representative of their nationality but also for party lists.⁶⁹ In Croatia, Albanian, Bosnian, Macedonian, Montenegrin, Slovenian as well as Czech, Slovak, Serbian, Italian and Hungarian minorities can obtain a nationality mandate by reaching a minimum

58 Gurbai, 2016, p. 190.

59 The essence of passive suffrage is that the voter can also run in the elections as a candidate. In contrast, active suffrage entitles one to vote.

60 See 'On the election of members of parliament and senate' 247/1995. Sb. Arts. of 25. and 27.

61 See Art. 10 of the Act on the Election of Members of Parliament and Senators of the National Assembly.

62 Constitution of Romania, Art. 37(2).

63 See Zákon c. 333/2004. Z. z. Art. of 3.

64 For more on this topic, see Dobos, 2018, pp. 7–39.

65 Pozsár-Szentmiklósy, 2016, p. 32. and Juberias, 2014, pp. 279–302.

66 A nationality list is a list set up at the national level that is drawn up by members of that nationality and can only be voted on by voters of that nationality.

67 Dezső, 1998, p. 191.

68 Roter, 2017, pp. 75–80.

69 Horváthné, no date, p. 29.

number of votes.⁷⁰ In Romania, those national minorities can each obtain a parliamentary mandate under preferential rules, who, in accordance with the general rules, did not obtain at least one mandate in the elections⁷¹ but reached 5% of the vote required to elect a member of parliament.⁷² In Serbia, according to Art. 100 of the constitution, the equality of persons belonging to national minorities in parliament is ensured. Under section 81 of the Electoral Procedure Act, the parties or coalitions of national and ethnic minorities are entitled to a mandate even if they have not reached the 5% electoral threshold; however, in Serbia, the electoral system does not know the institution of a guaranteed minority parliamentary mandate.⁷³ In Hungary, the preferential mandate has been granted to 13 recognised minorities since 2014 provided that the number of votes required for the preferential mandate is obtained.⁷⁴

4.3. Characteristics of the electoral systems used

The evolution of electoral systems is influenced by many factors. In this section of the study, I examine the electoral systems of the countries analysed.

As we have seen before, most EU member states adopt a version of the proportional electoral system; however, some countries adopt a pure majority system or even a mixed electoral system. It is therefore a question of where the electoral systems of the eight countries studied are located in this coordinate system and by what characteristics we can group them.

First, it is important to note that most of the countries analysed use a proportional electoral system. In the Czech Republic, e.g., members of parliament (more precisely, the members of the Chamber of Deputies) are elected in 14 multi-member electoral districts, for a total of 200 people. However, an interesting element of the Czech system is that the number of mandates that can be allocated in each electoral district is not predetermined, and only the total of 200 mandates that can be allocated will be recorded, although their allocation among electoral districts varies depending on turnout⁷⁵ (where more people go voting, the electoral district ‘gets’ more mandates).⁷⁶ Poland also voted in favour of a proportional electoral system. Members of the Sejm are elected by list: in 41 multi-member (7–20 mandates) electoral districts, Polish citizens can vote for one candidate from a list they choose (thus, in Poland the so-called ‘free list’ works).⁷⁷ In Slovakia, 150 members of the National Council are also elected in a proportional electoral system, in a single electoral district covering the whole country.⁷⁸ Serbia also adopts a pure proportional electoral system, where the whole

70 In Croatia, as in Hungary, minorities must choose between a party list and a nationalities list (Roter, 2017, pp. 80–83).

71 Dezső, 1998, p. 187.

72 Horváthné, no date, p. 29.

73 Horváth, 2019, pp. 410–411.

74 For more about the Hungarian system, see Kurunczi, 2020, pp. 107–145.

75 Cerny, 1999, pp. 80–83.

76 Stumpf and László, 2018, p. 180.

77 Dezső and Pozsár-Szentmiklósy, 2016, pp. 224–232.

78 See Arts. 11 and 25 of the Act on the Election of Members of Parliament and Senators.

country consists of a single electoral district. The list is closed, and voters have no say in its order.⁷⁹ This system is also present in Croatia, where the current electoral system, which applies a proportional electoral system with closed lists, has been in place since 2000. Under section 81 of the Electoral Act, the country was divided into 10 electoral districts, between which there should not be more than a 5% deviation. In these electoral districts, parties can nominate a maximum of 14 candidates, bringing the total to 140 members of parliament.⁸⁰ Slovenia also has a proportional electoral system, based on which 88 of the 90 members of parliament are elected. The country is divided into eight electoral districts, in which the so-called ‘open lists’ can be set and voters can choose their preferred candidates and vote for them directly on the list (however, everyone has only one vote).⁸¹ Romanian parliamentarians are elected in two steps. As a first step, at the constituency level, an election coefficient is calculated separately for the Chambers of Parliament (CP) and for the Senate. This is done as follows: the total number of votes cast is divided by the number of CPs and Senate seats required by law in that constituency.⁸² Each county list receives as many seats as the number of votes equal to the election coefficient received on the list. An independent candidate shall obtain a seat if they have received a number of votes equal to or higher than the election coefficient. As a second step, mandates not allocated on the basis of the above are allocated by the Central Electoral Office on the basis of unused votes, and at the national level, on the basis of the principle of proportionality⁸³; therefore, the Romanian electoral system is also a proportional electoral system. Thus, of the eight countries examined, only Hungary uses a non-proportional electoral system but rather a completely mixed system. Along with the adoption of the Basic Law, the Act on the Election of Members of Parliament was enacted, which maintained a mixed electoral system but reduced the number of members of parliament and strengthened the majority elements in the electoral system instead of the previous proportional nature. According to the current regulations, 106 members of parliament are elected in individual electoral districts (no longer on the basis of an absolute majority but based on a relative majority system) and 93 members of parliament based on party lists.⁸⁴

As a second consideration, it is important to determine whether each country applies a nomination or entry threshold. The disadvantage of proportional electoral systems may be the creation of a fragmented parliament, and it is therefore essential to examine this issue. In the Czech Republic, if a party (or parties) wishes to set

79 Lieszkovszky, 2016, pp. 250–256.

80 Koic, 2016, pp. 113–125.

81 Kopic, 2016, pp. 266–272.

82 For example, if 70,000 votes are cast in a given county, and the law provides five seats, the election coefficient is 14,000.

83 See the Romanian electoral system for more details: Law no. 208/2015 of 20 July 2015 on the election of the Senate and the Chamber of Deputies as well as on the organisation and functioning of the Permanent Electoral Authority, Art. 94.

84 This system also provides for the possibility of parliamentary representation on the basis of nationality. See Kurunczi, 2014, pp. 56–65.

a party list, an amount of 15,000 Czech Crowns must be deposited with the Czech National Bank no later than 72 days in advance, which will be the revenue of the central budget as a contribution to election expenses.⁸⁵ Lists may win mandates if they reach more than 5% of the valid votes, which rises to 10% for two parties, 15% for three parties and 20% for four or more parties.⁸⁶ In Poland, according to Art. 196 of the Electoral Code, only those parties can set the list (similarly to Hungary); they can obtain a mandate if they receive 5% of the votes and, in the case of a common list, 8% of the votes. In Romania, according to Art. 94 of the electoral law,⁸⁷ a party must obtain 5% of the votes to receive a mandate (it increases to 8% for two parties, 9% for three parties and 10% for four or more parties) or 20% of the total number of validly cast votes in at least four electoral constituencies for all electoral competitors. If the parties do not achieve this, but their candidates have won at least six mandates, they can get mandates of the list without reaching these percentages. In Slovakia, lists can be set by parties; as these are free lists, voters choose one of the lists and can support those four candidates with their votes.⁸⁸ There is also an election threshold – as a general rule, 5%, while it is 7% in the case of two or three parties and 10% in the case of a group of four or more parties. Interestingly, according to Art. 42 of the Electoral Act, if no party or party association reaches the limit set for it, then each election threshold will be reduced by 1-1 points until the seats can be allocated. In Serbia, each party can only participate in setting a single list. A uniform 3% threshold⁸⁹ is applied in elections, except in the case of nationalities, who may obtain a mandate without it.⁹⁰ In Croatia, a 5% entry threshold must be reached for successful mandates. In Slovenia, according to Art. 45 of the Electoral Act, the Hungarian and Italian minorities must obtain the recommendations of 30 voters to stand for election; here the election threshold is 4%. The other two members of parliament are elected by the Hungarian and Italian minorities in a majority system.⁹¹ In Hungary, only parties can make a list, but only if they were able to nominate individual candidates in at least 71 individual electoral districts, 14 counties and the capital. The election threshold is generally 5%; however, this increases to 10% for a joint list of two parties and to 15% for a joint list of three or more parties.

The third element that must be examined is whether the electoral system in question contains some national characteristics which are country-specific. One such element is the issue representation of minorities already discussed earlier, which is defined according to national specificities and follows a different pattern from country

85 See Art. 31(4) of the Act of Law 247/1995 Coll., on elections to the Parliament of the Czech Republic.

86 See Art. 49(1) of the Act of Law 247/1995 Coll., on elections to the Parliament of the Czech Republic.

87 See Law no. 208/2015 of 20 July 2015 on the election of the Senate and the Chamber of Deputies as well as on the organisation and functioning of the Permanent Electoral Authority.

88 See Arts. 18, 23 and 30 of the Act on the Election of Members of Parliament and Senators.

89 The electoral threshold was reduced from 5% to 3% in 2020. See Molnár, 2021, p. 74.

90 Ördögh, 2016, p. 100.

91 Ördögh, 2016, pp. 102–103.

to country. It is interesting to note that in the practice of the eight countries, many have a second chamber (e.g. in Romania, Poland and the Czech Republic) – e.g. in Slovenia, which has a second chamber chosen by different interest groups (e.g. chambers, trade unions, craftsmen, universities, local interest groups etc.) appears and organised on a functional and territorial basis. It is also important to highlight the strengthening of the majority element in Hungarian regulation. Six of the countries analysed have a fully proportionate system, and in Romania, this is also dominant, even if the rule strengthening the majority element also appears there. Hungary, however, not only adopts a mixed system, but it also explicitly strengthens the majority. In addition, the electoral law introduced an important (and controversial) innovation in the so-called ‘winner compensation’ rule which further strengthened the majority element of the mixed electoral system. The essence of this is that the number of votes of the candidate holding a mandate in the individual electoral district above the votes of the candidate in the second place is also considered a fractional vote. This institution was also examined by the Hungarian Constitutional Court, which concluded that because the elements of the electoral system are predetermined and apply to everyone to the same extent, considering the previous case law of the Hungarian Constitutional Court (according to which the legislator has a wide range of motion in formulating electoral system⁹²), the institution of ‘winning compensation’ is not constitutionally objectionable. I fully agree with the constitutional content of this decision of the Hungarian Constitutional Court, but it must be stated that this institution is a majority element, thus pushing the Hungarian parliamentary electoral system towards stable governance. In addition, the institution of ‘winner compensation’ is opposite to the purpose of the institution of compensation. The purpose of compensation is to ensure that non-mandated votes are not lost in individual electoral districts, and thus the electoral system should make these votes appear on the party lists of the parties or even on a separate compensation list. To do this, ‘winner compensation’ also compensates the winning candidate in the individual electoral district for the votes that are above the number of votes of the second-place candidate by one. The logical starting point for the compensation is that the winner did not need these votes; however, this would only be fully true if we were to look at these (according to the system) ‘unnecessary’ votes as votes that had not already been cast. Namely, if we consider that they were cast, but not to the winning candidate – since they ‘did not need it’ – then these votes may have been cast elsewhere, in which case, however, the final winner would not have won the mandate. Thus, we can only regard these votes as if they should not have been cast for the winner to take their mandate. In this theoretical case, however, the justification for compensation is also lost.

92 See Decision 26/2014. (VII. 23.) AB of the Constitutional Court of Hungary: “[...] the National Assembly has wide discretion in choosing the electoral system and in establishing the rules of the electoral procedure. The legislature is free to determine the electoral district’s systems, the procedure for nominating candidates, voting and obtaining mandates, and only the Basic Law sets the framework for this legislative freedom”.

5. Conclusion

The regulation of electoral systems is always country-specific and in line with social and historical traditions. It is therefore not possible to mechanically transpose the electoral system of other countries to any country as some of its elements will not necessarily be compatible with the specificities of the other country. The history of the eight countries analysed (the legacy of communism, the ‘problem’ of nationality) shows several points of connection; nevertheless, the electoral systems of the analysed countries are not uniform. Although most countries – in line with European trends – have a proportional electoral system, they have many different regulations. By comparison, in Hungary (or even in Romania), legislators adopted completely different electoral systems after the change of regime. It can thus be stated that the definition of the electoral system is one of the most national issues, where standards can and should be set; however, these standards can only provide a basis for comparability rather than accountability.

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