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The Constituent Peoples' Case and its Impact on the Multinational Nature of Bosnia and Herzegovina

Lidia Bonifati

Abstract

This paper discusses the Constituent Peoples' case delivered in 2000 by Constitutional Court of Bosnia and Herzegovina and its impact on the multinational nature of the constitutional system. In the aftermath of the Bosnian war, the 1995 Dayton Peace Agreement introduced a complex constitutional framework in Bosnia-Herzegovina (BiH), blending consociationalism and federalism. The constitutional system emerging from the conflict reflected the divisions among groups rather than the multi-ethnic nature of the pre-existing state. It identified three "constituent peoples" (i.e., Bosniacs/Muslims, Serbs, and Croats) entitled to collective rights, while excluding the "Others" (i.e., national minorities). In this context, the Constitutional Court of Bosnia and Herzegovina played a crucial role and delivered several important decisions that had a deep impact on the constitutional system. Among these, the so-called Constituent Peoples' case (decision U-5/98 III, 1 July 2000) represents a landmark judgment as it imprinted a new dynamic and multinational dimension to the constitutional system, ending the principle of ethnic segregation of groups within the territory and recognizing the equality of the three constituent peoples across the entirety of the territory.

Keywords

Bosnia and Herzegovina; Constitutional Court; Constitutional Transition; Dayton Peace Agreement; Multinationalism.

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Lidia Bonifati**

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1. Introduction

In the aftermath of the war in Bosnia and Herzegovina (BiH), the 1995 Dayton Peace Agreement (DPA) introduced a complex constitutional architecture based on the interaction between consociational and federal principles. The constitutional system emerging from the conflict reflected the divisions among groups rather than the multi-ethnic nature of the pre-existing state.[1] Indeed, the Preamble BiH Constitution identifies the three main ethnic groups, i.e., Bosniacs/Muslims, Serbs, and Croats, as the "constituent peoples," along with the so-called "Others," i.e., national minorities, citizens with mixed background or who do not affiliate to any constituent peoples. According to the Constitution, only the constituent peoples are entitled to share power at the central-level institutions and to collective rights.[2] The constitutional text

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[1] On the constitutional system of Bosnia and Herzegovina, see Saša Gavrić, Damir Banović, and Mariña Barreiro, *The Political System of Bosnia and Herzegovina: Institutions - Actors - Processes* (Cham: Springer, 2021); Christian Steiner and Nedim Ademović, eds., *Constitution of Bosnia and Herzegovina Commentary* (Sarajevo: Fondacija Konrad Adenauer, 2012).
[2] On the functioning of consociationalism and power sharing, see Arend Lijphart, *Thinking about Democracy: Power Sharing and Majority Rule in Theory and Practice* (London ; New York: Routledge, 2008).

also provides for a multi-tiered structure of the state,[3] including two entities (the Federation of BiH and the Republika Srpska) and the autonomous Brčko district. If the Republika Srpska (RS) is designed as a unitary and centralized republic of Serb majority, the Federation of BiH is further decentralized into ten cantons of Bosniac and Croat majority. Each level of government (i.e., state, entities, cantons, Brčko district) has its own legislature, executive, and judiciary, further increasing the degree of political, administrative, and judicial fragmentation.

In this context, the Constitutional Court of Bosnia and Herzegovina plays a determining role in guaranteeing a delicate equilibrium among communities. Moreover, the BiH Constitutional Court is one of the few "hybrid constitutional courts" still existing around the world, i.e., a court composed of both local and foreign judges. Especially at the outset of the Dayton system, the Constitutional Court of Bosnia and Herzegovina adopted a number of important decisions that had a deep impact on the constitutional system, guaranteeing the functioning of central power-sharing institutions as well as ensuring the delicate balance reached after the war. Among these decisions, the so-called constituent peoples' case (decision U-5/98 III, 1 July 2000) represents a landmark case since it imprinted a new dynamic and multinational dimension to the constitutional system, ending the principle of ethnic segregation of groups within the territory and recognizing the collective equality of the three constituent peoples across the entirety of the territory.

On these premises, the article frames the constituent peoples' case as a landmark case by analyzing the long-lasting impact of this and other decisions on the constitutional system of Bosnia and Herzegovina. First, the paper highlights the peculiar nature of the BiH Constitutional Court as one of the few remaining "hybrid" constitutional courts. Then, the analysis moves to the phases of the constitutional transition in Bosnia and Herzegovina to better grasp the tension between the static and dynamic elements of the constitutional system as well as the role played by the Court in addressing this tension. Furthermore, the paper addresses the constituent peoples' case and its impact on the system, assessing its implementation and the role of the internationally appointed High Representative. Finally, the article considers the legacy of the landmark case by referencing to other meaningful judgments and by addressing the present constitutional situation in Bosnia and Herzegovina, with a specific focus on the

[3] On Bosnian federalism, see Soeren Keil, *Multinational Federalism in Bosnia and Herzegovina*, Southeast European Studies (Wey Court East, Union Farm, Farnham, Surrey, England ; Burlington, VT: Ashgate, 2013); Jens Woelk, "Forced Together, Never Sustainable? Post-Conflict Federalism in Bosnia and Herzegovina," *Kansas Law Review* 71 (2022): 252–74.

current compliance issues that the Constitutional Court is facing and the respective impact on the rule of law.

2. The Constitutional Court of Bosnia and Herzegovina in Comparative Perspective

2.1. Hybrid Constitutional Courts

Although hybrid constitutional courts have found a limited space in legal scholarship, these represent a topic of unique interest for comparative constitutional law. A recent study by Dixon and Jackson offers a first classification of the different types of hybrid constitutional courts.[4] A first model is provided by the Court of Final Appeal of Hong Kong, as a court where the presence of foreign judges is functional to support its reputation and independence. A second model follows the experience of the Court of Appeal and Supreme Court of Fiji, i.e., courts in small jurisdictions where the hybrid character of the court fosters its capacity and independence. Finally, a third model of hybrid constitutional courts is precisely provided by the Constitutional Court of Bosnia and Herzegovina, namely a court operating in post-conflict societies, usually deeply divided along ethnocultural lines.[5] The comparative study by Dixon and Jackson also allowed the identification of different sets of advantages and disadvantages linked to the presence of foreign judges in constitutional jurisdictions. On the one hand, foreign judges can lead to a "comparative constitutional engagement"[6] through the exchange of their knowledge and expertise from outside the local jurisdiction; they can ensure greater impartiality and independence of the single judges and the bench; and they can create channels "for increased outsider attention"[7] by foreign governments, IOs, and NGOs, to bring awareness on potential unconstitutional practices or conversely on positive developments within the system.[8] On the other hand, foreign judges might not have the necessary knowledge of the local context to effectively deliver their constitutional role; they might not be perceived as impartial and independent but influenced by specific foreign interests (and therefore lacking democratic

[4] Rosalind Dixon and Vicki Jackson, "Hybrid Constitutional Courts: Foreign Judges on National Constitutional Courts," *Columbia Journal of Transnational Law*, no. 57 (2018): 283–356.
[5] Dixon and Jackson, "Hybrid Constitutional Courts," 289-293.
[6] Dixon and Jackson, "Hybrid Constitutional Courts," 354.
[7] *Ibidem*.
[8] Dixon and Jackson, "Hybrid Constitutional Courts," 289-290.

legitimacy); and they might delay the development of "domestic lawyers' capacity or willingness to sit as judges on their own country's courts."[9] The trade-off between advantages and disadvantages largely depends on a series of contextual factors, such as the reasons behind the appointment of foreign judges, the specific profiles of these judges, the duration of their mandate, and their appointment procedures.[10]

As already mentioned, the hybrid character of a court can be a specific configuration for deeply divided societies to avoid judgments along ethnic bias. In these contexts, the expectation is that foreign judges might be decisive in split decisions.[11] Aside from the Bosnian case, there are two other examples of hybrid constitutional courts in divided societies, namely Cyprus[12] and Kosovo.[13] The hybrid nature of the Supreme Court of Cyprus was part of the consociational model introduced by the 1960 Constitution to manage internal divisions between the Greek and Turkish Cypriots. Until the collapse of power sharing in 1964, the Supreme Court was composed of one Greek-Cypriot judge, one Turkish-Cypriot judge, and one "neutral" international judge, who served as President of the Court and cast the decisive vote in case of split decisions.[14] Schwartz observes that despite this composition, or perhaps precisely because of it, the Supreme Court was essentially ineffective in addressing the constitutional conflicts that led to the 1964 crisis.[15] For what concerns the case of Kosovo, the Constitutional Court was established in 2009 in the aftermath of the 2008 independence from Serbia, and the original composition provided for six local judges and three foreign judges appointed by the

[9] Dixon and Jackson, "Hybrid Constitutional Courts," 290.
[10] *Ibidem*.
[11] Alex Schwartz, "International Judges on Constitutional Courts: Cautionary Evidence from Post-Conflict Bosnia," *Law & Social Inquiry* 44, no. 1 (2019): 2.
[12] On the Supreme Court of Cyprus, see Constantinos Kombos, "Idiosyncratic Constitutional Review in Cyprus: (Re-)Design, Survival and Kelsen," *ICL Journal* 14, no. 4 (2021): 473–96; Christella Yakinthou, *Political Settlements and Ethnically Divided Societies: Consociationalism and Cyprus* (Cham, Switzerland: Palgrave Macmillan, 2009).
[13] On the Constitutional Court of Kosovo, see Laura A. Dickinson, "The Relationship between Hybrid Courts and International Courts: The Case of Kosovo," *New England Law Review* 37, no. 4 (2002): 1059–72; Constance Grewe and Michael Riegner, "Internationalized Constitutionalism in Ethnically Divided Societies: Bosnia-Herzegovina and Kosovo Compared," *Max Planck Yearbook of United Nations Law Online* 15, no. 1 (2011): 1–64; Andrea Lorenzo Capussela, "A Critique of Kosovo's Internationalized Constitutional Court," *European Diversity and Autonomy Papers* 2 (2014): 5–40; Enver Hasani, "The Role of the Constitutional Court in the Development of the Rule of Law in Kosovo," *Review of Central and East European Law* 43, no. 3 (2018): 274–313; Enver Hasani, Oren Doli, and Fisnik Korenica, "Individual Complaint Mechanism as a Means to Protecting Fundamental Human Rights and Freedoms: The Case of the Constitutional Court of Kosovo," *European Yearbook of Human Rights* (2012): 383–400; Enver Hasani and Fisnik Korenica, "'Two Courts' for *One Constitution*: Fragmentation of Constitutional Review in the Law of the Kosovo Specialist Chambers in The Hague," *German Law Journal* 24, no. 2 (2023): 385–401.
[14] Schwartz, "International Judges on Constitutional Courts," 3.
[15] *Ibidem*.

international civilian representative after consultation with the President of the European Court of Human Rights.[16] Despite the abrogation in 2012 of the constitutional provision on the presence of foreign judges, these remained in office thanks to an agreement between the EU authorities and the President of Kosovo, which renewed their mandate until 2016 and then again until 2018.[17]

Despite the pressing nature of the "post-conflict dilemma"[18] that hybrid courts are called to respond to, the literature observed that the presence of foreign judges tends to be "ambivalent."[19] Indeed, a recent study showed that the impartiality assumption concerning foreign judges appears to be mistaken, and they do not necessarily cast pivotal votes in split decisions.[20] Conversely, the inevitable tendency to side with one part or another can potentially undermine the counterbalancing role of the Court and hurt its authority.[21] Moreover, Schwartz argues that the overreliance on the international community to "enforce controversial decisions purchases short-term results at the expense of the sort of incremental activism that constitutional courts typically use to build authority over time."[22]

2.2. The BiH Constitutional Court

Before moving specifically to the analysis of the hybrid nature of the BiH Constitutional Court,[23] it should be recalled that the original design of the constitutional system provided for two other hybrid judicial bodies, namely the Human Rights Chamber (later Human Rights Commission) until 2002, and the Court of Bosnia and Herzegovina until 2007. In the Human Rights Chamber, the balance between local and foreign judges was in favor of the latter, in a

[16] Constitution of Kosovo – Article 152(4).
[17] Hasani, "The Role of the Constitutional Court," 292-293.
[18] Schwartz, "International Judges on Constitutional Courts," 2.
[19] Schwartz, "International Judges on Constitutional Courts," 25.
[20] Schwartz, "International Judges on Constitutional Courts," 26.
[21] *Ibidem*.
[22] *Ibidem*.
[23] For further references on the Constitutional Court of Bosnia and Herzegovina, see Joseph Marko, "Five Years of Constitutional Jurisprudence in Bosnia and Herzegovina: A First Balance," *European Diversity and Autonomy Papers* 7 (2004): 5–39; Alex Schwartz and Melanie Janelle Murchison, "Judicial Impartiality and Independence in Divided Societies: An Empirical Analysis of the Constitutional Court of Bosnia-Herzegovina," *Law & Society Review* 50, no. 4 (2016): 821–55; Harun Išerić, "The Role of the Constitutional Court of Bosnia and Herzegovina in Profiling Cooperative Federalism in a Multinational State," in *Ethnic Diversity, Plural Democracy and Human Dignity*, ed. Mario Krešić et al. (Cham: Springer International Publishing, 2022), 153–83; Dawn Walsh, "Constitutional Courts as Arbiters of Post-Conflict Territorial Self-Government: Bosnia and Macedonia," *Regional & Federal Studies* 29, no. 1 (2019): 67–90; Edin Skrebo, "La Corte costituzionale della Bosnia ed Erzegovina fissa i limiti alla modifica del riparto di competenze tra Stato centrale e entità federali," *DPCE Online*, no. 4 (2022): 2353–65.

six-to-eight ratio,[24] whereas in the Court of Bosnia and Herzegovina, foreign judges were in the division dealing with war crimes and organized crime, and in the appellate division. Originally, the ratio between judges was two foreign judges versus only one local judge, and in a later stage the ratio reversed in favor of local judges.[25] It should be noticed that both bodies, in addition to the Constitutional Court, have jurisdiction over claims of human rights violation and the protection of the rule of law. Precisely for this reason, the presence of foreign judges was functional in guaranteeing the application of international human rights standards and the European Convention on Human Rights.

Coming specifically to the Constitutional Court of Bosnia and Herzegovina, it is established by Art. VI of the BiH Constitution, which provides that the Court is composed of nine judges: four selected by the legislature of the Federation of BiH, two by the legislature of the Republika Srpska, and three by the President of the European Court of Human Rights after consultation with the state Presidency.[26] The Constitution further specifies that the foreign judges shall not be citizens of Bosnia and Herzegovina or of any neighboring state.[27] Even though there is no explicit repartition among judges, it is an established practice that the judges appointed by the Federation of BiH are two Bosniacs and two Croats, whereas the two judges selected from the Republika Srpska are Serbs. The Constitution provides that the Court has exclusive jurisdiction over disputes on competencies between the entities, between the entities and the central state, or between state institutions,[28] and assesses the constitutionality of the entities' constitutions or laws, as well as of state legislation.[29] Finally, access to the Court is limited to the members of the Presidency, the Chair of the Council of Ministers, the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, one-fourth of the members of either chamber of the Parliamentary Assembly, or one-fourth of either chamber of a legislature of an entity.[30]

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[24] Gavrić et al., *The Political System of Bosnia and Herzegovina*, 47-48.
[25] On the Court of Bosnia and Herzegovina, see David Re, "The Court of Bosnia and Herzegovina" (*Bar News*, Summer 2008/2009), 32-34.
[26] Constitution of Bosnia and Herzegovina – Article VI(1)a.
[27] Constitution of Bosnia and Herzegovina – Article VI(1)b.
[28] Constitution of Bosnia and Herzegovina – Article VI(3)a.
[29] Constitution of Bosnia and Herzegovina – Article VI(3)c.
[30] Constitution of Bosnia and Herzegovina – Article VI(3)a.

3. The Role of the Constitutional Court in the Democratic Transition: The Constituent Peoples' Case

3.1. The First Phase of the Transition: The Dominance of the Static Elements

To assess the impact of the BiH Constitutional Court on the constitutional system, it is first necessary to trace the different phases of constitutional transition. A thorough analysis of the transition is provided by Woelk, who identified three phases of the ongoing constitutional transition in Bosnia and Herzegovina.[31] In the aftermath of one of the most violent wars on European soil after World War II, the signing of the Dayton Peace Agreement in 1995 paved the way for the starting of a peaceful transition, regulating the terms of the ceasefire and encompassing a newly drafted Constitution for Bosnia and Herzegovina. Notably, the BiH Constitution is the Annex IV of the DPA and was introduced within the system without any internal ratification.[32] The first phase of the constitutional transition in Bosnia and Herzegovina (1995-1997) was characterized by the rigid application of the ethnic and territorial separation among the previous belligerent groups, with the implementation of the ceasefire and the setting out of the political institutions provided by the Dayton. As initially designed, the post-conflict constitutional system was often used to justify centrifugal tendencies and the dominance of a group over the others.[33] Therefore, the first phase of the transition was anchored on the static elements entrenched in the Dayton constitutional design, which modeled the system along ethnic lines. This was evident not only in the central political institutions, where the Presidency and the Parliament were elected following ethnic criteria but also in the territorial structure, with two entities with clear ethnic belongings and enjoying wide autonomy. In the first five years of the transition, any attempt to strengthen the capacity of the central level was blocked by the veto powers exercised by the ethnonationalist parties in the central parliamentary assembly.[34] However, this was in tension with the dynamic elements provided by other constitutional provisions. Indeed, Article I of the Constitution states that "Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections."[35] Moreover, Article II states that "the rights and freedoms set forth

[31] Jens Woelk, *La transizione costituzionale della Bosnia ed Erzegovina* (Padova: CEDAM, 2008).
[32] Woelk, *La transizione costituzionale*, 80.
[33] Woelk, *La transizione costituzionale*, 110.
[34] Woelk, *La transizione costituzionale*, 102-103.
[35] Constitution of Bosnia and Herzegovina – Article I(2).

in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law."[36] These constitutional principles contrast with the predominant role played by ethnicity within the system.[37] This tension becomes even more evident when considering the mechanisms for the protection of minority rights aimed at promoting the return of refugees and internally displaced persons to their homes and, thus, the rebuilding of the previous multi-ethnic society.[38]

3.2. The Constituent Peoples' Case

A new phase of the constitutional transition was opened precisely by the decisions of the BiH Constitutional Court, introducing some "constitutional corrections" to the original constitutional design. Among these, the landmark judgment that directly addressed the tension between the static and dynamic elements of the constitutional system was precisely the constituent peoples' case.[39] The case originated in 1998, when the former Bosniac member of the Presidency, Alija Izetbegović, posed a request to the Constitutional Court, claiming that several articles of the Constitution of the Republika Srpska and of the Constitution of the Federation of BiH were incompatible with the Constitution of Bosnia and Herzegovina. It should be recalled that the Dayton Constitution established that the pre-existing sub-state constitutions[40] had to be amended within three months to ensure their conformity with the state Constitution,[41] but at the time of the claim the amendments still had to be made. Among the contested constitutional provisions,[42] there were the definition in the RS Constitution of the Republika Srpska as the "State of Serb peoples," and the recognition of Serbian as the only official language, and the explicit recognition in the Constitution of the Federation of BiH of only two constituent peoples (Bosniacs and Bosnian-Croats) and of only two official languages.

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[36] Constitution of Bosnia and Herzegovina – Article II(2)
[37] Woelk, *La transizione costituzionale*, 104.
[38] *Ibidem*.
[39] Constitutional Court of Bosnia and Herzegovina [CCBiH], 1 July 2000, decision U-5/98 III.
[40] The Constitution of Republika Srpska was adopted in 1992, upon the declaration of independence from the former Republic of Bosnia and Herzegovina, whereas the Constitution of the Federation of BiH was adopted in 1994, upon the signature of the Washington Agreement (ending the conflict between the Bosniac and Croat warring parties).
[41] Constitution of Bosnia and Herzegovina – Article XII(2).
[42] Other contested provisions in the Constitution of the Republika Srpska concerned the preferred relations with "other Serbian states", the explicit support of the Republika Srpska to the Orthodox Church, the limitations to property rights, and provisions on the central bank. In the case of the Constitution of the Federation of BiH, other contested provisions concerned matters related to defense and international relations.

As noted by Woelk, these provisions are emblematic of the fact that "the two subnational constitutions were adopted as constitutions of sovereign states, to which was later imposed the common structure of the Constitution of Bosnia and Herzegovina."[43]

The Constitutional Court passed four individual judgments. The first decided on the nature of the border between the entities, i.e., the so-called inter-entity boundary line (IEBL), as a political border between states or as an administrative boundary between entities, opting for the latter perspective.[44] The second decision concerned matters related to collective property,[45] and the fourth dealt with many aspects, including language, religion, and defense.[46] The third partial decision concerned precisely the issue of the constituent peoples, specifically whether the reference to the constituent peoples in the Preamble of the Dayton Constitution[47] should translate into the equal status of the three constituent peoples across the entirety of the territory or follow a narrow interpretation, related only to parity in their representation in state institutions.[48] Starting from the normative nature of the Preamble[49] (and of the Constitution itself), it is interesting to notice that the Court's reasoning is based not only on the international entrenchment of the Constitution as an annex to an international peace agreement, directly recalling the Vienna Convention on the Law of the Treaties,[50] but also on the reference to foreign law.[51] In particular, the Constitutional Court recalled the case law of the Supreme Court of Canada, and specifically to another landmark case, i.e., *Reference re Secession of Quebec*.[52] The use of foreign law to justify the normative nature of the Preamble and of the Constitution

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[43] Woelk, *La transizione costituzionale*, 112.
[44] Constitutional Court of Bosnia and Herzegovina, 30 January 2000, decision U-5/98 I.
[45] Constitutional Court of Bosnia and Herzegovina, 19 February 2000, decision U-5/98 II.
[46] Constitutional Court of Bosnia and Herzegovina, 19 August 2000, decision U-5/98 IV.
[47] Constitution of Bosnia and Herzegovina – Preamble: "Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine that the Constitution of Bosnia and Herzegovina is as follows: […]".
[48] Woelk, *La transizione costituzionale*, 113.
[49] On constitutional preambles, see Justin O. Frosini, *Constitutional Preambles. At a Crossroads between Politics and Law*. Sant'Arcangelo di Romagna (RN): Maggioli Editore, 2012; Justin O. Frosini, "Constitutional Preambles: More than Just a Narration of History," *University of Illinois Law Review* 2017, no. 2 (2017): 603–28.
[50] CCBiH, case U-5/98 III, para. 19.
[51] CCBiH, case U-5/98 III, para. 23.
[52] The Constitutional Court makes explicit reference to paragraphs 49 through 54, where the Supreme Court held that "these [constitutional] principles inform and sustain the constitutional text: they are the vital unsaid assumptions upon which the text is based.... Although these underlying principles are not explicitly made part of the Constitution by any written provision, other than in some respects by an oblique reference in the preamble to the Constitution Act, it would be impossible to conceive of our constitutional structure without them. The principles dictate major elements of the architecture of the Constitution itself and are as such its lifeblood. [...] The principles assist in the interpretation of the text and the delineation of spheres of jurisdiction, the scope of rights and obligations, and the role of our political institutions".

was instrumental in overcoming the arguments of the entities' representatives, and they included reference to the French Constitution and the French Declaration of the Rights of Man and Citizens[53] and the 1919 Weimar Constitution.[54] The comparative method was also used to define the nature of entities as states or sub-states. Indeed, by recalling other federal states,[55] the Court concluded that the entities cannot be defined as sovereign states since state sovereignty is reserved only to the central state.[56]

Coming to the heart of the case, i.e., the concept of "constituent peoples," the Constitutional Court did not accept the arguments brought about by the representative of the Republika Srpska, according to which the DPA's goal would be "equality among nations." In the Court's view, this interpretation of the DPA created a *de facto* segregation of groups, and as such it was not acceptable.[57] Indeed, the Court clearly stated that "however vague the language of the Preamble[…], it clearly designates all of them as constituent peoples, i.e., as peoples",[58] and further observed that "Article II.4 of the Constitution prohibits discrimination on any grounds such as […] association with a national minority and presupposes […] the existence of groups conceived as national minorities."[59] In this context, the Court recalled that "the text of the Constitution of BiH […] distinctly distinguishes constituent peoples from national minorities with the intention of affirming the continuity of *Bosnia and Herzegovina as a democratic multi-ethnic state*."[60] Once again, the Court made reference to the case *Reference re Secession of Quebec* to conclude that "the elements of a democratic state and society and the underlying assumptions – pluralism, fair procedures, peaceful relations following from the text of the Constitution – must serve as a guideline to further elaborate the question concerning how *BiH is structured as a democratic multi-ethnic state*".[61] Moreover, according to the Court, "the adopters of the Dayton Constitution would not have designated Bosniacs, Croats, and Serbs as constituent peoples in marked contrast to the constitutional category of a national minority if they had wanted to leave them in such a minority position in the respective Entities as they had,

[53] CCBiH, case U-5/98 III, para. 15-16.
[54] CCBiH, case U-5/98 III, p. 68.
[55] CCBiH, case U-5/98 III, para. 28-29.
[56] CCBiH, case U-5/98 III, para. 30.
[57] CCBiH, case U-5/98 III, para. 57.
[58] CCBiH, case U-5/98 III, para. 52.
[59] CCBiH, case U-5/98 III, para. 52.
[60] CCBiH, case U-5/98 III, para. 53.
[61] CCBiH, case U-5/98 III, para. 54.

in fact, obviously been situated at the time of the conclusion of the Dayton Agreement."[62] It is further interesting to observe that, concerning the nature of the territorial organization of the state, the Court clearly stated that this "must not serve as an instrument of ethnic segregation, but […] must provide for ethnic accommodation through preserving linguistic pluralism and peace in order to contribute to the integration of state and society as such."[63]

For the entities, this would entail a constitutional obligation of non-discrimination against the constituent peoples of the state, even in the case that these would constitute only a numerical minority in the entity's territory.[64] Indeed, the Court concluded that "the constitutional principle of collective equality of constituent peoples following from the designation of Bosniacs, Croats, and Serbs as constituent peoples prohibits any special privilege for one or two of these peoples, any domination in governmental structures, or any ethnic homogenization through segregation based on territorial separation."[65] The Court applied the same reasoning when dealing more specifically with the representation of the constituent peoples in political institutions[66] and with the discrimination against refugees and internally displaced persons returning to their homes.[67] In conclusion, the Constitutional Court declared unconstitutional the contested constitutional provisions of the Republika Srpska and of the Federation of BiH, highlighting the necessity of a compromise between the ethnic and civic conception of citizenship to rebuild Bosnia and Herzegovina as a multi-ethnic state.[68]

Finally, it should be noted that, despite its great significance, the decision was implemented only thanks to the role played by the High Representative, that imposed the necessary amendments in the sub-state constitutions through the use of the so-called "Bonn powers."[69] The results of the implementation were the inclusion of Serbs as constituent peoples in the Federation of BiH and of Bosniacs and Croats as constituent peoples in the Republika Srpska, giving effect to the principles of collective equality and non-discrimination. Notably, also the so-called "Others," i.e., the national minorities who do not belong or affiliate with any constituent peoples, benefited from the constituent peoples' case. Indeed, the Court found that

[62] CCBiH, case U-5/98 III, para. 63.
[63] CCBiH, case U-5/98 III, para. 57.
[64] CCBiH, case U-5/98 III, para. 59.
[65] CCBiH, case U-5/98 III, para. 60.
[66] CCBiH, case U-5/98 III, para. 64-69.
[67] CCBiH, case U-5/98 III, para. 129-138.
[68] CCBiH, case U-5/98 III, para. 104.
[69] On the Bonn powers, see Tim Banning, "The 'Bonn Powers' of the High Representative in Bosnia Herzegovina: Tracing a Legal Figment," *Goettingen Journal of International Law* 6, no. 2 (2014): 259–302.

the exclusion of persons from the representative system violated their individual political rights, and therefore the "Others" were introduced into the representative system, recognizing their rights to political participation in parliaments and administrative bodies.[70] Therefore, the decision prompted the reorganization of all entity institutions and the introduction of mandatory representation quotas in government and legislative institutions in both entities for the three constituent peoples and the "Others,"[71] as well as the addition of the languages and scripts of the other constituent peoples as official languages.

4. The Legacy of the Constituent People's Case

As already discussed by the literature,[72] the constituent peoples' case can be framed as a landmark case insofar as it represented a turning point in the post-conflict constitutional transition in Bosnia and Herzegovina.[73] After five years of rigid implementation of the peace agreement to ensure peace and stability in the country, the risk was that the multinational model

[70] Gavrić et al, *The Political System of Bosnia and Herzegovina*, 26.

[71] It should be noted that, despite this significant opening towards the political representation of the "Others", in its subsequent case-law the Constitutional Court rejected the requests of two notable applicants, Dervo Sejdić and Jakob Finci, that claimed to be discriminated against their ethnic origin and later will bring their case before the European Court of Human Rights (European Court of Human Rights, applications no. 27996/06 and 34836/06, *Sejdić e Finci v. Bosnia and Herzegovina*, 22 December 2009). In one of the three cases that came before the Court (U-5/04), the judges were unanimous in declaring the case inadmissible, while in the other two cases (U-13/05 and AP-2678/06), two judges (including the German judge) expressed their dissenting opinion. In the Court's opinion, the constitutional provisions that prevented citizens who did not identify with one of the three constituent peoples from running for the collective Presidency and the second chamber of the BiH Parliamentary Assembly were justified if considering the delicate balance reached in Bosnia and Herzegovina after the conflict, when peaceful equilibrium had been achieved through the Dayton Accords. The Court also referred to an earlier ruling of the Court of Strasbourg, i.e., *Mathieu-Mohin and Clerfayt v. Belgium* (application no. 9267/81, 2 March 1987), in which the restrictions imposed on the election to the Presidency had been considered legitimate and functional in maintaining a peaceful dialogue between the language communities. The Court's different attitude compared to the two cases from the early 2000s can be explained if one considers that the cases related to electoral legislation concerned the heart of the BiH consociational system (i.e., the composition of state public offices), as opposed to the case of constituent peoples (see Sujit Choudhry and Richard Stacey, "Independent or Dependent? Constitutional Courts in Divided Societies," in *Rights in Divided Societies*, by Colin Harvey and Alex Schwartz (Oxford ; Portland, Or: Hart Publishing, 2012), 101; for more on *Sejdić and Finci*, see Stefan Graziadei, "Democracy v. Human Rights? The Strasbourg Court and the Challenge of Power Sharing," *European Constitutional Law Review* 12, no. 1 (2016): 54–84; Elizebeth Raulston, "(Un)Justifiable: A Comparison of Electoral Discrimination Jurisprudence at the European Court of Human Rights and the Constitutional Court of Bosnia and Herzegovina," *American University International Law Review* 28, no. 2 (2013): 669–706).

[72] See, among others, Zatlan Begić and Zatlan Delić, "Constituency of Peoples in the Constitutional System of Bosnia and Herzegovina: Chasing Fair Solutions," *International Journal of Constitutional Law* 11, no. 2 (2013): 447–65.

[73] Woelk, *La transizione costituzionale*, 120.

would result in ethnic segregation.[74] As argued by Marko, one of the foreign judges on the bench, instead of confirming the Dayton scheme (i.e., the static elements), the Constitutional Court decided to prioritize the dynamic goal of the Dayton Peace Agreement, namely the rebuilding of the pre-existing multi-ethnic society through the right of return to refugees and displaced persons.[75] Moreover, the significance of the judgment lies in the fact that the decision went even beyond the constitutional text, supporting the international (and supranational) entrenchment of the Constitution.[76] Through the norms on the return of refugees, the Constitutional Court highlighted the constitutional obligation to commit to a multi-ethnic society in a multinational state based on a delicate balance between individual and collective rights.[77] The judgment was highly criticized by the majority of Bosnian-Serb parties, whereas positively acclaimed by the Bosniac parties and the international communities. However, it should be reminded that the decision would not have been possible if the consociational logic had been applied to the Court as well. Indeed, the judgment was passed by a simple majority, constituted by the three international judges and the two Bosniac judges, whereas the two Bosnian-Serbs and the two Bosnian-Croats judges voted against the decision.

The constituent peoples' case clearly showed the impact that the Constitutional Court had on the BiH constitutional system, imprinting a multinational direction, as also confirmed by subsequent cases.[78]

4.1. The Place Names Case

In the jurisprudence of the Constitutional Court related to the collective equality of the constituent peoples, it should be recalled the so-called 2004 place names case.[79] The case concerned two statutes adopted by the National Assembly of the Republika Srpska, according to which some towns and cities would be renamed in order to highlight their "Serb origin." As noted by Feldman, this case exposed the tensions between fundamental goals inherent in the BiH Constitutions, i.e., the recognition of a common federal structure encompassing two autonomous entities, the guarantees of equal treatment and protection of the three constituent

[74] See Francesco Palermo, "Bosnia-Erzegovina: la Corte costituzionale fissa i confini della (nuova) società multietnica," *Diritto Pubblico Comparato ed Europeo*, no. 4 (2000): 1479–89.
[75] Joseph Marko, "Problems of State- and Nation-Building in Post-Conflict Situations: The Case of Bosnia-Herzegovina," *Vermont Law Review* 30, no. 3 (2006): 532.
[76] Woelk, *La transizione costituzionale*, 120.
[77] Woelk, *La transizione costituzionale*, 121-122. See also Choudhry and Stacey, "Independent or Dependent," 98.
[78] See also Woelk, *La transizione costituzionale*, 122-129.
[79] Constitutional Court of Bosnia and Herzegovina, 27 February 2004, decision U-44/01.

peoples across the entire territory, and the creation of the necessary conditions to encourage refugees and displaced persons to return to the homes they were forced to flee during the war.[80] At the time of the case, the RS legislation was extremely controversial and cause for concern because it would have threatened the very foundations of the Dayton Peace Agreement. Indeed, they would have reflected the view that the Serb people (and the Serb identity) would have had a privileged position in the Republika Srpska relative to the Bosniac and Croat peoples. Moreover, it would have legitimized the existence of a Serb majority in the entity that came through systematic discrimination and dramatic operations of ethnic cleansing.[81] What is further interesting to notice is that this case underwent considerable procedural issues that shed even more light on the functioning of the system. After the submission of the request on July 2001, the first obstacle consisted of the difficulties faced by the Constitutional Court in obtaining a reply to the applicant's request from the RS National Assembly. Once obtained, the subsequent issue was that the original composition of the bench had expired its mandate. Indeed, the BiH Constitution provided that the judges originally appointed had a non-renewable mandate of five years,[82] which expired in May 2002. The appointment of the new judges happened during the summer of 2002, but in September, the former High Representative, Lord Ashdown, issued a decision annulling the appointment of the two judges selected by the RS National Assembly.[83] Given the nature of the case, the rest of the bench deemed it inappropriate to proceed without the RS judges, and the proceedings could begin only in May 2003. The substantive deliberations took place between December 2003 and February 2004, when the decision on the place names case was delivered.

It is worth noticing that the Constitutional Court recalled the constituent peoples' case in holding the principle of collective equality among constituent peoples, which would be violated if a special position were accorded to one identity over the others.[84] The Court was unanimous in declaring the unconstitutionality of the statutes since they implied the superiority of the Serb identity over the others and discouraged the members of the other two constituent peoples from returning or settling in the "renamed cities," thus contrasting with the objective of rebuilding a

[80] David Feldman, "Renaming Cities in Bosnia and Herzegovina," *International Journal of Constitutional Law* 3, no. 4 (2005): 650.
[81] Feldman, "Renaming Cities," 658.
[82] Constitution of Bosnia and Herzegovina – Article VI(1)c.
[83] Feldman, "Renaming Cities," 654-655.
[84] Feldman, "Renaming Cities," 657.

multi-ethnic society.[85] Once again, the Constitutional Court defended the multinational nature of the Bosnian society, demonstrating that "ethnic nation-building will be subjected to the constraints of civil and political individual rights enshrined in familiar documents like the European Convention."[86] Interestingly, Feldman notes that, unlike the constituent peoples' case, the Court was unanimous in taking the decision, showing the commitment of the newly appointed judges in upholding the founding constitutional principles of individual and collective equality as already established in the previous case-law in the first five years.[87]

4.2. The Day of the Republic Case

In another interesting case from 2015, the Court declared the unconstitutionality of the Law on Holidays in Republika Srpska,[88] which marked the 9th of January as the "Day of the Republic." The applicant argued that on 9 January 1992, the Assembly of the Serb People in Bosnia and Herzegovina adopted a Declaration Proclaiming the Republic of Serb People of Bosnia and Herzegovina, providing for the "territorial demarcation between them and political communities of other peoples of Bosnia and Herzegovina, with the intent to establish a state of predominantly one people."[89] Therefore, the establishment of the "Day of the Republic" on such a meaningful anniversary for the Serb people recalled a dramatic historical moment for Bosniacs and Croats, as well as other national minorities, which led to human rights violations and discrimination. In the process of the adoption of the Law on Holidays, the Bosniac Caucus in the second chamber of the RS parliament raised an objection against the law on the ground that it would violate the vital interests of non-Serb peoples, but the Constitutional Court of the Republika Srpska rejected the objection.[90] Concerning the proceedings of this case, it should be noted that the Constitutional Court invited the Venice Commission of the Council of Europe, the Bosniac, Croat, Serb, and Others Caucuses in the second chamber of the RS parliament, as well as the Legal Department of the Office of the High Representative, to submit their expert opinions on the request. With the exception of the Legal Department of the High Representative, all parties participated in the proceedings in a rare public hearing before the Court.

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[85] Choudhry and Stacey, "Independent of Dependent," 99-100.
[86] Choudhry and Stacey, "Independent of Dependent," 100.
[87] Feldman, "Renaming Cities," 660.
[88] Constitutional Court of Bosnia and Herzegovina, 26 November 2015, decision U-3/13.
[89] Mirha Karahodžić, "Bosnian Constitutional Court: Unconstitutionality of the 'Day of the Republic': Judgment of 26 November 2015, U 3/13," *ICL Journal* 11, no. 1 (2017): 154.
[90] *Ibidem*.

The Constitutional Court had to take into account whether 9 January represented a historical heritage of only the Serb people in the Republika Srpska and whether the practice of observing the holiday on 9 January represented a privilege of only one people.[91] Concerning the first aspect, the Court referred to a previous case,[92] where it stated that symbols of entities such as the Republika Srpska had to represent all citizens of the entity, who have equal rights as granted by the Constitution of Republika Srpska. The Court further recognized as undisputable that the selection of 9 January as the "Day of the Republic" was inspired by the day in 1992 when the Assembly of the Serb People was held without the inclusion of Bosniacs, Croats, and Others. As such, the Court concluded that 9 January did not represent a "collective, shared remembrance contributing to strengthening the collective identity as values of particular significance in a multi-ethnic society based on the respect for diversity as the basic values of a modern democratic society."[93] Furthermore, the violation of the rights of non-Serb citizens was not compatible with the guarantee of equal rights provided by the subnational constitution, i.e., the Constitution of the Republika Srpska, as well as with the obligation on individual and collective non-discrimination enshrined in the BiH Constitution. The conclusion of the Court was in line with the position expressed by the Venice Commission, that held that "the selection of 9 January as the Republic Day by the Law on Holidays of the Republika Srpska is inspired by an event of particular significance for one of the constituent peoples only, which is painful for people belonging to other communities. Nevertheless, it is imposed upon all citizens of the Republika Srpska. This choice is hardly in line with the unifying values of dialogue, tolerance, mutual understanding, and equality which should be the underlying basis for the choice of a national day."[94] For what concerns the second element of the issue, the Constitutional Court held that the practice of observance of 9 January as the "Day of the Republic" and as Patron Saint's Day (an Orthodox religious holiday) in the Republika Srpska constituted a preferential treatment of only one people, i.e., the Serb people, relative to Bosniacs, Croats, and Others,[95] and as such it would violate the principle of collective equality among constituent peoples.

[91] Karahodžić, "Unconstitutionality of the 'Day of the Republic'," 158.
[92] Constitutional Court of Bosnia and Herzegovina, 31 March 2006, decision U-4/04.
[93] Karahodžić, "Unconstitutionality of the 'Day of the Republic'," 158.
[94] Venice Commission, Opinion no. 736/2013, 14 October 2013, "Amicus Curiae Brief for the Constitutional Court of Bosnia and Herzegovina on the Compatibility with the Non-Discrimination Principle of the Selection of the Republic Day of the Republika Srpska," CDL-AD(2013)027, para. 61.
[95] Karahodžić, "Unconstitutionality of the 'Day of the Republic'," 159.

Despite its significance in strengthening the multinational nature of Bosnia and Herzegovina, this case is emblematic of a deeply concerning issue related to the Court, namely the systematic non-implementation of its judgments. Indeed, the decision was harshly criticized, and the Constitutional Court underwent considerable political pressure.[96] Moreover, on July 2016, the RS National Assembly passed a decision to schedule a referendum in the Republika Srpska for 25 September 2016 to assess the support towards the establishment of the "Day of the Republic" on 9 January. The decision was challenged before the Constitutional Court, which proceeded with its suspension. Nevertheless, RS authorities did not respect the Court's judgment and held the referendum as originally scheduled, which resulted in an overwhelming majority in favor of the date. Despite the subsequent judgment by the Constitutional Court declaring the unconstitutionality of the decision to call a "republic referendum" and annulling the results,[97] the RS authorities openly violated the Court's ban, and celebrations regularly took place even on January 9, 2025.[98]

5. Conclusion

The constituent peoples' case certainly represented a unique chance for the Constitutional Court to go beyond the rigidity of Dayton, and, as observed by Gavrić, Banović, and Barreiro, it demonstrated "the importance of the Court as an institution that not only protects but also establishes constitutional principles."[99] Indeed, in this decision, the Court derived three general normative principles.[100] The first is the principle of multi-ethnicity, designing Bosnia and Herzegovina as a multi-ethnic society and excluding any possibility for segregation or assimilation based on the territorial organization of the state. The second crucial normative principle concerns the collective equality of constituent peoples, prohibiting any form of special treatment for or privileged recognition to any constituent people over the others. The Court translated this principle also in terms of political representation in decision-making processes, balancing collective ethnic representation of the three constituent peoples in political institutions and individual equality in terms of electoral rights. This principle also means that

[96] Karahodžić, "Unconstitutionality of the 'Day of the Republic'," 160.
[97] Constitutional Court of Bosnia-Herzegovina, 01 December 2016, Case U-10/16.
[98] Azem Kurtic, "Bosnian Serbs Celebrate Banned Holiday With Massive Parade," *Balkan Insight*, 9 January 2025, available at https://balkaninsight.com/2025/01/09/bosnian-serbs-celebrate-banned-holiday-with-massive-parade/.
[99] Gavrić et al, *The Political System of Bosnia and Herzegovina*, 26.
[100] Gavrić et al, *The Political System of Bosnia and Herzegovina*, 25-26.

the entities have the constitutional obligation to comply with the principle of collective equality, prohibiting any form of discrimination against the constituent peoples that are in a numerical minority within the entity. Finally, the third principle concerns precisely the prohibition of discrimination, distinguishing between *de jure* and *de facto* discrimination.

Another interesting aspect to consider is the use of foreign law (and of landmark cases such as *Reference re Secession of Quebec*), as well as international law, that the Constitutional Court made to support their arguments and findings.[101] This recalls the experience of another constitutional court that played a crucial role during the transition toward democracy, notably the Constitutional Court of South Africa. The South African case is exceptional insofar as it is the Constitution itself that entitles the Constitutional Court to "consider foreign law" when interpreting the Bill of Rights.[102] As already noted by Lollini, this provision led to a "wide use of foreign jurisprudence and legislation, as well as extra-systemic parameters, that have formed the basis for models of legal argumentation, the balancing of general principles and literal interpretation."[103] The BiH and South African Courts also share another point of convergence, namely they are two courts that interpreted their constitutional authority as a responsibility to mediate "the inherent conflict between democratic self-governance and the risk of majoritarian oppression."[104] Issacharoff also argued that both courts supported their respective deeply divided societies in moving away from the "risk of locking in social fractures"[105] and were "quite sensitive to the need to assure meaningful minority participation in the structures of governance."[106]

Despite the great significance of this landmark case, the current compliance issues that the Constitutional Court is facing confirm the trade-off of hybrid constitutional courts previously identified by Dixon and Jackson. Indeed, the Court has been facing concerning compliance issues already since 2010, when it declared unconstitutional some of the provisions of the Election Act 2001 and of the Statute of the City of Mostar, providing that these had to be

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[101] See for example Gábor Halmai, "The Use of Foreign Law in Constitutional Interpretation," in *The Oxford Handbook of Comparative Constitutional Law*, ed. András Sajó and Michel Rosenfeld (Oxford: Oxford University Press, 2012), 1328–48.
[102] Constitution of South Africa – Article 39.
[103] Andrea Lollini, "Legal Argumentation Based on Foreign Law: An Example from Case Law of the South African Constitutional Court," *Utrecht Law Review* 3, no. 1 (2007): 60.
[104] Samuel Issacharoff, "Constitutionalizing Democracy in Fractured Societies," *Texas Law Review* 82 (2004): 1893.
[105] *Ibidem*.
[106] *Ibidem*.

amended.[107] However, these amendments were only implemented in 2020, leaving the city of Mostar without a democratically elected mayor for 12 years.[108] More recently, the RS authorities have (instrumentally) contested the legitimacy of the Court precisely because of the presence of the foreign judges on the bench since they were accused of not being impartial and siding with the Bosniac judges.[109] One of the most recent examples of this dynamic concerns the adoption of a property law by the RS legislature, despite the fact that the Constitutional Court had previously declared it unconstitutional (as property falls within the state's exclusive jurisdiction and not the entities). In this context, RS authorities openly declared that they would not have complied with the Court's judgment, and they proceeded to publish the statute in the Official Gazette of the Republika Srpska despite the Court's ban. This further escalated when in June 2023, the RS Parliamentary assembly adopted a law according to which the Republika Srpska does not recognize the authority of the Court within the entity since the Court will not be considered legitimate until a reform leaving out the foreign judges from the bench.[110] Despite the alleged "temporary nature" of this law, this represents a direct attack on the authority of the Constitutional Court and on the principles of the rule of law. Therefore, if, on the one hand, it is true that the hybrid nature of the Court was necessary and functional in guaranteeing the correct application of the Dayton Peace Agreement and of the Constitution, it is also true that the persisting presence of the foreign judges (as well as the High Representative) has been more and more controversial, especially in terms of legitimacy.

The issue of how to reform the composition of the Constitutional Court is still debated, and some proposals have been advanced.[111] Among these, one alternative would be to follow the example of the Belgian Constitutional Court, which includes an equal number of members from the Dutch- and French-speaking communities. Moreover, in the Belgian Court, "instead

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[107] Constitutional Court of Bosnia-Herzegovina, 26 November 2010, Case U-9/09.
[108] See Valida Repovac Nikšić, "Local Elections in Bosnia and Herzgovina – Political Changes in Times of Pandemic," *Contemporary Southeastern Europe* 8, no. 1 (2021): 30–39.
[109] Lidia Bonifati, "Constitutional Design and the Seeds of Degradation in Divided Societies: The Case of Bosnia and Herzegovina," *European Constitutional Law Review* 19, no. 2 (2023): 246.
[110] Azem Kurtic, "Bosnia's Serb Entity Passes Law Rejecting Constitutional Court's Authority," *Balkan Insight*, 28 June 2023, available at https://balkaninsight.com/2023/06/28/bosnias-serb-entity-passes-law-rejecting-constitutional-courts- authority/.
[111] See, for example, Stefan Graziadei, "Six Models for Reforming the Selection of Judges to the BiH Constitutional Court," *Center for Southeast European Studies Working Papers* 14 (2016): 1–38; Stefan Graziadei, "Power Sharing Courts," *Contemporary Southeastern Europe* 3, no. 2 (2016): 66–105. For the role played by minorities and subnational entities in the appointment of constitutional judges, see Antoni Abat i Ninet, "Kelsen versus Schmitt and the Role of the Sub-National Entities and Minorities in the Appointment of Constitutional Judges in Continental Systems," *ICL Journal* 14, no. 4 (February 23, 2021): 523–43.

of including foreign judges as neutral tiebreakers, the Belgian model alternates the tie-breaking vote between both wings on an annual basis."[112] Moreover, the Court decides by consensus, and dissenting opinions are not public, thus fostering the search for a compromise and avoiding political and public pressures on the Court.[113] Despite the pressing nature of this reform, the complex political and institutional situation in Bosnia and Herzegovina prevents from advancing important structural reforms that would be necessary to implement the 14 key priorities identified by the EU Commission to advance the process of European integration.[114] However, the issue of reforms in BiH has become a "taboo," and they are hostage of the vetoes from ethnonationalist parties that have no interest in changing a system that grants them wide powers and autonomy.[115] Nevertheless, the Constitutional Court, with its case law, remains a crucial actor in protecting human rights and guaranteeing the functioning of the central state and was able to imprint a unique multinational direction to a constitutional system where ethnocultural divisions led to dramatic consequences in the past.

[112] Schwartz, "International Judges on Constitutional Courts," 27.
[113] *Ibidem*.
[114] European Commission, "Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union", Brussels, 29 May 2019.
[115] See Woelk, "Forced Together," 263.