

Foreign judges in the Constitutional Court of Bosnia and Herzegovina. Legal and political aspects

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Abstract

The article presents the analysis of the competences and constitutional position of the Constitutional Court of Bosnia and Herzegovina. In case of this country, there are a number of unique political arrangements, because under the *Dayton Peace Agreement* from 1995, ending the bloody war, representatives of international community play a significant role in political system. The Constitutional Court is a case in point, as one-third of the court consists of foreign judges. Starting the study, the author hypothesised that the presence and participation of these judges, on the one hand, allowed the Constitutional Court to avoid the typical purely ethnic division of authorities in Bosnia and Herzegovina leading to ethnocratic solutions, but on the other hand, it indicates the still incomplete state sovereignty that has persisted for almost 30 years. The hypothesis was verified based on research methods appropriate to social sciences, primarily institutional and legal, as well as a case study.

Keywords: Bosnia and Herzegovina, Constitutional Court, state sovereignty, foreign judges, international community, European Union

Sędziowie zagraniczni w Sądzie Konstytucyjnym Bośni i Hercegowiny. Aspekty prawne i polityczne

Streszczenie

W artykule poddano analizie kompetencje i pozycję ustrojową Sądu Konstytucyjnego Bośni i Hercegowiny. W przypadku tego państwa można mówić o szeregu wyjątkowych rozwiązań ustrojowych, gdyż na mocy porozumienia pokojowego z Dayton w 1995 roku, kończącego krwawą wojnę, istotną rolę w systemie politycznym odgrywają przedstawiciele wspólnoty międzynarodowej. Przykładem

jest właśnie Sąd Konstytucyjny, gdyż jedną trzecią składu stanowią sędziowie zagraniczni. Przystępując do badania, autor postawił hipotezę, że z jednej strony obecność i udział tychże sędziów w Sądzie Konstytucyjnym pozwala na uniknięcie typowego dla Bośni i Hercegowiny, czysto etnicznego podziału organów władzy prowadzącego do etnokratycznych rozwiązań, z drugiej jednak strony wskazuje na wciąż niepełną suwerenność państwową, utrzymującą się już niemal od 30 lat. Hipoteza ta została zweryfikowana w oparciu o metody badawcze odpowiednie dla nauk społecznych, w tym przede wszystkim instytucjonalno-prawną oraz studium przypadku.

Słowa kluczowe: Bośnia i Hercegowina, Sąd Konstytucyjny, suwerenność państwowa, sędziowie zagraniczni, wspólnota międzynarodowa, Unia Europejska

The legal and constitutional arrangements that are currently in place in Bosnia and Herzegovina (BiH) are the aftermath of decisions made in the fall of 1995 in the U.S. city of Dayton, Ohio.¹ *The General Framework Agreement for Peace*, which ended the bloodiest armed conflict in Europe since World War II, also brought a new constitutional order for this multi-ethnic post-Yugoslav republic. Since the end of 1995, BiH has had a constitution, originally written only in English and adopted completely bypassing the existing then constitutional procedures, which to date has not received formal approval in the relevant proceedings. The text of the *Constitution of Bosnia and Herzegovina*, which is *de iure* the most important legal act, was published in Annex 4, being a part of the *Dayton Agreement* (see: *The General Framework Agreement...* 1995; see also: Krysieniel 2012: p. 225–234). The Constitution itself omits some essential constitutional issues or treats them superficially. For example, the form of the state is undefined (not directly specified in the Constitution), and an attempt to analyse specific provisions leads to different conclusions – depending on the thesis adopted and political views expressed. The result is a lack of full consensus among constitutionalists as to what BiH really is. Most features support defining it as asymmetric federation, primarily due to its different internal structure – the decentralised Federation of Bosnia and Herzegovina (composed of ten cantons; hereinafter – FBiH), the centralised Republika Srpska (RS), and the Brčko District (Bieber 2008: p. 105).

The aim of the research and used methodology

The main aim of this research is to analyse selected aspects of political and legal implications of the presence of foreign judges in the Constitutional Court of Bosnia and Herzegovina (hereinafter also: CC BiH). The appointment of one-third of such a crucial political body by citizens of third countries is an uncommon phenomenon, therefore, all the more deserves an in-depth study. From the researcher's point of view, it should also be noted that sufficient time has passed for the solutions in question, almost three decades, to be able to assess the effects of the solutions adopted in 1995. The circum-

¹ Although the *General Framework Agreement for Peace in Bosnia and Herzegovina* (well-known as *Dayton Agreement*) was formally signed in December 1995 in Paris, however, there was Dayton, where key decisions were made for the future of BiH.

stances and international position of Bosnia and Herzegovina have also changed. After obtaining the status of a candidate country for the European Union, its political system can be evaluated through the prism of the problems that will arise during the – probably long – integration process.

The article is aimed to verify the **hypothesis** that the presence of foreign judges, serving as “safeguards” in the composition of the Constitutional Court, has helped avoid typical ethnocratic solutions in BiH, but at the same time represents one of the main problems and challenges, leading to a deep legal and political crisis and calling into question the sovereignty of the country. For this purpose, **research methods** appropriate to social sciences were used, primarily the case study and elements of the institutional-legal method.

Origins of constitutional judiciary in Bosnia and Herzegovina

The constitutional judiciary in the area of the former Socialist Federal Republic of Yugoslavia has a rich history, especially compared to other socialist countries. As early as 1963, at both the federal and republican levels, new constitutions introduced constitutional judiciary. This process included the Socialist Republic of Bosnia and Herzegovina. Its Constitution, adopted in Sarajevo on 10 April 1963 (modified in 1969, see: *Ustav Socijalističke Republike Bosne i Hercegovine 1969*), defined the appointment, functioning, and powers of the CC BiH (art. 225–231). It is worth noting that these regulations did not differ – at least declaratively – from those adopted in Western democracies, e.g. they introduced the irrevocability of judges (with some exceptions related to resignation or a valid conviction for a crime) and the finality of the Court's decisions. The scope of competencies was also typical for such organ, although it referred only to the republican level (Tadić 2017: p. 5). However, it should be remembered that equating the actual constitutional position and significance of the constitutional judiciary in democratic states and in authoritarian Yugoslavia would be unjustified due to the constitutional practice in the latter.

The next Constitution, adopted by republican parliament in Sarajevo in 1974, also included provisions related to the CC BiH, again copying the federal constitution in this regard. Formally, this legal state persisted until the declaration of independence and the establishment of the Republic of Bosnia and Herzegovina in 1992.² However, it should be remembered that at the outbreak of the war in April of that year, the internationally recognised authorities in Sarajevo controlled only part of the republic's territory, because most of it was under Serbian or Croatian troops' control. Ultimately, under the pressure of the international community, primarily President Bill Clinton's administration, the conflicting parties were forced to end the war and sign the *Dayton Agreement* in the fall of 1995, which included a series of provisions regarding the foundations of a common state, including the aforementioned Annex 4 containing the text of the new constitution.

² The last consolidated text of the *Constitution of the Republic of Bosnia and Herzegovina* was announced during the war on 24 February 1993. Part XIII was entirely devoted to the Constitutional Court.

Structure and operational principles of the Constitutional Court of Bosnia and Herzegovina. The issue of foreign judges

The current key provisions concerning the CC BiH are found in the extensively detailed Article VI of the *Constitution of Bosnia and Herzegovina* (see: *Ustav Bosne i Hercegovine* 1995; *Constitution of Bosnia and Herzegovina* 1995).³ Additionally, Article IV (par. 3(f)) lists the CC BiH as a body that assesses substantively and procedurally whether the legislative process in the parliament has violated the vital interests of any of the constituent nations (Gazić et al. 2023; p. 333). There is no separate law dedicated to this body; instead, the detailed regulations on the functioning, internal structure, and procedures of the Court are specified in internal legal act, namely the *Rules of the Constitutional Court of Bosnia and Herzegovina* (bos. *Pravila Ustavnog suda Bosne i Hercegovine*).

According to the provisions of the Constitution, the CC BiH is composed of nine members, four of whom are chosen by the House of Representatives of the Federation of Bosnia and Herzegovina, and two – by the National Assembly of the Republika Srpska. The remaining three positions are filled by the President of the European Court of Human Rights, in consultation with the Presidency of Bosnia and Herzegovina (a collegial three-member body representing Bosniaks, Serbs, and Croats). The Constitution sets no exceptionally high requirements for candidates for judges, who must simply be „distinguished jurists of high moral standing” (*Constitution of Bosnia and Herzegovina* 1995: art. VI, par. 1 (b)). There are no specific requirements regarding sufficiently long professional experience or academic achievements, which, in combination with political conditions, results in the fact that, on more than one occasion, positions in the CC BiH were occupied by people who did not necessarily meet the substantive requirements for judges in lower courts of general jurisdiction (Smailagić, Keranović 2011: p. 311). It should be noted that, unlike several other central-level bodies (e.g. the Presidency of BiH, the House of Peoples of the Parliamentary Assembly), the Constitution does not impose ethnocentric solutions that would limit selection only to representatives of the three constituent nations, discriminating against other citizens of Bosnia and Herzegovina (Marko 2004: p. 29). Nevertheless, in practice, only Bosniaks and Croats have been elected from the Federation to the CC BiH, and only Serbs from the Republic (*Međunarodne sudije...* 2024).

The Constitutional Court, in its new post-war form, officially commenced its operation on 22 May 1997, nearly 1.5 year after the signing of the peace agreement. According to its provisions, the term of the first composition lasted five years, expired in May 2002. During this period, the CC BiH issued several rulings in 2000 that led to the removal of discriminatory provisions from the constitutions of both entities, which targeted Serbs in the FBiH and Bosniaks and Croats in the RS. It is worth noting that this outcome was

³ An unofficial but widely used text of the Constitution (in three language versions: Bosnian, Serbian, and Croatian) is available on the website of the Constitutional Court: <https://www.ustavnisud.ba>. The original version (in English) can be found, for example, on the website of the High Representative (OHR).

achieved thanks to the votes of foreign judges, as only the Bosniak members of the Court supported this position among the locals (Krysieniel 2012: p. 278).

Due to delays in the election of judges by the National Assembly of RS, the new composition could only convene for its inaugural session a year later, in May 2003. During this period, no sessions were held, nor any decisions were made, although numerous cases within the Court's jurisdiction were formally submitted. From the spring of 2003, the CC BiH functioned without major disruptions for two decades (Tadić 2017: p. 6).

Article VI of the Constitution also regulates the scope of competencies of the CC BiH. Primarily, it is responsible for resolving disputes between entities (FBiH and RS), between the authorities of BiH and any of the entities, as well as between central-level institutions themselves. The Constitution particularly emphasises the role of the CC BiH in controlling the constitutionality of agreements made by entities with neighbouring countries, as well as laws and other legal acts adopted by the entities' authorities. Additionally, it is granted the competencies of a higher (appellate) court in matters regulated by the Constitution if they have been decided by any court in Bosnia and Herzegovina. What may be surprising, however, is how the Constitution addresses the Court's ability to review laws passed by the Parliamentary Assembly for compliance with the Constitution (and the *Convention for the Protection of Human Rights and Fundamental Freedoms*, which the Constitution explicitly mentions). This is possible when any court refers a question to the CC BiH in a particular case, the review of which depends on the content of the questioned law. Moreover, the Constitutional Court has clarified in its rulings that it can evaluate not only individual provisions contained in laws, but also entire legal acts (Steiner, Ademović 2010: p. 637). Summarising the powers and scope of tasks of the CC BiH, it can be stated that it combines classical solutions that are typical for the European model with certain elements of the Anglo-Saxon approach (Smailagić, Keranović 2011: p. 311).

The Constitution does not regulate the internal structure or the operation of the CC BiH. Specific solutions have been adopted in the aforementioned *Rules of the Constitutional Court of BiH*. The CC BiH can make decisions in one of three forms of sessions (Articles 8–12). These are: Plenary Court (all judges, requiring a majority of the full composition, i.e. five votes), Grand Chamber (only judges from Bosnia and Herzegovina) and Small Chamber (the president and two deputies, local judges).

For both the Plenary Court and the Grand Chamber, a quorum is five judges, while for the Small Chamber – all its members must be present. The president of the CC BiH can only be a judge selected by the parliament of one of the entities, hence must be a local judge (Articles 84–86). The term of the president of the CC BiH is three years. Simultaneously with the president, three deputies are selected, none of whom can come from the same constituent nation as the president, nor can they come from the same nation if the president is from one of the other constituent nations. Among the deputies, there may also be foreign judges.

A separate but extremely important issue, which is a key aspect of this research, is the appointment of three positions in the CC BiH by the President of the European Court of Human Rights. In Dayton, it was decided (and this formulation is included in the Constitu-

tion: art. VI, par. 1 (b)) that these positions would belong to foreign judges, none of whom can be citizen of a country neighbouring Bosnia and Herzegovina. This provision was aimed at excluding the possibility of choosing citizens of Croatia and Serbia, countries that were quite strongly, but formally only indirectly, involved in the conflict in BiH. It was explained that participation of foreign judges was intended to serve as a safeguard in case when the legislative and executive bodies undertook actions dangerous to the political and social stability of the country (Steiner, Ademović 2010: p. 625). Although the Constitution provides for the possibility that after five-year term of the first composition of the Court the Parliament could adopt a law specifying a different method for selecting the three judges than by the President of the European Court of Human Rights, this possibility has not been exercised.

It is worth emphasising that this specific international oversight was not limited to the CC BiH. A similar constitutional safeguard against potentially destructive actions by local politicians was also provided for the Central Bank of Bosnia and Herzegovina (Article VII of the BiH Constitution), where for the first six years, the position of governor was to be held by a person who was not a citizen of BiH or any neighbouring country.⁴

The aforementioned "safeguards" of appointing certain key state functions to foreigners can be considered as justified, but only until 1997, when the entities overseeing the implementation of the *Dayton Agreement* endowed the High Representative of the International Community (OHR), established under Annex 10, with extraordinary powers, effectively making BiH a protectorate.⁵ It should be noted that the Constitutional Court on numerous occasions refused to review the legal acts imposed by the High Representative. It was argued that the constitutional terms of reference did not provide for the possibility of reviewing acts of international law, and the CC BiH considered the OHR's decisions to be precisely such. The above interpretation was adopted despite the fact that by its activities – parallel to the state bodies – the High Representative strongly interfered and interferes in the legal and political system of Bosnia and Herzegovina (Steiner, Ademović 2010: p. 749).

Bosnia and Herzegovina's constitution has not introduced, except for the first composition, the tenure of judges. The only restriction on serving is reaching the age of 70. Earlier vacating of a position is possible in only two cases: upon the judge's resignation or a unanimous decision by the remaining judges to remove the member from the Court.

Genesis and course of the crisis in the Constitutional Court

The personnel crisis began in November 2022, when Serbian judge Miodrag Simović resigned from his position due to age. Later, under pressure from the authorities of Republika Srpska (RS), Zlatko Knežević resigned in January 2024. Since the National

⁴ This position was filled by New Zealander Peter Nicholl.

⁵ The OHR can repeal or impose any legal act, including laws passed by the Parliamentary Assembly, amend the constitutions of both entities and the Brčko District, and remove any person from their position, even if they are elected through popular elections, including members of the Presidency.

Assembly did not elect anyone to replace them, there was no longer a judge from the RS in the Constitutional Court. This was the realisation of the goal set by the president of this entity and at the same time the most important politician in RS for many years – Milorad Dodik. He publicly stated that, in his opinion, since the decisions adopted by the majority in the CC BiH hit Serbs and the Republika Srpska, it would be rational to refrain from electing judges and undermine the legitimacy of this body (Maksimović 2023). Dodik's attitude is a part of an escalation in political and legal conflict that arose from the Constitutional Court's annulment in 2023 of several laws passed by the National Assembly of RS (addressing, among others, the seizure of real estate, the declaration of a national holiday, a refusal to enforce Constitutional Court's verdicts in RS, and the publication of OHR's decisions). However, an analysis of the distribution of votes during the decision-making on these politically important issues for the RS does not allow us to state that foreign judges played a decisive role and tipped the balance. Each time, the majority of local judges also voted to repeal the controversial provisions (Išerić 2024).

Among the arguments put forward by the Serbs from RS, the basic one emphasises the negative impact of the participation of representatives of other countries in the functioning of such important body as the CC BiH. They argue that this fact undermines the sovereignty of Bosnia and Herzegovina, creating a form of protectorate (especially in conjunction with OHR's actions). Another issue is the lack of understanding of the legal, political, and social realities in this ethnically divided state, as well as the necessity to translate documents into foreign languages to enable participating judges to review them (which generates additional costs and slows down the process, especially during sessions). It is worth noting that, of the 12 foreign judges, who have served on the CC BiH since 1997, only two spoke any of the official state languages (Bosnian, Croatian, or Serbian). They were the Austrian Joseph Marco in 1997–2002, and the Macedonian Margarita Caca-Nikolovska in 2011–2020 (Išerić 2024).

The aforementioned language inconveniences became particularly visible from December 2022, when due to the lack of adequate number of local judges, it was not possible to convene the Grand Chamber sessions, and all cases had to be considered by the Plenary Court. This situation resulted in a significant slowdown in the pace of work, which contributed to the weakening of the role of the Constitutional Court as a body guarding human rights and freedoms.⁶ For comparison: from November 2021 to November 2022 (i.e. the moment when problems with the composition appeared), about 950 cases were considered, and in the following 12 months – only about 170 (Išerić 2024).

The main goal of Serbian politicians is to achieve the adoption of the law on the CC BiH, according to which the full composition of this body would be based on judges from Bosnia and Herzegovina. To this end, in August 2023, a draft law on the Constitutional Court was submitted to the Parliamentary Assembly of Bosnia and Herzegovina,

⁶ Due to the memory of the tragic consequences of the war, human rights are particularly strongly articulated in the *Constitution of Bosnia and Herzegovina*, including the direct application of the *Convention for the Protection of Human Rights and Fundamental Freedoms* (Article 2), which takes precedence over other laws.

which stipulates that within six months from the date of entry into force of the law, foreign judges will be replaced by local ones. If their election within this period does not take place, the mandate of foreign judges would expire anyway, and the Court would function on the basis of a 6-person composition. However, as of the time of drafting this article, parliamentary proceedings on this bill have not yet begun. It should be noted that this is not the first attempt to pass a law on the CC BiH. Similar efforts in 2007, 2010, and 2020 also failed, primarily due to resistance from Bosniak representatives (Išerić 2023).

Paradoxically, the demands to remove foreign judges from the CC BiH are also made by one of the most important Croatian politicians in BiH, Dragan Čović. He argues that such move would increase the numerical representation of Croatian judges, who, in coordination with Serbian judges, would diminish the influence of Bosniak judges, who usually vote similarly to foreign judges (Wankiewicz 2024). However, this seemingly reasonable pursuit by Serbian and Croatian politicians has a deeper motive, as the removal of foreign judges from the Court would likely further slow its work, limit the role and significance of yet another central governing institution, and thereby weaken the cohesion of the state. This situation could benefit regional authorities, which is precisely what the Serbs in Republika Srpska and Croats in the FBiH are counting on.

The Constitution itself does not help to solve the problem either, because it does not *expressis verbis* provide for the possibility of removing foreign judges from the Constitutional Court. It only mentions the opportunity of alternative method for their appointment, other than through the President of the European Court of Human Rights. Therefore, the key legal question is whether such law – should it be passed by parliament – would be constitutional. Two High Representatives – the previous one (Valentin Inzko) and the current one (Christian Schmidt) – were negative about such a possibility. Since the OHR has a competence to remove from the legal system of BiH any legal act that would pose a threat to the stability of the state, the chances of effectively carrying out the procedure of terminating the mandates of foreign judges are negligible (Išerić 2023).

It is worth emphasising that despite the negative circumstances indicated above, changes in the CC BiH are necessary to continue the process of integration with the European Union. Although in December 2022 BiH received the status of a candidate country, it was a gesture of purely symbolic meaning, rather without prospects for starting the actual negotiation process. The European Commission had already set a number of conditions for the authorities in Sarajevo (more precisely –14 priorities) that they must meet in order to start real talks. One of these priorities is the reform of the Constitutional Court and solving the problem of foreign judges (Transparency International 2021). In most cases, no significant improvement in the situation was noted.

During the peak of the Constitutional Court's crisis, on 22 March 2024, a press conference was held with all judges present. During the event, the Court's president Valerija Galić emphasised that, since November 2022, the Court has been operating under exceptional circumstances, because the lack of three local judges⁷ has made it

⁷ In addition to the judges from RS, one of the judges from FBiH was not elected – due to the lack of political agreement in the parliament of this entity.

impossible to convene sessions of the Grand Chamber, which in previous years reviewed approximately 99% of cases under appeals procedure. The plenary sessions considered only cases related to the assessment of the constitutionality of legal acts and a negligible part of appeals. The scale of the problem is evidenced by the data cited by Valerija Galić, according to which in 2023 the Constitutional Court received 5,465 cases from the scope of appeals and only 32 concerning the review of constitutionality. The partial paralysis of the CC BiH led to the situation that at the end of 2023 there were over 8,000 unfinished procedures (*Ustavni sud BiH... 2024*). Later, at the conference, the judges stated that the attempt to paralyse the activity of the CC BiH is a threat to the stability and existence of Bosnia and Herzegovina, and it constitutes another example of an attack on the independence of the judiciary, reflecting a broader global trend.⁸ Therefore, in the judges' opinion, all possible steps, in accordance with the Constitution, had to be taken to ensure the continuity of the functioning of the body.

Faced the threat of complete inability to make any decisions due to a lack of the required quorum, a change was made in regulations regarding the performance of duties by a judge after the age of 70 (*Odluka... 2024*). A new provision (Article 99.a) was added to extend a judge's mandate exceptionally if the relevant body fails to appoint a successor by the time, when the term expires.

It is noteworthy that the controversial concept of extending the sitting of judges in the CC BiH beyond the constitutionally defined age of 70 was put forward in March 2024 by Venice Commission (Opinion No. 1176/2024, see: Venice Commission 2024).⁹ In addition to this solution, it was proposed, among others, to appoint *ad hoc* judges, who – following the solutions in force in Austria, Chile, or Liechtenstein – would fill vacant positions. Ultimately, it was decided to extend the mandate until a successor was elected, which on the one hand allowed the Constitutional Court to avoid complete paralysis, but on the other hand – exposed this body to accusations of acting in violation of the Constitution, which formally it supposed to guard.

Conclusions

According to the provisions of the Constitution, the removal of foreign judges from the CC BiH requires introducing changes to the fundamental law by the Parliamentary Assembly. The amendment would have to be accepted by both houses of parliament, with a two-thirds majority required in the House of Representatives. However, looking rationally, the chances of reaching such a compromise are minimal – in thirty years, the *Constitution of Bosnia and Herzegovina* has been amended only once, in March 2009 (provisions concerning the Brčko District were included in it). The amendment was possible only after an agreement was reached among the most important party leaders representing all three constituent nations. In current reality, it is difficult to imagine reach-

⁸ The attack on the rule of law occurring in Poland was cited at the conference as one of several other examples.

⁹ One of the members of the 5-person team appointed to consider the problem was Hanna Suchocka.

ing such compromise, when the national interests related to the continued functioning of foreign judges in the CC BiH are contradictory (Bosniaks *versus* Serbs and Croats). The lack of chances to reach any agreement was also influenced by the fierce political rivalry before the local elections held on 6 October 2024 (Išerić 2023).

The problem of the presence of foreign judges in the CC BiH seems to be disproportionately greater than the role that they actually play. Their participation is limited only to the work of the Plenary Court, which normally deals with only a small part of the cases flowing to the Constitutional Court. Similarly, it is impossible to defend the thesis put forward by Serbian politicians that foreign judges are biased, and their activity contributes to attacks on the Republika Srpska and affects the limitation of its independence. On the other hand, it should be noted that there are voices from high-ranking Western politicians directly indicating that the reason for maintaining the presence of foreign judges in the CC BiH is the policy of the authorities of the Republika Srpska (Williamson's... 2025).

Of course, it does not change the fact that the mere presence of foreigners in the Constitutional Court indicates the limited sovereignty of BiH as a country aspiring to join the European Union. If there is to be any progress in the process of integration with the EU, the influence of the international community on the political system of Bosnia and Herzegovina must be limited. In the current reality, i.e. with an almost potentially omnipotent High Representative and foreigners in the CC BiH, there is no such possibility. However, solving this problem is not easy, because, paradoxically, the presence of external entities is the most important guarantee of the continued existence of BiH as a political entity. Without this external "brake", strong centrifugal tendencies, visible especially among the Serbs, could lead to the disintegration of the state and destabilisation of the situation in the region.

Finally, referring to the hypothesis put forward, it can be viewed precisely through the prism of this specific situation with no way out. Without a doubt, the presence of foreign judges in the composition of the Constitutional Court proves the lack of full state sovereignty of BiH, but on the other hand, a significant part of the democratic changes in the law, including the constitutions of both entities, were made thanks to the active participation of these judges, with the opposition of the majority of local judges. Therefore, we can draw the sad conclusion that the solution limiting the sovereignty of BiH *de facto* supports maintaining its relative unity as a state entity. Taking into account not only the announcements of actions but the steps already taken in recent years by some key politicians, handing control of the Constitutional Court entirely to judges from BiH, appointed by representatives of nationalist parties, could mean the total paralysis of this body.

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