

ARTICLES

THE IMPACT OF THE ELECTORAL LAWS ON ELECTORAL PARTICIPATION IN BOSNIA AND HERZEGOVINA*AUTHORS****Nedžad Sijamhodžić, Boštjan Rogelj***

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UDC: 913:342.8(497.6)"1996-2018"

ABSTRACT***The impact of the electoral laws on electoral participation in Bosnia and Herzegovina***

Electoral laws governing the election of members to the Presidency of Bosnia and Herzegovina roughly follow the consociational model of institutional arrangements in ethnically divided societies. The existing laws have been widely criticized since its introduction in 1996. Most problematic is the restriction of passive and active voting rights of segments of the electorate. The legislation makes it impossible for voters to vote for representatives of their nationality or to run as candidates for their own national community. In this article, we want to investigate whether the dissatisfaction of this group of voter's manifests in lower voter turnout and a larger number of invalid ballots. Analysis of election results in the 2018 election reveals a weak correlation between the share of "unrepresented voters" and voter turnout. Consequently, it can be argued that voter dissatisfaction with the electoral system is not reflected in reduced voter turnout. The opposite is true for the share of invalid ballots. The share of "unrepresented voters" and the share of invalid ballots shows a moderately strong correlation. Consequently, we can conclude that many voters, who are prevented by the electoral system from voting for a representative of their nationality, express their protest by casting an invalid ballot.

KEY WORDS

Elections, Presidency of BiH, voter turnout, invalid ballots, Bosnia and Herzegovina.

1. Introduction

Modern democracies are based on the principle of popular sovereignty. One of the most important expressions of popular sovereignty and a necessary condition for the establishment and maintenance of the rule of law are elections (Grad, 2004). Elections give representatives of governing authorities the necessary legitimacy to be able to make decisions on behalf of the people. From the point of view of ensuring the legitimacy of the authorities, it is important that as many voters as possible participate in elections and that they express their will clearly and unambiguously. Low voter turnout and a large number of invalid ballots undermines the legitimacy of elected authorities, which also means there is a lower level of acceptance of authorities' decisions (Hadjar and Beck, 2010).

Past research has shown that voter turnout and the number of invalid ballots are influenced by a variety of factors (Powell, 1986; Knack and Kropf, 2003; Blais, 2006; Pacek, Pop-Eleches and Tucker, 2009; Hadjar and Beck, 2010; Cancela and Geys, 2016; Cohen, 2018; Kouba and Lysek, 2019; Lysek, Lebeda and Kouba, 2020). One factor are the electoral laws, that is the set of rules concerning all the important legal aspects of elections. While elections are a key element of a democratic system, electoral laws are a key element of elections. Electoral law establishes important incentives that influence the conduct and actions of both voters as well as political actors.

In this article we want to determine how electoral law governing the election of members of the Presidency of Bosnia and Herzegovina (hereinafter the Presidency of BiH) affects voter turnout and the share of invalid ballots. The laws in question have been widely criticized for crudely restricting the passive and active voting rights of certain groups of voters. Current electoral laws prevent some voters from voting for representatives of their ethnic group. In a country marked by deep ethnic and religious divisions, this poses a serious problem.

The aim of the research is to examine the extent to which turnout and the share of invalid ballots are affected by certain voters not being able to elect representatives of their ethnic group. The study is divided into five parts. The introductory part is followed by a brief presentation of the theoretical starting points for studying the impact of electoral laws on voter turnout and invalid ballots. The main features and shortcomings of electoral laws governing the election of members of the Presidency of BiH are presented in the third part. The central part of the article is devoted to the presentation of results from the analysis of voter turnout and the share of invalid ballots in relation to the share of "unrepresented voters" (the term is described in more detail below). In the conclusion, the main findings are synthesized and suggestions for further research are outlined.

2. Influence of the electoral laws on voter turnout and invalid ballot rates

Turnout and the number of invalid ballots have attracted the attention of many researchers over the past two decades (Blais, 2006; Ugglá, 2008; Hadjar and Beck, 2010; Cancela and Geys, 2016; Kostelka, 2017; Aldashev and Mastrobuoni, 2019), while there has been significantly less research into the later topic compared to the first. In the following section, we will briefly summarize some of the key findings of previous studies. Above all, we want to highlight the impact of electoral law on voter turnout and the proportion of invalid ballots.

Voter turnout and abstention are very complex phenomena influenced by a myriad of factors. Researchers roughly divide them into three sets: social and economic milieu, institutional arrangements, and party system (Powell, 1986; Blais and Dobrzynska, 1998; Norris, 2004). The first set consists of factors related to the socio-economic and demographic characteristics of voters. This set also includes the socio-economic situation in the country and the political culture in society. The second set consists of factors related to the broader institutional arrangements for elections. Among other things, it includes various aspects of electoral laws and the electoral system as well as the form of government (presidential or parliamentary). The third set includes factors related to the characteristics of the party system and electoral competition. Among them are the number of parties, the closeness of election campaigns, the way governments and coalitions are formed, as well as the significance of a particular election or election decisiveness.

Comparative studies of voter turnout (Jackman and Miller, 1995; Blais and Dobrzynska, 1998; Norris, 2004; Cancela and Geys, 2016) have shown that turnout is significantly influenced by the broader institutional context in which elections take place (Powell, 1986). Electoral laws (some authors use the term electoral system, electoral rules or electoral legislation) is one of its most important elements. Electoral laws can be defined as the set of rules that governing the entire election process - from calling elections, through nominating candidates, campaigning and voting, to counting votes and determining results (Farrell, 2001).

Differences in electoral laws are useful when it comes to explaining differences in turnout at the national level but are less appropriate for explaining differences at the sub-national or local level. To ensure the legitimacy of elections, important elements of electoral laws within a country do not change. For instance, rules on candidacy, voting, determining results and the like are the same throughout the territory where the elections take place. However, this is not always the case in deeply divided societies and countries. In deeply divided societies, ethnic, religious, or racial affiliation or identity is extremely important, as it marks every aspect of social life (Sisk, 1996).

Political party dynamics and electoral behaviour reflect ethnic, religious, or racial divisions in society (Bogaards, 2019). These divisions also influence the design of democratic institutions. When forming institutions, in addition to respecting general democratic principles, it is also necessary to ensure that individual minority groups are adequately represented. As a result, significant differences in electoral law as it applies within a country can emerge. These create discrepant incentives that influence the electoral behaviour and electoral participation of individual groups of voters.

In the case of elections for selecting members of the Presidency of BiH, there are important differences among individual groups of voters with respect to how they exercise their passive (right to stand for election) and active (right to vote) voting rights (see section 3). Who can vote for an individual candidate and who can run in a particular constituency are some of the key factors influencing voter turnout. The fact that a sizeable proportion of voters do not have the opportunity to vote for candidates of their ethnic group, in our opinion, significantly influenced turnout in the election of members of the Presidency of BiH in 2018. These dynamics that we see for turnout also tend to apply to invalid voting. In research to date, three theoretical approaches have been developed to study invalid voting: institutional, socioeconomic, and political-protest approaches. Each approach draws attention to a competing set of factors that endeavour to explain differences in the level of invalid voting (McAllister and Makkai, 1993; Power and Garand, 2007). The first argues that invalid voting is the result of institutional design (ballot design, voting method, etc.). The socioeconomic approach looks to social structures or demographic and socio-economic characteristics of voters (education and literacy are supposed to play a key role) to explain invalid voting. The last approach argues that voters invalidate ballots because of their dissatisfaction with the existing political or economic situation. It should be noted that an invalid ballot may be the result of an unconscious or conscious decision on the part of a voter. In the first case, the voter casts an invalid ballot unintentionally, due to an error resulting from a misunderstanding of the voting rules or else makes a mistake. The number of inadvertently cast invalid ballots depends on various demographic, socio-economic and institutional factors. In the second case, the voter intentionally casts an invalid ballot. It is a form of expressing dissatisfaction with the democratic process. There can be various reasons for this, one of them being that the political demands of political minorities are disregarded or are perceived to be (Moral, 2016).

In our opinion, the large number of invalid ballots in the election of members of the Presidency of BiH resulted from dissatisfaction among a part of the electorate with electoral law, which prevents them from voting for candidates of their ethnic group.

3. Voting system used for electing members of the presidency of Bosnia and Herzegovina

Bosnia and Herzegovina is a typical example of a deeply divided society. In the professional literature there are two frequently discussed models for securing democratic order and protecting minority groups in divided societies (Horowitz, 1985; Lijphart, 1994; Reilly, 2012). The consociational model, based on the principle that each ethnic community should enjoy a significant degree of independence and the right to veto matters that directly affect the well-being of its members. It advocates for the creation of a federal system based on ethnic principles and the granting of territorial autonomies. It posits that elections be carried out through a highly proportional electoral system, and that political units be formed to reflect existing ethnic divisions. The centripetal or integrative model emphasizes the importance of institutions that can promote cooperation, compromise and integration between groups. It tends to diminish the importance of dominant ethnic identities rather than institutionally promote their representation. It advocates the creation of a federal arrangement that is not based on ethnicity. When it comes to elections, it is in favour of solutions that encourage the formation of interethnic political parties and pre-electoral coalitions.

Electoral law and more broadly the electoral system in place for electing members of the Presidency of BiH roughly follows the consociational model (Kasapović, 2017). The basic features were agreed upon in the Dayton peace negotiations (Annexes 3 and 4 of the peace agreement). Details regarding candidacy, pre-election campaigning, conducting elections and determining results are determined by the Election Law of BiH, which was adopted in 2001 (the Election Law of BiH has been amended several times, most recently in 2020).

The Presidency of BiH consists of three members – a Bosniak, a Croat and a Serb, whose terms lasts four years. For the election of members of the Presidency of BiH, the country is divided into two constituencies. The first is the Federation of BiH, in which Bosniak and Croat members are elected. All citizens registered in the electoral roll of the Federation of BiH have the right to vote. A voter can vote for either a Bosniak or a Croat, but not for both. A Bosniak and a Croat candidate are elected, based on receiving the most votes among the candidates of each individual constituent nation. Republika Srpska (RS) is the second constituency in which only the Serb member of the presidency is elected. All citizens registered on the electoral roll of the Republika Srpska have the right to vote. The candidate who receives the most votes is elected. Voters in the Brčko District can decide whether to vote for candidates in the Republika Srpska or Federation of BiH constituencies (Izborni zakon Bosne i Hercegovine, 2020).

Electoral laws governing the election of members of the Presidency of BiH have frequently been criticised in the past (Kasapović, 2017). The biggest problem is that members of certain ethnic groups face restrictions on their passive voting rights (the right to stand as a candidate). People who do not belong to three constituent nations do not have the opportunity to run for a position in the presidency, while Croats and Bosniaks in Republika Srpska as well as Serbs in the Federation of BiH face similar restrictions. It is also problematic that Serbs living in the territory of the Federation of BiH as well as Croats and Bosniaks living in the territory of Republika Srpska cannot vote for representatives of their ethnic groups (Sahadžić, 2011).

The election of the Croat member of the presidency is also problematic. The drafters of the electoral laws envisaged that voting for candidates would take place on the basis of ethnic divisions in society (each ethnic group would vote for its representative). In practice, this has not eventuated. We mentioned that voters in the Federation of BiH can vote for either a Bosniak or a Croat member of the presidency. As a result, Bosniaks, who are in the majority in Federation of BiH, can have a decisive influence on the election of the Croat member of the presidency. Analyses of election results have shown that the ballots cast by Bosniaks decisively contributed to the victory of Željko Komšić in the elections in 2006, 2010 and 2018 (Kasapović, 2017; Sijamhodžić, 2020). This fosters the feeling among members of the Croat community that they are outvoted and powerless.

Another contentious issue is the fact that it is not necessary to amass an absolute majority of votes to win. In very close election races, a candidate can win with the support of significantly less than 50% of the electorate. In the 2018 elections, Šefik Džaferović, the elected candidate as the Bosniak member of the presidency, received only 36.6% of all votes of the Bosniak candidates (Centralna izborna komisija BiH, 2018).

4. Influence of the electoral laws on voter turnout and the share of invalid votes

The results of the analysis are presented below, which we used to check how the listed shortcomings of the electoral laws affect electoral participation. We were primarily interested in the effect that part of the electorate being unable to vote for a candidate of its nationality would have on turnout and ballot invalidation levels. This group of voters, which includes members of non-constituent nations throughout the country (sometimes labelled as “Others”), as well as Serbs living in the Federation of BiH along with Croats and Bosniaks living in the territory of Republika Srpska, we termed “unrepresented voters” (Figure 1).

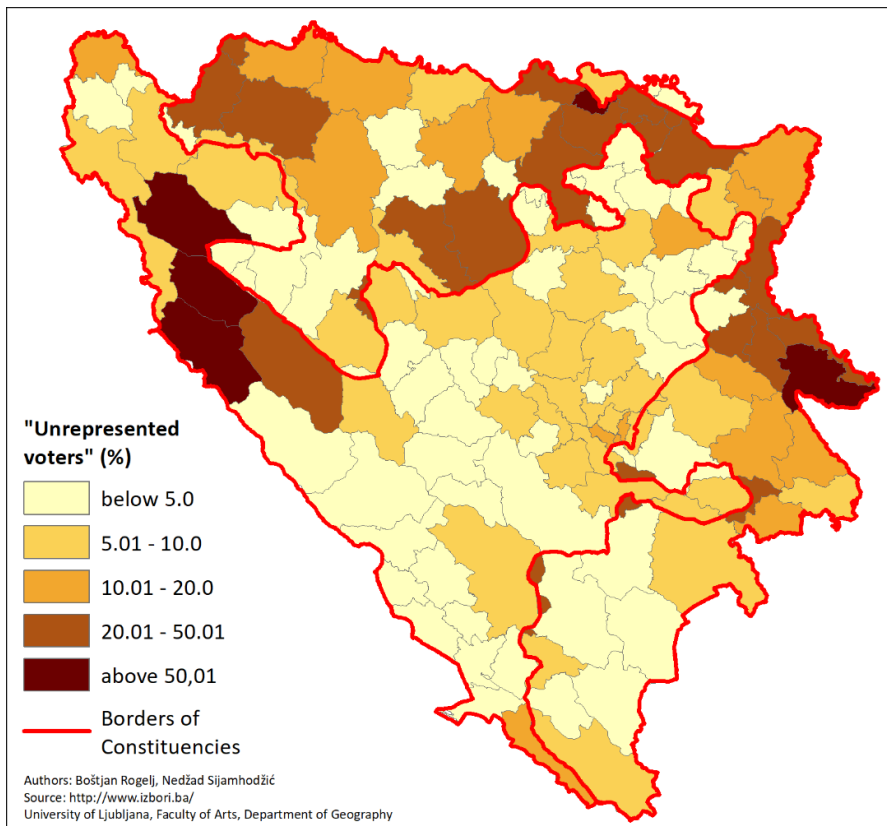


Figure 1: Proportion of “unrepresented voters” by municipalities according to the 2013 census.

The analysis is based on data from the Central Election Commission of BiH (Centralna izborna komisija BiH, 2018) on the results of voting in the elections of members of the Presidency of Bosnia and Herzegovina in 2018, and data from the Agency for Statistics of BiH on ethnic composition of the population by municipality according to the 2013 census (Agencija za statistiku Bosne i Hercegovine, 2020). With quantitative analysis and the help of various cartographic representations, we investigated whether municipalities with a high share of “unrepresented voters” are characterized by low voter turnout and a high share of invalid ballots.

The war in Bosnia and Herzegovina significantly changed the ethnic structure of the country's population. It brought about a marked homogenization of the ethnic composition of communities. In 1991, there were only 18 (16.5%) municipalities in the country in which the nationality in the majority had a more than two-thirds majority (among them there were eight municipalities with a Serb majority, seven municipalities with a Croat majority and three with a Bosniak majority).

In 2013, there were as many as 115 (80.4%) such municipalities, and in 98 municipalities (68.5%) the national group in the majority accounted for more than 80% of the population. The number of municipalities in which no ethnic group had an absolute majority also decreased dramatically. Before the war, there were 24 such municipalities (22.0%), today there are only seven (4.9%) municipalities (Pejanović, 2017; Agencija za statistiku Bosne i Hercegovine, 2020).

The share of “unrepresented voters” in individual municipalities is especially important for our analysis. In Republika Srpska, it includes all Bosniaks, Croats and voters of other nationalities, while in the Federation of BiH it consists of Serbs and voters of other nationalities. There are only five (4.2%) municipalities in BiH, where they account for more than 50% of the electorate (Drvar, Bosansko Grahovo and Bosanski Petrovac in the Federation of BiH along with Vukosavlje and Srebrenica in Republika Srpska). In 62 (43.4%) municipalities they make up less than five percent of the electorate, and in almost 70% of municipalities their share is lower than ten percent (Figure 1).

Like other transition countries in SE Europe, BiH is characterized by relatively low voter turnout (Kostelka, 2014). Turnout in the Presidency of BiH elections has been stable since 2002, hovering around 55%, with it slightly higher in the Republika Srpska than in the Federation of BiH (Table 1). The lowest turnout was recorded in the municipalities of Una-Sana Canton and Canton 10, as well as in some smaller municipalities with Croat majority populations in the Federation of BiH (Usora, Orašje and Dobretići). In Republika Srpska, only the municipalities of Oštra Luka and Brod recorded turnout well-below average (Figure 2) (Centralna izborna komisija BiH, 2018).

Table 1: Voter turnout in the elections of members of the Presidency of BiH from 1996 to 2018.

Election year	BiH (%)	Federation of BiH (%)	Republika Srpska (%)
1996	83	/	/
1998	74	/	/
2002	55.5	57.4	52.9
2006	55.3	54.2	57.1
2010	56.3	56.7	56.1
2014	54.4	53	56.8
2018	54.1	51.8	57.7

Source: Centralna izborna komisija BiH, 2018

Among the ten municipalities with the lowest turnout, three have a share of “unrepresented voters” greater than 10% (Velika Kladuša, Bosansko Grahovo and Bosanski Petrovac). On the other hand, some municipalities with a high share of “unrepresented voters” record above-average turnout (the municipality of Trnovo in Republika Srpska records the fifth highest turnout in the country, despite the fact that “unrepresented voters” represent more than 40% of the population). Figure 3 shows that the share of “unrepresented voters” and voter turnout are not closely linked. This is also confirmed by the calculated correlation coefficients (Table 2). Only municipalities in Republika Srpska show a statistically significant moderately-strong negative correlation between the two variables. In the Federation of BiH and at the level of the entire country, the association between them is not statistically significant.

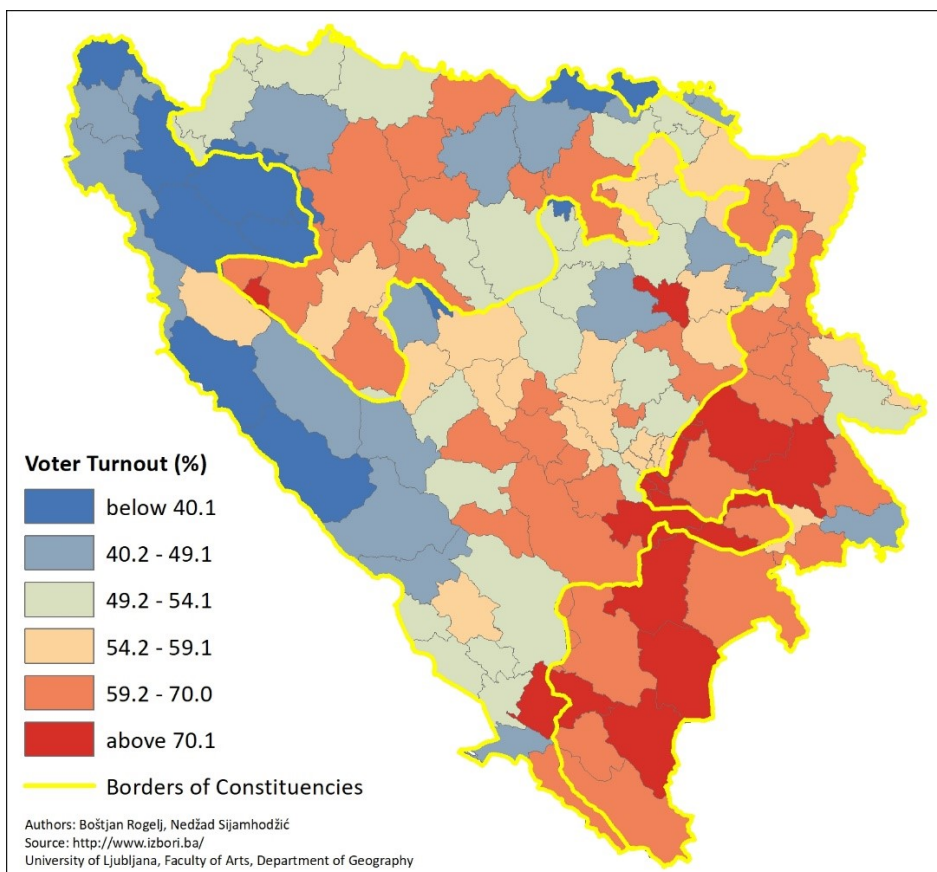


Figure 2: Voter turnout by municipalities in the elections of members of the Presidency of BiH in 2018.

In this section we also examine the degree of association between voter turnout and the relative size of ethnic communities in municipalities. Calculations showed that the association was highest among Croats. Statistically significant moderately-strong negative correlations between the share of Croats and voter turnout were recorded both at the level of the entire country and in Republika Srpska. In the Federation of BiH, this correlation is still statistically significant but is slightly weaker (Table 2). The calculated coefficients into the association confirm the thesis that Croats express their dissatisfaction with the electoral system through lower turnout. However, it should be noted that there are large regional differences between Canton 10 and Posavina Canton on the one hand and Central Bosnia and Herzegovina-Neretva Canton on the other. In the latter, municipalities with a high share of Croats have above-average turnout.

One of the main reasons for regional differences are different incentives to participate in state level politics. The high degree of cantonal autonomy enables Croats living in ethnically homogeneous cantons (Canton 10, Posavina Canton) to achieve their political goals at the cantonal level and ignore state level politics. In ethnically mix cantons that is less likely, consequently Croatians there are more motivated to participate in state level politics.

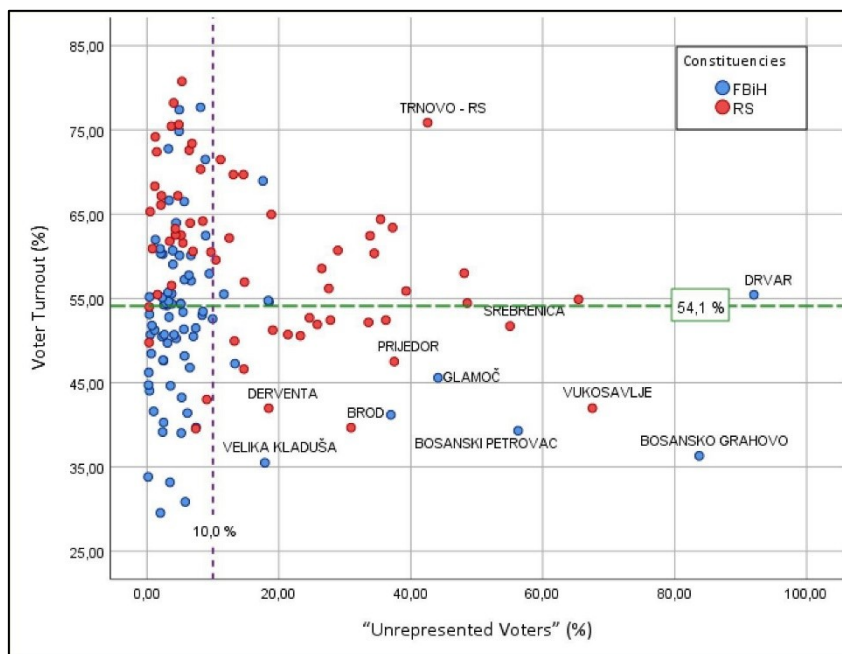


Figure 3: Association between the share of “unrepresented voters” and voter turnout at the municipal level (Centralna izborna komisija BiH, 2018; Agencija za statistiku Bosne i Hercegovine, 2020).

Table 2: Level of correlation (Spearman's Rho) between voter turnout / share of invalid ballots and share of population of individual ethnic groups.

	Ethnic group	Voter turnout		Invalid ballots	
		ρ	p.	ρ	p.
BiH	“Unrepresented voter”(%)	-0.006	0.939	+0.246	0.003
	Bosniaks (%)	-0.125	0.136	+0.406	<0.001
	Croats (%)	-0.405	<0.001	+0.096	0.253
	Serbs (%)	+0.384	<0.001	-0.285	0.001
	Others (%)	-0.149	0.075	+0.292	<0.001
FBiH	“Unrepresented voter” (%)	+0.088	0.436	+0.317	0.004
	Bosniaks (%)	+0.268	0.016	+0.176	0.117
	Croats (%)	-0.229	0.041	-0.279	0.012
	Serbs (%)	-0.027	0.812	+0.276	0.013
	Others (%)	+0.225	0.045	+0.123	0.275
RS	“Unrepresented voter” (%)	-0.424	<0.001	+0.512	<0.001
	Bosniaks (%)	-0.259	0.039	+0.410	0.001
	Croats (%)	-0.351	0.004	+0.210	0.096
	Serbs (%)	+0.424	<0.001	-0.512	<0.001
	Others (%)	-0.316	0.011	+0.254	0.043

Source: Centralna izborna komisija BiH, 2018; Agencija za statistiku Bosne i Hercegovine, 2020.

In the 2018 elections, 120,259 (6.63%) invalid ballots were cast, with the share of invalid ballots in the Federation of BiH (7.0%) being slightly higher than in the Republika Srpska (6.1%). The reasons for the high share can be found in the specific design of the electoral system, which does not allow part of the electorate to vote for representatives of their nationality. Casting an invalid ballot is similar to abstaining in elections, it is an act of protest or an indicator of dissatisfaction with the existing system.

Figure 4 shows the municipalities with the highest levels of invalid ballots (including certain municipalities in Canton 10, Una-Sana and Posavina Canton, as well as in Podrinje and Posavina). Not surprisingly, the highest levels of invalid ballots were recorded in municipalities with a high proportion of “unrepresented voters”. Among the ten municipalities with the highest levels of invalid ballots, as many as nine show a high share of “unrepresented voters”. Particularly striking are the extremely high proportions of invalid ballots in municipalities with a high proportion of Serbs in the Federation of BiH (Drvar, Bosansko Grahovo, Glamoč and Bosanski Petrovac).

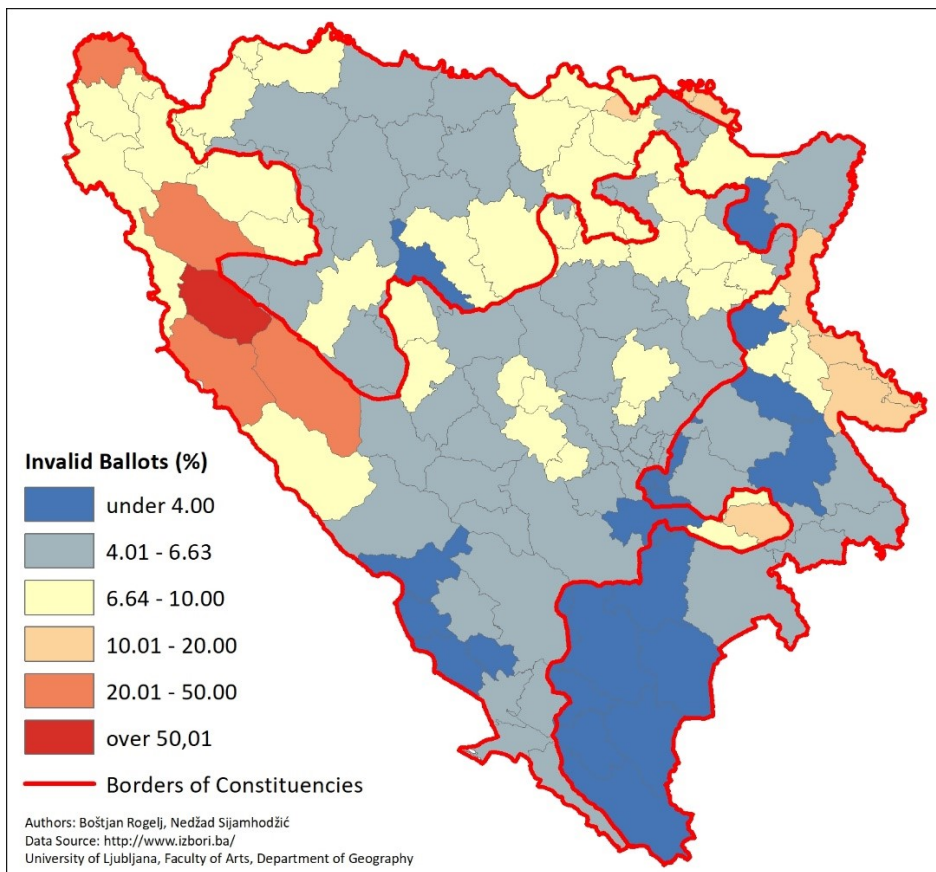


Figure 4: Proportion of invalid ballots in the 2018 elections of members of the Presidency of BiH.

The existence of a correlation between the share of “unrepresented voters” and the share of invalid votes is also shown in Figure 5, with the calculated correlation coefficients presented in Table 2. Although the highest share of invalid ballots is recorded in the Federation of BiH, the correlation is slightly higher among municipalities in Republika Srpska. If we compare the levels of invalid votes and the proportions of ethnic groups, we see that Bosniaks in Republika Srpska and Serbs in the Federation of BiH are the groups that most often cast invalid ballots, which is indicative of their inability to vote for their own representatives.

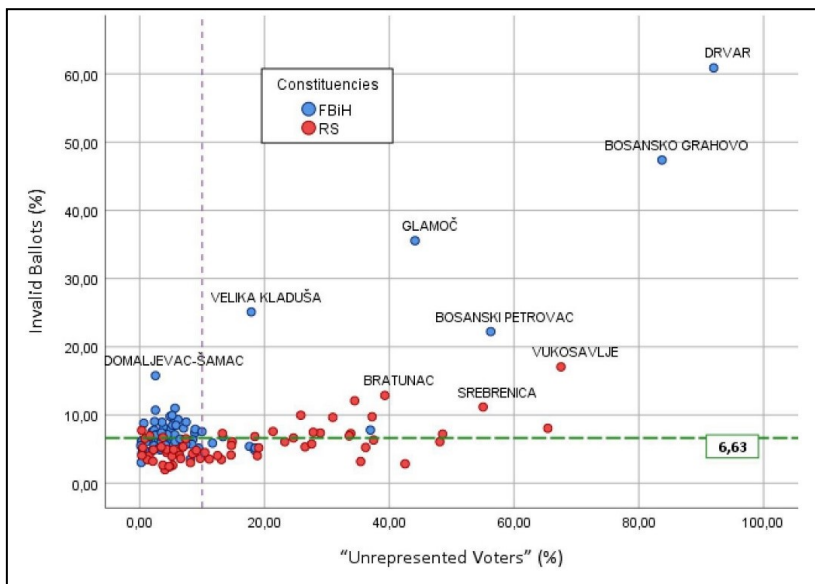


Figure 5: Association between the share of “unrepresented voters” and voter turnout at the municipal level
 Source: Centralna izborna komisija BiH, 2018; Agencija za statistiku Bosne i Hercegovine, 2020.

5. Conclusion

Our research focused on whether dissatisfaction with the electoral laws on the part of segments of the electorate unable to vote for representatives of their nationality, is reflected in lower voter turnout and a higher share of invalid votes. The weak connection between ethnic group make up, especially the so-called "unrepresented voters" and voter turnout at both the national and entity levels suggests that dissatisfaction with the electoral laws is not the most important factor influencing low voter turnout. As it is elsewhere in Europe, low voter turnout in BiH is the result of various overlapping factors, with dissatisfaction in the electoral laws just one of them.

A statistically significant negative correlation between the share of Croats and voter turnout in both entities is worth highlighting. We link this to the fact that Croats in Republika Srpska do not have the opportunity to vote for their member of the presidency, while in the Federation of BiH the election of their member can be decisively influenced by the votes of Bosniaks. It seems that Croats more often express their dissatisfaction with the existing electoral laws by abstaining from voting. Although it is important to note that there are also significant regional differences among Croats.

The dissatisfaction of certain groups of voters with the electoral laws is more clearly reflected in the share of invalid ballots. The share of invalid ballots is significantly higher in municipalities with a greater proportion of voters who do not have the opportunity to vote for candidates of their nationality. Most municipalities with high levels of invalid ballots are characterized by large proportions of “unrepresented voters”. However, it is also worth noting that this is a very complex phenomenon that cannot be explained on the basis of one factor alone.

The analysis shows that “unrepresented voters” express their dissatisfaction with the electoral laws more frequently by submitting invalid ballots rather than by abstaining from voting. Low voter turnout and the relatively high levels of invalid ballots in some ethnically homogeneous municipalities, as well as noticeable regional differences that cannot be explained by the ethnic composition of the population, raise a number of new questions. Answers to these could be obtained through in-depth analysis into voter turnout and ballot invalidation. Such research should include factors not simply related to institutional arrangements but also those linked to the social and economic environment as well as the party-political system. Likewise, it would also make sense to include a larger number of elections in the analysis. Such in-depth analysis would provide insights into which factors influence voter turnout and invalid voting in Bosnia and Herzegovina.

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