BOSNIA AND HERZEGOVINA BETWEEN DAYTON AND BRUSSELS

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After numerous appeals for reform from the international community and the pro-reform part of the Bosnian-Herzegovinian public, in 2006 the Presidency of Bosnia and Herzegovina proposed that the Parliamentary Assembly as the constituent assembly adopt constitutional amendments in the first stage of constitutional reform. By means of these amendments, traditional state responsibilities would be transferred to the central State and the House of Representatives as the representative body of the Bosnian-Herzegovinian populace systemically empowered. At the same time, the responsibilities of the House of Peoples as the representative body of Bosniaks, Croats and Serbs as constituent peoples would be limited, the Council of Ministers as the central organ of the executive power would be established, and the responsibilities of the Presidency of Bosnia and Herzegovina would be limited. All these changes would contribute to the more efficient and stable operation of Bosnian-Herzegovinian institutions. According to the proposed amendments, all matters relating to the European Union would be within the exclusive competence of central institutions. Despite intense efforts by the international community, the House of Representatives was unable to achieve the two-thirds majority of votes required for the adoption of the proposed amendments; at the same time, key political parties rejected the "Butmir Package of Constitutional Amendments" prepared by the representatives of the USA and EU in 2009. Thus, especially following the publication of the Stabilisation and Association Agreement between the EU and Bosnia and Herzegovina in the Official Journal of the European Union at the beginning of 2011, the appeals for the adoption of constitutional amendments became increasingly topical and visible.

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1 Introduction

Following a decade of experience with the Dayton Constitution as the "law *de jure*" and as "law *de facto*", which is sometimes characterized in professional circles as a provisional constitution,[2] the political elites of the international community – especially on the basis of the Resolution of the Parliamentary Assembly of the Council of Europe on the strengthening of democratic institutions in Bosnia and Herzegovina,[3] the Brussels "consultations" with the leaders of Bosnian and Herzegovinian parliamentary parties[4] and the Washington declaration on the modernisation of the Dayton constitution[5] – also reached the conclusion that it is not possible to transform Bosnia and Herzegovina into a democratic and efficient state without comprehensive constitutional reform. After numerous appeals for reform by the international as well as the pro-reform part of the Bosnian-Herzegovinian public on the tenth anniversary of the Dayton Agreement, at the beginning of 2006 the Presidency of Bosnia and Herzegovina proposed that the Parliamentary Assembly – the House of Peoples and the House of Representatives – as the constituent assembly adopt a constitutional amendment regarding the competencies of the institutions of Bosnia and Herzegovina as central State, as well as constitutional amendments regarding the Parliamentary Assembly, the Presidency of Bosnia and Herzegovina, and the Council of Ministers. The decision-making on the adoption of other amendments, especially those regarding human rights and fundamental freedoms, was postponed until the second stage of constitutional reform.[6] Despite intense efforts by the international community for the adoption of the proposed amendments and the fact that the majority of the parliamentary parties had endorsed their adoption by means of a special agreement – following the robust intervention of the representatives of the international community in the residence of the US Ambassador by means of "elbowing"[7] – the House of

[2] Edin Šarčević, "Verfassungsgebung 'konstitutives Volk': Bosnien und Herzegowina zwischen Natur-und Rechtszustand," in *Jahrbuch des Öffentlichen Rechts der Gegenwart*, ed. Peter Häberle (Tübingen: Mohr Seibeck, 2002), 531.

[3] See Council of Europe, Resolution 1384 (2004), *Strengthening of democratic institutions in Bosnia and Herzegovina*, 23 June 2004.

[4] *The Guardian*. "Revealed: US plans for Bosnian constitution." 11 November 2005; *Jutranji list*. "Lideri BiH danas na tajnom sastanku o promjeni Daytona." 11 November 2005; *Le Monde*. "Du sičge de Sarajevo aux acords de Dayton." 22 November 2005.

[5] *The New York Times*. "U.S. Urges Bosniacs to Revise Constitution." 22 November 2005.

[6] See *Amendments to the Constitution of Bosnia and Herzegovina*, 2006. Available at www.ohr.int/ohr-dept/legal/oth-legist/doc/fbih-constitution.doc (June 2011).

[7] The talks with parliamentary parties' leaders were conducted by the American ambassador Douglas McElhaney, who at the press conference on the occasion of the 20th anniversary of the Dayton Agreement stated that he will support the revision of the Dayton constitution even by means of "elbowing". See: Avdo Omeragić, "Ako BiH želi biti ozbiljna, mora objediniti institucije," *Oslobodjenje*. 20 December 2005. Cf.: *Dnevni avaz*. "Paket ustavnih promjena ide u parlamentarnu proceduru." 19 March 2006.

Representatives in 2006 was unable to achieve the required two-thirds majority of those present and voting for their adoption.

Among the most high-profile initiatives for the revival of work for the preparation of constitutional changes was the conclusion of the Prud Agreement towards the end of 2008, signed by the leaders of the most prominent political parties in Bosnia and Herzegovina. The Agreement established the points of departure for the preparation of amendments regarding the harmonisation of the Constitution of Bosnia and Herzegovina with the European Convention of Human Rights and Fundamental Freedoms, amendments regarding the constitutional arrangement of the Council of Ministers of Bosnia and Herzegovina, as well as amendments for the adoption of the Law on the Legal Status of State Property and the Population Census Law. The leading political parties later abandoned this proposal for the agreement due to diverging views on its contents.[8] At the end of 2009, the representatives of the USA and EU jointly organised several consultations with the representatives of the key political parties in Bosnia and Herzegovina in Butmir near Sarajevo, at which the so-called Butmir Package of Constitutional Amendments was prepared, containing mainly the rejected proposals for constitutional changes from 2006.[9] The proposed amendments were particularly important because the Stabilisation and Association Agreement between the EU and Bosnia and Herzegovina was concluded in 2008; Bosnia and Herzegovina also ratified it in the same year, thus legally assuming new commitments in the ensuing process of progress towards the European Union.[10] However, since the Butmir Package received only the backing of the Bosnian Party of Democratic Action, this intervention by the USA and EU also failed.
As the political arena continued to be distinctively polarised even after the 2010 autumn elections, at which the nationalist parties mostly just regrouped, the party oligarchies – despite intense interventions by the international community – failed to muster the political will to support the beginning of constitutional reform.

Following the publication of the Stabilisation and Association Agreement between the European Union and Bosnia and Herzegovina in the Official Journal of the European Union at the beginning of 2011, the demands of the international community and the majority of the national population for

[8] See *Oslobodjenje*. "Prudski sporazum prvi pozitivan korak." 22 November 2008; and *Dnevni avaz*. "Prudski sporazum glavna tema." 23 December 2008.

[9] See *Dnevni avaz*. "James Steinberg spašava, butmirski paket'." 2 December 2008; and *Oslobodjenje*. "Butmirski paket je minimum." 3 November 2008.

[10] Council Regulation (EC) No 594/2008 of 16 June 2008 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, and for applying the Interim Agreement on trade and trade-related matters between the European Community, of the one part, and Bosnia and Herzegovina, of the other part.

adopting the constitutional amendments have become all the more topical and substantial.

2 Constitutional relationship between the state institutions and the two entities

According to the opinion of the Council of Europe's Venice Commission that has also been adopted by the expert group on the preparation of the draft constitutional amendments as the point of departure for its work, the main issue in the first stage of the constitutional reform is the widest possible transfer of responsibilities from the Entities to Bosnia and Herzegovina as the central State ("Gesamtstaat").[11] Under the Dayton constitution, the institutions of Bosnia and Herzegovina have only those powers that are comprehensively listed in the constitution, mainly in the field of immigration, refugee and asylum policy (Article III.1).[12] Also established in the Constitution – more descriptively than comprehensively – are some responsibilities of the Entities, among others regarding the provision of a safe and secure environment for all persons (Article III.2.c), but the Constitution simultaneously stipulates that the Entities have "[a]ll governmental functions and powers" that are not expressly assigned in the Constitution to the institutions of Bosnia and Herzegovina (Article III.3). The constitutional provision in the favour of the Entities is (so to speak) identical to one of the Articles of Confederation and Perpetual Union between the States (Article 2), on the basis of which the United States of America were founded as a confederation – following a proposal from 1777 and its implementation in 1781; in line with Article 2, each state retained all powers and jurisdictions other than those expressly delegated to the confederation.[13] Disregarding the foreign policy that is (despite the common foreign policy) also one of the sovereign rights of the European Union Member States, the constitutional responsibilities of the institutions of Bosnia and Herzegovina hardly exceed those of the European Community or European Union within the framework of its former first pillar. Given the limited constitutional responsibilities of the central State and the constitutional presumption in favour of the two Entities, according to which the Entities under the Constitution also retained the responsibilities in

[11] Council of Europe, European Commission for Democracy through Law (Venice Commission). Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative, CDL-AD (2005)004, Strasbourg, 11 March 2005, point 102.

[12] Joseph Marko, "Integration durch Recht," in *Europas Identitäten, Mythen, Konflikte, Konstruktionen*, eds. Monika Mokre, Gilbert Weiss and Rainer Bauböck (Frankfurt/New York: Campus Verlag, 2003), 163–165; see also Axel Schwarz, *Die Verfassung des Gesamtstaates*. (Berlin: Europa-Blätter, 2003), 129–130.

[13] Robert D. Clinton, "A Brief History of the Adoption of the United States Constitution," *Iowa Law Review,* (1990), 891–893.

the military and police fields, Bosnia and Herzegovina is a *sui generis* federation with extremely limited viability ("Lebensfähigkeit").[14]

The architects of the Dayton Agreement balanced the constitutional provision that very restrictively stipulates the responsibilities of the central state by means of a special provision that enables Bosnia and Herzegovina to assume additional responsibilities as agreed by the Entities (Article III.5.a). On the basis of this provision, Bosnia and Herzegovina can, in agreement with the Entities, assume mainly those responsibilities provided for in Annexes 5, 6, 7 and 8, particularly the responsibilities in the field of protection of human rights as well as the rights of refugees and displaced persons, and the responsibilities necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina; additional institutions may also be established as necessary to carry out such responsibilities.[15]

Acting upon this constitutional provision, the Parliamentary Assembly of Bosnia and Herzegovina adopted several laws under a legislative procedure that is less demanding than the constitutional revision procedure, despite the right to the so-called veto for the protection of a vital national interest. By means of these laws – following the intense intervention by the High Representative and prior institutional or tacit consent of the Entities – the Parliamentary Assembly also assumed traditional State responsibilities in the form of additional responsibilities, by means of which it fundamentally complemented the responsibilities of the institutions of Bosnia and Herzegovina comprehensively listed in the constitution.

As early as in 2000, the High Representative on the basis of the Bonn powers ("Bonner-Powers") adopted a decree on the adoption of the Law on the Court of Bosnia and Herzegovina, by means of which he partly established the foundations for a gradual establishment of the judiciary power in line with the principle of separation of powers at the central State level.[16]

Under these laws, Bosnia and Herzegovina as the central State, in addition to those comprehensively listed in the constitution, also has the following

[14] Wolfgang Marcus Vitzthum and Marcus Mack, "Multiethnischer Föderalismus in Bosnien-Herzegowina," in *Europäischer Föderalismus, supranationaler, subnationaler und multiethnischer Föderalismus in Europa*, ed. Von Wolfgang Graf Vitzhum. (Berlin: Duncker und Humbold, 2000), 89–95. Elisabeth Küttler, *Die Menschenrechtskammer für Bosnien-Herzegowina* (Berlin: BWV/ Berliner Wissenschafts – Verlag GmbH, 2003), 34.

[15] Gearoid O'Tuathall, "La Republika Srpska est-elle européenne, La grande stratégie du Bureau du Haut-Representant pour ancrer la Bosnie-Herzégovine dans L'Espace geopolitique européen," in *L'ex Yugoslavie dix ans aprčs Dayton*, eds. Andre-Louis Sanguin et al (Paris: L'Harmattan, 2005), 204–248. See also Opinion of the Venice Commission at footnote 10, points 22 and 23.

[16] Official Gazette of Bosnia and Herzegovina, no. 29/00.

responsibilities and institutions: the defence area, organised by a special law as a single system of armed forces; the Intelligence and Security Agency as one of the sub-system institutions in the field of security; the High Judicial and Prosecutorial Council, which decides on the selection and appointment of judges and prosecutors in the country as a whole; the Office of the Prosecutor of Bosnia and Herzegovina, which is one of the fundamental state institutions in the field of justice; the Court of Bosnia and Herzegovina, which was established by the legislative decision of the High Representative and which, due to its limited competencies, is not in the rank of the Supreme Court; and a particular system of financing state institutions that is not solely linked to the Entities' revenue.

It is paradoxical that Bosnia and Herzegovina as the central State has even more traditional state responsibilities that have been assumed on the basis of the provisions on additional responsibilities by means of laws (particularly in the field of defence, security – namely by open reform of the police – and justice) than under the general constitutional provision that comprehensively lists its responsibilities.

In the future, these statutory powers, on the basis of which State institutions already function, should be transposed into the Constitution; their constitutional arrangement would contribute to a more legitimate and stable operation of these institutions. After the adoption of the above legislation, the constitutional provision on additional responsibilities should also be abrogated or at least possibilities for its use limited. The relationship between the legal order of the central state and the legal order of the Entities should also be determined, for instance, on the model of the German Basic Law (Article 31 GG) it could be stipulated that the State law shall take precedence over ("bricht") Entity law.[17]

In the first stage of constitutional reform, the following should also be done: change the constitutional arrangement on the creation and composition of basic state bodies, reallocate the most important responsibilities among them and at least in part reshape the decision-making procedures of these bodies.

After more than a decade of documents in which individuals and institutions alike have reached the conclusion that the constitutional provisions regarding the composition of fundamental State institutions on the basis of ethnic affiliation are impermissible (they are, *inter alia*, in conflict with the constitutional provision on non-discrimination (Article II.4)[18] and the European Convention on

[17] Article 31 of the German Basic Law stipulates: "Bundesrecht bricht Landesrecht".

[18] See in particular: Magdalena Pöschl, "Diskriminierung in Bosnien und Herzegowina," *Zeitschrift für öffentliches Recht*, 60 (2005), 217–235.

Human Rights and Fundamental Freedoms (Article 14)[19], in line with the envisaged amendments, the House of Representatives would also include three delegates who do not belong to one of the constituent peoples; composition on the basis of ethnic affiliation would also be abolished with regard to the provision on the composition of the Presidency of Bosnia and Herzegovina, while the adoption of the decision on the amendment of the constitutional provision regarding ethnic composition of the House of Peoples would be postponed to the second stage of constitutional reform.

Two other strategic goals of the anticipated constitutional changes, alongside the transfer of responsibilities from the Entities to the central State, are (a) the systemic empowerment of the House of Representatives as the representative body of the anticipated Bosnian-Herzegovinian populace, along with simultaneous limitation of the authority of the House of Peoples as the representative body of the constituent peoples of Bosniaks, Croats, and Serbs, and (b) the establishment of the Council of Ministers as the central organ of executive power, along with simultaneous limitation of the Presidency's authority. The fulfilment of these two goals should decidedly contribute to an effective and streamlined operation of the state as a whole. Bosnia in Herzegovina could thus also fulfil the "Copenhagen criteria" and other special conditions ("political conditionality") in the process of stabilisation and association with the European Union.[20]

In the future, the bicameral system is also to be abolished; under this system, the House of Peoples and the House of Representatives jointly adopt all decisions; this greatly hinders their operation. A special kind of unicameral system would be introduced, whereby the House of Representatives would, for the most part, decide independently, while the House of Peoples would be involved in (i) the evaluation of laws adopted by the House of Representatives and relative to vital national interest of constituent peoples, (ii) in the decision-making regarding the adoption of constitutional amendments, and (iii) in the candidacy procedure for the election of the Presidency of Bosnia and Herzegovina. After the bicameral decision-making, the new constitutional order would be similar to the Belgian Constitution (Article 195), German Basic Law (Article 79, paragraph 2 GG), Austrian Federal Constitutional Law (Article 44, paragraph 2 B-VG) and the Spanish Constitution (Article 167).[21]

[19] See in particular the Chapter entitled "The Compatibility of the Constitution of Bosnia and Herzegovina with the European Convention on Human Rights and the European Charter of Local Self-Government" in the Venice Commission Opinion under footnote 10, 20–24.

[20] Rudi Kocjančič, Stabilisierungs- und Assoziierungsprozess auf dem Gebiet des ehemaligen Jugoslawien. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 66 (2006), 439–440.

[21] Thomas Gro , "Zwei-Kammer-Parlamente in der Europäischen Union," *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 63 (2003), 41–43.

However, the constitutional provision under which the House of Representatives decides by a majority of those present and voting will be retained, provided that the dissenting votes do not include two-thirds or more of the delegates or members elected from either Entity. At the same time, an existing constitutional provision would be kept; on the basis of this provision, any of the three constituent peoples may declare decisions of the Parliamentary Assembly to be destructive of a vital interest – by a majority of, as appropriate, the Bosniak, Croat, or Serb delegates – thus preventing the adoption of such decisions.[22] On the basis of the first constitutional provision, two-thirds of delegates of the House of Representatives from either Entity – considering that there are nearly only Serbs living in one Entity and nearly only Bosniaks or Croats in the other – could block the adoption of any decision in the House of Representatives ("entity veto"), while on the basis of the second constitutional provision, each of the three constituent peoples could prevent the implementation of the decisions of the Parliamentary Assembly by declaring them destructive of a vital interest of these peoples ("ethnic veto").[23] The vital interest veto has thus been designed much wider than the right of the other House to suspensive veto in the law adoption procedure, the same right being provided by the constitutions of, for instance, Austria (Article 42 B-VG), Germany (Article 76, paragraph 2 GG), Ireland (Article 23) and Slovenia (Article 97).[24]

The entity right to veto is discriminatory to the delegates of the House of Representatives, particularly in making it systemically difficult for them to adopt decisions, while simultaneously eroding the legitimacy of the House. It is a distinctively dysfunctional and disintegrative constitutional provision.[25] Even the Bishops' Conference of Bosnia and Herzegovina advocated for its abrogation on several occasions.[26] The Parliamentary Assembly of the Council of Europe also called upon the political circles in Bosnia and Herzegovina to endorse the immediate elimination of the "entity veto".[27]

[22] Preliminary Opinion on the Draft Amendments to the Constitution of Bosnia and Herzegovina (CDL(2006) 027), Council of Europe – European Commission for Democracy Through Law (Venice Commission), Strasbourg, 7 April 2006, particularly point 36 and points 39–41.

[23] See in particular: Kasim Trnka, *Ustavno pravo (*Sarajevo: Fakultet za javno upravo, 2006), 292–293. See also: Maja Kaljanac, Faris Vehabović and Nidžara Ahmetašević, *Proces ustavnih promena u BiH* (Sarajevo: Centar za ljudska prava, 2006), 43–45.

[24] See Thomas Gro , "Zwei-Kammer-Parlamente in der Europäischen Union," *Zeitschrift für ausländisches öffentliches Recht und Völkerrech*, 63 (2003), 41. See also Schambeck, Herbert. *Reflections on the significance of the bicameral parliamentary system*. Available at http://www.senateurope.org/eng/28062002.html (June 2011).

[25] See Cerar, Miro. *Bosnia and Herzegovina at the crossroads?* International Institute IFIMES, available at www.ifimes.org (June 2011).

[26] See *Oslobodjenje*. "Biskupska konferencija BiH potvrdila ranije stavove." 27 October 2007.

[27] Constitutional reform in Bosnia and Herzegovina, Resolution 1513 (2006), Parliamentary Assembly of the Council of Europe, 29 June 2006, point 18.

Disregarding the political philosophy in "The Clash of Civilisations",[28] it needs to be emphasised that Bosnia and Herzegovina is a multi-ethnic, multi-regional, multi-cultural and, to some extent, a multi-civilisational state.[29] Thus Bosniaks, Croats and Serbs already *per se* represent fundamental collective entities in the country, with distinctively different identities,[30] while in the Preamble of the Constitution, which is by its incorporation and nature a constituent part of the Constitution, they are defined as constituent peoples.[31] Radical restriction or even full abolition of their right to veto would seriously endanger their equality and, consequently, the political stability in the country.[32] Unfortunately, in professional circles, too – even in the Venice Commission opinion on the constitutional situation in this country[33] – there often appears a somewhat Austro-marxist conception of nationalities (K. Renner, O. Bauer), according to which the Bosniaks, Croats and Serbs in Bosnia and Herzegovina would only have the right to autonomy in the areas of language, education and culture. However, it is evident that ethnocratic elites are striving to retain the Entities' right to veto and the constitutional option of its unrestricted use for the protection of vital interest when deciding on "any issue" (Amendment II.10.a/xii), which would enable them to maintain – even after the extension of responsibilities of State institutions and the introduction of the unicameral system – strategic advantage over central State institutions, above all over the operation of the House of Representatives as the representative body of citizens.

3 Contours of the parliamentary system in Bosnia and Herzegovina

According to the constitutional arrangement – the whole constitutional text being by both diction and structure closer to the Anglo-Saxon legal tradition

[28] Samuel P. Huntington, *Kampf der Kulturen: Die Neugestaltung der Weltpolitik im 21. Jahrhundert, 6th edition* (München: Goldman, 1998), 327–334.

[29] Joseph Marko, "Friedenssicherung im 21. Jahrhundert: Bosnien und Herzegowina als europäische Herausforderung," in *Völker- und Europarecht, 25. Österreichischer Völkerrechtstag*, eds. Konrad Ginther et al (Vienna: Verlag Österreich, 2001), 55–61.

[30] Wolfgang Marcus Vitzthum and Marcus Mack, "Multiethnischer Föderalismus in Bosnien-Herzegowina," in *Europäischer Föderalismus, supranationaler, subnationaler und multiethnischer Föderalismus in Europa*, ed. Von Wolfgang Graf Vitzhum (Berlin: Duncker und Humbold, 2000), 93–94.

[31] On legal personality of the constituent peoples see Kasim Trnka, "Konstitutivnost naroda i uključivanje Bosne i Hercegovine u evropske integracije," *Pravna misao, Časopis za pravnu teoriju i misao*, 35, 7–8 (2004), 18–21.

[32] On the concept of Bosnia and Herzegovina as the state of citizens and equal peoples see Mirko Pejanović, "Provodjenje amandmana o konstitutivnosti naroda u Federaciji BiH i Republici Srpskoj," *Pravna misao, Časopis za pravnu teoriju i misao*, 35, 7–8 (2004), 4–7. See also Bebler, Anton. *Ob desetletnici pariških in dejtonskih sporazumov.* International Institute IFIMES, available at www.ifimes.org (1 February 2006).

[33] See Venice Commission Opinion under footnote 10, point 33.

rather than the European continental one – in Bosnia and Herzegovina, executive power is carried out by the Presidency and the Council of Ministers, whereby the secondary role of the Council of Ministers is visible from its incorporation in the Constitution, which stipulates its legal arrangements in one of the five points in the Article on the Presidency (Article V.4).[34] The Presidency of Bosnia and Herzegovina consists of three Members, one Bosniak, one Croat, and one Serb, each directly elected in each Entity; they perform the function of the Chair by rotation. The Presidency nominates the Chair of the Council of Ministers, who takes office upon approval by the House of Representatives. The Chair then nominates Ministers, who likewise take office upon approval by the House of Representatives. The Constitution stipulates that the Presidency, above all, conducts the foreign policy, negotiates the conclusion and termination of international treaties and – with the consent of the Parliamentary Assembly – decides on their ratification, executes decisions of the Parliamentary Assembly, and proposes the annual budget to the Parliamentary Assembly (Article V.3). According to a generalized constitutional provision, the Council of Ministers is responsible for the implementation of policies and decisions in the areas comprehensively listed in the Constitution as well as in those areas the responsibility for which is assumed by the central State on the basis of the provision on additional responsibilities (Article III.5).[35]The significance that the authors of draft amendments assigned to the constitutional arrangement of the executive power is evident from the limitation of powers of the Presidency in this area, particularly from the designation of the Council of Ministers as the institution of executive authority for the State of Bosnia and Herzegovina (Amendment IV, paragraph 1). In line with these amendments, the Presidency of Bosnia and Herzegovina would comprise the President and Vice President, elected under the new regime by a majority vote of those present and voting.[36] The Presidency as a whole would mainly have those responsibilities held by the head of state in countries with the parliamentary system, the innovation being that its President would also nominate the candidate for the Chair of the Council of Ministers. The Presidency as a whole would also decide on issues regarding the defence area, the appointment of Constitutional Court judges and members of the Governing Board of the Central Bank – in these three cases by consensus – but it could also request the convention of the Council of Ministers and a meeting of the Parliamentary Assembly, as well as the reassessment of adopted laws.

[34] See Venice Commission Opinion under footnote 10, points 37–41.

[35] See Venice Commission Preliminary Opinion regarding the draft amendment to the State Presidency under footnote 10, particularly point 43.

[36] Opinion on Different Proposals for the Election of the Presidency of Bosnia and Herzegovina (CDL-AD(2006)004), European Commission for Democracy Through Law (Venice Commission), Strasbourg, 20 March 2006.

It is also necessary to change four generalized paragraphs on the Council of Ministers in the present Constitution (Article V.4) and, above all, to comprehensively supplement them with an independent amendment that would arrange more precisely the establishment and composition of the Council of Ministers in this area, so that it would be similar to the governmental arrangements in the countries with the parliamentary system, while relinquishing the legal arrangement of the Council of Ministers to the House of Representatives, particularly the vote of no confidence and the vote of confidence to the Council of Ministers, to the legislation.

According to the proposal for the amendment of the constitutional arrangement of the Council of Ministers, the House of Representatives would approve the Chair of the Council of Ministers on a proposal by the Presidency, and – in the eventual second or third ballot – also on a proposal by at least one-sixth of the delegates of the House of Representatives. When designing its contents, the drafters of the proposal modelled themselves on the example of the German Basic Law, "Musterverfassung",[37] which stipulates that the Federal Chancellor is elected by the Parliament at the proposal of the Federal President (Article 63, paragraph 1). According to constitutional theory, the dependence of the Head of Government on the Parliament is the foundation of the parliamentary government system.[38] On the basis of the German Basic Law, Spain, Ireland, Hungary, Slovenia, and Bulgaria also introduced the election of the Head of Government in the Parliament.[39]

The proposal does not define a specific majority that would be necessary when voting for the approval of the Chair of the Council of Ministers. In line with general regulation, the House of Representatives would also confirm the Chair of the Council of Ministers by a majority of those present and voting (Article IV.3.d). In all countries in which the Head of Government is elected by the Parliament – and in other countries when taking a vote of confidence or no confidence on the government – a majority vote of all members of the Parliament is required on the first ballot.

In the second stage of the constitution of the Council of Ministers, at a proposal by the Chair of the Council of Ministers, the House of Representatives would confirm the list of candidates for Ministers, but if the proposed list would not be

[37] Heinz Schäffer, "Deutschlands "Grundgesetz": Vom Verfassungsprovisorium zur Musterverfassung," in *Die öffentliche Verwaltung*, 12 (June 1999), 485–495.

[38] Georg Hermes, *Grundgesetz-Kommentar* (Tübingen: Mohr Siebeck, 1998), 118.

[39] Wolfgang Ismayr, "Die politischen Systeme Westeuropas im Vergleich," in *Die politischen Systeme Westeuropas im Vergleich*, ed. Wolfgang Ismayr (Opladen: Leske-Budrich, 1999), 18; Wolfgang Ismayr, "Die politischen Systeme Westeuropas im Vergleich," in *Die politischen Systeme Osteuropas*, ed. Wolfgang Ismayr (Opladen: Leske-Budrich, 2002), 27.

confirmed by the House of Representatives, the Chair of the Council of Ministers could submit a new list; his term of office, however, would expire, if the House of Representatives would not confirm the list of candidates within thirty days. Ministers would take office upon the approval of the House of Representatives. In line with the proposed regulation, the President of the Presidency would not be involved in the appointment and approval of Ministers.

The proposal under which the House of Representatives would decide on the appointment of the government Ministers is not similar to the constitution of the government in the countries with the parliamentary government system or in the countries with the traditional parliamentary system. As evidenced by the constitutional arrangements of European countries, it is only in Slovenia that the National Assembly (Slovenian Parliament) decides on the appointment of government Ministers. In line with the Slovenian Constitution – which (on the model of its German counterpart) provides for the election of the President of the Government in the National Assembly as well as the so-called constructive vote of no confidence – Ministers are appointed by the National Assembly at the proposal of the President of the Government (Article 112).[40]

Professional circles in Slovenia are of the opinion that the appointment of Ministers by the National Assembly undermines the position of the President of the Government as well as hindering the formation of the government and negatively affecting the implementation of the principle of separation of powers.[41] The fundamental difference between the role of the German Federal Chancellor in establishing the government and the role of the Slovenian President of the Government is that after his election and appointment, the Federal Chancellor effectively decides on the establishment of the Federal Government, while (upon election) the Slovenian President of the Government receives only the mandate to propose candidates for Ministers, their appointment being decided by the National Assembly. In Slovenia, three governments of different political affiliations have in recent years advocated the abolition of decision-making on the appointment of Ministers in the National Assembly; in line with the latest government proposal, the Constitution would be amended so that the President of the Republic would also appoint the Ministers at the proposal by

[40] Ivan Kristan, "Verfassungsentwicklung Sloweniens," in *Jahrbuch des öffentlichen Rechts der Gegenwart*, ed. Peter Häberle (Tübingen: J.C.B. Mohr, 1994), 82. Franc Grad, "Government," in *The Constitutional System of the Republic of Slovenia*, ed. Igor Kaučič (Ljubljana: SECLI, 2002), 135–136. See also Franc Grad, *Parlament in vlada* (Ljubljana: Uradni list Republike Slovenije, 2000), 279–280. Gregor Virant, "Vlada," in *Komentar Ustave Republike Slovenije,* ed. Lovro Šturm (Ljubljana, Fakulteta za podiplomske državne in evropske študije, 2002), 849–851.

[41] Matevž Krivic, "Vlada," in *Nova ustavna ureditev Slovenije*, ed. Ivan Bele (Ljubljana: Pravna fakulteta, 1992), 195–196. See also Franc Grad, "Posebnosti parlamentarnega sistema v naši pravni ureditvi," in VI. dnevi slovenske uprave (Ljubljana, Portorož: Visoka upravna šola, 1999), 24–26.

the President of the Government elected by the National Assembly.

Double voting in the House of Representatives of Bosnia and Herzegovina – first on the approval of the Chair of the Council of Ministers and then on the approval of the list of candidates for Ministers – would only make the establishment and operation of the Council of Ministers more difficult due to the "Weimar-like" division of the House in questions as well as general political divisions in the country.

The working draft of the amendment on the Council of Ministers prepared by the expert group of the Presidency on the tenth anniversary of the Dayton Agreement also foresaw the legal arrangement of the vote of confidence and the vote of no confidence to the Council of Ministers. According to this proposal, the competencies of the Council of Ministers will be regulated by law (Amendment IV.7.a). As already observed by the Venice Commission, the issue of the regulation of the accountability of the Council of Ministers to the House of Representatives is of such importance – as also evidenced by the constitutional arrangements of government competencies in other countries – that at least the vote of no confidence and the vote of confidence to the Council of Ministers should already be dealt with in constitutional amendments.[42]

What is unusual here is that regarding the anticipated confirmation of the Chair of the Council of Ministers in the House of Representatives, the writers modelled themselves on the elections of the Federal Chancellor in the German Parliament, and on the countries with the traditional parliamentary system, regarding the envisaged regulation of the vote of no confidence to the Council of Ministers. In line with the anticipated approval of the Chair of the Council of Ministers in the House of Representatives, it would be more consistent to also adopt the constructive vote of no confidence based on the German example.

According to the German Basic Law, under which the legislative regulation of Federal Government is designed as a kind of "counter-Constitution against the Weimar Constitution" ("Gegenverfassung zu Weimarer Verfassung")[43], the election of the Federal Chancellor by the Parliament and the constructive vote of no confidence in the Federal Chancellor are the main pillars of the parliamentary government system designed by the Parliamentary Council so as to avoid unstable and incompetent governments in Germany following the negative

[42] See Preliminary Opinion of the Venice Commission regarding the draft amendment related to the Council of Ministers at footnote 10, point 73.

[43] Peter Häberle, *Ustavna država* (Zagreb: Politička kultura, 2002), 247.

experience with the Weimar Constitution.[44] The institute of constructive vote of no confidence was mainly adopted by the countries that introduced the election of the Head of Government in the Parliament (e.g. Spain, Hungary, Slovenia).[45] The professional public is of the opinion that a constructive vote of no confidence has a different impact on government stability in different countries.[46] As evidenced by the parliamentary practice, government stability depends mainly on the electoral and political party system; therefore, in Germany the stability of the Federal Government does not depend primarily on the vote of no confidence, but is (above all) the result of the combined electoral system and a high concentration of parliamentary parties.[47] Despite the introduction of the constructive vote of no confidence, in Slovenia, too, the issue of abandoning the proportional system, introducing the combined electoral system, and indirectly strengthening government stability by limiting the number of political parties in the Parliament is becoming increasingly pertinent.[48] In Bosnia and Herzegovina, the issue of the electoral and thus also political party system – in a substantive law sense – represents one of the core issues of constitutional reform.

4 Bosnia and Herzegovina and the European Union

In the present stage of stabilisation and association with the European Union, the main strategic priorities of Bosnia and Herzegovina as a member of the Council of Europe and a potential candidate country for the accession to the European Union are (i) to amend the constitutional provision regarding the elections to the House of Peoples as the second chamber of the Parliamentary Assembly (Article IV, paragraph 1) as well as the constitutional provision regarding the elections to the Presidency of Bosnia and Herzegovina (Article V, paragraph 1),

[44] Roman Herzog, *Grundgesetz. Kommentar.* (München: Beck, 1993), Art. 63, Rn. 6. See also Klaus von Beyme. *Das politische System der Bundesrepublik Deutschland (10th Ed.)* (Wiesbaden: VS Verlag für Sozialwissenschaften GW V-Fachverlag GmbH, 2004), 261.

[45] Pedro Cruz Villalón, "Bericht Spanien," in *Das Grundgesetz im internationalen Wirkungszusammenhang der Verfassungen: 40 Jahre Grundgesetz*, ed. Ulrich Batist (Berlin: Duncker und Humbol, 1990), 102–103. See also Wolfgang Ismayr, "Die politischen Systeme Westeuropas im Vergleich," in *Die politischen Systeme Osteuropas*, ed. Wolfgang Ismayr (Opladen: Leske-Budrich, 2002), 30.

[46] Christian Starck, "Generalbericht," in *Grundgesetz und deutsche Verfassungssprechung im Spiegel ausländischer Verfassungsentwicklung: Landesberichte und Generalbericht der Tagung für Rechtsvergleichung 1989 in Würzburg*, ed. Christian Starck (Baden-Baden: Nomos Verl.-Ges., 1990), 32–33.

[47] Konrad Hesse, *Grundzüge des Verfassungsrechts der Bundesrepublik Deutschland* (Heidelberg: Müller Verlag 1995), 240. See also Klaus von Beyme. *Das politische System der Bundesrepublik Deutschland (10th Ed.)* (Wiesbaden: VS Verlag für Sozialwissenschaften GW V-Fachverlag GmbH, 2004), 90.

[48] Ciril Ribičič, "Uravnoteženost političnega zastopstva v parlamentu," in *VII. dnevi javnega prava* (Portorož: Inštitut za javno upravo, 2002), 221–222.

and (ii) to adopt the constitutional amendments necessary for the assumption and fulfilment of obligations arising from the process of its association with the European Union. In light of the imminent granting of the status of a candidate country to Bosnia and Herzegovina, a relevant issue is the adoption of the constitutional changes that are necessary for defining the constitutional basis for its decision on the accession to the European Union.

Specifically, the Parliamentary Assembly of the Council of Europe has, in collaboration with the Venice Commission, called upon Bosnia and Herzegovina on several occasions to amend the constitutional provision regarding the elections to the Presidency of Bosnia and Herzegovina, under which the Presidency consists of one Bosniak, one Croat, and one Serb (Article V, paragraph 1), and the constitutional provision that stipulates that the House of Peoples of the Parliamentary Assembly comprises only Bosniak, Croat and Serb Delegates, since these two constitutional provisions clearly discriminate against "others" who are not members of the constituent peoples (Article IV, paragraph 1).[49] The appeals are all the more pertinent and conspicuous following the judgement of the Grand Chamber of the European Court of Human Rights, which in the case of *Sejdić and Finci v. Bosnia and Herzegovina* in 2009 ruled that the constitutional provision under which "others" are ineligible to stand for election to the House of Peoples is in violation of Article 3 of Protocol No. 1 to the European Convention on Human Rights and Fundamental Freedoms (ECHR), which recognizes the right to free and fair elections, as well as Article 14 of the ECHR, which prohibits discrimination; at the same time, the constitutional provision which renders "others" ineligible for election to the Presidency is in breach of Article 1 of Protocol No. 12 to the ECHR, which introduces a general prohibition of discrimination.[50] The weight of the infringement of the rights of "others" is evident from the constitutional provision according to which the House of Peoples and the House of Representatives decide on equal footing on the adoption of laws (Article IV, paragraph 4), as well as from the constitutional provision under which the Presidency has much greater responsibilities than the Head of State in the parliamentary system (Article V, paragraph 3).[51]

In the case of *Sejdić and Finci v. Bosnia and Herzegovina*, the Court ruled for the first time on the direct incompatibility of the constitutional provision of one of the Member States of the Council of Europe with the ECHR, basing its jurisdiction on Bosnia and Herzegovina's membership in the Council of Europe and its ratification of the ECHR, while indirectly also referring to the second

[49] Constitutional reform in Bosnia and Herzegovina – Council of Europe Resolution 1513/2006; Honouring of obligations and commitments by Bosnia and Herzegovina - Resolution 1626(2008).

[50] Case of *Sejdić and Finci v. Bosnia and Herzegovina* (Applications nos. 27996/06 and 34836/06).

[51] Gro Nystuen, *Achieving Peace or Protecting Human Rights? Conflicts between Norms Regarding Ethnic Discrimination in the Dayton Peace Agreement* (Leiden/Boston: Martinus Nijhoff, 2005), 135.

paragraph of Article II of the Constitution of Bosnia and Herzegovina, which stipulates that the rights and freedoms set forth in the European Convention and its Protocols apply directly and that they have "priority over all other law".[52] Upon becoming a member of the Council of Europe and the ratification of the ECHR as well as the Stabilisation and Association Agreement in 2008, Bosnia and Herzegovina committed itself to amending electoral legislation regarding members of the Bosnia and Herzegovina Presidency and House of Peoples delegates to ensure full compliance with the European Convention on Human Rights within one or two years.[53]

The Court also agreed with the opinion of the Venice Commission, which took part as *amicus curiae* in the examination of the appeals lodged by Dervo Sejdić and Jakob Finci, that "there exist mechanisms of power-sharing which do not automatically lead to the total exclusion of representatives of the other communities"[54] as well as that it "remains legitimate to try to design electoral rules ensuring appropriate representation for various groups".[55] Yet despite critical opinions on the constitutional provision regarding the elections to the House of Peoples as well as the constitutional provision regarding the elections to the Presidency, neither the Parliamentary Assembly of the Council of Europe nor the Venice Commission put forward more tangible directions for the amendment of constitutional provisions regarding the elections to the above-mentioned state bodies.[56]

In line with the opinion of the Venice Commission, it would be preferable to gradually abolish the House of Peoples, to restructure the House of Representatives into a unicameral legislative body and to move the exercise of the vital interest veto to the House of Representatives.[57] However, as is already apparent from the political and constitutional structure of Bosnia and

[52] On the interpretation of the expression "priority over all other law" see Christian Steiner and Nedim Ademović, *Ustav Bosne i Hercegovine, komentar. Article II/1-7* (Sarajevo: Fundacija Konrad Adenauer, 2010), 142–143. Taris Vehabović, *Odnos Ustava Bosne i Hercegovine i Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda* (Sarajevo: ACIPS, 2006), 91–92; see also Odluka Ustavnog suda Bosne i Hercegovine u Predmetu broj U 5/04, Official Gazette of Bosnia and Herzegovina No 49/06.

[53] Council Decision of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Bosnia and Herzegovina and repealing Decision 2006/55/EC (2008/211/EC).

[54] Case of *Sejdić and Finci v. Bosnia and Herzegovina*, point 48 of the judgement.

[55] Council of Europe, European Commission for Democracy through Law (Venice Commission). 2005. *Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative*. Strasbourg, point 75.

[56] Sanja Bogdanović, "Perspektive ravnopravnosti ‚ostalih'," *Puls demokratije*, 15 July (2008), 17.

[57] Council of Europe, European Commission for Democracy through Law (Venice Commission). 2005. *Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative*. Strasbourg, points 35 and 36.

Herzegovina, which includes the constitutional peoples, along with "Others", as a special constitutional category in addition to the citizens, the abolition of the House of Peoples would already be questionable in principle.[58] Specifically, the discrimination against "Others" could be eliminated simply by electing from the Federation of Bosnia and Herzegovina to the House of Peoples – apart from five Bosniaks and five Croats – also one or two Serbs and one representative of ethnic or other minorities, and from the Republika Srpska – apart from five Serbs – also one or two Bosniaks and Croats and one or two representatives of ethnic minorities, while at the same time the House of Peoples of the Parliamentary Assembly of the Federation of Bosnia and Herzegovina and the House of Peoples of the Republika Srpska would elect delegates on the proposal by the club of constituent peoples and the club of "Others". The second option is to recognize a special voting to "Others" in the House of Representatives and ensure their proportional representation in this House as well as a special constitutional provision for the protection of their rights. In doing so, the Slovenian Constitution, which stipulates that laws, regulations, and other general legal acts that concern the exercise of the constitutionally provided rights and the position of the national communities exclusively, may not be adopted without the consent of representatives of these national communities (Article 64, paragraph 5), could be taken as a reference point.[59]

The second strategic priority of Bosnia and Herzegovina in the present stage of its association with the European Union is to adopt the constitutional amendments necessary for the assumption and fulfilment of obligations arising from the process of its association with the European Union. By signing and ratifying the Stabilisation and Association Agreement with the EU in 2008, Bosnia and Herzegovina legally committed itself to approximating its legislation to that of the European Community or European Union (paragraph 13 of the Preamble in connection with Article 1, second point).[60] A crucial precondition for the fulfilment of this commitment is the allocation of responsibilities between central state and the Entities by constitutional amendments in the areas relating to the European Union. This is especially urgent in the field of the regulation of the movement of workers, the provision of services and capital movement.

According to the opinion of the Venice Commission, the State level should have exclusive competencies with regard to matters concerning the European Union.[61] This Commission further states that "[t]he State shall ensure compliance with

[58] Šahbaz Džikanović, "Platforma za novi Ustav Bosne i Hercegovine," *Bulletin for Legal Theory and Practice,* 36, 5–6 (2005), 15–16.

[59] Paragraph 5 of Article 64 of the *Constitution of the Republic of Slovenia*, Official Gazette of the Republic of Slovenia, No 33/91.

[60] Council Regulation (EC) No 594/2008.

[61] See Opinion of the Venice Commission at footnote 10, point 26.

the principles, priorities, and demands set forth by the European Union in the phases before and after accession."[62] Ensuring "compliance with the principles, priorities, and demands" in the area of EU-related matters is, by all means, one of the exclusive competencies of the State level. However, the issues in this field are much more complex. Specifically, given its social and political structure, Bosnia and Herzegovina cannot constitute itself either as a traditional federation nor a centralised state. Certain competencies of the Entities in the area of EU-related matters would also strengthen the legitimacy and integrity of its authority. The adoption of constitutional changes in this direction was also indirectly supported by the European Parliament in its 2010 Resolution on the situation in Bosnia and Herzegovina, in which it called for the regulation of the relationship between the central State and the Entities based on the principle of subsidiarity.[63]

Another issue needs to be considered here: the constitutional arrangement of the potential co-operation of the two Entities when considering those EU proposals that could significantly affect the competencies of the Entities or be prejudicial to their exclusive competencies.[64] The Treaty establishing the European Community already provided for the possibility that the authorised Line Minister of Federal Units could attend Council meeting on behalf of Member States (Article 203). This provision is also included in the consolidated version of the Treaty on European Union (Article 16, point 2).[65] The question is if, based on this provision, the authorised Line Ministers of the two Entities could also attend Council meetings.

In the first or second stage of constitutional reform, Bosnia and Herzegovina should also determine the constitutional basis for the decision on accession to the European Union. In this regard, it has (like other countries) two main possibilities: to adopt the abstract or generalised approach according to which it would allow the transfer of part of its sovereign rights to international organisations, thus implicitly also to the European Union, or the concrete or casuistic approach in line with which it would explicitly transfer part of its sovereign rights to the

[62] European Commission for Democracy Through Law (Venice Commission), *Report on the participation of political parties in elections*, CDL(2006)025 (16 March 2006).

[63] See *Resolution on the situation in Bosnia and Herzegovina*, point 14 of the Chapter on the constitutional reform and the reform of the judiciary.

[64] Mile Dmičić, "Bosna i Hercegovina kao državna zajednica sui generis - privremeno rešenje ili model za budučnost," *Anali Pravnog fakulteta u Beogradu*, 58, 1 (2010), 226–227.

[65] See Official Journal of the European Union, *Consolidated versions of the Treaty on European Union and the Functioning of the European Union*, OJ C 83, 30 March 2010. Available at http://eur-lex. europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:EN:PDF (June 2011).

European Union.[66] Given the previous and anticipated role of the European Union prior to the accession of Bosnia and Herzegovina to this organisation, as well as the fact that even after its accession to the European Union, further involvement of this organisation will be required in its internal social and political consolidation as well as stabilisation, it would be logical and sensible to apply the concrete or casuistic approach when defining the constitutional basis for its decision on accession to the European Union. At the same time, Bosnia and Herzegovina should by means of constitutional amendments define the constitutional basis for legislative and procedural regulation of the relationship between the Parliamentary Assembly and the Council of Ministers. After the supplementation of the Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality to the revised Treaty on European Union, which strengthened the role of national Parliaments in this organisation, the definition of the legal relationship between these two state bodies would be even more urgent.[67] Similarly, following the supplementation of the principle of subsidiarity in the Treaty on European Union, which in addition to Union and central levels also includes regional and local levels,[68] (Article 5, point 3), it would also be necessary to define in a particularly responsible and sensible way the legal relationship between the central State, two Entities and cantons in the execution of shared responsibilities of the European Union.

5 Conclusion

Despite the fact that prior to the last year's October elections, by means of special resolutions the European Parliament and the Parliamentary Assembly of the Council of Europe had forcefully called upon Bosnia and Herzegovina to adopt the appropriate constitutional changes, and despite the fact that the Stabilisation and Association Agreement between the EU and Bosnia and Herzegovina has also been published in the Official Journal of the European Union, none of the State institutions or political elites again proposed to adopt constitutional changes. At the May, 2011 session of the UN Security Council, Valentin Inzko, High Representative of the International Community in Bosnia and Herzegovina, stated that Bosnia and Herzegovina is facing its worst political crisis since the Dayton Peace Agreement. The current political situation is also very well illustrated by the title "Progress, Stagnation *or* Regression?" of

[66] For more information see Rudi Kocjančič, "3.a člen kot evropski člen Ustave Republike Slovenije," in *Petnajst let uresničevanja Ustave Republike Slovenije*, ed. Igor Kaučič (Ljubljana: Pravna fakulteta, 2007), 92–96. See also Rudi Kocjančič, "Ustavni osnov za odlučivanje o pristupanju Slovenije Evropskoj uniji", *Anali Pravnog fakulteta u Beogradu*, 53, 1 (2005), 114–119.

[67] Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality, see, in particular, Articles 5 and 6.

[68] Official Journal of the European Union, *Consolidated version of the Treaty on European Union*, OJ C 83, 30 March 2010, article 5, point 3. Available at http://eur-lex. europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:EN:PDF (June 2011).

the important international conference on Western Balkans that took place in Sarajevo in mid-June. In fact, the first half of 2011 was a time of political crisis, especially due to the constitutionally questionable formation of the Government of the Federation of Bosnia and Herzegovina and the fact that the House of Representatives and the House of Peoples of Bosnia and Herzegovina – due to political obstructions and blockades by monoethnic political parties – were formed a full eight months after the October elections, and the Council of Ministers nearly nine months after those elections. Political circles were also stirred by to the April decision of the National Assembly of Republika Srpska on the call of a referendum in which the electoral body of this Entity would vote against the Prosecutor's Office Law and the Law on the Court of Bosnia and Herzegovina as well as in favour of the limitation of the Bonn powers of the High Representative of the International Community; however, the European Union politically prevented its execution.

In conclusion, it can be observed that Bosnia and Herzegovina will not adopt the constitutional amendments without an authoritative and intense intervention by the international community, especially the European Union.

Bibliography

Amendments to the Constitution of Bosnia and Herzegovina, 2006. Available at www.ohr.int/ohr-dept/legal/oth-legist/doc/fbih-constitution.doc (June 2011).

Bebler, Anton. *Ob desetletnici pariških in dejtonskih sporazumov*. International institute IFIMES. Available at www.ifimes.org (February 1, 2006).

Beyme, von Klaus. *Das politische System der Bundesrepublik Deutschland (10th ed.).* Wiesbaden: VS Verlag für Sozialwissenschaften GW V-Fachverlag GmbH, 2004.

Biskupska konferencija BiH potvrdila ranije stavove. Oslobodjenje, October 27, 2007.

Bogdanović, Sanja. "Perspektive ravnopravnosti ‚ostalih'." *Puls demokratije*, July 15, 2008.

Butmirski paket je minimum. Oslobodjenje, November 3, 2008.

Cerar, Miro. *Bosnia and Herzegovina at the crossroads?* International institute IFIMES. Available at www.ifimes.org (June, 2011).

Clinton, D. Robert. "A Brief History of the Adoption of the United States Constitution." *Iowa Law Review,* (1990): 891–893.

Council of Europe. *Strengthening of democratic institutions in Bosnia and Herzegovina. Council Regulation (EC) 533/2004*. Strasbourg, 2004

Council of Europe. *European Commission for democracy through law (Venice Commission). Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative*. Strasbourg, 2005.

Council of Europe. *Constitutional reform in Bosnia and Herzegovina*. Strasbourg,

2006.

Council of Europe. *European Commission for democracy through law (Venice Commission). Preliminary opinion on the draft amendments to the Constitution of Bosnia and Herzegovina*. Strasbourg, 2006.

Council of Europe. *Decision on the principles, priorities and conditions contained in the European Partnership with Bosnia and Herzegovina and repealing Decision 2006/55/EC.* Strasbourg, 2008.

Council of Europe. *Honouring of obligations and commitments by Bosnia and Herzegovina*. Strasbourg, 2008.

Dmičić, Mile. "Bosna i Hercegovina kao državna zajednica sui generis – privremeno rešenje ili model za budučnost." *Anali Pravnog fakulteta u Beogradu,* 58, 1 (2010): 226–227.

Du sičge de Sarajevo aux acords de Dayton. Le Monde, November 22, 2005.

Džikanović, Šahbaz. "Platforma za novi Ustav Bosne i Hercegovine." *Bulletin for Legal Theory and Practice,* 36, 5–6 (2005): 15–16.

Grad, Franc. *Posebnosti parlamentarnega sistema v naši pravni ureditvi*. Presented at the VI. dnevi slovenske uprave. Ljubljana, Portorož: Visoka upravna šola, 1999.

Grad, Franc. *Parlament in vlada*. Ljubljana: Uradni list Republike Slovenije, 2000.

Grad, Franc. "Government." In *The Constitutional System of the Republic of Slovenia*, ed. Igor Kaučič. Ljubljana: SECLI, 2002.

Gro , Thomas. "Zwei-Kammer-Parlamente in der Europäischen Union." *Zeitschrift für ausländisches öffentliches Recht und Völkerrech*, 63 (2003): 41–43.

Häberle, Peter. *Ustavna država*. Zagreb: Politička kultura, 2002.

Hermes, Georg. *Grundgesetz-Kommentar.* Tübingen: Mohr Siebeck, 1998.

Herzog, Roman. *Grundgesetz. Kommentar.* München: Beck, 1993.

Hesse, Konrad. *Grundzüge des Verfassungsrechts der Bundesrepublik Deutschland*. Heidelberg, Müller Verlag, 1999.

Huntington, P. Samuel. *Kampf der Kulturen: Die Neugestaltung der Weltpolitik im 21. Jahrhundert. 6th ed.* München: Goldmann, 1998.

Ismayr, Wolfgang. "Die politischen Systeme Westeuropas im Vergleich." In *Die politischen Systeme Westeuropas im Vergleich*, ed. Wolfgang Ismayr. Opladen: Leske-Budrich, 1999.

Ismayr, Wolfgang. "Die politischen Systeme Westeuropas im Vergleich." In *Die politischen Systeme Osteuropas*, ed. Wolfgang Ismayr. Opladen: Leske-Budrich, 2002.

James Steinberg spašava butmirski paket. Dnevni avaz, December 2, 2008.

Kaljanac, Maja, Faris Vehabović and Nidžara Ahmetašević. *Proces ustavnih promena u BiH.* Sarajevo: Centar za ljudska prava, 2006.

Kocjančič, Rudi. Ustavni osnov za odlučivanje o pristupanju Slovenije Evropskoj uniji. *Anali Pravnog fakulteta u Beogradu,* 53, 1 (2005): 113–131.

Kocjančič, Rudi. "Stabilisierungs- und Assoziierungsprozess auf dem Gebiet des ehemaligen Jugoslawien." *Zeitschrift für ausländisches öffentliches*

Recht und Völkerrecht, 66 (2006): 439–440.

Kocjančič, Rudi. "3.a člen kot evropski člen Ustave Republike Slovenije." In *Petnajst let uresničevanja Ustave Republike Slovenije*, ed. Igor Kaučič. Ljubljana: Pravna fakulteta v Ljubljani, 2007.

Kristan, Ivan. "Verfassungsentwicklung Sloweniens." In *Jahrbuch des öffentlichen Rechts der Gegenwart*, ed. Peter Häberle. Tübingen: J.C.B. Mohr (Paul Siebeck), 1994.

Krivic, Matevž. "Vlada." In *Nova ustavna ureditev Slovenije*, ed. Ivan Bele. Ljubljana: Pravna fakulteta v Ljubljani, 1992.

Küttler, Elisabeth. *Die Menschenrechtskammer für Bosnien-Herzegowina*. Berlin: BWV/Berliner Wissenschafts – Verlag GmbH, 2003.

Lideri BiH danas na tajnom sastanku o promjeni Daytona. Jutranji list, November 11, 2005.

Marko, Joseph. "Friedenssicherung im 21. Jahrhundert: Bosnien und Herzegowina als europäische Herausforderung." In *Völker- und Europarecht, 25. Österreichischer Völkerrechtstag*, eds. Konrad Ginther, Wolfgang Benedek, Hubert Isak and Renate Kicker. Vienna: Verlag Österreich, 2001.

Marko, Joseph. "Integration durch Recht." In *Europas Identitaten, Mythen, Konflikte, Konstruktionen,* eds. Monika Mokre, Gilbert Weiss, and Rainer Bauböck, Frankfurt/New York: Campus Verlag, 2003.

Nystuen, Gro. *Achieving Peace or Protecting Human Rights? Conflicts between Norms Regarding Ethnic Discrimination in the Dayton Peace Agreement*. Leiden/Boston: Martinus Nijhoff, 2005.

O'Tuathall, Gearoid. "La Republika Srpska est-elle européenne, La grande stratégie du Bureau du Haut-Representant pour ancrer la Bosnie-Herzégovine dans L'Espace geopolitique européen." In *L'ex Yugoslavie dix ans aprčs Dayton*, eds. André-Louis Sanguin, Amael Cattaruzza and Emmanuelle Chaveneau-Le Brun. Paris: L'Harmattan, 2005.

Official Journal of the European Union. *Consolidated version of the Treaty on European Union,* March 30, 2010. Available at http://eur-lex. europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:EN:PDF (June 2011).

Official Gazette of Bosnia and Herzegovina, no. 29/2000.

Omeragić, Avdo. "Ako BiH želi biti ozbiljna, mora objediniti institucije." *Oslobodjenje,* December 20, 2005.

Paket ustavnih promjena ide u parlamentarnu proceduru. Dnevni avaz, 19 March 2006.

Pejanović, Mirko. "Provodjenje amandmana o konstitutivnosti naroda u Federaciji BiH i Republici Srpskoj." *Pravna misao, Časopis za pravnu teoriju i misao,* 35, 7–8 (2004): 4–7.

Pöschl, Magdalena. "Diskriminierung in Bosnien und Herzegowina." *Zeitschrift für öffentliches Recht,* 60 (2005): 217–235.

Prudski sporazum glavna tema. Dnevni avaz, December 23, 2008.

Prudski sporazum prvi pozitivan korak. Oslobodjenje, November 22, 2008.

Revealed: US plans for Bosnian constitution. The Guardian, November 11, 2005.

Ribičič, Ciril. "Uravnoteženost političnega zastopstva v parlamentu." In *VII. dnevi javnega prava*. Portorož: Inštitut za javno upravo, 2002.

Schäffer, Heinz. "Deutschlands 'Grundgesetz': Vom Verfassungsprovisorium zur Musterverfassung." *Die öffentliche Verwaltung,* 12 (June 1999): 485–495.

Schambeck, Herbert. *Reflections on the significance of the bicameral parliamentary system.* Available at http://www.senateurope.org/eng/28062002.html (June 2011).

Schwarz, Axel. *Die Verfassung des Gesamtstaates*. Berlin: Europa-Blätter, 2003.

Starck, Christian. "Generalbericht." In *Grundgesetz und deutsche Verfassungssprechung im Spiegel ausländischer Verfassungsentwicklung: Landesberichte und Generalbericht der Tagung für Rechtsvergleichung 1989 in Würzburg*, ed. Christian Starck. Baden-Baden: Nomos Verl.-Ges, 1990.

Steiner, Christian and Nedim Ademović. *Ustav Bosne i Hercegovine, komentar. Article II/1-7.* Sarajevo: Fundacija Konrad Adenauer, 2010.

Šarčević, Edin. "Verfassungsgebung 'konstitutives Volk': Bosnien und Herzegowina zwischen Natur-und Rechtszustand." In *Jahrbuch des Öffentlichen Rechts der Gegenwart*, ed. Peter Häberle. Tübingen: Mohr Seibeck, 2002.

Trnka, Kasim. "Konstitutivnost naroda i uključivanje Bosne i Hercegovine u evropske integracije." *Pravna misao, Časopis za pravnu teoriju i misao,* 35, 7–8 (2004): 18–21.

Trnka, Kasim. *Ustavno pravo*. Sarajevo: Fakultet za javno upravo, 2006.

U.S. Urges Bosniacs to Revise Constitution. The New York Times, November 22, 2005.

Vehabović, Taris. *Odnos Ustava Bosne i Hercegovine i Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda.* Sarajevo: ACIPS, 2006.

Villalón, Pedro Cruz. "Bericht Spanien." In *Das Grundgesetz im internationalen Wirkungszusammenhang der Verfassungen: 40 Jahre Grundgesetz*, ed. Ulrich Batist. Berlin: Duncker und Humbol, 1990.

Virant, Gregor. "Vlada." In *Komentar Ustave Republike Slovenije,* ed. Lovro Šturm, Ljubljana: Fakulteta za podiplomske državne in evropske študije, 2002.

Vitzthum, Wolfgang Marcus and Marcus Mack. "Multiethnischer Föderalismus in Bosnien-Herzegowina." In *Europäischer Föderalismus, supranationaler, subnationaler und multiethnischer Föderalismus in Europa*, ed. Von Wolfgang Graf Vitzhum. Berlin: Duncker und Humbold, 2000.