



Bosnia and Herzegovina

Revised constitution loses by two votes

BY DR. VJEKOSLAV DOMLJAN

A package of constitutional amendments was rejected by a mere two votes in Bosnia's lower house of parliament in late April, in a move that will delay the country's hopes to enter the European Union.

The amendments were seen as essential for Bosnia to begin negotiations to join the EU.

The day of the rejection was the most tempestuous in the Bosnian parliament since the Dayton Peace Accord, Bosnia's interim constitution, was signed in 1995. For the amendments to be adopted, two-thirds of the deputies attending the session of the house had to vote in their favour. However, out of 42 deputies, 26 supported the amendments and 16 voted against, which meant that the proposed amendments did not gain the required two-thirds majority.

The day after, EU Special Representative Christian Schwarz-Schilling expressed "profound disappointment" over the rejection of proposed constitutional amendments.

"Bosnia now needs time to reflect on last night's outcome and then agree on how to move forward," he added. "The need to modify the Bosnian Constitution will not go away. It is an issue that will have to be re-visited in order to better equip the country for EU integration, and better equip the government to serve its citizens."

The Dayton constitution produced the first government in Bosnia after the three-year Bosnian war, which had expelled more than 50 per cent of the population from their homes and killed at least 100,000. The Dayton deal provided the framework within which much of the transformation of Bosnia has been taking place. Some reforms have been made to the Dayton agreement since 1995, but not all the changes that were necessary for membership in the EU.

The reform was slated for adoption before May 4, when Bosnia's Central Election Commission was supposed to schedule the next elections, planned for Oct. 1. The commission did so, but the rejection means that the elections will be organised under the existing constitutional rules.

The draft constitutional changes had proposed:

- giving legislative authority to an 87-member lower house of parliament;

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Tired of the failures of their parents, Bosnian youths wrote their own new constitution and displayed it publicly.

- changing the role of the upper house to deal only with issues of vital national interest,
- the election of one president and two vice presidents by the Bosnian parliament and
- giving broader authority to the Bosnian cabinet.

The main opponents to the changes were the Party for Bosnia and Herzegovina, led by Haris Silajdzic, and a breakaway Croat party called HDZ 1990.

The urgency of constitutional changes became apparent in April 2005, when the European Parliament adopted a resolution which questioned and implicitly criticized Bosnia's constitutional framework. Representatives of the EU held a public hearing with Bosnian representatives on the Dayton Agreement in October 2005, and recommended revisions to it. On February 16, 2006, the EU parliament repeated its criticism, calling on the three ethnic communities in Bosnia to resume negotiations on reform of the Constitution. They also asked that the Constitution include values linked to democracy, human rights and equality of citizens in the text, as well as references for overcoming ethnic divisions and the simplification of state structures.

The need to modify the Bosnian Constitution will not go away.
- Christian Schwarz-Schilling, EU High Representative in Bosnia

"Entity voting" or pre-election game

As with many federations, the structures and number of constituent units are devised to accommodate particular geographic and ethnic realities.

While Canada has 10 provinces and Germany has 16 *Länder*, Bosnia has only two constituent units, called "entities." They are Republika Srpska (populated mostly by Serbs) and another entity, populated mostly by Bosniaks and Croats, called the Federation of Bosnia and Herzegovina. There is also the tiny internationally-supervised district of Brčko.

The differences that still need to be hammered out in a revised Bosnian constitution stem from differing

perspectives of the three major ethnic groups of Bosnia: the Bosniaks (who are mostly Muslims), the Croats (who are mostly Roman Catholics) and the Serbs (who are mostly Christian Orthodox). To make things more complex, the Federation of Bosnia and Herzegovina has ten separate constituent units called cantons. In addition, the Federation of Bosnia and Herzegovina has 84 municipalities while the Republika Srpska has 53 of them.

Those who voted against the constitutional changes reportedly did so mainly because the draft constitution retained a practice called "entity voting" in parliament. "Entity voting" sets three conditions for a vote to be binding:

- 1) a majority of those voting
- 2) at least one-third of the minimum majority vote to come from members from Republika Srpska
- 3) at least one-third of the minimum majority vote to come from members from the Federation of Bosnia and Herzegovina.

There are many constitutional models in the community of democratic nations that Bosnia could learn from and possibly adapt.

Opponents of the constitutional changes viewed entity voting as the maintaining of the division of Bosnia into two entities. In their view, the constitutional amendments were unacceptable because they would have legalized wartime gains. The "wartime gains" were both

territorial and economic. Because the map of the two entities was largely based on the territory controlled by one side or another when the fighting stopped, each local district "belonged" to one of the two entities. And after a district "belonged" to it, that entity's government had more power than the central government to set the terms of economic, political and social relations in that locality.

According to Werner Almhof, Ambassador of Austria, the country which currently holds the Presidency of the EU, some MPs voted against the proposed constitutional amendments in order to gain political points on the eve of the upcoming October elections, "focusing on political and ethnic issues, not on the European path."

Donald Hays, a senior U.S. diplomat and former principal deputy high representative in Bosnia, blamed the defeat on a "handful of people that are fixated on the past, who want to revive the agony of the war and settle old accounts."

Defending the rejection, the leader of the Party of Bosnia and Herzegovina, Haris Silajdzic, stated that the amendments had to be rejected because "entity voting" is detrimental to Bosnia as a country.

On the other hand, Milorad Dodik, the Prime Minister of Republika Srpska and the leader of the Party of Independent Social Democrats, said "the entity vote was used only a couple of times so far," and he did not understand why it posed such a big problem, especially for the Party of Bosnia and Herzegovina.

For the Croats, the preserving of the two entities is seen as a failure to create a space for Bosnians of Croat descent. This was the reasoning of those Croat members of parliament who defected from the HDZ to form HDZ 1990. They spoke out against constitutional solutions which "preserved two entities," meaning that Croats in Bosnia would have no constitutionally defined role in the country.

The most multicultural country in Europe

Bosnia is located at the intersection of the fault lines of three civilizations, Roman Catholic, Eastern Orthodox and Muslim ones, running from the Baltic and Black Sea to the Adriatic Sea converge in Bosnia, making Bosnia the most multicultural country in Europe.

It finds itself still haunted by the past, particularly before election time. It is easier to talk about "chosen problems," or rather about each ethno-religious group's traumas, than to address questions about "pressing problems," which require large, innovative policy changes.

It is widely accepted that the current institutional setup is administratively complex, fiscally expensive, economically unsustainable and politically ineffective. It makes negotiating with the EU and other international bodies extremely difficult. To address those deficiencies Bosnian political leaders have proposed four different constitutional models. The most frequently mentioned is "the Bosnia of entities," "the Bosnia as a citizen state," "the Bosnia of ethnicities" and "the Bosnia of regions."

The failure of constitutional changes showed that Bosnians can be indecisive when their future is in question.

A negative signal

In any case, a negative signal was sent to the international community by failing to pass the constitutional changes. Bosnia took a step backward and lost its momentum in the process of European integration. Bosnian politicians, primarily those of the Party of Bosnia and Herzegovina and HDZ 1990, should take the responsibility for that.

Milenko Brkic, president of the Croatian party, the HNZ, one of eight political parties that signed a Commitment to Pursue Constitutional Reforms on Nov. 23, 2005, said the process of changes must not stop and that it is the responsibility of all political forces that stand for a prosperous and European future for Bosnia.

There are many constitutional models in the community of democratic nations that Bosnia could learn from and possibly adapt. The Council of Europe, a 46-member body which Bosnia joined in 2002, has a special commission, the European Commission for Democracy through Law - the Venice Commission for short. This commission made a number of suggestions to Bosnia in March 2005. It recommended a transfer of responsibilities from the "entities" to the national level, making the election of members to national Presidency and House of Peoples compatible with the European Convention on Human Rights, and several other provisions. Whatever the changes, the EU will have to be satisfied that members of all three ethnic groups can get justice from the governments of both entities, and that the central government is strong enough to call Bosnia and Herzegovina one country. (6)