

# BOSNIA STUDIES SARAJEVO

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The Alienation from Citizenship in Bosnia  
and Herzegovina: From Criticism of the  
Constitution to Actual Participation

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## Abstract

*Remaining true to the spirit and logic of the war-torn territories, the Dayton Peace Agreement highlights the interdependence of Bosnia and Herzegovina's (B&H) 'local' problems with the wider region's problems, and indeed, global problems. 25 years after the signing of the Dayton Peace Agreement, we have gained a democracy without a people, a democracy with MP's defined by their ethnicity, who, at their discretion, interpret the will of the people and dispose of the mandate entrusted to them by their convictions. This paper aims to open up the question of whether the Dayton Constitution alienated B&H's citizens from their political community. Pointing to the process of alienation from citizenship, which is, among other things, caused by a constitutional architecture that does not conceive of the citizen as an abstract category, the author focuses more on the conditions in which voters are denied real political participation. In theoretical terms, this participation would mean not only resistance to ethnonationalism, but also the creation of opportunities for citizens to unite and make political-strategic, and long-term decisions important for the future of B&H.*

*Keywords: Dayton Peace Agreement, the Dayton Constitution, democracy, alienation, citizenship.*

## Citizenship as belonging to a community

*Citizenship* as a concept fundamental to both law and politics, has numerous definitions, and one of them defines it as; through individual rights and belonging to a specific community (Kymlicka and Norman, 1995:283). It is through the concept of citizenship that political theory teaches us about the interactions between the individual and society, about; "the ways in which we live with others in a political community" (Lazar, 2013:1). Therefore, we can understand *citizenship* within the context of nationality, but also in terms of the *Other* and *Otherness*, because this symbiosis makes politics possible. This process of constituting the nature of citizenship, requires that members of the political community develop certain qualities, rights, and virtues in order to distinguish themselves from foreigners, outsiders and, others.

The Anglo-Saxon tradition defines the concept of *citizenship* through the topics of civic participation, activism, and identity within which are analyzed voting habits, political association and action, protest policies, themes in the field of civil disobedience and issues related to the reconciliation of different cultural, ethnic, religious, and other identities, with the identity of the *citizen* of the given political community. On the other hand, as Jelena Vasiljević notes, citizenships formulates the conditions of belonging to the political community (who are the citizens, what are their rights, how are immigration and naturalization policies

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implemented, issues of dual citizenship, etc.) “*Citizenship* also refers to the idea of citizen corps, and on the issues of formal conditions of the system in which citizens live, as citizens of a specific political community and a legally defined community” (Vasiljević, 2016:15) In this context, *citizenship* is a far more complex, dynamic philosophical-political concept and it is inseparable from the idea of a political community, civil rights, and participation in it. Unlike nationality, which is more or less given to us, citizenship is an identity that is acquired and built, whilst also based on certain processes of socialization.

### *Panethnic and civic as universal*

The idea of B&H as a *pan-ethnic* and *civic* community has inspired numerous international diplomats, authors, and researchers because of its universality, but also for its modern understanding of the identity of the political community. In the book *Aporia of Democracy or Aporia of Freedom*, in a chapter entitled *Democracy in polyethnic societies: Is Bosnia important*, Džemal Sokolović points out that what B&H lacks is not a democracy, i.e. the power of the people, but *a people* as “mere substance and *condition sine qua non* democracy” (Sokolović, 2018:89). “Bosnia, therefore, needs people in the sense of *demos*, i.e. citizens who, regardless of their ethnic, religious, or racial identity, will feel the state as their community. Belonging to *ethnos* as a community is not excluded, but it is not enough for the existence of Bosnia as *politeia*” (Sokolović, 2018:89).

According to Sokolović, the reason why B&H has been declared a priority task by the United States is deeper than the fact that B&H, Europe, the United States, and the whole world are multiethnic. In B&H, the Americans had the opportunity to prove that political universal *principles* are also in the American interest. B&H has no oil, American economic interests in Bosnia were minimal, whereas 43.7% of the Bosnian population, precisely the part that needed help, were Muslims. It is true that these facts were known to the United States in 1992 when Bosnia and Herzegovina was attacked, and that it was possible to intervene earlier, but the intervention did take place eventually. What determined the difference in terms of the intervention was the difference in understanding of multiethnicism between the United States and Europe (emphasis added). Sokolović explains Europe’s ambivalent attitude towards the Bosnian war by the fact that Europe acted following its own experience, which was more controversial than successful. The American intervention “probably saved Europe as well, but its honor was disgraced” (Sokolović, 2018:93).

In looking at Europe’s experience in relation to multiethnicity and democracy, we are reminded of the disappearance of many ethnic identities, followed by numerous episodes with totalitarianism. Europe was ambivalent towards B&H and acted in accordance with its historical experience. Its attitude towards multiethnicity

is based on the old principle of the nation-state, which was established by erasing minority ethnic identities or by dissolving multiethnic states. In considering these historical facts, it is necessary to conclude; “Bosnia has shown the extent to which Europe can be ‘irresponsible’ towards its multiethnicity” (Sokolović, 2018:96).

The basic conclusions of Sokolović’s analyzes can be reduced to the following; “Different perceptions of democracy in multiethnic societies underlie the proclamation of Bosnia and Herzegovina as an American strategic interest” (Sokolović, 2018:93). B&H is a paradigm of the optimal types of multiethnicity and as such, the most suitable for the development of democracy; “If the Bosnian type of multiethnic society is preserved, then it is the pattern by which polyethnic societies should be developed; if democracy can function in Bosnia, then polyethnic societies are a suitable ground for its functioning” (Sokolović, 2018:92). In other words, the BiH model of multiethnicity, in which no group has an absolute majority, is significant because, as such, it limits the possibility of majoritarianism. Therefore, the pan-ethnic identity in B&H contains social and cultural significance and political weight. Perhaps it is of even greater social and cultural significance and political weight than the pan-ethnic identities studied in the United States.

### The solution for Bosnia and Herzegovina is (not) in Bosnia and Herzegovina?

On the eve of the 25th anniversary of the signing of the Dayton Agreement, which stopped the war in B&H, but also disabled a previously functioning state, political, legal, and other opinions were exchanged on what the Dayton Peace Agreement means and whom it represents. The United States announced a Resolution on the Dayton Peace Agreement, Croatia requested its revision, Serbia insisted that the agreement be respected as it is, and Milorad Dodik, the Serb member of the Presidency of Bosnia and Herzegovina, demanded that Clinton’s 1995 plan to separate Republika Srpska from Bosnia and Herzegovina be rehabilitated. These new/old domestic and foreign political opinions about B&H were reminiscent of the historical narratives in which B&H was always a place where the interests of neighboring countries and the major world powers are often convergent, and have often clashed. In that sense, one can observe the Dayton Peace Agreement which was adopted, among other things, to achieve one common goal - to establish peace in B&H while respecting the converging interests of the great world powers of the countries/members of the Contact Group. Whatever you call peace in B&H, whether it be *unjustified peace*, or *negative peace*, or a *belated peace* - the arguments coming from different perspectives point to the fact that the price of achieving the international goal of peace in B&H was still too high. The strongest

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argument against Dayton is the critique of its constitutional democracy, which is not in line with modern democratic standards, and which has produced a political system that is inefficient because it allows for constant blockades and obstruction of the state.

Due to the circumstances following the end of the aggression in B&H, the citizens were not actively involved in the political decision-making process. Mostly, decisions were made on their behalf by representatives of political parties and representatives of the international community. Moreover, they were not even asked to verify the Dayton Constitution, and therefore current *issues of constitutional legitimacy* contribute still further to the earlier processes of identifying individual peoples with other/neighboring states, rather than with the state of B&H. We would not be mistaken if we said that during the post-Dayton process, the institutional structures that deny the statehood of Bosnia and Herzegovina have been strengthened. Recent diplomatic incidents between officials in Sarajevo and Zagreb and Belgrade, may support the claim that Bosnia and Herzegovina today is closer to the agreement in Karađorđevo than to the Brussels phase. Political meetings of *representatives of the constituent peoples in Bosnia and Herzegovina with the presidents of the neighboring countries* of Croatia and Serbia (Dodik/Čović with Milanović and Plenković, and Dodik/Čović with Vučić, and later Izetbegović with Plenković) confirm this disrespect and disregard for the state of B&H and that the level, i.e. the level of negotiation, as a basic condition for conducting modern politics, is not respected.

## Policy review

The idea of a civil and pan-ethnic Bosnia and Herzegovina was called into question in 2009, when the European Court of Human Rights ruled in the case *Sejdić and Finci v. Bosnia and Herzegovina*, stating that the Dayton constitution; “denies the rights of Bosnian and Herzegovinian citizens to run for the presidency or to The House of Peoples is discriminatory<sup>1</sup> and based on ethnic (non) affiliation.” Sejdić and Finci complained that they were prevented from running in the elections for the House of Peoples and the Presidency of BiH, due to their Roma and Jewish origin, respectively. BiH’s Constitution provided institutional access only to the constituent peoples of B&H - Bosniaks, Serbs, and Croats.

This verdict, as well as other documents such as the *Declaration on Bosnia and Herzegovina* adopted by the Committee of Ministers of the Council of Europe at its 120th session, and then the *Resolution of the Parliamentary Assembly 1725 On the Urgent Need For Constitutional Reform In Bosnia and Herzegovina*, were

<sup>1</sup> <http://www.demos.ba/clanci/presude-suda-za-ljudska-prava-u-strazburu-sejdic-finci-kompletna-presuda/253/>

a great opportunity for B&H to abandon ethnic voting and harmonize its Constitution and state laws with the European Convention on Human Rights.

Given that there were no radical changes in the integrative function of the Constitution, the Dayton Peace Agreement led to a dysfunctional political-constitutional state structure in B&H. In fact, it led to both the entity and state institutions of Bosnia and Herzegovina being constituted according to the dominance of ethnic representation of the three peoples of B&H: Bosniaks, Serbs, and Croats. In this way, all social interests: social, economic, cultural, and political are manifested and articulated on an ethnic basis.

The constitutional and political structure, grounded in the Dayton Constitution, granted full competency in terms of governance to its two entities, and insufficient competencies to B&H's state institutions, which strengthened the powers of the ethnic parties created during the war and ethnic pluralism based on it. Pluralism based on ethnicity, suppressed the citizen as a political subject of society and introduced the manifestation of the collective interests of ethnic groups.

B&H citizens have thus far, been unable to take control of the democracy formally advocated by the Dayton Constitution. The fact that our democracy functions in an ethnopollitical regime that allow citizens to be satisfied only with freedom, has been often criticized. On one hand, it is criticized by various international and domestic experts, and on the other, by citizens. We wonder here whether exclusive criticism of Dayton is enough for us, or is it time for citizens to participate in various reforms, such as constitutional reform, and thus win space for participation in post-Dayton B&H?

In all of B&H's twenty-five post-Dayton years, the three ethnic parties have had the greatest electoral and real power in B&H: HDZ BiH, SDS, and the SDA, with Milorad Dodik's Alliance of Independent Social Democrats (SNSD) supplanting the Serbian Democratic Party in 2006. These three parties base their program goals on ethnonational policies. The main characteristic of said ethnonational policies is that they strive for the ethnic territorialization of the area where they have a majority. Another important characteristic of these ethnonational policies is their historical roots mean they do not exist to build consensus on the development of B&H as a state. Thus, for example, after all the victories in the general parliamentary elections, the three ethnic parties avoid forming a coalition agreement by defining the main issues of social and political development of the Bosnian society in a way that means agreement cannot be made. Partnerships are only established regarding the division of responsibilities in the state government. This kind of avoidance of responsibility for the political basis on which the government of the parliamentary majority should work, has led to a permanent crisis in the development of B&H's state and society. Not only that, it has led to Milorad Dodik's constant advocacy for the secession of Republika Srpska.

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In addition to the post-Dayton ‘partisanship’ regarding constitutional reforms in B&H, let us add the opinion of the Venice Commission on the Bosnian and Herzegovinian constitutional system, which diagnosed points of critical urgency: a weak state structure, lack of clear definitions and limitations of ‘vital interests’ - institutions of veto, confusing overlap of territorial structures and ethnicities, as well as the composition of the state presidency and the House of Peoples. The opinions of the European Commission for Democracy through Law and the International Commission for the Balkans, were also a sufficient sign that Bosnia and Herzegovina was being asked to renew its collective and political identity. This process was imposed internationally and was conducted through activities related to constitutional reform. However, it has not been completed to this day, although the Dayton constitution allows for its revision.

*The dominance of the ethnic appropriation of the state is confirmed and strengthened by mechanisms (ethnic representation of the three dominant ethnic groups), then through ethnic clubs in the parliament and entities of the Federation of Bosnia and Herzegovina and Republika Srpska, in which certain constituent peoples have a majority. Despite the interventions and maneuvers international community’s representatives, which primarily consisted of insisting on and respecting human rights, citizenship in B&H has remained on the margins of social and political life. Today’s B&H is not a state from the 1992 referendum issue, nor is it a state as advocated by the 1993 *Presidency Platform*. Citizens are hostages to the constitutional solutions to which they react, without anyone holding their opinion relevant.*

## A call for citizenship

Knowing that there is no *citizenship* without an efficient state, through this paper we try to answer the question of whether it is possible to *liberate* ethnic citizenship from the ideology of division and ethnic distance in such conditions?

Although living under the terms of the Dayton Peace Agreement for so many years, most of B&H’s citizens have not often been consulted as to how they perceive, understand, and interpret the Dayton Constitution. Although they are currently *exempt from actual political participation*, there are some indications that citizens would be willing to engage in an overall revision or replacement of the Dayton Constitution in favor of the constitution of Bosnia and Herzegovina. One part of the results of the research<sup>2</sup> that we will present below, illustrates some of

2 Research conducted as part of a Fulbright Fellowship awarded by the U.S. Department of State (Scholar-in-Residence), which the author realized in the academic year 2019/2020 by lecturing at Wittenberg University and Antioch College (Ohio, USA). The title of the research topic was: “The Understanding of Constitutional Narratives: A Comparison Between the American and Bosnian-Herzegovinian System of Political Representation”.



the range of views on the role and importance of citizenship in B&H. Aware of all the methodological controversies regarding the placement of constitutional issues at the center public discourse, and their tendency toward large generalizations whilst using the focused survey method, we tried to detect some of the B&H's public's dominant attitudes and preferences .

*The Constitution* is treated as a set of rules that define the coercive order of society (Dimitrijević 2010:185), and *legitimacy* as a special type of relationship between the individual as the holder of rights and authoritative state bodies, as holders of powers of coercion.

Over 150 citizens living in B&H and the USA (originally from B&H), answered a set of different questions on constitutive democracy<sup>3</sup>, to find out what status the Constitution of Bosnia and Herzegovina has among its citizens.

Out of the 86 respondents from Bosnia and Herzegovina, 52.4% are not at all satisfied with the functioning of constitutional democracy, while 43.9% are not very satisfied with the constitutional order of the state. Only a few are quite and very satisfied with the relationship between the Constitution and democratic issues in the country. The Bosnian diaspora in the United States (64 respondents) responded that they were not at all (59.7%) satisfied, 40.3% responded with not quite satisfied (). There were no citizens who were quite or very satisfied with the way the institutions of democracy in Bosnia and Herzegovina work. The intention behind questioning part of the Bosnian public about the possibility of democratic consolidation, was to analyze the nature of the political body (the Constitution) and the possibility of its transformation.

We questioned the following claims:

- The Constitution preserves the territorial integrity of B&H
- The Bosnian and Herzegovinian Constitution undermines the internal sovereignty of the state
- The Bosnian and Herzegovinian Constitution discriminates against minority communities
- The Bosnian and Herzegovinian Constitution protects citizens from state repression
- The Bosnian and Herzegovinian Constitution limited the abuse of power

We approached these claims from the position of citizens' sovereignty, which in a decentralized society, would create a political public sphere that discusses various social problems and interests.

When asked *whether the Constitution preserves the territorial integrity of BiH*, the respondents answered in the following way. *I completely agree* was the opin-

<sup>3</sup> Respondents were selected to favor their civic identity, although their identity did not exclude belonging to ethnic groups.

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ion of 28% of respondents; *I agree*, 51%; *I do not agree*, 19%; *I completely disagree*, 3%; while there was *no answer* from 2% of respondents. The vast majority believe that the greatest value of the Dayton Constitution is that it has preserved the territorial integrity of B&H.

In response to the question as to whether, *The Bosnian and Herzegovinian Constitution undermines the internal sovereignty of Bosnia and Herzegovina*, the respondents clearly agreed, because they answered as follows: 22% *completely agree*; 50% *agree*; 23% *disagree*; 4% *completely disagree* and 3% of respondents chose *no answer*. The internal structure of the state - the division into entities and the Brčko District - has been recognized as a key element in undermining the country's internal sovereignty.

*The BiH Constitution discriminates against minority communities*. This statement was also confirmed, because the respondents answered: *I completely agree* 50%; *I agree*, 44%; *I disagree*, 21%; *I completely disagree*, 2% and there was *no answer* from 7% of respondents. These results speak for themselves.

*The Bosnian and Herzegovinian Constitution protects citizens from state repression*. Respondents refuted this claim by answering as follows: 4% *completely agree*; 20% *agree*; 44% *disagree*; 15% *completely disagree*, whilst *no answer* was recorded from 7% of respondents. The results of the response sends a strong message about the character of democracy in B&H.

*The Bosnian and Herzegovinian Constitution has limited the abuse of power*. This claim is also disputed. 6% of respondents answered, *I completely agree*; , 18% responded, *agree*; 44%, *disagree*; 24%, *completely disagree*, while 6% of respondents answered *no answer*.

We also asked B&H's citizens to respond to the following statements, in a bid to ascertain what they thought of the Bosnian and Herzegovinian Constitution:

- The Bosnian and Herzegovinian Constitution is complicated
- The Bosnian and Herzegovinian Constitution has not been verified in the Bosnian and Herzegovinian Parliament
- The Bosnian and Herzegovinian Constitution has unfairly divided Bosnia and Herzegovina
- The Bosnian and Herzegovinian Constitution has fairly divided Bosnia and Herzegovina
- The Bosnian and Herzegovinian Constitution protects politicians more than Bosnian and Herzegovinian citizens
- The Bosnian and Herzegovinian Constitution protects collective rather than individual rights

In response to the statement *The Bosnian and Herzegovinian Constitution is complicated*, our respondents replied thus: 46% of respondents answered, *I com-*

pletely agree; 54% responded *agree*; 18% responded *disagree*; 1% responded with *completely disagree* and 5% of respondents chose the *not answer* option. The respondents responded to the statement that *the Bosnian and Herzegovinian Constitution has not been verified in the Bosnian and Herzegovinian Parliament* thus; 22%, *completely agree*; 40%, *agree*; 10%, *disagree*; 0%, *completely disagree*; whilst 15% of respondents selected the *no answer* option. These responses require further explanation, especially if we add that 56 respondents opted to select: *neither agree nor disagree*. The Dayton Peace Agreement and the BiH Constitution are not available to its citizens because they were never published in the official gazette. Moreover, Article 11 of the Agreement states that it entered into force upon ratification, and not by being published it in the Official Gazette of Bosnia and Herzegovina, which is the usual way a law comes into force.

When, we asked the respondents *whether the Constitution divided Bosnia and Herzegovina fairly or unjustly*, it is notable that, contrary to the opinions of political actors, respondents generally agree with the first claim that the Dayton Constitution of Bosnia and Herzegovina unfairly divides B&H.

The responses to the statement *the Bosnian and Herzegovinian Constitution has unfairly divided Bosnia and Herzegovina* were positively confirmed, with 49% of respondents selecting: *I completely agree*; 40% selecting, *I agree*; 8% selecting, *I do not agree*; 3% selecting *I completely disagree*, whilst the *no answer* option was circled by 8% of respondents. In reviewing the answers to the statement, *the Bosnian and Herzegovinian constitution fairly divided Bosnia and Herzegovina* (I completely agree 3%, diaspora 9%; I agree 1%, diaspora 9%, I disagree 41%, I completely disagree 37%, no answer 9%), we can state that a larger number of respondents are aware of the constitutional and legal stratification of the Bosnian society into ethnic communities and that this constitution has significantly weakened the B&H state's credibility. The claim of a fair division of B&H is disputed.

By careful analysis of the data presented here, it can be seen that the state is seen as a place that should be effectively regulated. Several determinants have been identified that provide a qualitative addition to the quantitative data that say that Bosnian and Herzegovinian citizens would vote tomorrow to change the Constitution. They believe that B&H has a "complex state system" (blockades of entity, cantonal and municipal levels); that there exists an "inconsistent consensus on vital issues within Bosnia and Herzegovina"; that there are "too many ministries"; that "constitutional provisions are discriminatory"; that we have a "problematic Election Law by which Croats are proclaimed as "constituent peoples""; that there is a "small electoral threshold of 3%"; that there are "too many political parties" and finally, that; "The Dayton Agreement, which is not democratic and does not recognize the rights of other ethnic groups, was signed illegally and by war criminals."

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The opinions of our respondents answer one of the key questions of constitutional democracy, do the “new examples of the adoption of the constitution” by the international community (in the case of B&H and Kosovo) contain integrative potentials or not?

This rich source of quotations from the material, for the most part, points in one direction; “The Bosnian and Herzegovinian Constitution has “expired “, its deadline has passed. At one time, it was an instrument for stopping the war and starting the process of reconciliation and development of democracy and mutual relations with respect for all. Today it does not function to the extent it should be, the constitution is the basis for all other social and political processes in a democratic system”. It is concluded that; “A constitutional structure unknown to any social order in the world is contrary to constitutional law”. Following this; “The reputation of the state of Bosnia and Herzegovina is being destroyed” from within “and this is not taken into account at all at the state/parliamentary level - quite the opposite.”

There are, of course, mechanisms for change in the Dayton Peace Agreement itself, especially in its dynamic component, which notes that the state of “Bosnia and Herzegovina is emerging”. Within this dynamic component, other, numerous reforms have been implemented, such as the reform of B&H’s Armed Forces. The upgrade of the state cannot be imagined without the assistance of representatives from the international community, who occasionally show interest in constitutional reforms. The latest reform, known as the April package, failed to reach a political agreement between representatives of the three ethnic groups, despite some interesting proposals that may have paved the way for B&H’s European integration. Ethnic political structures are resilient and resistant to everything that is civic, so that their autism about these and other judgments of the civic type, reveals their motives and attitude towards the state of B&H and its citizens.

## Conclusion

Institutional structures based on the separation of ethnic groups and citizens, give themselves the right to personalize the state of B&H for themselves, in a way that suits each of them individually. Thanks to the constitutional and political structure of the state, based on the ethnic principle and full constitutional and legal competencies of the entities, national or leading ethnic parties become the owners of Bosnian society as a whole, which devalues and limits any other form of citizenship and pan-ethnicity in B&H.

Constitutional reform has been reduced to the issue of political agreements between representatives of the three ethnically dominant groups, *who do not show interest* in the integrative function of the Constitution of Bosnia and Herzegovina.

The implementation of the *Sejdić Finci v. Bosnia and Herzegovina* verdict as well as other judgments that followed, could bring B&H closer to European standards and European citizenship, which is a symbiosis of citizenship and panethnicity.

If the verdicts handed down by the International Court of Justice in Strasbourg, and if the entire process of constitutional reform were returned to Parliament, the Dayton Constitution could be revised or even rejected, which is less likely. So, in addition to the lack of will by ethnic politicians for an integrative constitutional function, we see the necessity and need to change the method and methodology in solving the accumulating problems. The international community could help form a joint expert group, whose recommendations could benefit the parliamentary structure. Such a synergy of profession and politics would restore morality to the constitution and dignity in terms of citizenship and panic. This would mean that Bosnian citizenship means having a connection to the political community; that it carries within itself a strong normative charge, a normative ideal that is always connected with the ideas and views of citizens on how a political community should be well organized (Podunavac 1998:13).

If we agree with Thomas Mayer that *alienation* is a process in which politics and life move away from each other, then in B&H, the power to shape what concerns all of us has not died. Of the several possible ideas and solutions for amending the Dayton Constitution, one solution seems to be becoming the most reliable, especially in the historical context of B&H's EU integration. This solution implies that constitutional reform, intending to amend the Dayton Constitution into more provisions within which the principles from the European Convention on Human Rights and Freedoms, as well as the principles from the European *acquis*, will be incorporated.

This diverse material from the research presented in this paper, confirmed the hypothesis that the *status of citizenship* has a significance and vitality only in those contexts in which the *impersonal idea of the state* is the basic ideal of living together.

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