



Court Law Review

ISSN: 3061-0893

E-ISSN: 3061-0907

Journal homepage <https://courtlawreview-aip.com/>

## Research Article

# THE IMPORTANCE OF EFFECTIVE INSTITUTIONAL FRAMEWORKS IN THE EU INTEGRATION PROCESS: LESSONS FROM BOSNIA AND HERZEGOVINA

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## ABSTRACT

**Background:** The progress of Bosnia and Herzegovina in the process of EU integrations can be described as slow and difficult. Many reasons contribute to such development, starting with political instability. However, even in the case of absence of political difficulties, certain features of the constitutional and legal system of the country make decision-making at state level and conducting necessary reforms slow and ineffective. Bosnia and Herzegovina's constitution is a part of a Dayton Peace Agreement, which was a result of long peace negotiations to end one of the bloodiest conflicts in the 1990's. It achieved in stopping the conflict, but inserted many features which make reforms difficult, such as complicated decision-making process, fragmented state apparatus and division of competences between different levels of government. One of the features of the constitutional system is the set of group rights belonging to the so-called constituent peoples. The principle foresees certain procedural rules related to the parity in appointment of officials as well as necessary quotas and veto powers in the decision-making process in the legislative and executive bodies. Primarily seen as a compromise to bring back inter-ethnic trust, in recent years, it has been increasingly seen by European Institutions such as

DOI:

<https://doi.org/10.33327/CLR/3061-0907/2025/1-00003>

Date of submission: : 01 Aug 2025

Date of acceptance: 29 Aug 2025

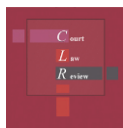
Online First publication: 09 Sep 2025

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*European Court of Human Rights and the European Commission, as discriminatory and ineffective, hampering the progress of the state on its path to EU integration.*

*The European Court of Human Rights has in multiple cases described the realization of principle of constituent peoples as contrary to human rights standards. On the other hand, the EU institutions, such as European Commission, in its assessments of the readiness of Bosnia and Herzegovina to progress in EU integrations and potentially become the EU Member state, has pointed to the fact that realization of the principle is detrimental to the decision-making process. The non-compliance with the European Court of Human Rights decisions related to the discriminatory nature of the principle, has slowed the country's EU integration process, even in the stage of signing of the Stabilization and Association Agreement, as is still an outstanding obligation. All of that is negatively impacting institutional frameworks aimed at devising and implementing necessary reforms on the EU integration path. This article analyses the position of the principle of "constituent peoples" in the legal system of the country and its evaluation by the European institutions as detrimental to country's progress.*

**Methods:** *The research employs legal methods of content analysis, historical legal method, and normative method. Content analysis covers constitutional provisions, international agreements, and relevant case law, especially at the international level. The historical method contextualizes the development of Bosnia and Herzegovina's legal system, while the normative method examines European institutional recommendations and their potential impact on reform.*

**Results and Conclusions:** *The analysis shows that the principle of constituent peoples, while originally introduced as a temporary mechanism to ensure peace and stability, has become a structural obstacle to Bosnia and Herzegovina's democratic development and EU integration. European Court of Human Rights and the European Commission have consistently highlighted its discriminatory character, and its application hampers institutional efficiency, especially in decision-making processes requiring consensus. Although the principle aimed to protect group interests, its persistence undermines both human rights standards and the effective functioning of government. Replacing it with a new, non-discriminatory framework aligned with European standards is therefore a legal necessity. Such a framework should guarantee minority rights while enabling institutions to function efficiently and fulfill obligations on the EU path.*

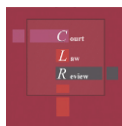
## 1 INTRODUCTION

The process of EU integrations can be described as complex and long-lasting, due to the fact that the candidate country needs to undergo a large number of reforms, including those of political, economic, societal and of course legal nature. So, it is no wonder that for many candidate countries, in past and in present, it has been a difficult task. When we talk about Bosnia and Herzegovina and its path on EU integrations, the difficulties have been compounded by the very complicated internal structure and specific constitutional

and legal system. Bosnia and Herzegovina, primarily due to its recent past and the position of the post-conflict society has a very complex constitutional setup and specific legal solutions which were primarily aimed at finding a compromise between the once warring ethnic groups. The constitution of Bosnia and Herzegovina is itself a product of difficult peace negotiations and is a part of a peace agreement. The constitution foresees the power sharing mechanism and internal territorial division, as well as mechanisms aimed for protection of the rights and interests of the main ethnic groups. The country is divided into entities, with wide competences and a government on state level which reserves certain competencies such as international relations etc. One of the specific features of the constitutional system of Bosnia and Herzegovina is a principle of constituent peoples and their special rights. Designed to keep any ethnic group being dominated by other it has foreseen a set of rules which mandates the selection and appointment of officials in certain institutions (e.g. state parliament, government and the presidency, but is spanning to other state institutions and agencies) requiring ethnic quotas, parity, and specific rules on decision-making. Adoption of laws or decisions in vast majority of cases requires either consensus, or the existence of majority vote within the representatives coming from each ethnic group or entity. In addition, constituent peoples are equipped with veto powers and can block the adoption of decisions deemed to be detrimental to their “vital interests”.

As said such solutions were initially installed as a compromise to bring back the trust between the ethnic groups, and, as the constitution itself, implicitly deemed as temporary solution. However, since the decision making process is very rigid and full of options for any of the sides to bring any changes to a halt, very little progress was made to introduce other mechanisms. Such situation does bring certain degree of stability, however, hinders any meaningful reforms. However, reforms are the most important aspect of the EU integration process as the candidate country undertakes the obligation to conform with the requirements of EU law and policies, as well as certain shared values. Aside from constant political instability the country is facing, one of the main obstacles in the realization of much needed reforms are the very features of the constitutional system, one of them being the concept of constituent peoples.

The European Court of Human Rights and EU institutions have, on several occasions assessed the principle as discriminatory and inefficient, most notably in the court cases such as *Sejdic-Finci*, and the EU Commissions assessment on the Bosnia and Herzegovina's application for the membership in the European Union. Although the European Court of Human Rights is an institution of Council of Europe, and not the European Union itself, the non-implementation of the *Sejdic-Finci* (and other similar cases that followed) was one of the main obstacles for the very entry into force of the



Stabilization and Association Agreement, and is still an obstacle in opening of any negotiations chapters, since it is deemed that non-discrimination is one of the core values of the EU. Therefore, it is especially problematic if the discriminatory norms are found in the very constitution of the country. Changes of the constitution are a difficult task in any country, and that is especially true in the countries with complex legal systems, however, they are needed if Bosnia and Herzegovina wishes to make any progress towards EU membership.

The negative implications of the principle of constituent peoples are reflected in the inefficiency of the institutional frameworks, which are tasked with the implementation of necessary reforms related to the EU integrations. This article aims to analyze the position of the principle of constituent peoples, and the assessment of it made by the European Court of Human Rights and the European Commission, especially in the context of fulfilling the obligations stemming from the EU integrations.

## 2 METHODOLOGY

This research uses legal methods of content analysis, historical legal methods, and normative methods. The content analysis method is used to analyze the relevant legislative texts, including constitution and international agreements and identify the most consequential parts. Content analysis method also includes the analysis of relevant case law, especially on the international level, which is relevant in the assessment of compatibility with international human rights standards. Historical legal method is used to describe development and contextualize the current legal and constitutional system of the country. Normative method analyses the recommendations made by relevant European institutions and their potential in reforming current legal frameworks.

In terms of literature review, writing related exclusively to the principle of constituent peoples is rather scarce. In the scientific literature in Bosnia and Herzegovina, main authority on the issue are the writings of Prof. Dr. Kasim Trnka and other authors cited in the research. Analysis of the principle is mainly done in the context of analysis of the judgments of European Court of Human Rights and its discriminatory nature. However, its evaluation in the context of EU integrations is lacking, therefore this research aims to point out that specific context.

### 3 BASIC CHARACTERISTICS OF THE DAYTON PEACE AGREEMENT AND CONSTITUTIONAL ORDER OF BOSNIA AND HERZEGOVINA

The General Framework Peace Agreement for peace in Bosnia and Herzegovina, was formally concluded in Paris on December 14<sup>th</sup> 1995, by the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia, as parties.<sup>1</sup> However, due to the city in which the negotiations took place, the agreement is better known as the Dayton Peace Agreement (or just the Dayton Agreement). The Dayton Agreement consists of a series of annexes of which Annex 4 stands out as the Constitution of Bosnia and Herzegovina, which determined the new constitutional order of Bosnia and Herzegovina.

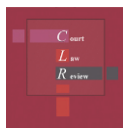
Regarding the constitutional legal order established by the Dayton Agreement, several main features can be identified. Dayton confirmed the statehood, territorial integrity, international legal subjectivity and continuity of Republic of Bosnia and Herzegovina (now named simply Bosnia and Herzegovina) as an independent sovereign state. On the other hand, the Annex 4 of the Dayton Agreement (Constitution of Bosnia and Herzegovina) carries out an internal reorganization of the country, which foresees the existence of two entities: the Federation of Bosnia and Herzegovina and the Republika Srpska (RS). Entities do not have the right of unilateral secession, on the other hand, their position is guaranteed by the Constitution. The inter-entity line represents an administrative line, not a state border. The Constitution and other annexes of the Dayton Agreement establish a broad catalog of human rights. Only the state of Bosnia and Herzegovina enjoys international legal subjectivity, and the entities are given the opportunity to conclude agreements on special relations with neighboring countries.<sup>2</sup> The Constitution established a bulky state apparatus with multiple levels and a division of competences, which provided for a certain number at the state level, but established the presumption of competence in favor of the entities. The Dayton Agreement also foresees the possibility of intervention of the international community, through the function of the "High representative" which is tasked with overseeing the implementation of the Dayton Peace Agreement and is equipped with sweeping powers which include imposition and annulment of laws and recall of elected and appointed officials, in the cases where the implementation of Dayton Agreement may be endangered. The use of these powers by first High Representatives was much broader, with their intervention into internal affairs fading over time, but still occasionally used.

The constitutional order of Bosnia and Herzegovina, as outlined by the Dayton agreement, introduced the principle of the "constituent peoples" by specifying Bosniaks, Serbs and

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1 General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement) (initialled 21 November 1995, signed 14 December 1995) <<https://peacemaker.un.org/en/node/9388>> accessed 15 July 2025.

2 Kasim Trnka, *Ustavno pravo* (2nd edn, Fakultet za javnu upravu 2006) 104.



Croats as “constituent peoples” to whom certain special rights and protection mechanisms belong when deciding and filling various government bodies. So, the legislative, executive and administrative bodies are populated in accordance with ethnic quotas and parity. The decision making in vast majority of the cases requires consensus, or supermajority which requires votes by the certain number of representatives of each ethnic groups (“ethnic majority”) and entities (“entity majority”). It also gives the constituent peoples veto powers by declaring a proposal as detrimental to their “vital interests”.

The very method of adopting the new Constitution and establishing a new constitutional legal order in Bosnia and Herzegovina is specific in comparison with the constitutions of other countries.<sup>3</sup> From a formal and legal point of view, the adoption of the new Constitution did not follow the constitutional procedure of changes provided for in the previous Constitution of the Republic of Bosnia and Herzegovina, so the characterization of the adoption of the new constitution in the literature goes from marking it as an “imposed” constitution<sup>4</sup> to the views which hold that the Constitution was accepted through “plebiscite” in practice by the people and its representatives.<sup>5</sup>

The Constitution of Bosnia and Herzegovina is the result of long-term negotiations and was created as a culmination of the efforts of the international community to find solutions that were primarily aimed at stopping the destruction of war, which is reflected in its “temporary” nature, which is not mentioned anywhere in the text, but which was implicitly understood.<sup>6</sup> In the time after the conclusion of the Dayton Agreement, that “temporary” solution, due to the lack of consensus on substantial changes, turned into a permanent one.

However, the procedure for amending the Constitution of Bosnia and Herzegovina foresees a decision-making procedure by democratically elected representatives in the legislative body at the state level of Bosnia and Herzegovina, with voting rules that require the existence of a qualified, ethnic and entity majority, so that the initial lack of democratic capacity of the Constitution can be corrected and compensated.

It should be noted that the Constitution of Bosnia and Herzegovina already had an amendment related to the status of Brčko District.<sup>7</sup> In international legal practice, it is not unknown for states to undertake obligation to change their legislation, including changes to

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3 Nicolás Figueroa García-Herreros, ‘Legality, Legitimacy and Democratic Constitution Making’ (2019) 1 *Jus Cogens* 97. doi:10.1007/s42439-019-00007-9.

4 Kasim Trnka, ‘Specifičnosti ustavnog uređenja Bosne i Hercegovine’ (2009) 11 *Revus* 51. doi:10.4000/revus.1102.

5 Kasim Trnka, ‘Dometi i izazovi ustavne rekonstrukcije Federacije Bosne i Hercegovine’ (Javni i privatni aspekti nužnih pravnih reformi u Bosnia and Herzegovina: Koliko daleko možemo ići? Zbornik Radova Međunarodna naučna konferencija, Tuzla, 13-14 decembar 2013) 13.

6 Edin Šarčević, *Dejtonski ustav: Karakteristike i karakteristični problema* (Konrad Adenauer Stiftung 2009) 62.

7 Trnka (n 4).

the Constitution itself, through an international legal agreement.<sup>8</sup> Examples of this can certainly be seen in the example of European integrations within which the candidate countries have agreed to significant changes within their legal systems, including in some cases changes to their constitutions.<sup>9</sup> Amending the entire text of the Constitution through an international agreement, on the other hand, is a kind of precedent.

In the period after the signing of the Dayton Agreement and the establishment of the current constitutional legal order of Bosnia and Herzegovina, with the assistance of the international community and in many cases, with the direct involvement of High representatives, there were certain changes in the expansion of state-level competences and the establishment of new institutions.<sup>10</sup> Among the most significant, one can definitely single out the defense reform, which established the Armed Forces of Bosnia and Herzegovina, the establishment of the indirect taxation system, changes in the functioning of the Council of Ministers, the establishment of the High Judicial and Prosecutorial Council, and the establishment of Court and Prosecutors office of Bosnia and Herzegovina at the state level, followed by the establishment of the State Border Police, several Intelligence and police agencies, etc. Some of them were established by entity agreements on the transfer of competences, others by decisions of High representatives. Key changes to the Constitution, however, did not take place, and the attempt to adopt constitutional amendments as part of the so-called The "April package"<sup>11</sup> was unsuccessful.

In terms of evaluating the Dayton Agreement, it must be said that its greatest achievement was that it stopped the war. Positive aspects are reflected in the aforementioned maintenance of the territorial integrity and international legal subjectivity of Bosnia and Herzegovina, as well as the definition of a broad catalog of human rights<sup>12</sup> that are (at least formally) directly applicable<sup>13</sup> throughout the territory of Bosnia and Herzegovina<sup>14</sup>

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8 An example of this can be the Agreement on Fiscal Issues concluded by individual countries of the European Union. The agreement was signed after the financial crisis, and with it the states undertook to introduce rules and mechanisms of fiscal restrictions, and to include them in their constitutions. See: Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (2 March 2012) <[http://data.europa.eu/eli/agree\\_eums/2012/302](http://data.europa.eu/eli/agree_eums/2012/302)> accessed 15 July 2025.

9 Anneli Albi and Samo Bardutzky (eds), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law: National Reports* (Asser Press 2019) 250. doi:10.1007/978-94-6265-273-6.

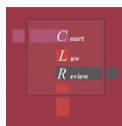
10 James Dobbins and others, *Europe's Role in Nation-Building: From the Balkans to the Congo* (Rand Corporation 2008) 145.

11 Amandmani na Ustav Bosne i Hercegovine (Aprilski Paket Ustavnih Promjena) (25 marta 2006) <[http://www.fcjp.ba/templates/ja\\_avian\\_ii\\_d/images/green/Aprilski\\_paket1.pdf](http://www.fcjp.ba/templates/ja_avian_ii_d/images/green/Aprilski_paket1.pdf)> accessed 15 July 2025.

12 Zoran Pajić, 'A Critical Appraisal of Human Rights Provisions of the Dayton Constitution of Bosnia and Herzegovina' (2008) 20(1) Human Rights Quarterly 128.

13 Lada Sadiković, 'Nadustavni karakter Evropske konvencije o ljudskim pravima u Bosni i Hercegovini' (2012) 1 Pregled: časopis Za društvena Pitanja 67.

14 Faris Vehabović, *Odnos Ustava Bosne i Hercegovine i Evropske konvencije za zaštitu ljudskih prava i osnovnih Sloboda* (ACIPS 2006) 23.



However, through the complex distribution of competences and complicated decision-making processes, the possibility of the state of Bosnia and Herzegovina to fulfill its international legal obligations is significantly hindered. The very content and vagueness of the Dayton Agreement point to its initial temporary nature,<sup>15</sup> adopted hastily as a means to stop the war, leaving room for improvement. However, due to its rigidity, the constitutional order does not provide enough space for the much-needed development of the effective state system, which should respond to the requirements and obligations imposed by the implementation of international obligations, especially obligations resulting from European integration.

#### 4 THE CONCEPT AND CONTENT OF THE PRINCIPLE OF "CONSTITUENT OF THE PEOPLES"

The concept of constituent peoples and their status in the constitutional and legal order of Bosnia and Herzegovina is one of the specific hallmarks of the Constitution of Bosnia and Herzegovina and the constitutional and legal order of Bosnia and Herzegovina. It is no surprise that Bosnia and Herzegovina, as a multi-ethnic state, in which no ethnic group constitutes the dominant majority of the population, has certain mechanisms intended to protect the rights and interests of all ethnic groups. However, an interesting question is how the specific mechanism that is present in the current constitutional and legal order of Bosnia and Herzegovina was created at all. On the other hand, its status is interesting compared to certain international standards, and the implications of the principle in relation to fulfilling the obligations of Bosnia and Herzegovina from the European integration process.

The principle of constituent peoples, as understood by the Dayton agreement, can be defined as the constitutional principle of collective equality that belongs to the peoples identified by the Constitution (Bosniaks, Serbs and Croats), which prohibits any privilege, dominance and territorial homogenization of one (or two) of those peoples over another.<sup>16</sup> We can define the concept of the constituent peoples as a *sui generis* collective right that belongs (by the Constitution) to the expressly determined peoples in Bosnia and Herzegovina,<sup>17</sup> and which, in its content, is lesser than sovereignty, but much broader than individual rights to national identity and equality and other forms of protection minority rights<sup>18</sup> Linguistically defined, the text in English uses the term "constituent",

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15 Damir Banović and Saša Gavrić (eds), *Država, politika i društvo u Bosni i Hercegovini: Analiza posredjtonskog političkog Sistema* (Magistrat 2011) 54.

16 Partial Decision III, U-5/98-III (Constitutional Court of Bosnia and Herzegovina, 1 September 2000).

17 Kemal Efendić, 'Konstitutivnost naroda u Bosni i Hercegovini: pregled teorijsko-pravnih i pojmovnih određenja' (2018) 11(21) *Anali Pravnog fakulteta Univerziteta u Zenici* 61.

18 Kasim Trnka, *Konstitutivnost naroda: Povodom odluke Ustavnog suda Bosne i Hercegovine o konstitutivnosti Bošnjaka, Hrvata i Srba i na nivou entiteta* (VKBI 2000) 57.

which can be understood as a constituent (part) of a whole, but also as a source of the constitutional legitimacy.<sup>19</sup>

The rights of the constituent peoples, their "users", i.e. members of the constituent peoples (Bosniaks, Serbs, Croats) are used in mutual interdependence, and one constituent people cannot exercise its rights in isolation and independently from other constituent peoples.<sup>20</sup> The concept of constituent peoples and the special group rights derived from it cannot be "territorialized" and used exclusively on certain territory by certain people, but is used by all peoples on all of the territory of Bosnia and Herzegovina.<sup>21</sup> Due to the impossibility of separate use and the impossibility of use in the context of territorial exclusivity, the constituent peoples have no right to secession.

The rights of the constituent peoples foresee a system of institutional and procedural guarantees for the protection of the equality of all the constituent peoples, regardless of the percentage in the demographic representation. The rights of the constituent nations are broader than the rights of the citizens that are not members of one of the constituent peoples (known in Constitution and in practice as the "others"), and therefore discriminatory in relation to the collective rights of minorities and "others".

In regards to its content, the principle of constituent peoples was implemented through the provision of various mechanisms for the protection of the equality of the three constituent peoples. This is guaranteed through a series of provisions of the Constitution in the form of the prohibition of discrimination and the institutional solutions related to the establishment and filling of organs and bodies and decision-making processes that guarantee multiple mechanisms for the protection of their interests.

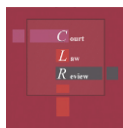
The establishment of the principle of constituent peoples and their rights was justified until the economic, social, cultural and other conditions for the realization of international standards are established, which implies their temporary nature and nature as transitional solutions.

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19 Joel Colón-Ríos, *Constituent Power and the Law* (OUP 2020) 46.

20 Tove H Malloy, *National Minority Rights in Europe* (OUP 2012).

21 The concept of constituent peoples in Bosnia and Herzegovina is, however, different from the concept of Community recognized by the Belgian constitution, because the constituent peoples do not have their own parliaments that have certain powers, but exercise their rights through participation in the work and decision-making of unique institutions at all levels.



## 5 THE RELATION OF PRINCIPLE OF CONSTITUENT PEOPLES AND FULFILMENT OF INTERNATIONAL LEGAL STANDARDS AND OBLIGATIONS FROM EU INTEGRATIONS

The principle of constituent peoples and the broadly defined emanation of the rights of constituent peoples have become the subject of criticism by various international bodies that directly or indirectly deal with human rights issues, primarily the European Court of Human Rights and the Commission of the European Union.

In its judgments, the European Court of Human Rights<sup>22</sup> assessed that the consistent implementation of the principle of constituent peoples results in discrimination against members of the "others", i.e. members of minorities, but also citizens of Bosnia and Herzegovina who do not want to declare and identify themselves as members of one of the three constituent peoples (e.g. persons that do not want to declare as members of any ethnic groups, or persons from families with "mixed" ethnic backgrounds).<sup>23</sup>

The European Court of Human Rights understood the principle of constituent peoples as a temporary solution that served to stop widespread violations of human individual and group rights, which was present during the war.<sup>24</sup> Thus, in the well-known "Sejdić-Finci" case, in paragraph 45 of its judgment, the Court states: "... *When the disputed constitutional provisions were adopted, a very fragile truce was reached on the ground.*" *The aim of these provisions was to stop the brutal conflict characterized by genocide and ethnic cleansing. The nature of that conflict was such that it was necessary to agree to the "constituent peoples" (ie Bosniaks, Croats and Serbs) in order to ensure peace. This, and without necessary justification, can explain the absence of representatives of other communities (such as local communities of Roma and Jews) at the peace negotiations and the participants' preoccupation with real equality among the "constituent peoples" in the post-war society.*"<sup>25</sup>

The European Court of Human Rights considers that the introduction of the principle of constituent peoples (including the acceptance of its discriminatory consequences) was a necessity in the context of achieving peace after severe war events and mass crimes, however, it sees the principle of constituent peoples itself as a "means" and not as a "goal", i.e. as a means that was needed to ensure peace, not as the final point in development.

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22 These are primarily judgments related to the discriminatory nature of certain constitutional rules and the electoral system, such as "Sejdić-Finci", "Pilav", "Zornić", "Šlaku", "Pudarić".

23 Making a comparison with the Kingdom of Belgium, belonging to a certain community in Belgium is determined by the election of voters from a certain unit belonging to one of the communities. On the other hand, in Bosnia and Herzegovina, ethnicity is determined by self-identification and self-declaration.

24 *Sejdić and Finci v Bosnia and Herzegovina* App nos 27996/06, 34836/06 (ECtHR, 22 December 2009) <<https://hudoc.echr.coe.int/fre?i=001-96491>> accessed July 2025.

25 *ibid*, para 45.

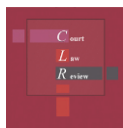
The Court states that the existence of group protection mechanisms is justified, but that as the political system matures, alternative models should be found, which implies the gradual abandonment of the concept of constituent peoples and its replacement by other mechanisms for the protection of group rights of peoples, which are not discriminatory. Thus, in paragraph 48 of the judgment, the Court states: *"Furthermore, although the Court agrees with the Government that no provision of the Convention requires the complete abandonment of the mechanisms of separation of powers inherent in Bosnia and Herzegovina and that perhaps the time has not yet come for a political system that would was only a reflection of the principle of majority rule, the Opinions of the Venice Commission clearly show that there are such mechanisms of power sharing that do not automatically lead to the complete exclusion of representatives of other communities. In this regard, the Court recalled that the possibility of achieving the same goal by different means is an important factor in this area (see Glor v. Switzerland, no. 13444/04, item 94, April 30, 2009)."*<sup>26</sup> This was confirmed by subsequent judgments, in which the ECtHR reiterated its position that maintaining discriminatory norms while justifying the need to preserve peace is not acceptable, given the possibility of protecting the special rights of constituent nations that are not discriminatory in nature, such as certain models recommended by the Venice Commission.

Accordingly, it is evident that the European Court of Human Rights sees the principle of constituent peoples as a temporary and necessary reality and a means that should have enabled peace and stabilization of society. That society should, however, continue its development and overcome the existing antagonisms, and establish a political system based on a different paradigm, which in no case excludes the mechanisms of protection of group rights and interests of individual peoples, but which is not discriminatory. Society and the constitutional and legal order in Bosnia and Herzegovina should develop on the basis of their own model of democratic government, which is rooted in centuries-old tradition, and on the other hand, provides access without discrimination and enables the efficient functioning of the government. The application of such a model is a prerequisite for the stabilization of Bosnian society.

The European Court of Human Rights observes the principle of constitutionality primarily through the lens of human rights and discrimination. The European Union and its institutions, on the other hand, observe the same problem through the prism of ensuring the necessary level of efficient functioning of state bodies, which are obliged to enable the implementation of laws, and in the context of Bosnia and Herzegovina's aspirations for membership in the European Union, and in the future, the possibility of very implementation of European Union legislation by Bosnia and Herzegovina. The Commission of the European Union, in its Opinion on Bosnia and Herzegovina's

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26    *ibid*, para 48.



application for membership in the European Union, once again emphasized the obligation to implement the "Sejdić-Finci" judgments and related subsequent judgments, by harmonizing the constitutional provisions and rules of the electoral process in Bosnia and Herzegovina with acceptable international standards, including the standards contained in the recommendations of the Venice Commission, particularly looking critically at the decision-making mechanisms they require consensus of the representatives of the constituent peoples.

Stating in its recommendations the fourteen priorities<sup>27</sup> which Bosnia and Herzegovina must fulfill, as the priority, in order to progress on the European integration path,<sup>28</sup> the European Commission concludes that Bosnia and Herzegovina must "... Ensure that the elections are conducted in accordance with European standards by implementing the relevant recommendations of the OSCE a/ODIHR and the Venice Commission." Regarding the efficient functioning of the state institutions the Commission concludes that Bosnia and Herzegovina is under obligation to take measures in order to "... ensure that all administrative bodies in charge of implementing the *acquis* are based solely on professionalism and to remove the right of veto in the decision-making process, in accordance with the *acquis*."<sup>29</sup>

It can be assumed that the Commission made the aforementioned recommendations primarily guided by its own interests, which aim to avoid the "import of dysfunction" and complications in the decision-making process within the European Union itself in situations where the approval by the Member states are needed, i.e. especially in cases where a consensus of Member states is required, and Bosnia and Herzegovina as a potential member is unable to find consensus within itself on the issue.

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27 In its Opinion on Bosnia and Herzegovina's application for EU membership, the Commission listed a number of remarks and recommendations, contained primarily in the Analytical part. The summarized version is presented in the Opinion itself, in which 14 recommendations are given for activities that Bosnia and Herzegovina must fulfill as a priority in order to achieve progress on the path of European integration, more details see: Banja Luka, 'The Integration Process of Bosnia and Herzegovina to the EU: 14 Priorities from the Opinion of the European Commission 4 Years Later' (*Transparency International u Bosni i Hercegovini*, 25 July 2023) <<https://ti-bih.org/publikacije/proces-integracije-bih-u-eu-14-prioriteta-iz-misljenja-evropske-komisije-4-godine-poslije/?lang=en>> accessed 15 July 2025.

28 Opinion on Bosnia and Herzegovina's application for membership of the European Union (COM/2019/261 final, 29 May 2019) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52019DC0261>> accessed July 2025.

29 *ibid.*

## 6 CONCLUSION

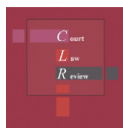
Regarding the analysis of the principle of constituent peoples in the context of relevant international standards, it can be concluded that abandoning the principle of constituent peoples represents a legal necessity. The reasons for this are multiple. The first reason is that the principle of constituent peoples was introduced as a temporary solution necessary to ensure peace and stability, and with the development of society and the political system it should be overcome. The second reason is the fact that the relevant international judicial bodies have explicitly confirmed not only its temporary and necessary nature, but also its inherent discriminatory nature. The third reason is the fact that the realization of the principle of constituent peoples produces difficulties in the functioning of the institutions, especially in situations where decision-making by consensus is necessary, accordingly, it represents an obstacle to the fulfillment of obligations arising from European integration and the effective application of European Union law, and as such can result in difficulties in the work of the institutions of the European Union in the hypothetical situation of Bosnia and Herzegovina's membership in the European Union, with the current constitutional solutions.

Just abandoning the principle of constituent peoples does not absolutely imply the abolition of all forms of protection of the special interests of groups. The existence of special measures for protection of group interests, in itself is not contrary to the law of the European Union, which can be concluded from the constitutional practice of countries such as the Kingdom of Belgium and other Member states. The replacement of the principle of constituent peoples requires the acceptance of a new concept, based on international standards, which will enable non-discriminatory access to the rights of minorities and others, but also enable the efficient functioning of government bodies and the fulfilment of the obligations from the EU integrations

As pointed out by the European Court of Human Rights and the European Commission, the implementation of principle of constituent peoples has discriminatory effects, and is negatively impacting the efficiency of the institutional frameworks. As such, it is an obstacle for the progress of Bosnia and Herzegovina on the path of EU integrations, and needs to be replaced by the solutions which are efficient and non-discriminatory but allow the protection of the rights of ethnic groups.

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**Corresponding author** solely responsible for conceptualization, data curation, formal analysis, funding acquisition, methodology, resources, validation and writing – original draft.

**Competing interests:** The author declares no competing interests.

**Disclaimer:** The author confirms that the views and opinions expressed in this manuscript are solely his own and have not been influenced by any institution, organization, or affiliation.

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## EDITORS

**Managing editor** – Mag. Bohdana Zahrebelna.

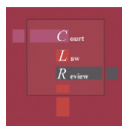
## ABOUT THIS ARTICLE

### Cite this article

Halilović H, 'The Importance of Effective Institutional Frameworks in the EU Integration Process: Lessons from Bosnia and Herzegovina' (2025) 1(1) Court Law Review 1-17 <<https://doi.org/10.33327/CLR/3061-0907/2025/1-00003>> Published Online 09 Sep 2025

**DOI:** <https://doi.org/10.33327/CLR/3061-0907/2025/1-00003>

**Summary:** 1. Introduction. – 2. Methodology. – 3. Basic Characteristics of the Dayton Peace Agreement and Constitutional Order of Bosnia and Herzegovina. – 4. The Concept and Content of the Principle of “Constituent of the Peoples”. – 5. The Relation of Principle of



## Constituent Peoples and Fulfilment of International Legal Standards and Obligations from EU Integrations – 7. Conclusions.

**Keywords:** *Bosnia and Herzegovina, EU integrations, constituent peoples, discrimination.*

### DETAILS FOR PUBLICATION

Date of submission: 01 Aug 2025

Date of acceptance: 29 Aug 2025

Date of publication: 09 Sep 2025

Number of reviewer report submitted in first round: 2 reports

Number of revision rounds: accepted as is

### Technical tools were used in the editorial process:

**Plagiarism Detection:** All submissions are screened for originality using iThenticate, a plagiarism detection service provided by Turnitin.

**Editorial Management:** The submission, peer review, and editorial workflow are managed through Open Journal Systems (OJS).

## АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

### Дослідницька стаття

### ВАЖЛИВІСТЬ ЕФЕКТИВНИХ ІНСТИТУЦІЙНИХ МЕХАНІЗМІВ У ПРОЦЕСІ ЄВРОІНТЕГРАЦІЇ: УРОКИ БОСНІЇ І ГЕРЦЕГОВИНИ

**Гарун Галілович**

### АНОТАЦІЯ

**Вступ.** Процес європейської інтеграції Боснії і Герцеговини характеризується як повільний і складний. На це впливають численні фактори, насамперед політична нестабільність. Проте навіть за відсутності політичних труднощів певні особливості конституційної та правової системи країни ускладнюють ухвалення рішень на державному рівні та проведення необхідних реформ. Конституція Боснії і Герцеговини є складовою Дейтонських мирних угод, які стали результатом тривалих переговорів і поклали край одному з найкривавіших конфліктів 1990-х років. Хоча ця угода досягла своєї

основної мети — припинення війни, вона водночас закріпила низку положень, що ускладнюють реформування, зокрема складний процес ухвалення рішень, фрагментацію державного апарату та розподіл компетенцій між різними рівнями влади. Однією з ключових рис конституційного устрою є закріплення групових прав так званих «конститутивних народів». Цей принцип передбачає певні процедурні правила, пов'язані з паритетом у призначенні посадових осіб, квотами та правом вето в процесі ухвалення рішень у законодавчих і виконавчих органах. Спершу задуманий як компроміс для відновлення міжетнічної довіри, останніми роками він дедалі частіше сприймається європейськими інституціями, зокрема Європейським судом з прав людини та Європейською комісією, як дискримінаційний і неефективний, що гальмує поступ країни на шляху до інтеграції в ЄС. Європейський суд з прав людини у низці рішень підкреслив невідповідність принципу конститутивних народів стандартам у сфері прав людини. Водночас інституції ЄС, зокрема Європейська комісія, у своїх оцінках готовності Боснії і Герцеговини до євроінтеграції та потенційного членства в ЄС відзначали, що реалізація цього принципу перешкоджає ефективному процесу ухвалення рішень. Невиконання рішень ЄСПЛ, які вказують на дискримінаційний характер принципу, сповільнило євроінтеграційний поступ країни навіть на етапі підписання Угоди про стабілізацію та асоціацію, оскільки це зобов'язання досі залишається невиконаним. Усе це негативно позначається на інституційних механізмах, спрямованих на розробку та впровадження необхідних реформ у рамках європейської інтеграції. У статті аналізується місце принципу «конститутивних народів» у правовій системі країни та його оцінка європейськими інституціями як чинника, що перешкоджає поступу.

**Методи.** Дослідження ґрунтується на правових методах контент-аналізу, історико-правовому та нормативному методах. Контент-аналіз охоплює положення конституції, міжнародні угоди та відповідну судову практику, особливо на міжнародному рівні. Історико-правовий метод дозволяє описати розвиток і контекстуалізувати сучасний конституційно-правовий устрій Боснії і Герцеговини. Нормативний метод застосовано для аналізу рекомендацій європейських інституцій та оцінки їхнього потенціалу у реформуванні правових рамок.

**Результати та висновки.** Аналіз засвідчує, що принцип конститутивних народів, попри його початкове призначення як тимчасового механізму для забезпечення миру та стабільності, перетворився на структурну перешкоду демократичному розвитку Боснії і Герцеговини та її європейській інтеграції. Європейський суд з прав людини та Європейська комісія послідовно наголошують на його дискримінаційному характері, а його застосування знижує ефективність інституцій, особливо у процесах ухвалення рішень, що вимагають консенсусу. Попри початкову мету — захист інтересів груп, збереження цього принципу підтримує стандарти у сфері прав людини та ефективність функціонування влади. Його заміна новою, недискримінаційною моделлю, узгодженою з європейськими стандартами, є юридичною необхідністю. Така модель повинна одночасно гарантувати права меншин і забезпечувати ефективну роботу державних органів та виконання зобов'язань у процесі євроінтеграції.

**Ключові слова:** Боснія і Герцеговина, європейська інтеграція, конститутивні народи, дискримінація.