

Ivan Tomić

## GORNJI DOMOVI PARLAMENTA U USTAVNOM SUSTAVU BOSNE I HERCEGOVINE

### SAŽETAK:

U doktorskom radu pod naslovom „Gornji domovi parlamenata u ustavnom sustavu Bosne i Hercegovine“ analizirat će se utjecaj organizacije domova naroda na funkcioniranje dvodomnog sustava u Bosni i Hercegovini. Po strukturi parlamenti mogu biti jednodomni, dvodomni i višedomni pri čemu su prva dva prevladavajući oblici organizacije parlamenta. U bikameralnim sustavima ključno je pitanje međusobnog odnosa domova parlamenta. Kada između domova postoji bitna jednakost, postoji sustav ravnopravne dvodomnosti. Ustavni sustavi u kojima je ravnopravnost narušena u korist jednog od domova parlamenta nazivaju se sustavima neravnopravne dvodomnosti. Između čistih modela dvodomnosti postoje razni modaliteti koji se opisuju kao umjereno snažni odnosno umjereno slabi bikameralizam. Klasifikacija sustava dvodomnosti temelji se prvenstveno na formalnim nadležnostima i sastavu domova, a bitan utjecaj imaju legitimitet i organizacija političkih stranaka.

Gornji domovi parlamenta odlikuju se specifičnim sastavom. Nasuprot donjih domova koji se popunjavaju u izbornom postupku, gornji domovi nerijetko se popunjavaju i postupkom imenovanja. Članstvo u gornjim domovima može se steći i nasljedstvom, po funkciji ili na osnovu drugih nedemokratskih kriterija. Trajanje mandata prosječno je duže od trajanja mandata u donjim domovima, može uključivati i doživotno članstvo, a posebni ciljevi koji se žele ostvariti kroz načelo reprezentacije u gornjim domovima često dovode do nadpredstavljenosti određenih građana. S druge strane, dvodomni sustavi omogućuju dvostruku provjeru legislativne djelatnosti, disperziju moći i ublažavaju demokratski dinamizam donjeg doma. U federalnim državama gornji domovi sredstvo su institucionalne zaštite federalnih jedinica i najznačajniji oblik sudjelovanja federalnih jedinica u saveznoj vlasti. Povijesno promatrano, dvodomni sustav olakšao je uspostavu suvremenog federalnog sustava, koji je, pak, povratno djelovao na demokratičniji razvoj gornjih domova obilježen postupnom, ali stalnom tendencijom otklanjanja klasnih elemenata iz ovog doma parlamenta.

U Bosni i Hercegovini kao složenoj, federalnoj državi dvodomni sustav pojavljuje se kao ključno pitanje ustavnog uređenja. Dom naroda Parlamentarne skupštine Bosne i Hercegovine kao gornji dom na državnoj razini primarno je predstavništvo konstitutivnih naroda koji su u ovom tijelu zastupljeni na paritetnoj osnovi. Pravni položaj državnog Doma naroda

usložnjavaju neimplementirane presude Europskog suda za ljudska prava koje se odnose na mogućnost kandidiranja građana koji ne pripadaju konstitutivnim narodima. Dom naroda Parlamenta Federacije Bosne i Hercegovine predstavlja federalne jedinice, ali i konstitutivne narode i građane koji se ne izjašnjavaju kao pripadnici konstitutivnih naroda. Unatoč formalno propisanom paritetu, u sastavu ovog doma poteškoće se pojavljuju kod osiguravanja legitimnog predstavljanja konstitutivnih naroda. Nasuprot dvodomnom sustavu na državnoj razini i razini Federacije Bosne i Hercegovine, u Republici Srpskoj postoji jednodomni sustav sa specifičnim položajem Vijeća naroda.

S ciljem predlaganja rješenja za unaprjeđenje dvodomnog sustava u Bosni i Hercegovini, u radu će se istražiti komparativni dvodomni sustavi koji obuhvaćaju različite modalitete snažnog i slabog bikameralizma, specifične načine popune, funkcioniranje dvodomnih parlamenata u unitarnim i federalnim državama, posebnosti načela reprezentacije kao i odnos između ustavnopravnih normi i prakse. Pored komparativnih sustava, istražiti će se praksa Ustavnog suda Bosne i Hercegovine i Europskog suda za ljudska prava koja se odnosi na gornje domove.

U doktorskom radu istraživanje će se temeljiti na osnovnoj i pomoćnim hipotezama te će se primijeniti odgovarajuća metodologija kako bi se provjerila njihova valjanost i ostvarili postavljeni ciljevi istraživanja. Utvrđene znanstvene spoznaje poslužit će kao temelj za predlaganje rješenja u ovom području *de lege ferenda*.

**Ključne riječi:** parlament, dvodomni sustav, gornji domovi parlamenta, Dom naroda Parlamentarne skupštine Bosne i Hercegovine, Dom naroda Parlamenta Federacije Bosne i Hercegovine.

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**THE UPPER HOUSES OF THE PARLIAMENTS IN THE CONSTITUTIONAL  
SYSTEM OF BOSNIA AND HERZEGOVINA**

**SUMMARY:**

In the doctoral thesis entitled "The Upper Houses of Parliaments in the Constitutional System of Bosnia and Herzegovina," the impact of the organization of the Houses of Peoples on the functioning of the bicameral system in Bosnia and Herzegovina will be analyzed. By structure, parliaments can be unicameral, bicameral, and multicameral, with the first two being the predominant forms of the structural organization of the parliament. In bicameral systems, the key issue is the mutual relationship between the houses of the parliament. When there is substantial equality between the houses, there is a system of equal bicameralism. Constitutional systems in which equality is violated in favor of one of the houses of parliament are called systems of unequal bicameralism. Between pure models of bicameralism, there are various modalities that are described as moderately strong or moderately weak bicameralism. The classification of the bicameral system is based primarily on the formal competences and composition of the chambers, but also the legitimacy and organization of political parties have an important impact.

The upper houses of the parliament are characterized by a specific composition. In contrast to the lower houses, which are filled in the electoral process, the composition of upper houses often includes appointed members. Membership in the upper houses can also be acquired by inheritance, by function, or on the basis of other non-democratic criteria. The duration of the mandate is, on average, longer than the duration of the mandate in the lower houses. It can also include lifetime membership, and the special goals that are sought to be achieved through the principle of representation in the upper houses often lead to the overrepresentation of certain citizens. On the other hand, bicameral systems enable double checking of legislative activity, dispersion of power, and moderate the democratic dynamism of the lower house. In federal states, the upper houses are a means of institutional protection of the federal units and the most significant form of participation of the federal units in the federal government. From a historical point of view, the bicameral system facilitated the establishment of the modern federal system, which, in turn, had an impact on the more democratic development of the upper houses characterized by a gradual but constant tendency to eliminate class elements from this house of parliament.

In Bosnia and Herzegovina, as a complex federal state, the bicameral system appears as a key issue of constitutional arrangement. The House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, as the upper house at the state level, is the primary representation of the constituent peoples that are represented in this body on a parity basis. The legal position of the state House of Peoples is complicated by unimplemented judgments of the European Court of Human Rights, which refer to the possibility of candidacy of citizens who do not belong to the constituent peoples. The House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina represents the federal units, but also the constituent peoples and citizens who do not declare themselves as members of the constituent peoples. Despite the formally prescribed parity, in the composition of this House, difficulties arise in ensuring the legitimate representation of the constituent peoples. In contrast to the bicameral system at the state level and the level of the Federation of Bosnia and Herzegovina, in the Republic of Srpska, there is a unicameral system with a specific position of the Council of Peoples.

With the aim of proposing solutions for improving the bicameral system in Bosnia and Herzegovina, comparative bicameral systems that include different modalities of strong and weak bicameralism, specific ways of filling and functioning bicameral parliaments in unitary and federal states, peculiarities of the principle of representation, as well as the relationship between constitutional norms and practices, will be analyzed. In addition to comparative systems, the practice of the Constitutional Court of Bosnia and Herzegovina and the European Court of Human Rights related to the upper houses will be researched.

In the doctoral thesis, the research will be based on basic and auxiliary hypotheses, and the appropriate methodology will be applied to verify their validity and achieve the set research goals. Established scientific knowledge will serve as the basis for proposing solutions in this area *de lege ferenda*.

**Key words:** parliament, bicameral system, upper houses of parliament, House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina.