



**Parliament of Montenegro  
Parliamentary Institute  
Research Centre**

Research paper:

**Affirmative action for persons belonging to national minorities, as set in the legislation governing the local self-government elections in EU member states – experiences of Bosnia and Herzegovina, Croatia, Macedonia, Serbia and Slovenia**

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*\*The contents of this document do not reflect the official views of the Parliament of Montenegro*

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## Foreword

Affirmative action is defined as a set of policies and practices giving certain advantage to groups (particularly persons belonging to ethnic groups and women) that have been faced with injustice and were excluded from fundamental processes throughout the history.<sup>1</sup> The term ‘affirmative action’ was used for the first time in 1961 by the American President John Kennedy in order to create equal chances for all citizens when it comes to employment, regardless of skin color, race, religion or nationality.<sup>2</sup> Even though the affirmative action was traditionally used for education and employment, in the last two decades, this principle increasingly applies to the field of protection of national minorities.

In the context of rights of national minorities, affirmative action may be defined as granting special privileges to individuals on the basis of belonging to a certain minority group. From individual and group perspectives, this principle is crucial for establishing not only equality *de jure*, but also equality *de facto*. In other words, the principle of affirmative action should grant effective rights to minorities, which are already enjoyed by the majority, without giving privileges to minorities. Affirmative action activities must be proportionate to the actual needs of certain minority groups, and aimed at achieving equal opportunities, in order to prevent discrimination of the majority.

Participation of persons belonging to national minorities in the decision-making process is not only the most basic human right, but also a special minority right. Therefore, persons belonging to national minorities aren’t just citizens of a state, but also citizens with specific needs, given that they belong to a minority. This is defined in Article 15 of the Framework Convention for the Protection of National Minorities of the Council of Europe, stating the following: “The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.”<sup>3</sup>

The research studies conducted by the Venice Commission and the OSCE<sup>4</sup> Office for Democratic Institutions and Human Rights are focused on the importance of the electoral process in simplifying the participation of minorities in the policy sphere. According to the Venice Commission Report on electoral rules and affirmative action for national minorities’ participation in decision-making process in European countries<sup>5</sup>, for an electoral rule to be considered as an

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<sup>1</sup> Definition of affirmative action is stated in the *Report on electoral rules and affirmative action for national minorities’ participation in decision-making process in European countries*, Venice Commission, Strasbourg, 15 March 2005. where it was taken from the *Oxford Dictionary of Sociology*, Gordon Marshall, Oxford University Press, 1998. In addition, the concept of affirmative action is defined in a similar way by many scientists in the field of sociology, including Richard F. Tomasson, Faye J. Crosby and Sharon D. Hersberger, *Affirmative Action: The Pros and Cons*, American University Press, 1996 and John D. Skrentny, *The Ironies of Affirmative Action*, The University of Chicago Press, 1996.

<sup>2</sup> Affirmative action: Overview, 2013 <http://www.ncsl.org/research/education/affirmative-action-overview.aspx> (17 March 2014)

<sup>3</sup> Framework Convention for the Protection of National Minorities, Strasbourg, 1.II.1995 <http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm>

<sup>4</sup> Guidelines to assist national minority participation in the electoral process, ODIHR, Warsaw, January 2001, <http://www.osce.org/odihr/elections/17569>

<sup>5</sup> Report on electoral rules and affirmative action for national minorities’ participation in decision-making process in European countries, Venice Commission, Strasbourg, 15 March 2005. [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2005\)009-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)009-e) (17 March 2014)

affirmative action electoral rule, it must fulfill the following two conditions:

- To provide national minorities (individually or collectively) with effective rights already enjoyed by the majority.
- Preferences defined by the electoral rules should be limited to creating equal opportunities for participation of national minorities in the decision-making process.

European countries implement various measures of affirmative action in the form of electoral rules, and the affirmative action electoral rules are most frequently used in the following areas:

- the electoral system in general (proportional or mixed),
- voting rights (dual voting right and special voters lists),
- the numerical threshold,
- the electoral districts (their size, form),
- reserved seats,
- representation,
- use of the national minorities language in the electoral process.

According to the **Constitution of Montenegro and the Law on Minority Rights and Freedoms**, persons belonging to minority nations and other minority national communities are guaranteed the right to authentic representation in the Parliament of Montenegro and in the assemblies of the local self-government units in which they represent a significant share in the population, according to the principle of affirmative action.

In accordance with the Lund recommendations on the effective participation of national minorities in public life and explanatory note, the electoral system should facilitate minority representation and influence:

- Where minorities are concentrated territorially, single member districts may provide sufficient minority representation.
- Proportional representation systems, where a political party's share in the national vote is reflected in its share of the legislative seats, may assist in the representation of minorities.
- Some forms of preference voting, where voters rank candidates in order of choice, may facilitate minority representation and promote inter-communal cooperation.
- Lower numerical thresholds for representation in the legislature may enhance the inclusion of national minorities in governance.<sup>6</sup>

The electoral rule on affirmative action is defined in constitutions, legislation governing the functioning of local self-government, legislation governing minority rights, as well as in electoral legislation at the national and local level, respectively the legislation on election of councillors and

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<sup>6</sup> *Lund recommendations on the effective participation of national minorities in public life and explanatory note*, Foundation on Inter-Ethnic Relations 1999

[http://chrisnetwork.org/wpcontent/uploads/2012/07/preporuke\\_iz\\_Lunda\\_o\\_delotvornom\\_ucescu\\_nacionalnih\\_manjina\\_u\\_javnom\\_zivotu\\_i\\_sa\\_objasnjenjima.pdf](http://chrisnetwork.org/wpcontent/uploads/2012/07/preporuke_iz_Lunda_o_delotvornom_ucescu_nacionalnih_manjina_u_javnom_zivotu_i_sa_objasnjenjima.pdf) (17 March 2014)

representatives in the local self-government units, i.e. in the regional self-government units.

In order to prepare a comparative overview of constitutional and legislative provisions concerning representation of persons belonging to national minorities in the assemblies of local self-government units, in accordance with the principle of affirmative action, the Research Centre collected and analysed the data on this topic, concerning the following five countries: Bosnia and Herzegovina, Croatia, Macedonia, Slovenia and Serbia. In the course of preparation of the document, in accordance with the request for preparation of the research paper, the following was analysed: constitutional provisions, as well as provisions on electoral legislation concerning the electoral rule on affirmative action at the local level, respectively representation of persons belonging to national minorities in the assemblies of local self-government units.

As to the countries included in the paper, the principle of affirmative action is envisaged in their constitutions (Croatia, Macedonia, Serbia, Slovenia) and electoral legislation (Serbia, Slovenia, Croatia), as well as legislation concerning the local self-government (Slovenia). The rest of paper provides an overview of electoral legislation provisions involving the principle of affirmative action, at the local level.

The complete document in Montenegrin language can be found at:

[http://www.skupstina.me/images/dokumenti/biblioteka-i-istrazivanje/Primjena\\_principa\\_afirmativne\\_akcije\\_na\\_nivou\\_lokalne\\_samouprave\\_u\\_izbornom\\_pocesu - iskustvo BiH Hrvatske Makedonije Slovenije i Srbije.pdf](http://www.skupstina.me/images/dokumenti/biblioteka-i-istrazivanje/Primjena_principa_afirmativne_akcije_na_nivou_lokalne_samouprave_u_izbornom_pocesu_-_iskustvo_BiH_Hrvatske_Makedonije_Slovenije_i_Srbije.pdf)