

30 years from Dayton: Analysis of proposals for constitutional changes in Bosnia and Herzegovina

Abstract



The Dayton Peace Agreement was signed in Paris in December 1995. The Agreement ended the war and established a new constitutional and political system. After the first decade, there was a talk of the need to change the Agreement. This refers primarily to the amendments to the Constitution, which are integral to the Peace Agreement. The main research question relates to the proposals for constitutional changes in Bosnia and Herzegovina and the impact on the political system. This question arises from the observed demand for constitutional change, which didn't happen thirty years after the signing of the agreement. Methodology involves a comparative analysis of the three most significant proposals: The April Package, the Prud Agreement, and the Butmir Process. In addition, the statements and interviews of political representatives during and after the negotiation process and their interpretation of the agreements reached will be used. This paper contributes to understanding the constitutional reform process and its challenges. The paper gives us a new perspective

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on understanding constitutional changes in Bosnia and Herzegovina. Ultimately, this paper represents a significant theoretical framework for future research.

Keywords



Dayton Peace Agreement, Bosnia and Herzegovina, constitutional changes

Introduction

Armed conflicts in different regions of the world, active after the Cold War, were often ended by signing a peace agreement. According to Bell (2006: 373-374), more than half of the civil wars ended with peace agreements, which is more than in the previous two centuries. Bell cites four reasons why there has been an increase in the number of peace agreements: The end of the Cold War saw an increase both in violent conflict occurring mainly within state borders (although often with transnational dimensions) and in the international attention devoted to such conflict.

1. A common approach to conflict resolution emerged that involved direct negotiations between governments and their armed opponents, who were treated for these purposes as equals.
2. This method resulted in a common approach to settlement design that linked cease-fires to agreement on new political and legal arrangements for holding and exercising power.
3. Hard-gained settlement terms were formally documented in written, signed, and publicly available agreements, involving both domestic and international participation (Bell, 2006: 373-374).

The importance of peace agreements, particularly in Bosnia and Herzegovina, lies in the country's Constitution being a direct product of a peace agreement that ended a devastating conflict. Specifically, the

Dayton Peace Agreement (DPA) is recognized as a comprehensive peace accord. According to Harbom, Hogblad, and Wallenstein, in addition to comprehensive agreements, partial agreements exist, as well as those related to the peace process (Harbom, Högladh, Wallenstein, 2006: 622). The constitutional framework that emerged from these peace negotiations features complex institutional structures, which are deeply influenced by elements of consociative democracy. Key aspects of this design include the veto mechanism and the territorial autonomy granted to the entities within Bosnia and Herzegovina. These provisions were integral to ensuring political stability and maintaining peace within the post-conflict state.

Consociational democracy in Bosnia and Herzegovina

Johann Althusius originally formulated the concept of consociational democracy, which was later adopted and further developed by Arend Lijphart. In the beginning, Lijphart used "the politics of accommodation." In the "Foreword to Lijphart," Vučina Vasović defines consociational democracy: "The concept of consociational democracy includes two sides of politics: segmented splits that are typical for plural societies and political cooperation of segmented elites" (Vasović, 1999: 31). Consociational democracy can be defined in terms of nine characteristics: 1. Elite accommodation 2. Grand coalitions, division of power in coalition cabinets; 3. The balance of executive and legislative power without the resignation of the Government; 4. Multiparty system and proportional representation; 5. Autonomy of segments and federal and decentralized power; 6. A strong bicameral parliament; 7. Constitutional rigidity and a hard-to-change constitution due to a qualified majority; 8. Judicial control of constitutionality, strong position of the constitutional court; 9. Independence of the Central Bank. These nine characteristics of consociational democracy are stated by Radomir Nešković, noting that every society is specific in itself and that no society has all the elements applied in practice, because the concept itself has its vagueness and internal contradictions that need to be removed and upgraded within the society and the state itself (Nešković, 2017: 335). The accommodation of elites is the most important element of consociationalism, because this element permeates all other elements. The identity of an ethnic nation derives from ethnicity. For the contents, interests, and values represented by the elites to have their original identity and indisputable legitimacy, it is necessary to articulate them in the democratic process. The elite cannot have the ability to negotiate if the elite itself is not a product of democratic processes within the nation. A condition for democratic relations between nations is democracy within the nations themselves, because consociationalism does not exist without interdependence, as mentioned

earlier. Not every deal-making is an accommodation of the elites (Nešković, 2017: 337).

1. Grand coalitions, division of power in coalition cabinets - In the case of Bosnia and Herzegovina, this means the involvement in the government of all three constituent nations. What Nešković notices is that the government in Bosnia and Herzegovina is seen as "election spoils" where each party that forms a coalition gets a certain share without obligations and responsibilities. He calls this type of management par-tocracy, not consociationalism. Consociationalism can be achieved when working under the Constitution and laws (Nešković, 2017: 338).

2. The balance of executive and legislative power without the resignation of the Government - Although the positions of the executive and legislative authorities are defined by the constitution, there is no balance in their relationship due to the election results. When a party or coalition gains the majority in parliament and forms the government, and the leader of the leading party becomes the prime minister, the government dominates the parliament, and there is no balance of power.

3. The Constitution guarantees the proportional representation of constituent peoples in legislative institutions at the level of Bosnia and Herzegovina, particularly in the Parliament. In addition to representation in Parliament, proportionality is upheld when distributing ministerial positions in the Council of Ministers. The proportional representation of constituent peoples in entity governments was ensured by the Sarajevo Agreement of March 2002, which defined the "Magic Formula" of 8:5:3. The agreement was reached between the High Representative and representatives of eight political parties.

4. The Bosnian constitution defines several institutional veto players that can employ veto mechanisms. Each of the three members of the state Presidency can invoke a "vital interest" veto, as can a caucus in the House of Peoples. This veto serves to protect the interests of the constituent peoples, but latter is extremely rarely invoked (Bahtić-Kunrath, 2011: 902). Bosnia and Herzegovina's Constitution does not define a "vital national interest." The veto mechanism in the House of Representatives is reflected in entity voting. In enacting all laws, the identical text of the law must be adopted by both chambers with the support of at least $\frac{1}{3}$ of the deputies elected in the entities. If this majority does not exist, the law goes for harmonization before a three-member commission made up of representatives of the constituent nations. With this decision, entity affiliation is practically institutionalized as a factor influencing the constellation of veto players. In this case, we can say that the party veto players are within the entity categories. Therefore, the distance is first an entity (or ethnic) and then ideological, further complicating policy change and maintaining the legislative *status quo* (Bursać, 2016: 92).

5. Autonomy of segments and federal and decentralized power - This principle in Bosnia and Herzegovina is expressed in the territorialization of the national constitution through the existence of two entities, the

Republika Srpska and the Federation of B&H, and the Brčko District. All three ethnic nations are constitutive in both entities and on the entire territory of Bosnia and Herzegovina, but due to the numerical dominance of one or two peoples in the entities, the autonomy of the segments is still national (Nešković, 2017: 344).

6. A strong bicameral parliament - The Constitution of Bosnia and Herzegovina, as well as the constitutions of the entities, define that there are also upper houses of the parliaments. In addition to the House of the People of Bosnia and Herzegovina, we have entity houses of the people. In the Federation of Bosnia and Herzegovina, it is the House of Peoples of the Federation of Bosnia and Herzegovina, in the Republic of Srpska, it is the Council of Peoples. Decisions cannot be made without the consent of the upper and lower houses of the Parliament, but the Constitution cannot be changed.

7. Constitutional rigidity and a hard-to-change constitution due to a qualified majority. A 2/3 majority is required to change the Constitution of Bosnia and Herzegovina, but the constitutional revision procedure is not precisely regulated. Marković states that it is clearly defined that the Constitution of Bosnia and Herzegovina is amended by the Parliamentary Assembly. Namely, in Article 10.1 of the Constitution, it is first said that the Parliamentary Assembly decides on its revision, and then it is specified that the decision in the House of Representatives is made by a two-thirds majority of the members present and voting. Since the House of Peoples is not mentioned at all in this norm, but only talks about a qualified majority that must be achieved in the House of Representatives, Marković refers to Trnka and states that to change the Constitution, the so-called national consensus in the House of Peoples, that is, that this house also participates in the revision process, but the changes must be agreed upon by the majority of delegates from among all the constituent nations (Marković, 2012: 49). On the other hand, Radomir Nešković does not carry out extensive consideration of this issue, but states that to change the Constitution, in addition to a 2/3 majority in the House of Representatives, an over-half majority in the national clubs of the House of Peoples (9 delegates 3+3+3) is required (Nešković, 2017: 345).

8. The Constitutional Court of Bosnia and Herzegovina can be considered a strong court in terms of the elements of consociational democracy. The power of the Constitutional Court derives from the Constitution itself, where the competences are defined. The Constitutional Court shall have exclusive jurisdiction to decide any dispute that arises under this Constitution between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina, including but not limited to: • Whether an Entity's decision to establish a special parallel relationship with a neighboring state is consistent with this Constitution, including provisions concerning the sovereignty and territorial integrity of Bosnia and Herzegovina.

9. The Central Bank of Bosnia and Herzegovina is defined by the Constitution as an institution of Bosnia and Herzegovina. The Central Bank of Bosnia and Herzegovina was established in 1997 after the Parliamentary Assembly adopted the Law on the Central Bank of Bosnia and Herzegovina². The bank has independent bodies and an independent passive monetary policy. Based on all the above, the conclusion is that most features of consociational democracy are represented in Bosnia and Herzegovina.

Political system of Bosnia and Herzegovina

The Constitution defines the institutions of Bosnia and Herzegovina as follows: The Parliamentary Assembly, which has two houses: the House of People and the House of Representatives, the Presidency, the Constitutional Court, and the Central Bank. Article 5 of the Constitution of Bosnia and Herzegovina, in addition to the Presidency, also lists the Council of Ministers and the Standing Committee for Military Matters as institutions of Bosnia and Herzegovina. (The General Framework Agreement for Peace in Bosnia and Herzegovina, 1995: 21-28). In Article 3.1, the responsibilities of the Institutions of Bosnia and Herzegovina are defined, namely: Foreign policy, Foreign trade policy, Customs policy, Monetary policy, Finances of the institutions and for the international obligations of Bosnia and Herzegovina, Immigration, refugee, and asylum policy and regulation, International and inter-Entity criminal law enforcement, including relations with Interpol, Establishment and operation of common and international communications facilities, Regulation of inter-Entity transportation, Air traffic control (The General Framework Agreement for Peace in Bosnia and Herzegovina, 1995: 20). Responsibilities that are not explicitly provided for by the Constitution belong to the entities.

The executive power at the level of Bosnia and Herzegovina consists of the Presidency and the Council of Ministers. Apart from the responsibilities provided for in Article 3.1 of the Constitution of Bosnia and Herzegovina, the responsibilities of Bosnia and Herzegovina are also provided for in other annexes of the agreement, as well as in other articles of the Constitution. The member of the Presidency from among the Serb people is elected on the territory of the Republika Srpska, and the members of the Presidency from among the Bosniak and Croat people are elected on the territory of the Federation of Bosnia and Herzegovina. The aforementioned election of members of the Presidency and delegates to the House of Peoples was the subject of a lawsuit filed by Sejdić, Finci, Zornić, Pilav and Šlaku against Bosnia and Herzegovina. The European Court of Human Rights in Strasbourg ruled in favor of the applicants in the Sejdić, Finci, Zornić, Pilav and Šlaku vs. Bosnia and Herzegovina. "The

[2] See the following links (<https://cbbh.ba/Content/Read/13?lang=en> , <https://cbbh.ba/Content/Read/14>).

ban on minorities actively participating in the elections has no objective and logical justification and thus stands in opposition to the European Convention on Human Rights, which prohibits discrimination”, the Court found, as the local Bosnian-Herzegovinian media reported (Banović and Gavrić, 2010: 159-160).

After the first elections held in Bosnia and Herzegovina in 1996, the Law on the Council of Ministers and Ministries of Bosnia and Herzegovina was adopted. The aforementioned law is contained in Articles 43 to 45. formally all the basic competences from Article III of the Constitution of BiH, but some organizational units of the three ministries were never established, while the majority could not realistically complete the assigned competences, both due to their non-existence and the fact that they were formally established but did not have enough employees or other resources for work. In fact, except for the Ministry of Foreign Affairs of Bosnia and Herzegovina, the other institutions were more miniature coordinating administrative apparatus than institutions of any functional state (Akšamija and Jahić, 2022: 13). The Law on the Council of Ministers from 2003 removed unconstitutional provisions and established the current structure of ministries.

The Constitution has *clausula* where it defines that Bosnia and Herzegovina shall assume responsibility for such other matters as are agreed by the Entities; are provided for in Annexes 5 through 8 to the General Framework Agreement; or are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina, under the division of responsibilities between the institutions of Bosnia and Herzegovina. Additional institutions may be established as necessary to carry out such responsibilities (The General Framework Agreement for Peace in Bosnia and Herzegovina, 1995: 21). More precisely, we are talking about three different sources of jurisdiction prescribed by Article 3.5.a) of the Constitution, i.e. three independent hypotheses: entity agreement (transfer of jurisdiction), jurisdiction included in annexes 5 - 8 of the General Framework Agreement, and those jurisdictions that are needed to preserve the sovereignty, territorial integrity, political independence and international subjectivity of BiH (taking over jurisdiction) (Akšamija and Jahić, 2022: 18). The transfer of competences is particularly interesting in the area when the institutions of Bosnia and Herzegovina took over the necessary competences and the preservation of sovereignty, territorial integrity, political independence and international subjectivity. In contrast to the assumption of jurisdiction through the agreement from Annexes 5 - 8 of the Dayton Peace Agreement. After the “discovery” of the mentioned constitutional basis, its “exploitation” began, and since then, laws have been adopted through the regular procedure in the Parliamentary Assembly of Bosnia and Herzegovina. The aforementioned constitutional basis did not in-

clude inter-entity agreements, but the passing of laws through regular procedure in the Parliamentary Assembly of Bosnia and Herzegovina³.

The legislative power consists of the Parliamentary Assembly of Bosnia and Herzegovina. The body is bicameral and consists of the House of Representatives and the House of People. The House of Representatives has 42 members; $\frac{2}{3}$ of the members are elected on the Federation of Bosnia and Herzegovina territory, and $\frac{1}{3}$ are from Republika Srpska. The House of Peoples represents a constituent nation (Bosniaks, Serbs, and Croats). There are three groups of delegates in the House of Peoples. Each club has five delegates. Delegates among the Serb people are elected by the National Assembly of the Republika Srpska, representing the entity's highest legislative body. Delegates from among the Bosniak people are elected by the Bosniak club in the House of Peoples of the Federation of Bosnia and Herzegovina. In contrast, delegates from the Croat people are chosen by the Croat club in the House of Peoples of the Federation of Bosnia and Herzegovina.

The Constitutional Court is the only institution of judicial power established by the Constitution. The Court of Bosnia and Herzegovina, as a part of judicial power, is established by law. The Constitutional court comprises nine judges, of which four members are elected by the House of Peoples from the Federation of Bosnia and Herzegovina and two by the National Assembly of Republika Srpska. In contrast, the other three members are elected by the President of the European Court of Human Rights in consultation with members of the Presidency. International judges cannot be citizens of Bosnia and Herzegovina or any neighboring countries. The issue of the judicial branch of government is one of the issues that causes the most attention in Bosnia and Herzegovina. Apart from the Constitutional Court, the judicial branch of government at the level of Bosnia and Herzegovina consists of the Court of Bosnia and Herzegovina, the High Judicial and Prosecutorial Council⁴ and the Prosecutor's Office of Bosnia and Herzegovina (Smailagić and Keranović, 2009: 238). Most often, the constitutional basis for the establishment of these institutions is questioned. Two opposite interpretations arise from this. According to one, the formation of the Court of Bosnia and Herzego-

[3] Examples of the aforementioned constitutional basis, which Akšamija and Jahić cite, are: the establishment of the State Agency for Investigation and Protection, and the assumption of competence in the field of intelligence and security affairs, and the establishment of the Intelligence and Security Agency of Bosnia and Herzegovina. These competences also include the establishment of the public radio and television service of Bosnia and Herzegovina, and here one could also find a basis for some other competences established through the transfer of competences (armed forces and state police), basic competences (security of foreigners) or are established as shared competences through framework legislation (international cooperation in the fields of education, science, culture, health, sports, work, social policy, etc.)

[4] The High Judicial and Prosecutorial Council, in addition to being an organ of the judiciary, performs several functions, mostly administrative or executive (appoints and dismisses, makes regulations and is a disciplinary tribunal).

vina is unconstitutional, since the Constitution does not give the state the authority to exercise judicial power. The existence of state institutions that perform one of the state functions must be determined by the Constitution. If this is not the case, the constitution maker didn't even want them. All institutions that perform the functions of one state power, i.e. judicial, can not be established by ordinary law. This, among other things, violates the division of competences established by the Constitution itself. As the Constitution foresees the presumption of jurisdiction in favor of the entity, while the state's jurisdiction is enumerated exhaustively, the absence of this state jurisdiction means that it cannot belong to it, until the Constitution is amended (Marković, 2012: 47). Another interpretation that Marković presents is that there is a constitutional basis for the establishment of the Court of Bosnia and Herzegovina. The establishment of the Court of Bosnia and Herzegovina does not call into question the Dayton structure of Bosnia and Herzegovina, nor the division of competences between the state and the entities, because it does not interfere with the constitutional competences of the entities, their judicial systems are not changed, nor is the state allowed to intervene in the resolution of disputes arising from the application of entity law. The Court of Bosnia and Herzegovina is not hierarchically superior to entity courts, but exists alongside them. Although the establishment of the Court of Bosnia and Herzegovina changes the structure of the judicial system, this is not done to the detriment of the autonomy of the entities and the functioning of their judicial systems (Marković, 2012: 48).

The Office of the High Representative is not provided for by the Constitution of Bosnia and Herzegovina, but is defined by Annex X of the Dayton Peace Agreement. For a time after the signing of the DPA in November 1995, the OHR had no power to impose anything. Its brief was to act as the Accords' guarantor and to "facilitate" the signatories' efforts to implement the peace settlement. The High Representative was to fill the role of a senior, foreign politician-diplomat with enough moral weight to help settle disputes. He had no command over any military or police forces either (Knaus and Martin, 2003: 63). After the signing of the DPA and the first elections held in September 1996, international actors noted a lack of motivation and political will among domestic political elites regarding the democratization process and the establishment of the institutions stipulated in the constitution. At the conference in Bonn in December 1997, which was dedicated to the state of peace in Bosnia and Herzegovina, the representatives of the Peace Implementation Council decided to expand the competence of the institution of the High Representative, better known as "Bonn powers". Elaborating on Annex 10 of the Dayton Peace Agreement, the PIC requested the High Representative to remove from office public officials who violate legal commitments and the Dayton Peace Agreement and to impose laws as he sees fit if Bosnia and Herzegovina's legislative bodies fail to do so (Mandate of OHR, 1997).

Speaking about the role of the Office of the High Representative in the constitutional amendment process, it is important to point out that their decisions usually related to the amendment of entity constitutions to adapt them to the Constitution, but also to the establishment of institutions at the level of BiH that were envisaged by the DPA, but which were not constituted after the end of the war and the first multi-party elections. The laws adopted by the High Representative that were necessary for the functioning of the multi-ethnic state were: the Law on Civil Service in the Institutions of BiH, the Law on the Flag of BiH and the Law on Citizenship (Bojkov, 2010: 26-27). Apart from adopting laws that enabled the functioning of the state, the High Representative did not explicitly intervene in the text of the Constitution of Bosnia and Herzegovina, but he did amend, supplement, or elaborate it by adopting certain laws. With these laws, he supplemented the constitutional matter, or regulated it differently than the framers of the constitution, who left many issues unsaid in the Dayton Constitution (Banović and Gavrić, 2010: 167).

Proposals for constitutional changes

Criticisms of the DPA are aimed at the problems of its functionality, which hinders the functioning of the state on its way to EU and NATO membership. Referring to Chandler, the author Simić believes that the DPA gradually became subordinated to the requirements of possible EU membership from 2000, i.e., “too strong adherence to the Dayton Peace Agreement, through the defense of the rights of the entities and the protection of the ‘vital interests’ of the constituent peoples in Bosnia and Herzegovina, was interpreted like an obstacle to legislative progress towards integration into the European Union. The aspiration towards membership has become a means of extending regulation from outside indefinitely and renouncing political autonomy, i.e., de-sovereignization”. The demands are to create a more straightforward and transparent administrative apparatus (Simić, 2016: 82). In addition to the request for the creation of a more functional administrative apparatus, two additional reasons are most often mentioned in the theoretical literature, namely:

1. Harmonization of the state constitution, as well as entity and canton constitutions (in the FBiH) with valid international and regional documents on human and civil rights, and above all with the European Convention on Human Rights, and therefore, the abolition of various discriminatory elements related to political rights certain population groups, and;
2. To build a functional state with government structures and competencies that will accelerate the decision-making process and their implementation, especially in the implementation of the *acquis communautaire* in the European integration process (Banović and Gavrić, 2010: 160).

When discussing the revision (amendment) of the Dayton Agreement, it is necessary to point out that this primarily implies the amendment of the existing constitutional solutions (Annex 4 of the Dayton Agreement), i.e. the possible constitutional and territorial reconstruction of Bosnia and Herzegovina. The term “upgrading” is also used as a synonym for the revision of the Dayton Agreement, which emphasizes the evolutionary character of the development of “post-Dayton BiH”, rather than a radical break with its legacy (Đukanović, 2004: 3-4). One problem with changing the constitution is that the current document was created as a compromise of the national political elites who led the war. For this reason, many legal norms are not specified in the Constitution itself. Adopting the Constitution was only part of a wider peace process. Provisions on which there was a consensus between the political elites of the warring parties were included in the Constitution itself. The Constitution of Bosnia and Herzegovina is modeled after the Constitution of the USA. The way of expression corresponds more to the Anglo-American than to the continental-European constitutional tradition. Many constitutional norms are imprecise, written in prose, as if they describe something instead of standardizing it. There are numerous constitutional gaps, which make the functioning of institutions difficult, make their nature insufficiently clear and complicate decision-making processes (Marković, 2012: 36). Different interpretations of the Constitution of Bosnia and Herzegovina arise from the fact that the Constitution is incomplete, unclear, and contradictory in its content. Different interpretations of the Constitution are more of a political nature, but of a legal nature. Political elites, in all three nations, interpret the Constitution of Bosnia and Herzegovina in different ways. The possibility of different interpretations lies in the fact that the Constitution of Bosnia and Herzegovina was written in English and was never officially translated into the languages of the people of Bosnia and Herzegovina. After 2006, constitutional changes are mentioned more in the context of the European integration of Bosnia and Herzegovina. According to Tolksdorf, the EU has been represented in Bosnia and Herzegovina through various units (the EU Delegation, the EU Special Representative, the EU peacekeeping force Althea, and the EU Police Mission). The EU Delegation supports Bosnia and Herzegovina’s preparations for EU membership, while the Special Representative assists with political reforms. Many EU member states embassies also played an active role in promoting political reforms. This multifaceted EU presence explains why statements and activities by EU actors were sometimes uncoordinated in the field of constitutional reform (Tolksdorf, 2015: 411). In the last decade, more precisely since 2012, the European Commission has taken an active role in the process of accession of Bosnia and Herzegovina to the European Union and thus encouraged constitutional reform in Bosnia and Herzegovina. In addition, in the negotiations within the framework of the Prud Process, there was talk of harmonizing the Constitution of Bosnia and Herzegovina with the Euro-

pean Convention on Human Rights. In the Butmir process, the EU was a party to the negotiations on constitutional reform, along with the USA.

April Package

The April package was the first of three initiatives to change the constitution of Bosnia and Herzegovina. In March 2005, the European Commission for Democracy through Law (the Venice Commission) issued a report on outstanding constitutional issues in BiH entitled, 'The Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative', pointing out the functionality and human rights problems of the Dayton constitution (Perry, 2015: 492). Not long after the opinion of the Venice Commission, there was talk of constitutional changes in Bosnia and Herzegovina. The April package resulted from negotiations between the leaders of eight parties from Bosnia and Herzegovina and American diplomats. The negotiations were conducted in secret from 2005 to March 2006. In March 2006, it was announced that an agreement had been reached on changing the constitution, and the agreed package was sent to the Parliamentary procedure. The April package was the most extensive of all these initiatives, comprising four amendments from different areas. The first amendment referred to the additional competencies of the institutions of Bosnia and Herzegovina, which are assigned to them in addition to the previous responsibilities prescribed by Dayton, as well as the shared competencies between the entity institutions and the institutions of Bosnia and Herzegovina. Additional responsibilities of the institutions were Defense and security, Establishment and functioning of the Court and Prosecutor's Office of Bosnia and Herzegovina, and Other responsibilities regulated by law. The shared responsibilities are the Tax system, the Election process, Justice, Agriculture, Science and Technology, Ecology, Local self-government, and Other responsibilities regulated by law (Aprilski paket, 2006: 2-3).

The responsibilities of the House of Representatives, as the lower house of the Bosnia and Herzegovina Parliament, and the Council of Ministers, as the body of the executive power, were also expanded. As for the Parliament of Bosnia and Herzegovina, it was planned to increase the number of seats in both houses of the parliament (House of Representatives and House of Peoples). The new responsibilities that were transferred from the entity to the state parliament were that the new constitution would elect the members of the representative clubs of all three constituent nations to the House of Representatives. The House of Peoples would still have the right of veto. Still, the areas in which they could veto were defined: territorial organization, the area of the identity of the constituent peoples, and the preservation of the integrity of Bosnia and Herzegovina. In addition to the changes related to the Parliament of Bosnia and Herzegovina, the April package proposed changes related to the

Presidency of Bosnia and Herzegovina and the Council of Ministers. The Presidency would remain a collective body with three members elected from among the Bosnia and Herzegovina House of Representatives. The President of Bosnia and Herzegovina and the Vice-Presidents could not be members of the same constituent nation. The idea was that the Presidency would represent the unity of the state, and they would have much less responsibility compared to what is provided for in the current Constitution. The Council of Ministers would become an institution of the executive power of the state. The proponent intended for the Council of Ministers to become the Government of Bosnia and Herzegovina. The House of Representatives would elect the Council of Ministers as before, and the Prime Minister could take office only when the entire Council of Ministers is confirmed. The House of Peoples would still represent all three constituent peoples. The list with the names of candidates for president and vice president of Bosnia and Herzegovina would be proposed by the House of Peoples establish a list of three candidates by majority vote of each club, and refer the list to the House of Representatives for confirmation. The list should have one candidate from each entity and, at most, one member from each nation. The April package provided for the abolition of the discriminatory provisions of the Constitution, according to which only Serbs from the RS and Croats and Bosniaks from the FB&H can be elected to the Presidency and the House of Peoples. Discrimination against minorities and ethnically undeclared citizens would be maintained (Banović and Gavrić, 2010: 172).

After the failure of the April package, analyses were started on its shortcomings. One of them is the provision that competencies that are not provided for in this proposal and that are not part of the Constitution can be transferred to the Bosnia and Herzegovina level by law, which caused fears of abuse of the article and the transfer of competencies without the consent of the entity level of government. The April package was submitted to the parliamentary procedure; however, there was not a $\frac{2}{3}$ majority in the House of Representatives to vote for the reform package. The Party for Bosnia and Herzegovina, headed by Haris Silajdžić and the Croat Democratic Union 1990 voted against the constitutional reforms. Haris Silajdžić stated several times to the media that his party was against the proposed constitutional reforms. He claimed that in this way, the role of the entities would be strengthened. Above all, the RS, which would take over the leadership of the state, would lead to antagonism in B&H, which was contrary to what the Party for Bosnia and Herzegovina stands for; however in the documents published After the failure of the April package, Wikileaks show that the reason for the rejection of constitutional changes was personal because, as we have already stated, the members of the Presidency were elected in the parliament (DW, 2011). Haris Silajdžić could not be elected as a member of the Presidency due to the weak influence of the Party for B&H in the parliament. Still, he had a strong influence among voters and in religious

circles. Haris Silajdžić's maximalist request for the establishment of a centralized state, without entities, was met with condemnation from the RS and the president of the Croat Democratic Union BiH, Dragan Čović.

In those moments, it could be concluded that the process would not be successful. Arguments that still appeared in the media appearances of Haris Silajdžić, which caused him to collapse the April package, were that the introductory provisions of the Dayton Peace Agreement, such as Annex 7, which refers to the return of refugees and displaced persons, were not respected. It was also unacceptable that it was not proposed to abolish entity voting, which is one of the program objectives of the Party for B&H. More precisely, the first program goal of the Party for BiH is the construction of a functional Bosnia and Herzegovina and constitutional changes through the reduction of the role of the House of the Peoples and the blockade through the entity voting mechanism (Programska deklaracija SZBiH). In the process of negotiations regarding the acceptance of the April package, representatives of the international community, primarily the USA, stated that in the event of failure to adopt the proposal in the Bosnia and Herzegovina Parliament, sanctions would be implemented against those who vote against the proposal; however, concrete sanctions were not implemented for Haris Silajdžić and his Party for B&H, but in those elections Party for B&H lost a significant part of the votes and has been on the margins of political life ever since. It is often said that the April package in Bosnia and Herzegovina came at the wrong time and that the lack of reaction of the international community to its demise encouraged deeper and deeper fragmentation in society. served as an instrument with which Dodik and Silajdžić scored political points. The election campaign was driven by nationalist rhetoric and the fact was that negotiations could hardly take place in such an atmosphere. After the elections in October 2006, the EU Foreign Affairs Council and the European Parliament called on the newly elected representatives in BiH to make constitutional reform a priority of their mandate. Christian Schwarz-Schilling, as the EU representative and High Representative for BiH, was optimistic and believed that constitutional reform could still be achieved by the end of 2006. He announced that he would promote a stronger role for civil society groups (for example, NGOs and religious communities) as well as the EU in the process and criticized the "elite-led approach" that American officials had applied in the previous round of negotiations (Tolksdorf, 2015: 409). However, after the elections, there were no concrete results, and the international community set new priorities related to the Western Balkans region. At that time, there was increasing talk of the possibility of Kosovo declaring independence. This rhetoric also encouraged the authorities in the RS to talk about a referendum on the secession of the RS if Kosovo declared independence from Serbia. The talk of constitutional changes was still relevant after the failure of the April Package, but the initiatives were much less ambitious and no concrete solutions were achieved. The April

Package was mentioned several times after 2010 as a potential solution, as well as its resubmission to the parliamentary procedure. Banović and Gavrić, in their work dedicated to constitutional changes in Bosnia and Herzegovina, think that the amendments envisaged by the April Package are not a radical change, but rather a moderate change (Banović and Gavrić, 2010: 172). The fact is that the amendments to the Constitution of BiH were only a way for the competencies transferred by the decisions of the High Representative and the institutions established by the decisions of the same institution to now be officially part of the Constitution of BiH.

Prud Agreement

The Prud negotiations were launched after the collapse of the April package. The Prud trial began in secret in November 2008. Participants in the negotiations were Milorad Dodik (SNSD), Dragan Čović (HDZ), and Sulejman Tihić (SDA). The agreement was never officially submitted to the public. Still, from the statements of the negotiators in that process, it can be concluded that the first agreement contained three things: 1. Alignment of the Constitution of Bosnia and Herzegovina with the European Convention on Fundamental Human Rights and Freedoms - state competences, functioning of Bosnia and Herzegovina institutions and territorial organization central level of government. 2. State property - property necessary for the functioning of the institutions of BiH, including those required for the functioning of the Armed Forces of Bosnia and Herzegovina, would be registered with the state. 3. Population census - Adoption of a law at the BiH level that would provide the conditions for a population census on the entire territory of BiH. The Prud process was, so far, the only domestic initiative concerning constitutional changes. It is clear from the joint statement of the three leaders that they did not reach an explicit agreement on the essential issues of constitutional reform but only agreed on a few principles that would represent the basis of further talks (Marković, 2011: 101).

By analyzing the literature, we noticed that the Prud initiative is studied as a part of the Butmir process, but in this article, we will look at it as a separate initiative. The Prud Agreement left behind many doubts. The first doubt relates to the territorial reorganization of Bosnia and Herzegovina. Since establishing a central level of government is foreseen, it would represent establishing regional units. It is unclear what the territorial reorganization would be. We can cite the fact that the agreement specifies the entities to which property that does not belong to the state would be registered. According to Nešković, the part about the new territorial organization of Bosnia and Herzegovina was particularly disputed in this agreement, and three different concepts were offered here. One concept advocated by the Serbian side was that there

should be three regions in Bosnia - federal units, whereby the Republika Srpska would retain its existing constitutional powers, and the Federation of Bosnia and Herzegovina would be divided into two federal units - Croatian and Bosniak. Another concept advocated by the Croatian side, that the Croatian territorial unit should be completely equal to the Serbian and Bosniak ones, regardless of whether they are regions or state entities. The third concept was advocated by the Bosniak side, that BiH should be organized into four regions, three ethnic (Banjaluka - Serb, Mostar - Croatian and Tuzla - Bosniak) and one region as a District (Sarajevo Region). There are no available data on which concept was ultimately accepted and what the elements of the constitutional structure and jurisdiction would be (Nešković, 2017: 403). The first signed agreement provided for the continuation of negotiations on further constitutional reforms and that the reconstruction of the Council of Ministers would be a topic of discussion at one of the following meetings. As Zdeb states, the Prud process, which brought together representatives of the three largest political parties, did not end with key changes, but it helped to find a solution and achieve consensus on several issues (Zdeb, 2016: 370).

The agreement was extolled by both the EU and the US, evidenced not least by then US Vice President Joe Biden's visit to Sarajevo in May 2009, inter alia, to express support for the talks on constitutional reform. All other issues were conditions for the closure of the Office of the High Representative—BiH's international administrator (Kasapović and Kočan, 2022: 3). What is evident is that the Prud Agreement showed that the political elites in BiH cannot reach even a minimum of consensus regarding constitutional changes. One of the reasons is that after signing the agreement, all parties interpreted what was signed and agreed upon differently. In addition, after every attempt and meeting related to changes to the constitution, one of the parties made decisions in the legislative bodies that took BiH back a step. In July 2009, the president of the SDA announced that the Prud Coalition officially no longer exists, citing as the reason the unilateral moves of Milorad Dodik and the Government of RS, which made a declaration on the return of jurisdiction from the BiH level to the entity level. This process resulted in adopting Amendment I to the Constitution, related to the Brčko district. The population census of Bosnia and Herzegovina was carried out in 2013, per the Law on the Census of Population, Households and Dwellings in Bosnia and Herzegovina in 2013 (Official Gazette of Bosnia and Herzegovina, 10/12 i 18/13). The aforementioned law was adopted in 2012 in the Parliamentary Assembly, independently of the Prudential Agreement. Even after its collapse, the Prud process caused a lot of debate, and its revival and restart were often mentioned in the previous decade (RTV BN, 2014).

The representatives of the political parties that made up the Prud Coalition had 19 deputies out of the 42 that the House of Representatives had. In addition, representatives of other political parties that did

not participate in the first meeting refused to participate in negotiating constitutional changes. The initiative did not confirm that its submitters had agreed on any issue that should be subject to constitutional review, unlike the so-called April package, which contained relatively comprehensive solutions to disputed issues (Marković, 2009: 82). In the Prud process, political representatives were much more inclined to find a compromise solution compared to the Butmir process, in which all parliamentary parties participated and in which there was competition between parties belonging to the same ethnic bloc.

The Butmir Process

In October 2009, attempting to revive the momentum and touting accelerated EU and NATO membership procedures as an incentive, the US and the EU organized talks on constitutional reform in a NATO military base in the suburb of Butmir on the outskirts of Sarajevo. Two rounds of talks—on 8–9 and 20–21 October—were mediated by Deputy Secretary of the US State Department James Steinberg and Swedish Foreign Minister and former High Representative in BiH Carl Bildt, representing the Swedish EU Presidency (Kasapović and Kočan, 2022: 4). The first session was on October 9, and it was one-on-one between representatives of the international community and leaders of political parties. The second session of negotiations was held on October 20 and 21, where a proposal for changes to the constitution was presented.

The main points of the initial Butmir package aimed at creating a parliamentary system by empowering the Bosnia and Herzegovina Council of Ministers and creating the post of prime minister—at the same time relegating the authority of the tripartite presidency—establishing a single countrywide electoral district, reserving seats in an expanded House of Representatives for ‘Others,’ and included a so-called ‘EU clause’ that would ensure that the state speaks with one voice in its membership negotiation with the EU. All parties except the SDA rejected this reform package (Kasapović and Kočan, 2022: 4). In addition, delegates to the House of Peoples would be elected from the House of Representatives and not, as before, from the entity parliaments, which would strengthen the function of the House of Representatives. The House of Peoples could debate matters of vital national interest. In the beginning, the Butmir process seemed like a possible solution, and the European media called it “Little Dayton”; however, after two meetings, the process completely collapsed.

There were attempts to reactivate the process, but there was no success. Unlike the Prud process, the leaders of the Party of Democratic Progress (PDP), the Croatian Democratic Union 1990 (HDZ 1990), the Party for B&H (SB&H), and the Social Democratic Party (SDP) were also involved in the negotiations in Butmir. On the other hand, mutual accu-

sations within the Bosniak political parties were much more significant when the information about the negotiations in Prud became public. President of the Party for BiH Haris Silajdzic characterized the negotiations as undemocratic even after the start of the Butmir process in which Silajdzic participated because it was an international initiative, unlike the Prud process, which was a “local initiative”.

Why do processes for constitutional changes fail?

Discussing the causes of the failure of initiatives for constitutional redesign, Sofia Sebastian cites the following reasons:

1. The lack of cohesion among external actors. Although there has always been a general consensus about the need to change Dayton, there have been strong disagreements over how to accomplish it. The US approach has always been more interventionist and has favoured a more comprehensive approach. In contrast, EU strategy has been less interventionist, preferring to see local politicians approve a new Constitution on their terms. The EU has also tended to favour a limited (and staged) constitutional process as a means of unblocking the stalemate (Sebastian, 2012: 604). The EU proposed a gradual process of constitutional reform, with the first step focusing on the implementation of the judgment of the European Court of Human Rights (ECHR) and technical changes, and only later would it open discussions on more difficult and sensitive issues. But the US and the Bosniak parties feared that the Serb parties might refuse to participate in that second phase, which could result in a failed state after the withdrawal of the international community. The Americans wanted to propose concrete solutions, while the Europeans were undecided. Later, when the proposal was accepted, the EU tried to change its content. There was also a certain naivety - one European diplomat admitted that they believed that the local parties would immediately provide support because the USA and the EU were finally acting together, but this did not materialize, and their cooperation began to weaken over time⁵.
2. Domestic and international actors have interpreted the same agreements in different ways, just as they interpret the Dayton Peace Agreement differently. The first problem that arises in the process of constitutional reforms is the lack of mutual trust and consensus regarding the extent of constitutional changes. The starting positions in the negotiations differ, but so do the expectations. For Bosniaks, Dayton was an unfair solution that threatened the national interests of Bosniaks who envisioned Bosnia and Herzegovina as a centralized state with a single Bosnian nation and

[5] See Sebastian, 2012: 604-605.

now see the process of constitutional changes as an opportunity to achieve that goal. On the other hand, the Serbs favor maintaining the status quo, possibly until the federalization of Bosnia and Herzegovina, but for the RS to remain a single entity. In the first decade after the signing of the Dayton Peace Agreement, Croatian political elites directed their demands towards the formation of a third entity. After 2006, the demands were directed at the legitimate representation that resulted from the "Komšić Case"⁶. Another problem is that the EU and the US have sought to strengthen BiH institutions in order to enable faster decision-making that would accelerate BiH's European integration process and make BiH a more functional state (Sebastian, 2012: 605). The proposed changes were limited and did not correspond to the deep political, social and institutional problems of the country. The focus on technical changes ignored the fact that the basic issue has not yet been resolved – the deep disagreement over the very existence of the state and the absence of inter-national cooperation.

3. The problem of interpreting Dayton has its roots in the first years after its signing. The Dayton Peace Agreement has never been officially translated into the languages of the constituent peoples, and unofficial translations already exist. The Dayton Peace Agreement was never officially translated into the languages of the constituent nations, but there are unofficial translations.
4. The democratic deficit inherent in the process remained a problem. The discussion was kept at the political-elite level as a non-transparent lite bargain framework mediated by political leaders. This strategy was based on the belief that the personality-driven politi-

[6] According to the 2013. population census, there are 544,780 Croats living in Bosnia and Herzegovina, or 22.4% of the total population in the Federation of Bosnia and Herzegovina, while according to the same census, there are 1,769,592 Bosniaks or 70.4% on the territory of the Federation of Bosnia and Herzegovina. Both members of the Presidency from the Federation of Bosnia and Herzegovina, both Bosniak and Croat, are elected from the entire territory of the Federation of Bosnia and Herzegovina as one electoral unit, through a common ballot paper consisting of two columns – 1 column with Bosniak and 1 column with Croat candidates. Voters have the right to vote for only one candidate in order for their vote to be valid. Due to numerical superiority in the previous decade, we have had a situation where a Croat member of the Presidency was elected by a Bosniaks on several occasions. Such claims can be confirmed by an insight into the final results for the members of the Presidency, where it can be seen that in areas where Croats predominate, they voted for a candidate from the HDZ, which represents the national party of Croats in Bosnia and Herzegovina, which is also cited as an argument by Mirjana Kasapović in her work dedicated to the "Komšić Case". Typical examples of ethnically most homogeneous Croat municipalities are in West Herzegovina. And vice versa: if a city is more heterogeneous, i.e., if the share of Croats in the electorate is smaller, the Croat candidates win fewer votes and the SDP candidate slightly more votes, as in some municipalities in Central and North Bosnia. (Kasapović, 2016: 182). The first time Bosniaks elected a Croat member of the Presidency was in 2006, when Željko Komšić, a candidate for the SDP, was elected as the Croat member of the Presidency. The case was repeated in 2010, then in 2018, and finally in 2022.

cal system in BiH called for a process in which party leaders would be the primary decision-makers. As a party official contended to the author, this approach has been informed by the persistence of uncompromising leadership and the complex system in place, which makes it 'easier to work with fewer politicians' (Sebastian, 2012: 607).

In the Butmir process, international representatives proposed amendments to the constitution. In that period, there was already an anti-Western mood on the part of the authorities from the RS, so even before the start of the negotiations, the president of that entity, Milorad Dodik, said that in case of pressure on the officials of the RS to accept amendments to the constitution, the authorities of the RS would call an independence referendum. The Butmir process showed that intra-ethnic stability is the priority, and only then inter-ethnic compromise. As the European representatives later said, the goal was to agree and implement constitutional changes as quickly as possible. Constitutional changes are undoubtedly a process that could not be implemented within a few months. Each of the mentioned proposals could have been a sound basis for future talks; however, the international community did not have much time to negotiate constitutional changes.

There are a number of reasons why international actors wanted the process of constitutional reforms to be implemented in the shortest possible time

1. Awareness that delaying the negotiation process can lead to the process taking too long and nothing is agreed upon in the end.
2. Each side looked at the process of constitutional changes from a different perspective. With that process, they wanted to satisfy the interests of their ethnic community, not to make BiH a more functional state. Election campaigns conducted in BiH during the period of negotiations on constitutional changes certainly had an impact on these processes. Any future process of negotiations on constitutional changes is hampered by the impossibility of finding a solution to implement the European Court of Human Rights judgment in the "Sejdić, Finci, Zornić, Pilav and Šlaku against Bosnia and Herzegovina" case, and the problem in the "Komšić Case." After the aforementioned initiatives to change the Constitution of Bosnia and Herzegovina, there were attempts to make new changes, but without success. The initiative concerned the implementation of the judgment of the European Court of Human Rights in the case of Sejdić-Finci and others. The initiatives were related to the Presidency of Bosnia and Herzegovina and the House of Peoples. As a condition for the continuation of the European path, the European Union demanded the full implementation of the said judgment, however, Bosnia and Herzegovina received candidate status in 2022 without the application of the said judgment.

3. Finally, according to Sebastian, the need for “quick solutions” and successes was also motivated by the internal interests of international actors. The US wanted diplomatic success in order to improve the administration’s image after the failures in Iraq and the Middle East, and to ensure stability in Bosnia and Herzegovina without being associated with negotiations on the status of Kosovo. On the other hand, the EU saw in Butmir an opportunity to speed up the closure of the Office of the High Representative (OHR) and establish a new EU office that would be the main interlocutor for BiH authorities.
4. In the end, time pressures and tight deadlines, especially during election cycles, made it difficult to counter the politics of stubbornness and intransigence. The way various constitutional initiatives unfolded essentially reflected political maneuvering by domestic actors aiming to weaken or unseat the ruling parties at the time. Power struggles intensified during the “April Package” due to the proximity of the 2006 general elections, which gave opposition parties the opportunity to shape their campaigns around a simple division of “yes” and “no” regarding the ongoing constitutional reforms. An example of this is the founding of the HDZ 1990 party, which was established just days after the HDZ and other ruling parties had agreed on constitutional changes. Although HDZ 1990 was formed by prominent moderate members of the HDZ, the new party adopted a more conservative stance to distinguish itself and focused its election campaign on opposing the HDZ’s position on constitutional reform⁷.

Possible scenarios for Bosnia and Herzegovina

Bosnia and Herzegovina is on the threshold of the thirtieth anniversary of the signing of the DPA. Still, there have been no constitutional changes that would make the country more functional. As Jović points out, given that Bosnia and Herzegovina was constructed from the outside, it will not be surprising to conclude that its future and the issue of internal redefinition depends on the international system and the behavior of external actors (Jović, 2016: 44). Unlike other countries in the region, Bosnia and Herzegovina has guarantees of survival from foreign actors, so claims about its disintegration are unfounded as long as the current constitutional framework exists. The question often asked when discussing the possible constitutional redesign of Bosnia and Herzegovina is whether the people want a constitutional redesign and what a change in the status quo would bring—the current constitutional arrangement prioritized stabilization rather than democratization. If the restoration of internal sovereignty is desired, perhaps we should start from the first

[7] See Sebastian, 2012: 607.

step - a new referendum on the issue- to truly determine the will of the citizens of Bosnia and Herzegovina.

If that will is not there, returning internal sovereignty to Bosnia and Herzegovina would be risky. In that case, the status quo is the best option if the goal is stability and peace. Therefore, Bosnia and Herzegovina is back where it was in 1992: either democracy or peace (Jović, 2016: 47). It is difficult to predict whether BiH will remain in the current Dayton framework because the works discussing possible solutions for Bosnia and Herzegovina to maintain the current situation do not consider it possible. The reason is that the EU also set constitutional changes as a precondition for Bosnia and Herzegovina's entry into the EU. The DPA ensured peace, and before the thirtieth anniversary of its signing, Bosnia and Herzegovina is facing challenges in terms of functionality; however, we can see that the DPA proved to be flexible and managed to maintain the unity of Bosnia and Herzegovina. Constitutional reform in Bosnia and Herzegovina remains one of the biggest challenges for international actors and domestic political elites.

Two possible scenarios for redesigning the Dayton construction are most often mentioned in the domestic literature. The first scenario envisages minimal changes in institutions at the Bosnia and Herzegovina level that do not call into question the survival of the entities as federal units. The proposals offered by Banović and Gavrić as possible in the constitutional redesign refer to the Presidency, the Parliamentary Assembly of Bosnia and Herzegovina, and the Council of Ministers. In the case of Bosnia and Herzegovina, the head of state consists of a three-member Presidency, representing a collective body. The election of the head of state in the Parliament of Bosnia and Herzegovina would remove the discriminatory provisions of the Constitution that make it impossible for members of other nationalities to be elected. In addition, such a head of state would have a symbolic function. For the head of state to assume his duties, he must be confirmed by both houses of the Bosnia and Herzegovina Parliament, who would be a member of the Parliament. This method of selection has several advantages. First, it ensures the equality of the Houses of Parliament. Second, the previous discriminatory provision of the Constitution, that only a Serb from the RS (and not from the FB&H), i.e., A Bosniak and a Croat from the FB&H (and not from the RS) can be elected to the Presidency, and the fact that members of others (minorities and ethnically undefined) from the whole of Bosnia and Herzegovina cannot be elected at all would be removed. Every citizen of Bosnia and Herzegovina could become the president of Bosnia and Herzegovina. Third, by electing the president in Parliament, there would be permanent political control over the president by the Parliament. The disadvantage of this type of election of the head of state is that the national political elites can hardly agree on a suitable candidate (Banović and Gavrić, 2010: 175).

The election of members of the House of People's Clubs is one of the problems of the current constitution; according to the judgments of the European Court of Human Rights, there is double discrimination in the election of members of the House of Peoples, firstly, only Serbs from the RS and Bosniaks and Croats from FB&H and others that do not belong to the constituent nations cannot be represented. The House of Peoples was expanded to four clubs, of which, as before, the constituent nations represented three clubs, and the fourth club represented the others. In addition, the entities should be represented in the House of Peoples, so the members of the House of Peoples should be elected by the entity parliaments, considering the number of delegates in filling all four clubs. According to the current Constitution, the Council of Ministers does not have a large number of responsibilities and ministries, except for the addition of responsibilities that have been transferred from the entity level to the Bosnia and Herzegovina level, especially in areas related to the European path of Bosnia and Herzegovina, because the current constitutional framework does not have the capacity for management and regulation in this area (Banović and Gavrić, 2010: 177).

Another scenario mentioned is the territorial reorganization of BiH. On that track, Pejanović proposes the division of Bosnia and Herzegovina into 14 cantons, the Brčko District and Sarajevo as the capital. All 14 cantons would be multi-ethnic. Regarding the responsibilities of all 14 cantons, those responsibilities would be equal. The capital city of Sarajevo could have the responsibilities that cantons in the Federation of Bosnia and Herzegovina have today. The competencies of the entities of the Federation of Bosnia and Herzegovina and Republika Srpska would be in the concept of a territorial organization with 14 cantons "divided between the state and the cantons." Thus, the citizen as a social and political subject would become responsible for selecting representative bodies of government and its functioning (Pejanović, 2020: 222-223). What Pejanović, as well as Banović and Gavrić, conclude in the end is that it is difficult to bring about all the mentioned changes in BiH because there is no trust and consensus among the political elites, especially when talking about territorial reorganization. In addition to the agreement among domestic political representatives, international actors are also involved in the process of constitutional redefinition, and above all, the Office of the High Representative, which participated in previous constitutional redesign processes and was a silent player in the redesign processes in the period after the signing of the DPA. When discussing secessionism in Bosnia and Herzegovina, the possibility of holding a referendum on the status or independence of the Republika Srpska (RS) is often considered. In the context of political and constitutional reforms, as well as moments of crisis in Bosnia and Herzegovina, Milorad Dodik has repeatedly announced the possibility of calling a referendum on the independence of the RS. This statement, which emerged during constitutional and political crises, reflects deep political divisions within the

country and raises serious questions regarding the territorial integrity and sovereignty of Bosnia and Herzegovina. Such announcements point to a strong political dynamic in which the interests of different ethnic communities often clash, and the possibility of secession becomes one of the key issues in the further political evolution of the state. Referendum announcements have existed continuously since 2010. However, this issue has never been approached more seriously, even though reactions to every mention of the referendum came from the FB&H and international community representatives. As stated by Savanović and Vranješ in their work dedicated to the sources and genesis of secessionist rhetoric in the RS, they state that the first document dedicated to the independence of the RS is the SNSD party declaration from 2015. This Declaration is significant because, for the first time, a political entity has clearly and unequivocally decided that the independence of the RS will be the basic political goal of its activities. In this context, independence is interpreted as a higher degree of autonomy within the constitutional framework of BiH and not as independence, which *a priori* implies secession. With this, we notice a certain ambiguity in the use of the term “independence” because it can connote, on the one hand, more autonomy but also the path to independence. It is precisely for this reason that this Declaration has remained somewhat controversial, as critics take it as the *corpus delicti* of secessionist politics, while on the other hand, they defend it with the argument that independence does not mean independence (Savanović, Vranješ, Vranješ and Budimir, 2020: 100). On the other hand, although there are frequent announcements about a possible referendum and the adoption of both parties and declarations and conclusions by the National Assembly of Republika Srpska, we can say that the said decisions have never been respected and that they are used for populist purposes in the period of crises or election campaigns so that the ruling party which is also an advocate of secessionism and remained in power. The alternative to independence and a referendum is a return to the “original Dayton”⁸.

In the reports of the High Representative for Bosnia and Herzegovina sent to the UN Secretary-General, every report from 2006 until today mentions, among other things, the secessionist rhetoric coming from the RS, first of all by Milorad Dodik, and not so rarely by other high officials of the SNSD - a. According to the report sent to the Secretary-General in April 2023, the Office of the High Representative warns that the RS authorities have taken concrete steps in secession. The examples he cites are the voting of the conclusion on the non-recognition of the decisions of the Constitutional Court of Bosnia and Herzegovina, the institution of

[8] “The only way for Serbs to survive in this area is for Srpska and Serbia to be preserved at all costs,” said the president of Republika Srpska, Milorad Dodik. He points out that Srpska must permanently resolve its issue during the term of the newly elected US President Donald Trump, and that, he says, means two things - to return to the original Dayton or a peaceful separation in Bosnia and Herzegovina. (Dodik: Srpska za vrijeme mandata Trampa mora trajno riješiti svoje pitanje, 10. 11. 2024.)

the high representative on the territory of the RS (OHR Report 63, 2023: 4). The National Assembly of the RS, as the holder of the legislative power in the RS, has on several occasions voted various declarations and conclusions which were seen by the international community, as well as by Bosniak political elites, as a step closer to the secession of the RS, however, as Savanović and others state, the topic of secession in the declarations and conclusions used prophylactically to stop the further collapse of the Dayton order (Savanović, Vranješ, Vranješ and Budimir, 2020: 103). Calls for secession often occur when the Dayton conception of Bosnia and Herzegovina is re-examined. However, the documents brought by the NSRS show no direct moves towards secession or (real) independence, Milorad Dodik's statements contained elements that can be seen as secessionist. In the mandate of 2018 - 2022, when Milorad Dodik served as a member of the Presidency of Republika Srpska, the number of statements about the status and independence of the RS was very frequent⁹.

On the other hand, in the reports that the RS sends to the UN Security Council, which are signed by the President of the RS (in the period from 2010-2018, it was Milorad Dodik), the allegations about the secessionist policy of the RS are rejected. The position that is explicitly stated is that the RS is committed to consistently respecting the Dayton Peace Agreement and the sovereignty of B&H as stipulated (Savanović, Vranješ, Vranješ and Budimir, 2020: 103). Even though we have different signals from the RS on the issue of secession, which are often not consistent, in the second entity of the FBiH, they are received as a threat of war and the disintegration of B&H, which is unacceptable for the Bosniaks and Croats.

Conclusion

What is the fact that the DPA proved successful because the war conflict ended from the day it was signed? Incidents on a national basis are minimized and represent isolated incidents. When we talk about the possibility of changing the Constitution, it is inevitable that if B&H wants to continue its European integration, there will be a change in

[9] In February 2020, a special session of the National Assembly of Republika Srpska (NSRS) was held, during which the "unconstitutional actions of the Constitutional Court of Bosnia and Herzegovina" were discussed. These actions involved the annulment of a provision in the Law on Agricultural Land of Republika Srpska, which recognized the entity's ownership of that land. On this occasion, Milorad Dodik addressed the deputies with the phrase, "Goodbye BiH, welcome RSexit." One year later, on March 10, 2021, Dodik announced the intention to hold a referendum in Republika Srpska, which, according to him, would take place within one or two years. The reason for this announcement was the expected arrival of a new High Representative in Bosnia and Herzegovina. Dodik stated that he harbored no ill will toward Bosniaks and called for peaceful coexistence, but emphasized that Republika Srpska faced accusations of genocide and made it clear that it would not accept external imposition of its will.

the constitutional arrangement at a certain point. The political and constitutional crises that occurred after the signing of the DPA are often characterized as a threat to the constitutional order of BiH and a threat to its survival. The crises after the signing of the DPA most often resulted from different understandings and interpretations of specific articles of the Constitution of B&H, which were the subject of disputes between political representatives and between political representatives and the Constitutional Court of Bosnia and Herzegovina. Changing the Constitution is only possible through the internal consensus of the political elites. Still, we cannot claim with certainty that a consensus will be reached. Apart from the consensus of the domestic political elites, international guarantees are also needed, which BiH indeed relies on even now, which would guarantee the implementation of future constitutional changes. In the paper, we did not deal with the crises that arose from different interpretations of the DPA. In addition, the mentioned topic represents fertile ground for future research. Some of the topics that can be addressed are the role of the Institution of the High Representative in the redesign of BiH, the level of democracy in BiH during the periods of initiatives for constitutional redesign, as well as the crises that arose from different interpretations of the DPA.

30 godina od Dejtona: Analiza prijedloga za ustavnim promjenama u Bosni i Hercegovini

Sažetak



Dejtonski mirovni sporazum potpisan je u Parizu u decmbru 1995. godine. Sporazum je okončao rat i uspostavio novi ustavni i politički sistem. Nakon prve decenije, počelo se govoriti da je potrebno mijenjati Sporazum. U prvom redu ovo se odnosilo na Ustav koji je sastavni dio mirovnog sporazuma. Glavno istraživačko pitanje odnosi se na prijedloge ustavnih promjena u Bosni i Hercegovini i uticaj na politički sistem. Ovo pitanje proizilazi iz uočenog zahtjeva za ustavnim promjenama, koje se nisu dogodile trideset godina nakon potpisivanja sporazuma. Metodologija uključuje komparativnu analizu tri najznačajnija prijedloga: Aprilski paket, Prudski sporazum i Butmirski proces. Pored toga koristeće se izjave i intervjui političkih predstavnika tokom i nakon pregovaračkog procesa i njihovo tumačenje postignutih dogovora.

Ovaj rad doprinosi razumijevanju procesa ustavne reforme i njegovih izazova. Rad nam daje novi pogled razumijevanja ustavnih promjena u Bosni i Hercegovini. Na kraju, ovaj rad predstavlja značajan teorijski okvir za buduća istraživanja.

Ključne riječi



Dejtonski mirovni sporazum, Bosna i Hercegovina, ustavne promjene

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