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**Editorial Team:** Beata Surmacz (Director of ICE), Tomasz Stępniewski (Deputy Director of ICE), Agnieszka Zajdel (Editorial Assistant), Aleksandra Kuczyńska-Zonik, Jakub Olchowski, Konrad Pawłowski, Agata Tatarenko

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Jan Muś

# The debate on constitutional changes in Bosnia and Herzegovina is gaining momentum

**The systemic reforms promoted by the international community in BiH aim at reaching an agreement between the leaders of the Bosniaks and Bosnian Croats. However, it ignores the most important problems faced by Bosnia and Herzegovina and its inhabitants – the ethnicization of politics with the simultaneous state capture of individual political groups. 26 years after the end of the war, these two processes define and institutionalize the most important lines of political divisions in BiH society.**

The debate around the constitutional system of BiH, which has intensified since the 2018 elections, is caused by many factors: the upcoming in 2022 general elections in BiH, a very poor social situation resulting from the inability to deal with the effects of COVID-19 in BiH, the issue of BiH cooperation with NATO, and the expected election of a new High Representative of the international community responsible for facilitation of implementation of the Dayton Peace Agreement. Although the issues under discussion have been functioning in the public space since the end of the war in 1995, there has been a shift in emphasis. The centre of gravity is currently the Bosnian-Croatian axis of the dispute over the creation of a third Croatian autonomous unit within BiH.

**Three charges.** The main objection to the existing constitutional order and political system is the division of powers within the state. The provisions of the constitution impose a strongly decentralized and asymmetrically divided state. Most of the power is concentrated in two entities – the Federation of BiH and Republika Srpska BiH. The Republika Srpska is a unitary unit dominated by Serbs. The Federation of Bosnia and Herzegovina is divided into ten cantons, which also have a significant share of power. Four out of ten cantons have a Croatian majority, and the fifth has a significant (38%) Croatian minority. There is a Bosniak majority in the other six cantons. The State of Bosnia and Herzegovina is a confederation, institutions of which have virtually no exclusive competences. All of them are duplicated or supplemented by the authorities of the entities or, in the case of the BiH Federation, of the cantons. Most elections are held on an ethnic basis, i.e. on the basis of the nationality (Bosniak, Croatian or Serbian) of the candidate and the voters themselves.

Criticisms of the current political system in BiH, however, vary radically. Bosniak leaders say the cause of state failure is excessive decentralization. Bosnian Serbs emphasize that such strong decentralization is a response to the ethno-political divisions in the state and that centralization will lead to conflict. Bosnian Croats are trying to form their own entity. Although they rule or co-govern in four cantons, they have been politically dominated by Bosnian Muslims at the higher level of the BiH Federation, and the electoral system of members of the collective head of state, the BiH Presidency, prevents them from electing their own representative. Currently, candidates from Croatian parties are losing elections to Željko Komšić, a Bosnian Croat backed primarily by moderate Bosniak voters, but also Croatian and Serbian voters from large cities. As a result, Bosniaks are engaged in a serious political dispute with both Bosnian Serbs and Bosnian Croats.

BiH's constitutional system has been criticized by the Council of Europe. In its judgment of December 2009, the European Court of Human Rights (ECtHR) in the Sejdić-Finci case confirmed the discriminatory nature of the electoral system in Bosnia and Herzegovina against the rights of ethnic minorities. In the opinion of the Tribunal, it prevents all those who do not want or are unable to associate themselves with one of the three so-called constitutive nations (i.e. Bosniaks, Croats, or Serbs) from standing for the Presidium and the upper house of parliament. In other words, according to the Tribunal, not all BiH citizens have equal electoral rights, and the discrimination has an ethnic character and/or is related to the place of residence.

Another objection concerns the controversial issue of the role of the High Representative of the international community in the political life of BiH. According to representatives of Bosnian Serbs, and supported by Russian diplomats, the High Representative and his actions are destructive and undemocratic. This official's mandate

comes from the choice of Western states concentrated in NATO and the EU and not the citizens of Bosnia and Herzegovina. His broad authority (he can, for example, remove elected officials from their positions and invalidate adopted legislation) is, according to Serbian and Russian leaders, contrary to the principles of democracy. At the same time, the High Representative, especially in the 1990s and early 2000s, repeatedly reacted against politicians whose actions were destructive to the Dayton Agreement.

**Real dimension.** A significant part of the conflict revolves around the election of a Croatian member of the BiH Presidency. Allowing Croatian voters to elect a Croatian member of the Presidency, the argument goes, enables the Croatian political elite to exercise their full political rights, and thus guarantee the possibility of social and economic development. This basic argument, used practically since the beginning of the 1990s, has been advanced by political leaders of all three groups inhabiting BiH. According to this logic, the state is too divided internally or too decentralized to carry out appropriate social, economic, administrative, and other reforms. In other words, the multi-level system of state governance and shared sovereignty make it possible to avoid responsibility and shift it to representatives of other ethno-political options / political programs.

A change in the electoral system with regard to the members of the Presidium of BiH would change very little. The Presidium of BiH does not have significant powers in a decentralized system of government. The only benefit would be that a representative of the largest Croatian party, the Croatian Democratic Union (Hrvatska Demokratska Zajednica, HDZ), could hold a prestigious office with exposure to the international relations of the state. However, a member of the BiH Presidium has no real influence on the socio-economic situation "on the ground." Moreover, Bosnian Croats are calling for the creation of a third "Croatian" entity in which they would not have to compete with the larger and often stronger Bosniak parties. As is often indicated, the creation of the third entity will lead to a further ethno-political and territorial division of the state.

Croatian demands for further autonomy ignore the expectations of the Council of Europe with regard to respect for minority rights. While Bosnian Croats are demanding that members of this constitutive nation elect their representative in the Presidium, the Council of Europe and the ECtHR are calling for equality for all BiH citizens. Thus, two incompatible political models stand in front of each other – civic and national. One of the answers may be the creation of a separate, third Croatian entity and a change of the electoral system for the BiH Presidium from national to civic. This is one of many proposals, and at this stage, it is difficult to predict which scenario will be adopted.

The debate on changes to the internal system is accompanied by the question regarding the future of the High Representative. The High Representative has been criticized especially by the authorities of Republika Srpska, who want to dissolve this institution or limit its powers. According to them, the High Representative and his past actions have led directly to the poor situation in BiH today. However, this vocal criticism is aimed at diverting public attention from pressing internal problems and political mobilization around the slogan of the sovereignty of Republika Srpska and the Serbian people.

**Conclusions.** The current debate on the political shape of Bosnia and Herzegovina has in fact been going on for over thirty years. Its subject matter evokes many political emotions, both in BiH itself and in the forum of the international community (primarily the EU, the United States, Russia, and Turkey). Possible changes are institutional in nature and as such do not address the causes of the political conflict, the capture of the state by political elites, or the frequent paralysis of public institutions. With the present balance of power, clearer political rights of the Croatian people in BiH will lead to the deepening of ethno-political divisions. At the same time, experience and the nature of the current political discourse teach us that a separate, third "Croatian" entity will be a platform for further irredentist claims. No point in the public debate raised by the elite is directed against the problem of corruption or nepotism.