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INFLUENCE OF ENTITIES' CONSTITUTIONAL CHANGES ON SOLVING THE NATIONAL PROBLEM IN BOSNIA AND HERZEGOVINA*

Constitutional changes imposed by the High Representative Decision will have, in long terms, far-reaching influence on national relationships among the three constituent peoples in Bosnia and Herzegovina. Will they have, and in what measure they will have, positive or negative consequences for solving the national problem is the question which can be answered only upon their actual implementation. The first test will be carrying out the oncoming elections and functioning of political system of power institutions after them. It is impossible, of course, to give the successful answer to that question at the present moment, but it is still possible to anticipate some of the probable consequences. Nevertheless, it will be only in future when we will be able to recognize the whole state, and together with it, certain individual solutions as well, and also find the answer to the question of the measure in which those changes will have secured great equality or if they will have caused further negative movements and consequences for national relationships in general, or for one of the peoples in the particular. In the same manner, only the time will show if the changes in entities' constitutions will have lead to further complications or to making simpler otherwise very complex national problem. And finally, it remains to be seen how the constitutional changes will be reflected regarding the position of the least numerous Croatian people, as well as solving the open Croatian problem in Bosnia and Herzegovina.

Uniqueness of the constitutional system in Bosnia and Herzegovina is, among other things, expressed in settling the national problem by Constitutional Law regulations. Regardless of all the practical efforts invested by the international community representatives up to now to put the notion of civil above national, which could especially be seen in their favorizing the civil over national political parties, it has become clear that the national cannot be and must not be underestimated. Actually, it can be seen that the civil (individual) equality of peoples cannot be achieved without the ethnic (collective) equality of nations. Moreover, on the contrary, it could be seen that equality and constituency of citizens on the whole territory is possible to be

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achieved only with simultaneous constituency and equality of nations. It is a very important knowledge learnt as a result of carrying out the constitutional changes.

Second important characteristic of the legal system in Bosnia and Herzegovina, its asymmetry and its inconsistency, have remained essentially unchanged. A different number of legislative subjects with the authority to organize social relationships by passing different laws and rules, as well as the organs for their putting into effect, have remained in force in both entities. Some people have counted and identified eight, and some have counted even the double number of legal sub-systems in this state, in relation with the numerous subjects authorized to pass legal acts and rules. A serious question of who can find a way through all of them arises afresh here.

POSITIVE CHARACTERISTICS OF CONSTITUTIONAL CHANGES AND NATIONAL PROBLEM

By an impartial scientific and critical analysis of constitutional changes it must be noticed, in the first place, everything which is positive in them, in contrast to the political parties' subjective analyses, which are able to see only negative sides of everything. Where do we see the positive characteristics of these constitutional changes?

1. Recognizing the principle of constituency of peoples and citizens on the whole state territory. In contrast to previous principle when one entity was mono-national and did not recognize the other two peoples as constituent (Republika Srpska), and when the other entity was composed of two peoples without recognizing the third one (Federation of Bosnia and Herzegovina), now they are all constituent in both entities. The same was and is to be said of citizens/individuals, members of different peoples. Now they are given the right of being represented in all the important institutions of political system, and also on all its levels, and together with this, representing of their interests and taking part in making important political decisions.

Regardless of the fact that this change makes relative and questionable further existence of entities, yet it will have, as its positive consequence, putting a stop to further building of mono-national and encouraging the building the multi-national entities. At the same time, it enables increasing of the same chance for the state of Bosnia and Herzegovina to retain its historic characteristic of being a multinational and plural state in each and every regard.

2. Increasing the motivation for returning. It is fair to say that the above mentioned changes, by which it is ensured that no people is a leading one, the sole one, the crucial one, and the first-rate one, while the other is inferior, and that no citizen can be a second-rate citizen, regardless of his or her place of residence or the numeric value of the people he or she belongs to, will represent a certain motivation for people to return to their pre-war homes. By this we do not try to say that previous numeric inferiority will be totally eliminated, but it also will not be absolutized, as it was the case up to now. All the people will never come back, and yet, by this, a lot of them will get an additional motivation to return to their pre-war homes.

3. Partial annulment of war gains. The past war was unjust and it offered great advantages to those who met it in the way of transforming the former mutual army into the army of only one people. Nor the peace that followed it was just, too.

Constitutional changes partly annul the results of war gains and diminish their contribution to the ethnic cleansing. The solution by which the Republika Srpska is not only belonging to Serbs any more, nor the Federation is belonging to Bosniacs Croats only annuls partially the war results, but it does not remove by the war produced injustices. For example, it does not change the unjust territorial division, which, after all, was not its purpose anyway.

4. Beginning of the reintegration process in the state of Bosnia and Herzegovina. The entities remain, and yet, they will not be what they used to be before these changes. Constitutional changes do not change entities' borders, but They make them relative by the very fact that they are not borders any more, but are defined as the entities' limiting lines.

5. Putting a stop to the process of elevating the 'Others' to the level of the fourth constituent people. During the time of searching the national balance within important institutions of political system, it seemed that national minorities, unjustly treated in their respective entities under the name of the 'Others' (which, nevertheless, has not been abolished nor changed), would gradually achieve the status of the third people in Federation, and the fourth one within the State. By constitutional changes their corresponding representation has been achieved, but their equilazing with the three constituent peoples has been avoided, though the very title of the 'Others' represents neither fortunate nor adequate constitutional solution.

6. Language equality of all the three peoples in both entities has been increased, and both alphabets/letters in them have become official. However, it is a fact that the language of Bosniac people in Federation has been named Bosnian (according to the geographic criterion, but also according to the Bosniacs will), whereas in Republika Srpska it has been named as Bosniac (according to the national criterion, but against the Bosniac people will), which is sure to ptovoke further complications with regard to the language. Accordingly, ensuring the trilingual use in official communications in both entities, as well as the equality of both alphabets/letters will surely have, as its consequence, numerous new problems, increased communication expenses, manifested national frustrations, and similar.

7. The notion of the vital national interest has finally been defined. Very different and contradict opinions with the regard to the idea and operation of the notion of vital national interest had been in existence for a long time, because it posed itself as one of the very subtle problems in functioning of political system and its important institutions. Equal operational definition in both entities' constitutions will surely contribute to equal treatment and better dealing with this extremely important question. However, some provisions, and particularly thwe one which defines whatever the two thirds of one of the clubs in both House of People and House of Representatives may vote for as a matter of the vital national interest still leave space for all sorts of doubts and difficulties.

8. Introduction of tri-national system and of corresponding minimum of representation of all three peoples in both entities, their proportional representation in public institutions, as well as the parity in performing important functions, represent significant improvements. The facts that each people must be represented in the House of Representatives in Federation and in the Republika Srpska Assembly with at least four representatives, that the entities' presidents must have two vice-presidents belonging to two other peoples, and that only two out of six most important functions can be performed by members of one people only surely represent improvements towards national equality strengthening.

9. Constitutional changes represent particularly positive influence on position of minorities in entities. So far, Croats and Bosniacs were totally inferior in Republika Srpska, whereas Serbs were totally inferior in Federation, but now they are becoming a factor without which it will be impossible to pass important laws or to make crucial political decisions.

However, it should be noted here that the true realization of constitutional changes and achieving of expected positive results will greatly depend on the political will of the created political atmosphere in which they are to be put into the effect.

NEGATIVE CHARACTERISTICS OF CONSTITUTIONAL CHANGES ON SOLVING THE NATIONAL PROBLEM

The changes realized in entities' constitutions will certainly have their corresponding negative consequences. They will, theoretically, open new questions and demand new answers, and practically, they will cause new problems which will have to be solved patiently and prudently in everyday life. Here, we are going to indicate some of the most important ones.

1. Constitutional changes have been imposed, and being such, they are going to be hardly feasible in one hand, whereas in the other, they will provoke plenty of resistances and obstructions. It is a great pity that the High Representative was waiting too long for voluntary carrying out of the Constitutional Court decision, when even the very process of its passing indicated clearly that it was not considered legitimate for the people whose representatives voted against that decision. A lot of precious time was wasted in searching for a compromising solution, only in order that it finally had to be enforced. What has been imposed forcibly will certainly not be carried out voluntarily. Therefore, those who passed the constitutional regulations will also have to find a way of putting them into effect.

2. Inequality of many solutions in both entities puts two minor peoples in an unequal position, especially in Republika Srpska. This mainly refers to different names, unequal composition, method of election and different jurisdictions of the National Assembly and the House of Peoples as most important entities' institutions for protecting national interests.

What is the real reason why the House of Peoples in Republika Srpska is not an equal House, but is subordinate to the National Assembly of Republika Srpska; why do two identical institutions of political system have drastically different number of delegates (seventeen) than both minor peoples taken together in the House of Peoples in Republika Srpska (sixteen); why are the 'Others' represented with four delegates in one entity, and with seven delegates in another one; is it possible to achieve national equality in, for that, most important institutions of the system if their jurisdictions are essentially so different?!!! The answers to these questions, as well as the solutions for problems arising from them, will know how to solve and will be able to solve only one person responsible for imposing such solution, and that person is the High Representative himself.

3. Introduction of equal status for Serbs in cantonal government which does not exist at all in Republika Srpska. By such provisions, the same position Serbs get in the Federation, Croats and Bosniacs cannot get in the Republika Srpska. The principle of peoples' equality, according to which, in the preamble, the constituent peoples 'are determined to ensure full respect for national equality' is, by such provisions, turned into the principle of national inequality. It is interesting, and at the same time absurd that politicians from Republika Srpska do not even want to hear anything regarding the cantonization of that entity, as well as anything regarding the asymmetry of the political system in both entities, but they are very willing to accept political power in Federal cantons. Instead of abolishing cantons in Federation, or forcing cantonization of Republika Srpska, the High Representative has, by his solution, only deepened this asymmetry, and together with it, the inequality of peoples in both entities. Inequality of constitutional solutions and asymmetry of political system in entities will remain to be the main source of national inequality and will make the national problem an open battlefield for further national confrontations.

4. Differences in jurisdictions, compositions and elections of the judges for Constitutional courts, as well as formation of the Council for Protection of Vital National Interests only with the Constitutional Court in Republika Srpska, and regarding the role constitutional courts play and different jurisdictions they have in both entities are not considered to be good solutions, because they do not offer equal opportunities for all peoples to protect their vital national interests through the workings and operations of these important, essentially the same, but nevertheless simultaneously different institutions in two entities, different by their compositions, by their electoral system, and by their jurisdictions. This will lead to arising further new problems with regard to the question of vital national interests protection, and together with them, to the question of further intensifying the national problem.

5. Functionality of the political system of government and its most important institutions will be getting worse and worse. We cannot expect any improvement in this regard, but on the contrary, we may expect lessening of its efficacy in the field of establishing desirable relationships between public authority and the society, as well as in the quickness of decision-making. The possibility of putting a blockage to making important decisions and laws, which are to determine questions of vital national

interests, is now increased. The procedure of mutual harmonizing of decision making between the president and two vice-presidents in entities is now made more difficult. Also, even more possibilities are open to the manipulation of electing 'suitable and desirable' politician out of minorities, so that the other major people will determine and elect their representatives according to their own criteria, and not according to their autochthonous will. In its wholeness, this will have the greatest negative consequence for the position of the least numerous people.

6. The possibility will be open for mutual national coalition of two minor people against the third major people, its political parties and its other representatives. It is a good thing that major people in either entity will no longer be able to be so dominant and so inviolable in imposing its own political will forcing its interests upon others and making important political decisions by itself, as it was the case before. On the other hand, however, this will open the procedures for new national confrontations and struggles, for increasing national tensions, and for deepening of new national mistrusts.

Summary

It is to be expected that realized constitutional changes, though enforced, will have more positive than negative consequences on solving the national problem. Without a satisfactory solution of this particular question for all the three constituent peoples, solution founded on principles of constituency, equality, parity and unity, but without endangering the others, there cannot be a stable, self-preserved, wholesome and functional state of Bosnia and Herzegovina. Those who at their disposal have the monopoly on political power, and above all the international community and the High Representative, will have to make some additional significant efforts in order to gradually put into effect and further affirm everything that is positive, but to also prevent eventual negative consequences of these changes.

The future of Bosnia and Herzegovina will greatly depend on the capability of Bosnian-Herzegovinian society and its political factors to, on one side, solve the national problem satisfactorily, and to, on the other side, enable realization and recognition of all the individual human and civil rights and freedoms. People themselves can be given I do not know what collective rights, but if in that community a single person is endangered as an individual, then we cannot talk at all about a happy community. And vice versa: it is a great illusion of those who think mechanically that if in a state individuals have all their human and civil rights, then by that only the national problem will be settled automatically. Establishment of Bosnia and Herzegovina as a prosperous plural community will be possible only in the state of balance between national and civil, collective and individual, and general and particular.

Legal system in Bosnia and Herzegovina has the whole set of its particularities, but while building and gradually improving it, we must never forget some universal human values. Among many of them I would like to specially emphasize those of justice and righteousness, of democracy and freedom, of peace and prosperity. Designing and cementing the Dayton foundations of this state and its constitution as

its basic legal act, with the peace in mind as the most noble aim and with the latest constitutional changes as an aspiration towards further improvement of legal and political systems, I am afraid that justice and righteousness have not built in adequate measure. Those administering the justices were simply not just enough themselves, because in doing that, they were bound by their own political, economic and other interests. Now, we are all facing a sort of a correctional exam. The sooner we all come to important comprehension of principles on which this state is to be built as a state in which we will have the rule of justice and law, the sooner we will ensure happier future for this generation and for the generations that are still to be born.

In the end, I would like to take advantage of this opportunity and to, as a sort of a warning, point out some very risky and dangerous ideas which are getting more and more expressed in some political, but also, sadly, in some scientific circles. According to these ideas, the solution of national problem is to be found in creating Bosnian nation, as a supra-nation, a nation above nations, and the state itself should create it by privileging those who declare themselves to be Bosnians. Then Bosnia and Herzegovina would be established on the principle of nation – state, taking for its ideal powerful national states in the West. We would not criticize this idea of merging peoples in one supra-nation if it were voluntarily accepted by all three peoples and their citizens. Thus, from the standpoint of reality, it seems to me to be an absurd, practically impossible and legally illogic idea. Really, why to have one more people together with those three already existing ones? Some very serious questions impose themselves here, and those are (a) if something like that would be counterproductive, (b) if it would perhaps cause new national frictions, and (c) if it would, eventually, endanger the very foundations of joint state.

Political and legal systems in Bosnia and Herzegovina should, at the same time, take into consideration all the universal international experiences and achievements, but they should also take into consideration all its ethnic, historic, legal and other particularities which characterize it as a unique plural community, and which will make it more attractive and readily inclusive in all the European and other broader international associations of peoples and states. To us, a hope remains that these constitutional changes will also serve that noble purpose. However, for its achieving in Bosnia and Herzegovina, it will be necessary to justify a lot more constitutional changes and to carry out a lot more reforms in order that this state could be prepared for all the challenges, and in order that it could overcome successfully all the trials and temptations that it is still to face in future.

Thank you!