

BOSNIA AND HERZEGOVINA: BETWEEN THE WEST AND THE REST

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This paper provides an analysis of the current situation in Bosnia and Herzegovina, in the context of the relationships and the influence of the pro-Russian political factor; the hegemonic policies of official Belgrade and Zagreb towards Bosnia and Herzegovina, as well as the Western political influence. The paper specifically points out the shortcomings of the Dayton Peace Agreement and the Constitution of Bosnia and Herzegovina, which favor the realization of Russian influence and hegemonic policies of official Belgrade and Zagreb (Serbia and Croatia), but recently also the influence of drug cartels in government institutions in Bosnia and Herzegovina. This paper also considers the confusing actions of the Western powers in Bosnia and Herzegovina, which still have a decisive influence on internal political trends.

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The United States of America administration, as well as a part of influential Western analysts and theorists, present and perceive the General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter: BH) - known as the Dayton Peace Agreement (hereinafter: the DPA) as a great success of the US administration. However, there are opposing opinions as well.¹ At the same time, it is being forgotten that BH was not a so-called third-world country with a totalitarian or tribal system at the beginning of the aggression in 1992. Still, it was a democratic European state, whose constitutional system was entirely based on generally accepted international democratic standards.

The Road to the West with the Apartheid Constitutional Framework

The rule of law, the European Convention, judgments of the European Court of Human Rights – “It's not for you.”

The principle of constituency of peoples – the constituency of Bosniacs, Serbs and Croats, which as a constitutional category is imposed by the DPA – and earlier by the Washington Agreement to some extent (at that time – for Bosniacs and Croats as ethnic groups), produces a situation of multiple discrimination on the ethnic basis of all those BH citizens who do not belong to constituent peoples, but also Serbs from the entity of Federation of BH (hereinafter: FBH) and Bosniacs and Croats from the Republika Srpska entity (hereinafter: RS) as members of constituent peoples – due to the impossibility of candidacy for key positions at the state level – BH institutions - the House of Peoples of the Parliamentary Assembly of BH and the Presidency of BH. There is also discrimination on an ethnic basis regarding elections for the Chair and Deputy Chairs of the House of Representatives and the House of Peoples of the Parliamentary Assembly of BH, as well as at the entity level for the President and two Vice-Presidents of the entities.

Confirming a severe form of ethnic discrimination and establishing a violation of the European Convention for the Protection of Human Rights and Fundamental

1) For the different views regarding the Washington and Dayton Peace Agreements, see: Derek Chollet, *The Road to the Dayton Accords: A Study of American Statecraft* (New York: Palgrave Macmillan, 2005), p. 133-181; Zlatan Begic, “One More Attempt by the US Administration in Bosnia and Herzegovina: Constitutional Reform of the Federation of Bosnia and Herzegovina—Mission Impossible or Back to the Future?”, *Journal of Balkan and Near Eastern Studies*, Vol. 19, No. 4 (2017), p. 423-427; Florian Bieber, *Post-war Bosnia: Ethnicity, Inequality and Public Sector Governance* (New York: Palgrave Macmillan, 2006), p. 40-86; David Chandler, *Bosnia: Faking Democracy After Dayton* (London-Sterling: Pluto Press, 2000), p. 66-89; Marcus Cox, “The Right to Return Home: International Intervention and Ethnic Cleansing in Bosnia and Herzegovina,” *The International and Comparative Law Quarterly*, Vol. 47, No. 3 (1998), p. 603-616; Francine Friedman, *Bosnia and Herzegovina: A Polity on the Brink* (London-New York: Routledge, 2004), p. 60-76; John Graham, “Black Past, Grey Future? A Post-Dayton View of Bosnia and Herzegovina,” *International Journal*, Vol. 53, No. 2 (1998), p. 217-220; Paul A. Papayouanou, “Intra-Alliance Bargaining and U.S. Bosnia Policy,” *The Journal of Conflict Resolution*, Vol. 41, No. 1 (1997), p. 101-109; Peter W. Singer, “Bosnia 2000: Phoenix or Flames?,” *World Policy Journal*, Vol. 17, No. 1 (2000), p. 31-35; Kasim Trnka, *Ustavno pravo/Constitutional Law* (Sarajevo: Fakultet za upravu, 2006), p. 103-106.

Freedoms (hereinafter: ECHR) and its respective protocols, the European Court of Human Rights in Strasbourg has issued a series of judgments in favor of applicants, and several proceedings are currently underway.² However, these judgments of the European Court of Human Rights have never been implemented, even though the first one was passed 15 years ago, and despite the fact that the ECHR and its protocols are part of the legal order of BH by force of the Constitution,³ and that the ECHR and its respective protocols had been ratified by institutions of BH a long time ago.⁴

Due to extremely undemocratic decision-making procedures (unknown in the democratic World) in the Parliamentary Assembly of BH, implementation of these and numerous other obligations of a legal nature are blocked. On the other hand, the position and role of the Western international community in BH can best be illustrated by a sentence that can be heard in the backrooms of these elites who play a crucial role in the political processes in BH – “Judgments of the European Court and the European Convention – it’s not for you.”

Not democracy or so-called “sharing of powers”, but the absence of democracy and domination of the pro-Russian political minority over democratic majority.

The BH Parliamentary Assembly consists of two Houses, the House of Representatives, and the House of Peoples. The House of Representatives consists of 42 MPs who are directly elected by citizens – 28 of them from the entity FBH and 14 of them from the entity RS – as electoral units. The House of Peoples consists of 15 delegates - five Serbs – appointed from entity RS electoral unit by the Assembly of the RS entity, and five Bosniacs and five Croats appointed from the entity FBH electoral unit by the Bosniac and Croat caucuses in the House of Peoples of the Parliament of the FBH entity.⁵

Thus, the House of Representatives is elected by citizens directly in elections, while the House of Peoples is indirectly appointed, whereby the key role in terms of personnel structure of the House of Peoples is played by narrow party leaderships, first and foremost by presidents of political parties - who play key role in the process of determining of candidates and candidate lists for the House of Peoples. Despite this, in accordance with Article IV 3. c) of the BH Constitution, all acts of law and

2) See, *Sejdic and Finci v BH* (2009) no. 27996/06 and 34836/06 – available at <https://www.echr.coe.int>; *Zornic v BH* (2014) no. 3681/06 - available at <https://www.echr.coe.int>; *Šlaku v BH* (2016) no. 56666/12 - available at <https://www.echr.coe.int>; *Kovacevic v BH* (2023) no. 43651/22 - available at <https://www.echr.coe.int>; *Pilav v BH* (2016) no. 41939/07 - available at <https://www.echr.coe.int>; *Pudaric v BH* (2020) no. 55799/18 - available at <https://www.echr.coe.int>

3) See, Article II/2. of the BH Constitution.

4) See, Article III/3.b) of the BH Constitution; For general principles of international law, especially for the *pacta sunt servanda* principle and its legal scope in BH constitutional order, see also: Begic, Zlatan, “Legal Capacities of the Dayton Constitution in the Process of Accession of Bosnia and Herzegovina to European Union,” *Journal of Politics and Law*, Vol. 9, No 1 (2016), p. 12-15.

5) See, Articles IV/1. and IV/2. of the BH Constitution.

other decisions must be adopted in the same text in both Houses, even though these two Houses do not have nearly the same level of democratic legitimacy and capacity.

Thanks to the mechanism of the so-called entity voting - which represents regular decision-making procedure in both Houses, it is a common phenomenon that acts of law and other decisions that have convincing support that goes beyond the ordinary majority or even goes beyond the two-thirds majority cannot be adopted because they do not have the support of at least one-third of the MPs in the House of Representatives and one-third delegates in the House of People from both entities.⁶ Thus, for example any act of law or other decision cannot be adopted if does not have the support of at least five MPs in the House of Representatives elected in the entity RS electoral unit, and at least two delegates in the House of People appointed from the same electoral unit – those who usually use this possibility to block any acts of law, including those whose adoption is necessary for BH to join the EU and NATO. In the indirectly appointed House of People, any act of law adopted in the House of Representatives even unanimously or with a convincing majority can be blocked in the absence of at least two votes of the delegates appointed from the electoral unit of the RS entity. Thus, for example, the result of the voting in the House of Peoples can be nine - IN FAVOUR, four - AGAINST, one - ABSTAINED - and the act of law still cannot be adopted, regardless of the fact that it was previously adopted unanimously in the House of Representatives - with the presence of at least one-third of votes from both entities, and regardless of the fact that there was a convincing majority in the House of Peoples (as was the case, for example, with acts of law that were supposed to be passed for the urgent procurement of vaccines during the coronavirus pandemic, but their adoption were blocked in the House of Peoples in this way).

If there is not at least one-third of votes from both entities in the majority, any act of law or other decision can be passed by consensus of the Chair and two Deputy Chairs - who are elected exclusively from constituent peoples as their representatives.⁷ Since three persons take over legislation procedures as well as since they are acting as representatives of three constituent peoples as ethnic communities, this could be considered as a kind of tribal decision-making unknown to the democratic world.

If the Chair and Deputy Chairs do not reach a consensus, a law or other decision can be made by majority vote, with the condition that votes against do not include two-thirds of votes from both entities,⁸ but this unblocking mechanism has proven to

6) See, Article IV/3.d) of the BH Constitution.

7) See, Article IV/3.d) of the BH Constitution; The Rules of Procedure of the House of Representatives (Official Gazette of BH No. 79/14, 81/15, 97/15, 78/19, 26/20, 53/22, 59/23, 87/23), Articles 85 and 86, and the Rules of Procedure of the House of Peoples (Official Gazette of BH No. 58/14, 88/15, 96/15, 53/16), Article 75 and 76; e.g. Report on efforts to reach agreement on the Proposal of the Law on Amendments to the Law on Value Added Tax, number 02-50-6-16-10/23 dated 6 October 2023.

8) See, Article IV/3.d) of the BH Constitution.

be useless because if there is not at least one-third of votes IN FAVOUR from both entities in the first round of voting, it will most certainly be two-third AGAINST in the last round of voting - with some/rare exceptions.⁹

Thanks to such Dayton constitutional solutions, in 1997-2007, the adoption of 59.9 percent, i.e. 156 acts of laws in the procedure, were blocked.¹⁰ In the period from December 2018 to the mid-2021, 55 acts of law were blocked due to entity voting - by MPs and delegates from the RS entity, a large number of which were acts of law from the European integration process, and laws that are of interest to all citizens of BH that in no way encroached on the interests of the entities or any constituent peoples (e.g. Law on Traffic Safety, Law on Patents, Law on State Aid, etc.).¹¹

The situation is completely identical in other institutions (Council of Ministers, Presidency of BH) where bearers of the pro-Russian influence have in their hands the mechanisms of blocking any decision that leads BH towards the European Union and to the NATO pact. The Dayton Constitution itself establishes some of these mechanisms, and some are established by acts/decisions - which were passed with great pressure and influence of the Western officials in BH (e.g. the Law on the Council of Ministers of BH introduces possibilities of ethnic blockades even though the Dayton Constitution does not recognize them, then the introduction of a coordination mechanism regarding EU integration process where decisions are made - by consensus, etc.).

Therefore, instead of democratizing the decision-making process, Western policy in BH moved in the direction of establishing blocking mechanisms even in those institutions for which the Dayton Constitution does not stipulate such mechanisms. This has further strengthened the privileged political minority in the institutional sense, which leans on the hegemonic policies of Belgrade and Zagreb and openly advocates Russian influence in BH.

9) In fact, due to the simple logic of numbers, blocking the adoption of laws and other decisions of the BH Parliamentary Assembly by a kind of abuse of the so-called entity voting is effective mainly for MPs and delegates - elected and appointed from the electoral unit of the RS entity. See also, Opinion of the Venice Commission, number CDL-AD (2005) 004, 11-12 March, 2005 (paragraph 34, etc.).

10) Kasim Trnka et al., *Proces odlucivanja u Parlamentarnoj skupštini Bosne i Hercegovine/Decision-making process in the Parliamentary Assembly of Bosnia and Herzegovina* (Sarajevo: Konrad Adenauer, 2009), pp. 77-90, http://www.kas.de/wf/doc/kas_17300-544-15-30.pdf

11) Due to the unequal value of votes and the impossibility of candidacy for the position of Chair and Deputy Chairs in the House of Representatives of the Parliamentary Assembly of BH, proceedings were initiated before the European Court of Human Rights in cases no. 34891/21, Begić v. BH and 5067/23, Begić v. BH, and judgements in these cases are expected.

The Final Question: Is Dayton a Process of Restoration of Democracy or a Means of Maintaining the State of the Frozen Conflict?

DPA can be viewed in two ways - as a process of restoration of democracy or as a means to maintain the state of frozen conflict. The first approach implies the full implementation of the DPA, including the implementation of the ECHR and its protocols, as well as the judgments of the European Court of Human Rights and other international instruments and obligations of legal nature from the EU and NATO integrations. The first way, therefore, implies the rule of law and the democratization of Bosnia and Herzegovina.

Another way of approaching to the DPA is to understand and accept it as a means of maintaining a frozen conflict, which implies the blocking of its implementation - i.e. violation of the rule of law, non-implementation of obligations of a legal nature from ratified international agreements and international instruments referred to by Annex 4 itself as part of the DPA, as well as the Stabilization and Association Agreement and other obligations of a legal nature from the Euro-Atlantic integration process, etc.

Unfortunately, the Western international community in BH in the last three decades preferred this second approach, rather than observing and working on the DPA as a process that should lead to the revitalization of democratic values and the democratization of society as a whole - which is the only guarantee of removing the malignant Russian influence – that fully coincides with the hegemonic policies of the official Belgrade and Zagreb. There is no conceptual difference between the so-called “Russian world” and the so-called “Serbian world”, and currently, in alliance with the holders of these two projects, the concept of the “Croatian world” is being achieved in BH in a more perfidious way under the control and leadership of the official Zagreb and with the help of the international community in BH, in the first place, the High Representative Christian Schmidt. The president of the Croatian Democratic Union in BH (hereinafter: HDZ – “Hrvatska demokratska zajednica”) Mr. Dragan Covic even made a statement in 2020 that he regrets that Russia's influence in Bosnia and Herzegovina is not greater.¹²

This is nothing new in BH, because the hegemonic policies of Belgrade and Zagreb have continuity - ever since the Milošević-Tudman agreement as well as acting of officials of these two neighboring states (Serbia and Croatia) – which the International Criminal Tribunal for the Former Yugoslavia adjudged as a “joint criminal enterprises”. Tragically, politics and in general, the approach of official Zagreb towards the majority of BH citizens and BH as a state could best be recognized from the statement of the President of Republic of Croatia Zoran Milanovic, which has a terrible overtone of a racist approach. Speaking about Bosnia and Herzegovina and

¹²) <https://n1info.ba/vijesti/a409298-covic-za-rossijske-gazete-nazalost-ovdje-ima-vrlo-malo-ruskog-utjecaja/>

its citizens, Mr. Milanovic in 2020 stated: “First soap, then perfume.”¹³

Most of what was done by the international community in BH was more aimed to ensuring official Belgrade's dominance in Bosnia and Herzegovina through the RS entity and this influence at the level of BH State institutions, and less to the implementation of the DPA. Thus, the exact same Decisions of the BH Constitutional Court in the case U-5/98 from 2000 (publicly known as “Decisions on the Constituency of the Peoples”) in two entities were implemented in two completely different ways with severe consequences!?

In this way, the entity RS was made into an entity under the complete influence of the ethnic group of Serbs, while in the entity FBH a system of complete equality of all three constituent peoples was established, numerous blocking mechanisms - which even led to the fact that the political party HDZ (Croatian Democratic Union) and other smaller parties gathered around HDZ - with only about 6 percent of votes of citizens of this entity can block the entire system for the purpose of political blackmail. Thus, in the entity FBH, after the general elections in 2018, thanks to the blocking mechanisms, the implementation of the election results and the establishment of the government until the end of the mandate period in 2022 were prevented because the HDZ conditioned the unblocking on the adoption of the Election Law, which would deepen discrimination and the violation of the ECHR, its protocols, as well as existing judgments of the European Court - and thereby the Constitution of BH.

Then, with the adoption of Amendments to the Law on the Domicile and Residence of Citizens of BH from 2015 - on which the Western international community strongly insisted, voting in elections in the RS entity was made much more difficult and even impossible for a significant number of those citizens of BH who were victims of ethnic cleansing, expulsion, genocide etc., which made this part of BH territory additionally “Serbinized” by a some kind of disastrous legalization of ethnic cleansing through this Act of Law.

Finally, by changing election rules imposed by the High Representative for BH Christian Schmidt in election night, which is a scandalous precedent in democratic practice - to vote according to one rule and to distribute mandates according to other rules, the FBH entity was essentially and completely delivered to the official Zagreb and satellites of the hegemonic policy of neighboring Croatia in Bosnia and Herzegovina. After that, High Representative Christian Schmidt suspended the Constitution of the FBH entity in order to enable the bringing to power of political parties as desired by the HDZ in this entity. The BH ruling majority and government at the State level was also formed under the strict control of the Western international community, in such a way that the State government is made up of

13) <https://n1.info.ba/vijesti/a494602-andquotprvo-sapun-onda-parfemandquot-ostre-reakcije-na-milanovicevu-izjavu-o-bih/>

exponents of Russian influence in BH - political parties gathered around Mr. Milorad Dodik, president of RS entity and his political party SNSD (“Savez nezavisnih socijaldemokrata” - Alliance of Independent Social Democrats), then Dragan Covic and political parties gathered around HDZ (Croatian Democratic Union), along with the so-called “Trojka” parties. The coalition of political parties, the so-called “Trojka” was formed under control and with the enormous influence of the Western international community - which is a coalition of the “Social Democratic Party”, “People and Justice Party” and “Our Party”. Although there was a possibility that the state ruling majority and government could be formed without the bearers of Russian influence in BH and the region – Mr. Milorad Dodik and Mr. Dragan Covic, under the control of the Western international community and through the “Trojka” political parties, they formed the ruling majority/government and in the meantime took control of most of the institutions through their personnel and thanks to concessions of the “Trojka” parties – which is under the complete control of the Western international community. However, in the meantime, this creation of the West in BH – known as “Trojka” coalition through some of their leaders, according to the findings of the FBI, DEA, EUROPOL and other relevant police agencies, are brought into connection with the so called “Tito and Dino” super drug cartel.¹⁴

So, today Bosnia and Herzegovina is the State where more than two-thirds of the citizens are strongly committed to Euro-Atlantic integrations, but whose vote means nothing, i.e. whose political will is captured by undemocratic decision-making mechanisms, pronounced inequality of votes and discrimination, i.e. in which more than two-thirds of citizens are trapped by an approach that sees the DPA as a means to maintain a frozen conflict, the continuation of the implementation of the hegemonic policies of Belgrade and Zagreb - which corresponds to the expansion of Russian influence in BH and in the region. In fact, Bosnia and Herzegovina is the State where democracy and the rule of law are captured by the interests of expanding Russian influence, hegemonic policies of Belgrade and Zagreb, and the interests of drug cartels, all with the strong influence of the Western international community - including the Office of the High Representative.

14) See, Objavljujemo EUROPOL-ovu shemu koja otkriva: Konakovic se u martu 2021. godine u Dubaiju susreo sa Edinom Gacaninom Titom! - Istraga .ba; Tagesspiegel pisao o kartelu "Tito i Dino" i navodnim vezama s Konakovicem: "Pokušaj infiltracije u drzavu" (klix.ba); Nizozemski list o vezama bh. politicara sa narko kartelom: Da li je Konakovic sa porodicom bio na vjencanju Edina Gacanina Tita u Dubaiju? - Istraga .ba etc.