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# EUDO CITIZENSHIP OBSERVATORY

## ***COUNTRY REPORT: BOSNIA AND HERZEGOVINA***

Eldar Sarajlić

Revised and updated January 2013



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European University Institute, Florence  
Robert Schuman Centre for Advanced Studies  
EUDO Citizenship Observatory

## ***Report on Bosnia and Herzegovina***

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# Bosnia and Herzegovina

*Eldar Sarajlić*

## 1 Introduction

As in other similar neighbouring countries, citizenship policies in Bosnia and Herzegovina have been determined by the recent historical, political and cultural developments the entire region of former Yugoslavia has experienced. In addition to the malaise of post-socialist transition, shared by all the Yugoslavian successor states, the existing Bosnian citizenship regime has been strongly influenced by a heritage of ethnic conflict and the provisional constitutional setup of the country, itself a result of a peace agreement between belligerent groups. But more profoundly, the conceptualisation of citizenship in Bosnia and Herzegovina has been dependent on the definition of the community of citizens who constitute the state. Since Bosnia and Herzegovina is not a nation-state (and has never been one) but a federal union based on the sovereignty of ethnic groups which have political supremacy over individuals, making clear-cut assumptions and definitions of Bosnian citizenship is close to impossible.

Given citizenship's crucial role in creating and defining of nation-state and its inescapable identity dimension, analysing citizenship in a country such as Bosnia and Herzegovina inevitably raises questions about its relation to nationality. The conflation between citizenship and nationality which often occurs within western political discourse poses difficulties in the analysis of Bosnia and Herzegovina, precisely because nationality (*nacionalnost*) is, as in many other parts of Eastern Europe, understood in Bosnia exclusively in ethnic terms, while this is not necessarily the case with citizenship (*državljanstvo*). However, since both terms involve categories of state and identity, their correlation is crucial for understanding contemporary the citizenship issues and dilemmas in this country.

Citizenship in Bosnia and Herzegovina has been set within a triangle of social and political relations in which ethnic identity and politics play the other two sides. This triangle - citizenship, ethnic identity and politics - represents key anchor points around which discussions on the Bosnian statehood revolve, rendering it similar and comparable to other cases (see Joppke, 2007). This chapter aims to analyse contemporary citizenship issues in Bosnia and Herzegovina in the context of transition, conflict and identity politics. It aims to contextualize the development of citizenship policies and practices in historical perspective and to assess the current state of affairs. The main focus is on the legal definition or 'state citizenship', involving 'the identification of citizenship with the elaboration of a formal legal status' between individuals and state (Stewart 1995: 63). The broader, democratic understanding of citizenship is dealt with only briefly where context and events render such references necessary to understand the issue. Additionally, the chapter tries to explain more clearly the country's complicated citizenship regime as established by the Dayton constitutional framework and to discuss some of the current debates using the "constitutional ethnography" as the most suitable method (Scheppele, 2004).

## 2 The history of Citizenship in Bosnia and Herzegovina

### 2.1 Bosnia and Herzegovina within empires

The history of Bosnian politics has always been determined by more powerful forces than the country itself. This was especially the case with its early modern and modern history. As a country at the crossroads of conquest and wars of great empires, both European and Asian, Bosnia's statehood and independence have been short-lived. As of the mid fifteenth century, when the country fell under the Ottoman rule, until the mid twentieth century, when the first modern republic was created under socialist supervision, Bosnia and Herzegovina had been a part of greater imperial frameworks, a periphery to the larger power.

Bosnian citizenship regimes evolved accordingly. The first modern legal definitions of belonging were developed during the late Ottoman rule. The *Tanzimat* reforms (1839-1878) that aimed at creating an overarching Ottoman nationality and stemming the tide of nationalist uprisings provided the first legal framework that corresponded to the modern concept of citizenship. Besides the Gülhane Edict (1839) that laid the ground for the reform across the board, two other crucial documents are relevant for the inception of the Ottoman citizenship project: the Hatt-ı Hümayun Edict of 1856 which promised full legal equality for citizens of all religions, and the Nationality Law of 1869 that created the common Ottoman citizenship, transcending religious or ethnic divisions (Köksal 2008; Imamović 2006). The establishment of a modern-type citizenship in the late Ottoman Empire had been influenced by European ideas of civil rights, but also by the need to reform the old legal framework, determined by religion (Berkes 1964). Within such framework, Muslims had been subjects of Sharia law while non-Muslims existed under the *millet system*, which recognised their minority rights and left certain parts of legal affairs, primarily civil status and family relations to be governed by their religious or canon law (Imamović 2004: 110).

However, the reforms were unsuccessful, mainly because of strong opposition from below exerted by the local (military) leaders and Muslim landowners who felt they were losing their hitherto dominant social position, as well as non-Muslims who desired national independence and thus opposed centralisation efforts. Bosnia and Herzegovina was one of the provinces where Ottoman rule faced fierce opposition, proving the futility of reform efforts on both grounds (Karčić 1999: 46). The Ottoman response to this opposition was to avoid direct conflict and gradually incorporate some of the old practices into the centralisation efforts. One of the practices was the 'legacy of the millet system, which recognised rights of communities, unlike the notion of citizenship that is based on individual rights' (Köksal 2008: 1503). In that way, the Ottoman citizenship project, though aimed at lessening the ethnic differences between its subjects and at increasing loyalty to the Empire through establishment of common nationality, ultimately reinforced the millet distinctions it sought to diminish. The rights of culturally and religiously defined communities remained the dominant political rule that determined the administrative framework, both at the local and the state level. Legal relations between the state and the individual remained strongly tied to communities the individuals belonged. This fact would have profound consequences on the development of citizenship in later parts of the Bosnian history.

Ultimately, the Ottoman reform efforts to establish a common citizenship reached a peak at the time of the proclamation of the first Ottoman Constitution in 1876. But, by the time it came to life, Bosnia and Herzegovina was occupied by another imperial force, the Habsburg Empire, and citizenship in the country followed a new historical path.

Pursuant to the decision of the European powers at the Berlin Congress in 1878, the Austro-Hungarian Empire occupied Bosnia and Herzegovina and established its own legal regime. In legal terms, the Austrian-Hungarian period of Bosnian history had two parts. The first part encompassed the period between the military occupation in 1878 and the formal annexation of the country in 1908. During these thirty years, under the terms of the Treaty of Berlin (art. 25), the Dual Monarchy had the right to occupy and administer Bosnia and Herzegovina, while the Ottoman Sultan retained the sovereign rights over the province. The second part was determined by the Habsburg decision to annex the country and impose its own legal order that lasted until the Empire's end in 1918. Only after 1908 did Bosnians formally become subjected to the rule of the Habsburg Empire. Between 1878 and 1908 they had been considered as subjects of the Ottoman Sultan.

There were two important characteristics of Habsburg legal rule in Bosnia and Herzegovina. First, Austria-Hungary retained some parts of the Ottoman legal and administrative setup, from the administrative organisation, legal order, and tax system to agrarian relations. These norms were altered and improved gradually, but the basic social structure remained organisationally tied to Bosnia's communal and religious order (Imamović 2004: 200). This setup influenced the political status of Bosnian citizens, whose limited participation in the political life of the country was determined by their ethnic and religious belonging. The second important characteristic was the specific position of Bosnia and Herzegovina within the Dual Empire, as a *corpus separatum* administered by the common Ministry of Finance and consequentially a complex situation with regard to citizenship. Austrian-Hungarian Monarchy had no common citizenship. There had been two separate citizenship laws, defined by the Austrian Civil Code of 1811 and the Law on Hungarian Citizenship from 1879, pertaining to lands under Austrian and Hungarian rule respectively. Since Bosnia and Herzegovina was administered as a separate territory, none of these citizenship laws were applied there. Thus, the inhabitants of Bosnia and Herzegovina were neither Austrian nor Hungarian citizens. Instead, they had the legal status of 'members of the land of Bosnia and Herzegovina' (Imamović 2004: 242). This status was further defined with the proclamation of the Land Statute (Constitution) in 1910 that introduced universal civic equality and regulated a uniform citizenship of Bosnia and Herzegovina as a distinct administrative entity (*territorium separatum*) within the Habsburg Empire.

After the First World War and the disappearance of the Dual Monarchy, Bosnia and Herzegovina became a part of the State and later the Kingdom of Serbs, Croat and Slovenes, which was superseded by the Kingdom of Yugoslavia. Royal Yugoslavian rule and the Citizenship Law from 1928 established a single Yugoslavian citizenship for the whole territory of the Kingdom, therefore also defining the status of Bosnians within the South Slavic state.

## 2.2 Bosnian republican citizenship in socialist Yugoslavia

The history of Bosnian citizenship under socialist Yugoslavia tracked the evolution of its federal system. It was defined by the first citizenship legislation enacted in 1945. From that moment, the citizenship of Bosnia and Herzegovina, as a constituent part of the common Yugoslav state, evolved together with the overall constitutional development of the Yugoslav federation. The most salient characteristic of the citizenship regime established and maintained during the Socialist Yugoslavia was its bifurcated nature, with federal and republican citizenships existing simultaneously. This meant Bosnian citizens had republican (Bosnian) and federal (Yugoslavian) citizenship at the same time. Their relation was

determined by the constitutions and the federal and republican citizenship laws enacted three times over a period of roughly thirty years, from 1945 to 1977.

Socialist Yugoslavia went through a number of constitutional phases that reflected the ideological and geopolitical shifts the ruling Communist Party pushed forward but also determined the political nature of the country and its constituent parts - the Republics (Kardelj 1980: 385-403; Jović 2003; Anđelić, 2005). However, the role of the constitutional development of Yugoslavia can be also seen through the prism of political identities developed in direct relation with the structural evolution of the country and the position of particular republics within it, including Bosnia and Herzegovina. There were three distinct phases within Yugoslavia's constitutional evolution that reflected but also determined this relationship. The first phase involved the period between the official creation of the new Yugoslav state in 1943 and the proclamation of the first constitution in 1946, when the country acquired its ideological and constitutional structure. The Democratic Federal Yugoslavia (DFY) (1943) and later the Federal People's Republic of Yugoslavia (FPRY) (1946) were both defined in terms of a federal republican state, constituted by communities of 'equal peoples who hold the right of self-determination'.<sup>1</sup> The second phase began after 1953 when the Constitutional Law defined the FPRY as a 'socialist and democratic federal state of the sovereign and equal peoples' and ended in 1963 when the new Constitution further defined the socialist character of the state and proclaimed a new name that would last until its dissolution in the nineties - the Socialist Federal Republic of Yugoslavia (SFRY). Finally, it was only in the third phase, beginning in 1974, that the Yugoslav federation was determined as a federal state of 'voluntarily united peoples and their socialist republics' (Ibrahimagić and Kurtčehajić 2002: 48-53).

Throughout Socialist Yugoslavia's entire political history, there was a certain trade off between federal and republican levels of power that became discernible through the pattern of Yugoslavian constitutional changes. In a strict ideological sense, unity at the level of political ideas was beyond question, at least during the first thirty years of the Yugoslav federation, and the respective federal constitutions reflected this fact. But, since the revolution and uprising against the foreign occupiers and their internal allies during the Second World War were understood not only in terms of class, but also as ethnic and national liberation, the concept of nationality and nation-state never ceased to influence the internal politics of Yugoslavia. This was clearly reflected in the relationship between the federation and its constituent republics, established and changed according to the evolution of the Yugoslavia's constitutional law. If the initial founding documents retained a considerably ambiguous terminology and avoided explicit nation-state labels to describe both the federation and constituent republics by holding onto more vague terms of 'people', the later constitutional development cleared the ambiguity and established a more confederate relation between the federation and the republics as nation-states of their respective ethnic majorities. This was especially evident with the Constitution of 1974 and its definition of the state as a community of 'united peoples and *their* socialist republics' (emphasis added).

Thus, the politics of Yugoslavian citizenship must be understood in these terms. The evolution of citizenship laws followed the changes in the federal constitution and framed the ways individuals belonged both to their respective republic and to the common federation. The first law on federal citizenship was rendered immediately after the Second World War, during the first session of the Temporary National Assembly on 23 August 1945 and had the explicit political role of defining the main body of Yugoslav citizens who had active and

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<sup>1</sup> Ustav Federalne Narodne Republike Jugoslavije (Constitution of Federal People's Republic of Yugoslavia), *Službeni list FNRJ*, br. 10/46.

passive votes in the forthcoming elections. The Law on Citizenship of the Democratic Federal Yugoslavia was confirmed by the Constitutional Assembly's proclamation of the new Yugoslav Constitution on 31 January 1946 (Medvedović 1998: 23-24). With several subsequent modifications and amendments, from 1946 to 1976, this Citizenship Law would remain the basic piece of legislation for determining the federal citizenship of Socialist Yugoslavia.

The provision of two forms of citizenship - the federal and the republican - was established in the initial piece of legislation of 1946. It provided that every citizen was 'simultaneously a federal citizen and every federal citizen (was) in principle a country citizen' (Medvedović 1988: 39). The term 'country citizen' was later changed to the 'citizen of the people's republic' to reflect the changes in the federal legislation, but the basic structure of bifurcated citizenship remained the rule for the entire period of Yugoslavia's socialist existence. This was also the case with the exclusivity of republican citizenship: the 1946 law provided that a citizen of the FPRY could hold the citizenship of only one of the people's republics. Since no similar provisions existed in the Kingdom of Yugoslavia, new criteria for the establishment of the republican citizenship had to be created. The Law on Citizenship of the DFY (in the art. 37 para. 1) defines the country of residence (domicile) as the main ground for the determination of the republican citizenship. Yugoslav citizens who had a 'domicile or membership in a county on the territory of the respective country' on 6 April 1941 - the day the Axis powers invaded Yugoslavia - became citizens of the respective federal units (Medvedović 1988: 41).

However, the most important legal source for republican citizenship was the law enacted at the republican level. For Bosnia and Herzegovina, three laws in the period of roughly thirty years defined its republican citizens: the Law on Citizenship of the People's Republic of Bosnia and Herzegovina from 1950,<sup>2</sup> the Law on Citizenship of the Socialist Republic of Bosnia and Herzegovina from 1965<sup>3</sup> and the Law on the Citizenship of the Socialist Republic of Bosnia and Herzegovina from 1977.<sup>4</sup> Although the terms of acquisition of the republican citizenship had been outlined by the federal law from 1946, the first detailed provisions on the acquisition and termination were established after the republican citizenship laws were rendered in 1950. As with those of the other Yugoslav republics, Bosnian republican citizenship laws provided that the primary principle for the acquisition of citizenship was origin (*ius sanguinis*). Other principles though combined with *ius sanguinis* (such as *ius soli* and naturalisation) were of a secondary relevance.

Since the federal law stipulated the unity of federal and republican citizenship, the termination of the Yugoslav federal citizenship automatically represented the termination of the individual's respective republican citizenship. However, the termination of republican did not involve simultaneous termination of the federal citizenship. One could lose its republican and retain federal citizenship, but these situations occurred in the cases of the change of the republican citizenship. In the case of Bosnia and Herzegovina, the 1977 Law (art. 8, para. 1) provided that an individual from another Yugoslav republic could acquire Bosnian republican citizenship if he or she was above eighteen and resided on the territory of Bosnia and Herzegovina.<sup>5</sup>

The bifurcated nature of the Yugoslav citizenship raised a number of theoretical issues pertaining to the question of the supremacy of federal or republican citizenship. Although no

<sup>2</sup> Zakon o državljanstvu Narodne Republike Bosne i Hercegovine, *Službeni list BiH*, br. 5/50.

<sup>3</sup> Zakon o državljanstvu Socijalističke Republike Bosne i Hercegovine, *Službeni list SRBiH*, br. 6/65.

<sup>4</sup> Zakon o državljanstvu Socijalističke Republike Bosne i Hercegovine, *Službeni list SRBiH*, br. 10/77.

<sup>5</sup> Zakon o državljanstvu Socijalističke Republike Bosne i Hercegovine, *Službeni list SRBiH*, br. 10/77, page 277.

consensus on this issue has yet been reached among legal scholars, certain factors indicate that federal citizenship was ‘derivative’, while republican citizenship was ‘primary’ (Rakić 1998: 58; on the debate about the primacy see also Muminović 1998: 73; Štiks 2006: 485). This was especially the case with the later Yugoslav legislation that had introduced more confederate relations between the federation and the republics, leading eventually to a higher degree of republican sovereignty in determining citizenship provisions. The federal constitution of 1974 and the corresponding republican citizenship laws, adopted between 1975 and 1979, provide the legal ground for such argumentation. The Bosnian 1977 citizenship law stipulated that the ‘decision on the acquisition and termination of the citizenship of the SFRY and SRBiH will be rendered by the Republican Secretariat for Internal Affairs’ (art. 24, para. 1), indicating that the sovereignty in terms of citizenship lied at the republican level.

However, regardless of that fact, citizens of all republics had equal rights and duties on the territory of the entire federation, as provided by the 1974 federal Constitution. Thus, republican citizenship had few practical consequences on the lives of Bosnian citizens in Yugoslavia, and many people were not even aware that they had a republican citizenship. The significance of it would appear much later when the dissolution of Yugoslavia and the new legal situation that ensued created new citizenship practices based on the rule of republican legal continuity.

### *2.3 The dissolution of Yugoslavia and the new citizenship regime in Bosnia and Herzegovina*

The dissolution of Yugoslavia and the emergence of new states raised a number of legal issues that had to be determined on completely new grounds and created unprecedented legal and political complexities. This was especially evident in Bosnia and Herzegovina. Combined with the dissolution of the federation, legal succession, ethnic conflict and the post-conflict politics based on the primacy of group (ethnic) over individual rights, a unique citizenship situation has been created. It would have far-reaching consequences for the outlook and the future of Bosnia and Herzegovina as a state.

Modern legal doctrine stipulates that issues of citizenship fall exclusively within the jurisdiction of states. Though contemporary legal development and the introduction of citizenship as a basic human right have significantly undermined the prerogatives of states in regulating citizenship, this issue still represents one of the most salient manifestations of state sovereignty (UNHCR 1997; Čok 1999). This was the case with the independent Republic of Bosnia and Herzegovina, established in 1992 on the basis of the popular referendum, after two other Yugoslav republics, Slovenia and Croatia, seceded from the Yugoslav federation. The Presidency of Bosnia and Herzegovina enacted the Citizenship Act on 6 October 1992, seven months after the official declaration of independence and amid heavy fighting in large parts of Bosnia and in its besieged capital. Defining the initial body of citizens within the contexts of state succession, complex legal history and the war represented significant challenges for Bosnian authorities. The initial determination of Bosnia and Herzegovina’s citizenry was based on legal continuity with the previous republican citizenship and later, unlike in the other former Yugoslav republics, territorial residence for those who did not have it. This makes the Bosnian case similar to what Rogers Brubaker calls the inclusive ‘new-state model’ according to which the majority of the former Soviet republics transformed all residents on the territory into citizens of new state (1992: 279; UNHCR 1997: 29). This means that the 1992 Citizenship Act was based on the legal continuity with the former citizenship of the Socialist Republic of Bosnia and Herzegovina. People who had the

country's republican citizenship during Yugoslavia were automatically considered as citizens of the new state. On the other side, the citizens who had another republican citizenship within Yugoslavia, but were residing in Bosnia and Herzegovina on 6 April 1992 were also considered as citizens of the new Bosnian state.<sup>6</sup>

The collective naturalisation of people with citizenships of other former republics of the SFRY, based on the application of a residence requirement, was supplemented by additional provisions governing the acquisition of Bosnian citizenship by aliens (non-SFRY nationals) who had to fulfil a number of requirements, including an age limit (eighteen years), a requirement of ten years of uninterrupted residence in the country, and a requirement to have financial means for sustenance. Spouses of Bosnian citizens had to fulfil a residence requirement of five years. Some of the provisions were taken over from the previous socialist citizenship law (1977).

Additionally, the naturalisation of aliens (both former SFRY and non-SFRY persons) was further facilitated through amendments enacted in 1993 that provided individual naturalisations of the members of the Armed Forces of Bosnia and Herzegovina who had not been Bosnian citizens. The amendment to art. 2 of the Citizenship Act provided that members of the Armed Forces could acquire the citizenship without having to fulfil any special requirements<sup>7</sup> (Muminović 1998: 79). This particular provision would have significant legal and political consequences since it enabled a significant number of individual naturalisations of foreign nationals who joined the Bosnian armed forces and remained in the country after the end of the war. Although the provision was eliminated with the enactment of the Dayton Constitution and the corresponding citizenship legislation (with all individual naturalisations granted between 6 April 1992 and 31 December 2006 pending a review by a special Commission)<sup>8</sup> the issue still represents a matter of both legal and political controversy in terms of interpreting events from the recent past. Most of the individual naturalisation cases on the basis of art. 2 pertained to people who fought in the Army of Bosnia and Herzegovina (including fighters who came from the Middle East or Africa).<sup>9</sup>

Through subsequent legislative action, the Citizenship Act from 1992 became the Law on Citizenship of the Republic of Bosnia and Herzegovina in 1994. It took over most of the provisions outlined in the previous legislation and amended few other things. Still, the citizenship legislation enacted by the formal authorities of Bosnia and Herzegovina had the effect only in the parts of the country's territory controlled by the Bosnian Army. The other warring side - the internationally unrecognised Republic of Srpska - had its own citizenship law, enacted in December 1992.<sup>10</sup> The Law on Serb Citizenship (*Zakon o državljanstvu*

<sup>6</sup> The initial provision in the Citizenship Act of 1992 stipulated that a person had to be resident in Bosnia and Herzegovina uninterruptedly for five years prior to 6 April 1992, but was amended in 1993 providing that all SFRY citizens automatically received Bosnian citizenship if resident on its territory at the designed date. It has been argued that, to a certain extent, this reflected the strategic aims of the Bosnian government to include as many individuals possible into the military obligation and defense of the state (UNHCR 1997).

<sup>7</sup> Uredba sa zakonskom snagom o izmjenama i dopunama Uredbe sa zakonskom snagom o državljanstvu Republike Bosne i Hercegovine *Službeni list RBiH*, br. 11/93, 251.

<sup>8</sup> This provision excludes naturalisations of individuals who were citizens of one of the former SFRY republics and who were resident in Bosnia and Herzegovina on 6 April 1992 for at least two years uninterruptedly after the enactment of the Law on Citizenship of Bosnia and Herzegovina (1999), as well as former citizens of the SFRY who took permanent residence in the country between 31 December 1998 and 3 September 1999 and remained resident uninterruptedly for three years (see more in Dautbašić 2003: 59).

<sup>9</sup> Given that the breakaway Serb Republic (Republika Srpska) did not recognise the authority of the Bosnian government, the individual naturalisations in this part of Bosnia and Herzegovina did not follow the same legal provisions.

<sup>10</sup> Although there were at least three warring sides during the conflict, only the official authorities of Bosnia and Herzegovina and the Republic of Srpska enacted laws on citizenship. The Croat-controlled Herzeg-Bosnia never

*srpskom*<sup>11</sup>) was a prime example of an ethnocentric legislation (UNHCR 1997: 30), clearly aimed at ‘ethnic engineering’ (Štiks 2006) and as such could be understood in the broader context of ethnic cleansing in the parts of Bosnia under the Serb control. From the democratic standpoint, it had many highly controversial provisions, such as those on the ‘acceptance of Serb culture’ and knowledge of ‘Serb language and Cyrillic script’ as one of the prerequisites for naturalisation (art. 7) or those on the acquisition of citizenship for any person of ethnic Serb origin, without having to fulfill the regular conditions for naturalisation of foreign individuals (art. 15).

In 1993 the Bosnian conflict took on another dimension which altered the citizenship situation: the war between Bosniaks (Bosnian Muslims) and Croats broke out. It would be resolved with the Washington Agreement of 1994 which established the Federation of Bosnia and Herzegovina, an entity that later became a constitutive part of the Dayton-shaped Bosnian state. The Constitution of the Federation and the Law on Citizenship of the Federation of Bosnia and Herzegovina provided the citizenship of this entity, as part of the broader state citizenship.

#### *2.4 Dayton citizenship*

With the peace agreement brokered by the Clinton Administration of the United States in 1995, Bosnia and Herzegovina entered a new phase in its political history. The peace agreement ended the four-year war and determined the administrative and political shape of the country, with two entities as its constituent parts - the Republic of Srpska, which was defined as an entity of the Serb people, and the Federation of Bosnia and Herzegovina, defined as an entity of Bosniaks and Croats. The text of the peace agreement, accepted in Dayton, Ohio and signed in Paris by the presidents of Bosnia and Herzegovina, Croatia and Serbia, also contained the Constitution of the country. It was one of the ten annexes to the agreement itself. The implementation of the peace agreement provisions was delegated to the newly created institution that would prove critical for sustaining the political order in the country for many years to come: the Office of the High Representative for Bosnia and Herzegovina (OHR). In addition to two entities, the subsequent arbitration of the international community established a separate District of Brčko in northern Bosnia, the only area in the country ruled and administered independently of the ethnically-defined entities (see more in Stjepanović, 2012).

The citizenship of Bosnia and Herzegovina was defined in the art. 1, para. 7 of the Constitution, providing that ‘there shall be a citizenship of Bosnia and Herzegovina, to be regulated by the Parliamentary Assembly, and a citizenship of each Entity, to be regulated by each Entity’.<sup>12</sup> The same paragraph gives a provision that echoes the former relation between the federal and republican citizenships in the SFRY, stipulating that ‘all citizens of either Entity are thereby citizens of Bosnia and Herzegovina’. As had been the case with Yugoslav citizenship, this provision raised a number of questions concerning the ‘primary’ or

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had any legislation pertaining to citizenship, since it never opted for a full-blown independence; rather, it tried to achieve the higher degree of autonomy within Bosnia and Herzegovina or aimed at merger with Croatia at some later point in history.

<sup>11</sup> Even the name of the Law indicates its highly ethnocentric nature. Unlike the later Dayton-determined and internationally supervised legislation, the 1992 Law on Serb Citizenship is explicitly focused on and concerned about the ethnic ‘substance’ of the body of its citizens.

<sup>12</sup> The Dayton Peace Accords, Annex 4, Constitution of Bosnia and Herzegovina, art. 1, para. 7.

‘derivative’ nature of entity citizenships and the subsequent emphasis on the sovereignty of the state or its administrative units (Muminović 1998: 84).

The constitutional provisions on citizenship were confirmed and further determined by the Law on Citizenship of Bosnia and Herzegovina, enacted by the state parliament in 1999, after the international community’s High Representative for Bosnia and Herzegovina imposed it two years before. It provided the legal ground for the subsequent enactments of the entity citizenships, the Law on Citizenship of Republic of Srpska (1999) and the Law on the Citizenships of the Federation of Bosnia and Herzegovina (2001). Both entity laws equally provided that citizens of the entity ‘are thereby citizens of Bosnia and Herzegovina’.<sup>13</sup> The relationship between the state and entity citizenships is further defined in arts. 25-29 of the Law on Citizenship of Bosnia and Herzegovina. These provisions seem to indicate that entity citizenships are primary, while the state citizenship is derivative. This is especially the case with provisions such as those to be found in art. 27 which stipulates that a person who loses the citizenship of one entity, without acquiring the citizenship of the other, automatically loses the citizenship of Bosnia and Herzegovina.<sup>14</sup> However, there are other provisions that indicate the opposite (for example, the art. 1 of the Law on Citizenship of Bosnia and Herzegovina that provides that entity citizenship laws must be in accordance to the state law). Consequently, the relationship between the two must be understood as somewhat ambiguous, providing grounds for differing interpretations.

The Dayton Constitution and the Law from 1999 annulled all the previous legislation on citizenship, including the acts and laws of both the Republic of Bosnia and Herzegovina and the previously unrecognised Republic of Srpska. However, it implied the continuity with the Republic of Bosnia and Herzegovina. Both the Constitution and the Law on Citizenship explicitly provided that all persons holding the citizenship of the Republic of Bosnia and Herzegovina are automatically citizens of Bosnia and Herzegovina (Muminović 1998: 84). The Law on Citizenship also provided that the status of naturalised persons in Bosnia and Herzegovina in the period between 1992 and 2006 would be determined by a special commission.

### **3 The current citizenship regime**

#### *3.1 Acquisition of citizenship in Bosnia and Herzegovina*

The Law on Citizenship of Bosnia and Herzegovina provides several modes for the acquisition of citizenship:

a) Acquisition *by descent* is determined by art. 6. Citizenship of Bosnia and Herzegovina is acquired by a child born after the entry into force of the state Constitution. The child acquires the citizenship if: both of his or her parents were Bosnian citizens at the time of the child’s birth, regardless of the place of his or her birth; one of his or her parents was a Bosnian citizen at the time of the child’s birth, and the child was born on the Bosnian territory; one of the parents was a citizen of Bosnia and Herzegovina at the time of the child’s birth, and the child was born abroad if the child would otherwise be stateless; the child was born abroad and one of his or her parents was a Bosnian citizen at the time of the child’s birth; he or she has been registered for the purpose of being entered in citizens register with

<sup>13</sup> Zakon o državljanstvu Republike Srpske, član 2. *Službeni glasnik Republike Srpske*, 35/99; Zakon o državljanstvu Federacije Bosne i Hercegovine, član 2. *Službeni glasnik Federacije BiH*, 43/01.

<sup>14</sup> Zakon o državljanstvu Bosne i Hercegovine, član 27. *Službeni glasnik BiH*, 13/99.

the competent Bosnian authority at home or abroad, or he or she has taken up permanent residence in the Bosnian territory.

b) *Acquisition by birth on the territory of Bosnia and Herzegovina* (art. 7). Bosnian citizenship is acquired by a child who has been born or found on the territory of Bosnia and Herzegovina after the entry into force of the Constitution and both of whose parents are unknown or of unknown citizenship or stateless, or if the child is stateless. A child coming within these provisions loses the citizenship if, by the age of fourteen years, he or she acquires the citizenship of another state by descent.

c) *Acquisition by adoption*, defined in art. 8. A child under the age of eighteen who has been fully adopted by a citizen of Bosnia and Herzegovina after the entry into force of the Constitution acquires Bosnian citizenship.

d) *Acquisition by naturalisation* (arts. 9-14). A foreigner who has submitted a request for acquisition of the citizenship of Bosnia and Herzegovina may acquire it by naturalisation if he or she fulfils the following conditions: reaching eighteen years of age; having a permanent place of residence registered on Bosnian territory for at least eight years before submitting a request; having knowledge of one of the Bosnian constituent languages; has not been an object of a security measure of expulsion of a foreigner from the country or of the protective measure of removing a foreigner from Bosnian territory undertaken by an authority established in accordance with the Constitution, and this measure is still in force; has not been sentenced to a term of imprisonment for a premeditated criminal act for longer than three years within eight years of the submission of a request; renouncing or otherwise losing the former citizenship upon the acquisition of the Bosnian citizenship, unless a bilateral agreement between Bosnia and Herzegovina and that state (as referred to in art. 14) provides otherwise.

e) *Acquisition by facilitated naturalisation* provides additional requirements and conditions. Citizenship of Bosnia and Herzegovina may be acquired by the foreign spouse of a Bosnian citizen if: the marriage lasted for at least five years before submitting the request and that it still lasts when the request is submitted; a person renounces or otherwise loses its former citizenship upon acquisition of Bosnian citizenship unless a bilateral agreement provides otherwise; a person has been a permanent resident for at least three years on the territory of Bosnia and Herzegovina. Additionally, the art. 11 provides that a child under the age of eighteen, one of whose parents has acquired Bosnian citizenship, has the right to Bosnian citizenship by naturalisation, if he or she is permanently resident on Bosnian territory. Under this provision, a parent who has the citizenship of Bosnia and Herzegovina may apply for acquisition of his or her citizenship on behalf of a minor child. If the child is over fourteen years of age, his or her consent is required. Art. 12 provides that the following persons are entitled to acquire Bosnian citizenship by application without meeting the outlined naturalisation requirements: emigrants who have returned to Bosnia and Herzegovina and their spouses, as well as first and second generation descendants of emigrants who have returned to the country. Individual cases of naturalisation without meeting the outlined requirements may also occur, if a person is, according to the art. 13, considered to be of particular benefit to Bosnia and Herzegovina. However, no details of what this benefit would represent are given in the article. Finally, in all cases where the Law provides for the loss of the previous citizenship by persons acquiring Bosnian citizenship, these persons are entitled to continue to hold the citizenship of the previous state whenever this is provided for by a bilateral agreement between Bosnia and Herzegovina and that state.

### 3.2 Termination of citizenship in Bosnia and Herzegovina

The loss of Bosnian citizenship is determined by provisions outlined in arts. 15-24. However, art. 15 provides that the citizenship of Bosnia and Herzegovina may not be lost if the person concerned would thereby become stateless (save from cases of the citizenship acquired by means of fraudulent conduct, false information or concealment of any relevant facts attributable to the applicant, defined in art. 23). Otherwise, Bosnian citizenship is terminated:

a) *By operation of law* (arts. 17-18). Under this provision, citizenship is lost by the voluntary acquisition of another citizenship, unless a bilateral agreement between Bosnia and Herzegovina and that state, approved by the Parliamentary Assembly in accordance with art. IV (4) (d) of the Constitution, provides otherwise. Also, citizenship is lost by a child if, following a full adoption, he or she acquires the citizenship of another state.

b) *By renunciation* (arts. 19-20). Art. 19 provides that a citizen who has reached the age of eighteen and habitually resides abroad and has acquired or has been guaranteed the citizenship of another state has the right to renounce the citizenship of Bosnia and Herzegovina. A similar provision applies to a child who lives abroad and has been guaranteed the citizenship of another state: he or she ceases to have Bosnian citizenship by renunciation upon the request of parents whose Bosnian citizenship ceased to exist by renunciation, or upon the request of one parent whose citizenship ceased to exist by renunciation, if the other parent is dead was deprived of parental responsibilities, or is a foreigner or stateless or upon the request of an adopting parent if his or her Bosnian citizenship was lost by renunciation and the relationship between the adopting parent and the adopted child is one of full adoption. If the child is over fourteen years of age, his or her consent is required.

c) *By release*, as defined in arts. 21-22. Release from Bosnian citizenship may be granted upon request to a person living in the territory of Bosnia and Herzegovina and meeting the conditions of: being eighteen years of age, having no criminal proceedings instituted against him or her for criminal acts prosecuted ex officio, having served the sentence if sentenced to imprisonment in Bosnia and Herzegovina, having settled all required contributions, tax or other legal obligations for payment stipulated by a legal decision of the authorised bodies; having acquired or have been guaranteed the citizenship of another state, and having fulfilled military obligations. A child under eighteen years of age who has acquired or has been guaranteed the acquisition of another state's citizenship and who still lives on the Bosnian territory ceases to have the citizenship of Bosnia and Herzegovina by release upon the request of one or both parents whose Bosnian citizenship was terminated by release.

d) *By withdrawal* (art. 23). The citizenship of Bosnia and Herzegovina may be withdrawn if: the citizenship of Bosnia and Herzegovina was acquired by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant; a Bosnian citizen performs voluntary service in a foreign military force in spite of an injunction to the contrary; or if the Bosnian citizenship was acquired after the entry into force of this Law, without the fulfilment of the naturalisation conditions.

### 3.3 Citizenship of the Republic of Srpska and the Federation of Bosnia and Herzegovina

The Dayton Constitution of Bosnia and Herzegovina provided a dual, state and entity citizenship for the country. Every citizen of one of its entities (the Republic of Srpska and the

Federation of Bosnia and Herzegovina) is, thereby, a citizen of the state of Bosnia and Herzegovina. The relation between the state and entity citizenships is defined in the Law on Citizenship of Bosnia and Herzegovina. In art. 1, it provides that the citizenship laws of the entities must be compatible with the Constitution of Bosnia and Herzegovina and the Law on Citizenship of Bosnia and Herzegovina. Additionally, the Law provides that a person, who loses his or her entity citizenship, without receiving the citizenship of the other entity, loses his or her Bosnian citizenship. The person who loses the state citizenship simultaneously loses the entity citizenship (art. 27).

Both of the entity citizenship laws are brought into the line with the state citizenship law and have similar provisions on most of the issues. The acquisition and loss of entity citizenships follow the same modes established in the state citizenship law, including principles of *ius sanguinis*, *ius soli*, adoption, naturalisation and international agreement for acquisition and principles of operation of law, renunciation, release, withdrawal and international agreement for the termination of citizenship.

Entity citizenship laws provide that all citizens of Bosnia and Herzegovina who have resided on the territory that today belongs to one of the entities on 6 April 1992 are to be considered as citizens of that entity. However, the Citizenship Law of Republic of Srpska differs from the Federation citizenship law in additional provisions stating that persons who resided on the territory of Federation of Bosnia and Herzegovina on 6 April 1992 but moved to the Republic of Srpska by 1 January 1998 will be also considered as citizens of Republic of Srpska (art. 39). The difference basically reflects the somewhat opposite political strategies of the two Bosnian entities. While politicians from the Federation of Bosnia and Herzegovina place more emphasis on the completion of the refugee return process in the country and advocate more entity integration in the structures of the state, the Republic of Srpska seeks to maintain the status quo and to prevent integration by discouraging the return of refugees to their pre-war residences. Provisions granting automatically the citizenship of Republic of Srpska to Serb refugees from Federation, clearly, aid to the process of ethnic homogenisation of the entities.

In addition to that, the Citizenship Law of Republic of Srpska has another, slightly controversial political provision, different from the one in the Federation of BiH. Art. 40 of the Republic of Srpska law provides a regulation that defines that all persons who had been citizens of the former SFRY and took residence in Republic of Srpska between 6 April 1992 and 1 January 1998 and maintained it for more than two years are eligible to acquire the citizenship of Republic of Srpska. It has been argued that this provision has the political aim of regulating the status of Serb refugees from Croatia and thus altering the ethnic structure of the Republic of Srpska to the detriment of Croats and Bosniaks. The provision has spurred some resentment among Bosniak and Croat politicians in the country and it remains an unsolved political rather than legal issue (Imeri et al 2006: 63).

The change of entity citizenships is provided in both of the entity laws (art. 31 for Republic of Srpska and art. 27 for the Federation of Bosnia and Herzegovina). A citizen of one of the entities residing in the other may change his or her entity citizenship if desires to do so, if the change of residence occurred after the Law entered into force. Upon the acquisition of citizenship of one entity, people automatically lose the citizenship of the other entity.

### *3.4 Citizenship issues in practice: procedures and responsibilities*

The practical institutionalisation of citizenship legislation in Bosnia and Herzegovina owes much to the country's dependence on the international community and its representatives. The wartime citizenship laws, both of the Republic of Bosnia and Herzegovina and of the Republic of Srpska were influenced by political priorities and ethnocentric strategy respectively. The international community made sure the first post-war citizenship legislation diverged from these principles. Two years after facilitating negotiations in Dayton, the international community's High Representative in Bosnia and Herzegovina imposed the Law on Citizenship of Bosnia and Herzegovina (17 December 1997) which was subsequently adopted (with identical wording) by the Parliament of Bosnia and Herzegovina. In addition to imposing the law, the High Representative has also imposed several subsequent amendments to this law as well as to entity laws on citizenship (in 2002 and 2009). Some of the amendments additionally altered the citizenship structure in the country and provided the freedom for Brčko District residents to choose their own entity citizenship since the district is a self-governing body under direct Bosnian sovereignty that officially belongs to both entities.

Clearly, without the strict international supervision and imposition of citizenship legislation, the situation might have been much worse and more complicated. The involvement of the Office of the High Representative (OHR) in the citizenship matters enabled reflection of the main democratic principles in citizenship legislation and provided clear guidance on the distribution of competencies and responsibilities regarding citizenship.

The institutional responsibility on citizenship issues in Bosnia and Herzegovina is distributed between the state and entity levels. The Law on Citizenship of Bosnia and Herzegovina (art. 30) provides that entity authorities (Ministry of Internal Affairs in the Federation of BiH and Ministry of Local Governance and Self-Governance in the Republic of Srpska) decide on cases of acquisition of citizenship by descent, acquisition of citizenship by birth, acquisition of citizenship by naturalisation and facilitated naturalisation, and decisions on loss of citizenship by release. On the other side, the state-level Ministry of Civil Affairs is in charge of the loss of citizenship by operation of law and loss of citizenship by withdrawal, including the cases that have not been outlined as being under the entity competencies (see Imeri 2006: 59).

Citizenship of Bosnia and Herzegovina is proved by a passport or citizenship certificate, issued by the authorities in charge of keeping the birth registers, which are the Ministry of Internal Affairs in the Federation of Bosnia and Herzegovina (and the cantonal level ministries) and the Ministry of Local Governance and Self-Governance in the Republic of Srpska. The citizenship certificate states both the entity and the state citizenship of the individuals. Identity cards, however, contain no reference to the entity citizenship. The passport also only records the individual's citizenship of Bosnia and Herzegovina, with no mention of the person's entity belonging. However, the passport contains information about the institution that issued it thereby indirectly indicating the entity citizenship of the passport holder, except for residents of the Brčko District.

The register of residence and identification documents is the responsibility of the Agency for Identification Documents, Registers and Data Exchange. The Agency was created as a part of the CIPS project, whose main objective was to establish a system for the implementation of the Law on Identification Documents, Registers and Data Exchange, enacted in 2008.

## 4 Current Political Debates and Reform Plans

### 4.1 Ethnocentric citizenship

Strict reliance on the Dayton constitutional framework and the political constellation created by it has been considered as one of the main characters of the Bosnian citizenship regime. The political constellation created by the provisions of the Dayton Agreement is highly ethnocentric and reflects the ethnopolitical aims and priorities of the once warring sides of the Bosnian conflict. The political domain in Bosnia and Herzegovina is divided across ethnic lines and these divisions have also been entrenched in the country's legislation. In a strict communitarian fashion, the three dominant ethnic groups in Bosnia share power and determine the outlook of the state and entity institutions (Perry, 2005). On the entity levels, Croats and Bosniaks dominate in the Federation of Bosnia and Herzegovina, while Serbs dominate in the Republic of Srpska. The state level is shared between the three, with ethnic quotas determined for both Houses of the Parliament, the State Presidency as well as government ministries and other state institutions.

As a result of this institutional framework, the overall participation of citizens in the political life of the country is circumscribed by the ethnic identities and allegiances. Even the voting system prevents individuals from transcending ethnic boundaries and electing members of other ethnic groups as their representatives. This is particularly the case with the three-member Presidency and the House of the Peoples of the State Parliament, which are directly elected by their ethnic constituency.<sup>15</sup>

Correspondingly, citizenship, as a link between the individuals and the state, is largely understood through the prism of ethnicity (Guzina 2007: 227). The communitarian emphasis on the importance of ethnic groups prevents certain groups of individuals from enjoying the full spectrum of their civil rights. Primarily, this pertains to the constitutional setup of the country that excludes individuals on the basis of their ethnic identity. The scale of this exclusion was significantly high before 2000, since entity constitutions contained a provision that defined entities as exclusive dominions of their ethnic majorities. The Republic of Srpska was defined as a state of the Serb people and the Federation as a state of Bosniacs and Croats. The Constitutional Court of Bosnia and Herzegovina eventually changed this with a decision from 2000. It concluded that provisions of the entity constitutions, which gave special rights to respective ethnic majorities, were not in accordance with a state constitution that stipulates the equal constitutional status of all three ethnic groups on the entire territory of Bosnia and Herzegovina.<sup>16</sup> The Court's decision, regardless of certain controversies it provoked in defying the ethnic exclusion logic of the country's consociational setup, significantly altered the legal ground providing for civic participation in politics and a more democratic

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<sup>15</sup> The election law stipulates that citizens of the Republic of Srpska are to elect the Serb member of the Presidency, while Croat and Bosniak members are elected by the citizens of the Federation of Bosnia and Herzegovina. Essentially, this rule reflects the communitarian principle of group rights and entitlements and defines Bosnia and Herzegovina as a consociational political community. However, there had been certain deviations from this rule that have produced political quarrels and dissatisfaction, such as those after the 2006 elections, when a Croat member of the Presidency was elected from a non-ethnic (Social Democrat) party thanks to the votes of many non-Croats in the Federation of Bosnia and Herzegovina. Croat ethnic parties at first refused to recognize the legitimacy of the vote and asked for a more stringent election rules that will limit cross-ethnic voting in this entity.

<sup>16</sup> See more in *East European Constitutional Review*, 10 (1) Winter 2001. <http://www1.law.nyu.edu/eecr/vol10num1/constitutionwatch/bosnia.html>.

environment. However, it did not substantially change the ethnocentric structure of the general legal and political system that continued to favour ethnic groups over individuals in the entitlements of civic rights. Moreover, by limiting political rights to members of three dominant groups, it has been argued that even this decision contributed to the exclusion of other ethnic groups (minorities) in the country, such as Jews, Roma and others, who are denied certain political rights on the basis of such legal provisions.

The debate over the ethnocentric nature of the Bosnian political system is at the core of the academic and expert discussions on the plans and suggestions for the political reform of the country. On one side of the debate are those who favour communitarian and consociational emphasis on group rights and power sharing between ethnic elites (Kasapović 2005; Vlasiavljević 2006); while on the other are those who advocate individual rights and principles of democratic deliberation for political management of a multiethnic state (Mujkić 2007; Haverić 2006). Essentially, the debate draws upon different visions of the nature of problems in Bosnian political history, but also corresponds to contemporary discussions in political theory and follows the liberal - communitarian divide (Benhabib 2002; Farrelly 2004). It affects the understanding of citizenship to a great extent, since it shapes the models of relation between individuals and the state that will determine future legislation outcomes in this area.

#### *4.2 The regional context: the case of dual citizenship*

One of the particularly salient characteristics of the citizenship situation in Bosnia and Herzegovina is the issue of dual citizenship. The Law on Citizenship of Bosnia and Herzegovina (art. 4) provides that citizens of Bosnia and Herzegovina may hold citizenship of another state if there is a bilateral agreement between that state and Bosnia and Herzegovina. For a long period of time, between 1996 and 2010, such agreements have been signed and ratified only with Serbia and Sweden, and around 9,000 dual citizenships have been acquired on that basis. With no statistical data or breakdowns, one can only make assumptions about the distribution of this figure between both cases. Sweden accepted a large number of Bosnian refugees between 1992 and 1995, many of whom were subsequently granted Swedish citizenship. However, the number of Bosnian citizens holding Serbian citizenship cannot be considered insignificant. This pertains not only to ethnic Serbs who might have acquired Serbian citizenship as refugees from parts of Bosnia and Herzegovina controlled by Bosnian Army or Croat forces, but to ethnic Muslims from the Sandžak area who migrated to Bosnia and Herzegovina as well. One wave of this migration occurred during the war, when many of able-bodied men escaped being drafted into the Yugoslav Army for the wars in Croatia, Bosnia and Herzegovina and Kosovo (from 1991 to 1999) while the other followed the pattern of economic and partially ethnic migration.

However, the current regional political context, together with the common history of Yugoslav successor states, creates an even more complex situation when it comes to dual citizenship of Bosnian citizens. This especially pertained to holders of both Bosnian and Croatian citizenships; around 800,000 individuals fall into this category. The Law on Croatian Citizenship (art. 16) provided the possibility for Croats (and those identifying themselves as Croats) residing outside of Croatia to obtain Croatian citizenship (Ragazzi and Štiks 2009: 345). The estimates say most of the Croat citizens of Bosnia and Herzegovina used this possibility (16 per cent of the Bosnian population), together with a significant number of non-Croats, especially in the western parts of the country. In 2011, after long discussions and

negotiations, an agreement between Bosnia and Herzegovina and Croatia was ratified that enabled more than eight hundred thousand Bosnians to keep their Croatian citizenship<sup>17</sup>.

Bosnian citizens holding Croatian passports effectively enjoy various civil, social and political benefits, such as using the healthcare services in Croatia or voting in Croatian presidential and parliamentary elections (Sarajlić, 2012b).<sup>18</sup> These possibilities are also often used by those who break the law or face a trial in one country and find legal refuge in another. These kinds of situations occurred on numerous occasions in previous years when many individuals used the opportunity to escape the law and to avoid detention by fleeing across the border.<sup>19</sup> The estimates say there are as many as 500 individuals with criminal records who use their dual citizenship status as a tool for protection from prosecution. So far, after being found guilty, 282 persons escaped Bosnia and Herzegovina (106 of them fled to Croatia, 100 to Serbia, 24 to Montenegro and 56 unknown), while 46 convicted individuals from Croatia fled to Bosnia and Herzegovina.<sup>20</sup> The negotiations between Bosnia and Herzegovina and Croatia on finding legal solutions to this problem are ongoing.

The political debates on dual citizenship issues in the past several years mostly revolved around possible amendments to the law that will alter the provision in art. 17, which stipulates loss of Bosnian citizenship upon acquiring another citizenship if no bilateral agreement exists. Faced with the necessity of renouncing their Bosnian citizenship when acquiring the citizenship of another state that does not allow for dual citizenships (such as Germany), more than 50,000 have already renounced their Bosnian citizenship.<sup>21</sup> Many policy makers were fearful that, unless the provisions from the Citizenship Law are changed, more similar cases might occur in the future.<sup>22</sup> Bearing in mind that there are around one million citizens of Bosnia and Herzegovina residing abroad (mostly in North America and Europe) who have by now acquired the citizenship of their host country, the issue of amending the problematic provisions of the citizenship law will probably remain on the reform agenda of the Bosnian decision makers. However, the policy fears were allayed by the Constitutional Court's decision in late 2012 that the art. 17 (together with the art. 39) is unconstitutional. The Court ordered the Parliamentary Assembly to amend the Law on Citizenship in these articles to reflect the Constitution of BiH. Following the order and executive recommendations, the article 17 has been deleted from the Law.<sup>23</sup>

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<sup>17</sup> See more at the official webpage of the Bosnian Ministry of Foreign Affairs: <http://www.mhrr.gov.ba/iseljenistvo/aktuelnosti/?id=2336>

<sup>18</sup> For instance, 97,735 voters from Bosnia and Herzegovina cast their votes at the second round of the 2010 Presidential Elections in Croatia. This represents around 37 per cent of all registered Croatian voters in Bosnia and Herzegovina. See more at [http://www.izbori.hr/2009Predsjednik/rezultati2K/r\\_00\\_9901.html](http://www.izbori.hr/2009Predsjednik/rezultati2K/r_00_9901.html).

<sup>19</sup> The most notorious cases being Branimir Glavaš, a Croatian politician and a former military officer facing charges for war crimes committed in Croatia in early 1990s who fled to Bosnia and Herzegovina in 2009 thanks to his Herzegovinian origins and a Bosnian passport, and Ante Jelavić, the former head of the most prominent Croat political party in Bosnia and Herzegovina, HDZ and a former member of the state Presidency, who fled to Croatia after being found guilty for corruption and embezzlement in Bosnia and Herzegovina in 2005.

<sup>20</sup> *Dnevni Avaz* [daily newspaper], 25 November 2009, 3.

<sup>21</sup> See the report by Radio Free Europe at <http://www.slobodnaevropa.org/Content/Article/1195830.html>.

<sup>22</sup> Strangely, although both articles that provide existence of bilateral agreements and renunciation (art. 4 and art. 17) pose problems, the ongoing debates revolve mostly around amending art. 17.

<sup>23</sup> The details of the changes available here:

<https://www.parlament.ba/sadrzaj/zakonodavstvo/obustavljeni/default.aspx?id=35184&langTag=bs-BA&pril=b>.

### 4.3 Naturalisation of foreign individuals

Among the most contested issues in the Bosnian citizenship situation is the case of individual naturalisations that took place during the war (1992-1995). The most problematic part of these naturalisations pertains to the individuals from Islamic countries of Africa and the Middle East who arrived in Bosnia and Herzegovina to join one of the warring sides in the Bosnian conflict, the Army of Bosnia and Herzegovina. Their naturalisations were made possible by the provisions of the Law on Citizenship of the Republic of Bosnia and Herzegovina (art. 2) that enabled members of Bosnian Armed Forces to acquire the country's citizenship. It is estimated that this situation affects around two thousand individuals, although no clear statistical indication has yet been offered.<sup>24</sup>

Eventually, after several attempts to regulate this issue by governmental decisions, the provisions from the amendments to the Dayton-based Law on Citizenship of Bosnia and Herzegovina in 2005 required revisions of these individual naturalisations. Pursuant to arts. 40 and 41 of the Law, the Commission on the Revision and Revocation of Individual Naturalisations between 6 April 1992 and 1 January 2006 was established. Its task was to revise and revoke illegally acquired citizenships. The Commission operated from March 2006 to December 2009 and reviewed two sets of naturalisation cases: individuals from the former Yugoslav republics who were assumed to have gained their citizenships without meeting the necessary residency requirements (around 20,000 cases) and individuals from 36 other states, mostly from Eastern Europe, Middle East and North Africa who gained citizenship on various grounds (1,300 cases). The Commission revoked around 660 citizenships held by individuals from the latter group, on the grounds of illegal acquisition and utilisation of illegal means, such as false personal data, falsified documents, fictitious addresses, and armed forces certificates.<sup>25</sup> The remaining 600 were considered as legal and these individuals continued to enjoy their civil and political rights as Bosnian citizens. However, most of these individuals (originally nationals from countries in North Africa and Middle East) have already left Bosnia and Herzegovina for EU countries, so the estimates are that only around 200 of these persons remain in the country.<sup>26</sup> The majority of them reside in just one of the country's entities, the Federation of Bosnia and Herzegovina. The revision of the naturalisation of 30,000 individual cases from former Yugoslav republics is still pending, and the Ministry for Civil Affairs took over the responsibility of revision. So far, around 400 of these citizenships have been revoked.

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<sup>24</sup> It is very difficult to keep track of exact data about this issue. The main reason for this is the extremely sensitive political nature of the problem determined both by the global context as well as regional and local relations of power. Very few official sources are willing to provide any indication on the numbers of these cases, so the only possible sources for some data are media reports. See for example <http://www.isn.ethz.ch/isn/Current-Affairs/Security-Watch/Detail/?ots591=4888CAA0-B3DB-1461-98B9-E20E7B9C13D4&lng=en&id=52180>.

<sup>25</sup> Interview with Mr Vjekoslav Vuković, former Chairman of the Commission for Revision and Revocation of Individual Naturalisations, 5 February 2010.

<sup>26</sup> The fact that majority of them have left indicates their motives for the initial acquisition of Bosnian citizenship. According to some estimates the number of individuals from the Middle East and North Africa who illegally acquired Bosnian citizenship, in the country or abroad at the Bosnian consulates (through fraudulent means, such as buying passports) to reach and settle in EU countries with it and use the status of Bosnian refugees is significantly higher, up to 10,000 cases. The Commission was said to be well aware of this fact, but no clear statistics on these cases are available, since most of these individuals have renounced or abandoned using citizenship of the respective EU state in which they have settled and fulfilled necessary conditions. Estimates and interpretation based on the interview with Mr Vjekoslav Vuković, former Chairman of the Commission for Revision and Revocation of Individual Naturalisations, 5 February 2010.

The issue of individual naturalisations of persons from Middle East and North Africa has become a particularly significant yet very sensitive dimension after the 11 September 2001 terrorist attacks in the United States. Following US pressure to tackle the problem of former Islamic fighters who were suspected of using Bosnia and Herzegovina as a base for terrorist operations in the West, Bosnian authorities responded with arrests, detentions and deportations of some of these individuals who stayed in the country after the war. The most notorious case was the so-called ‘Algerian Group’.<sup>27</sup> Six men were arrested and handed over to the US authorities who transferred them to Guantanamo prison in January 2002 under suspicion of involvement in terrorist activities and a planned attack on the US and UK embassies in Bosnia and Herzegovina. In five individual cases from this group, citizenship was revoked immediately after their deportation to Guantanamo. Apparently, two of these persons were able to regain the citizenship of Bosnia and Herzegovina, following their release from prison in 2008.<sup>28</sup> The US authorities failed to prove their involvement in any form of terrorist activities. Their imprisonment was not based on sufficient evidence and their case resulted in the first Guantanamo release under a court order. It followed a ruling from the US Supreme Court that detainees were entitled to a court review of their cases. Given the global context and the local political sensitivity, the issue had wide media attention and clearly influenced debates and issues around Bosnian citizenship policies during and immediately after the war.<sup>29</sup>

The entire case acquired a human rights dimension, because the attempts of the Bosnian governments to rectify mistakes made through naturalisation policies in the past have caused new human rights violations. The Helsinki Committee for Human Rights in Bosnia and Herzegovina, which included other international organisations, such as European Parliament and the Council of Europe, was particularly concerned with the government actions on the revocations of citizenship and extradition of individuals suspected of terrorist activities, especially the ‘Algerian Group’. The Helsinki Committee considered the extradition of the six men from this group to the US a violation of the main international conventions on human rights and citizenship.<sup>30</sup>

#### *4.4 Citizenship and human rights*

Ever since its establishment, the Dayton institutional framework in Bosnia and Herzegovina has faced criticism on the basis of a trade-off between stability and human rights (Balasz 2008: 105). By ensuring stability after the end of hostilities between the belligerent groups the Dayton Agreement created a framework that favours the dominant but marginalises minority ethnic and other groups (Bieber 2004; Hitchner 2005; Haverić 2006; Mujkić 2007; Šarčević 2008). Before the ruling of the Constitutional Court on the ‘constitutionality of peoples’ in 2000, all three of the main ethnic groups faced institutionalised exclusion in the areas of the country where they were in a minority position. Although their exclusion was somewhat

<sup>27</sup> The group included six men: Bensayah Belkacem, Boudella el Hajj, Lakhdar Boumediene, Sabir Mahfouz Lahmar, Mustafa Ait Idr and Mohammad Nechle. All of them had worked for Islamic charity organisations in Bosnia and Herzegovina, originally run from Saudi Arabia, United Arab Emirates and the United Kingdom. After the end of the war, they married local women and gained Bosnian citizenship.

<sup>28</sup> See [http://www.isaintel.com/site/index.php?option=com\\_content&task=view&id=212](http://www.isaintel.com/site/index.php?option=com_content&task=view&id=212).

<sup>29</sup> See, for example a *New York Times* article on Bosnia as a haven for Islamic radicals at <http://www.nytimes.com/2005/11/27/world/europe/27iht-bosnia.html>.

<sup>30</sup> See their press statement following the sixth anniversary of the extradition at <http://www.bh-hchr.org/Statements/e17-01-08.htm>.

reduced after this decision, the rule of dominant groups in majority areas has remained a defining characteristic of Bosnian political system.<sup>31</sup>

The need to transform the constitutional structure of Bosnia and Herzegovina and to enable higher levels of human rights enjoyment has been at the top of the agenda of both international and local analysts of the Bosnian political life. The European Union's Venice Commission has put forward several suggestions to the decision makers in Bosnia and Herzegovina in terms of constitutional detachment from the ethnicity-based political representation.<sup>32</sup> The Commission especially emphasised the incompatibility of particular constitutional provisions and the electoral law with the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols. Namely, the Preamble of the Constitution of Bosnia and Herzegovina makes a categorical distinction between the 'constituent peoples' (the main ethnic groups, Bosniacs, Croats and Serbs) and the 'Others' - individuals and groups not identifying themselves with any of the dominant ethnic communities. In accordance with the constitutional provisions and the current electoral law, the key state institutions, such as the House of Peoples of the Bosnian parliament or the Presidency are composed exclusively of members of dominant groups. Individuals of Jewish, Roma or any other origins, or simply individuals that do not want to state their ethnicity, are disenfranchised to elect their group representatives in the country's political institutions.

Following the written confirmation from the Central Election Commission that he was ineligible to run for elections because of his Jewish origin, Mr Jakob Finči, a Bosnian citizen of Jewish ethnic background, together with Mr Dervo Sejdić, a fellow citizen of Roma origin filed a suit against Bosnia and Herzegovina at the European Court of Human Rights. In December 2009, the Court decided that the constitutional ineligibility of these individuals to run for office lacks an objective and reasonable justification and had therefore breaches art. 14 (prohibition of discrimination), art. 3, protocol 1 (right to free elections) and art. 1, protocol 12 (general prohibition of discrimination) of the European Convention on Human Rights.<sup>33</sup>

Clearly, this decision and other international suggestions to change Bosnian constitutional setup in favour of civic (individual) instead of ethnic (group) rights will put additional pressure to decision makers in Bosnia and Herzegovina to comply with international human rights standards and amend problematic legislation. This may affect the citizenship debate as well and provide some ground for a substantial redefinition of relations between the Bosnian state and its citizens. In case some amendments to ethnocentric legal provisions are made, the understanding of citizenship in general in this country may also start to change. However, three years after the Court's decision, no concrete measures in rectifying the inadequate provisions have been made.

#### 4.5 EU integration and Dual Citizenships

<sup>31</sup> The exclusion of various minorities throughout Bosnia and Herzegovina has been confirmed by many empirical researches conducted in the country in the past ten years. Among the recent ones, the UNDP's National Human Development Report on Social Inclusion recorded that more than 50 per cent of population in the country faces exclusion on different grounds, from ethnic to gender identity, age and disability. See more in *Social Inclusion in Bosnia and Herzegovina*, UNDP, Sarajevo 2006.

<sup>32</sup> See more European Commission for Democracy Through Law's *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative*, Venice, March 2005, 12. The *Opinion* is available at [http://www.venice.coe.int/docs/2005/CDL-AD\(2005\)004-e.pdf](http://www.venice.coe.int/docs/2005/CDL-AD(2005)004-e.pdf).

<sup>33</sup> See more at [http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=860265&portal=hbkm&source=externalby\\_ydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649](http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=860265&portal=hbkm&source=externalby_ydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649).

The integration of Bosnia and Herzegovina into the EU also has effects on citizenship debates and developments. Since the visa requirement for EU Schengen states has been lifted in early 2011, the topics debated mostly revolve around the status of dual citizenship holders within the context of the faster integration of neighbouring Croatia and Serbia into the EU. It is recognized that this might potentially create new layers of problems. Namely, if these countries join the EU before Bosnia and Herzegovina (which is certain in the case of Croatia which should enter the EU in 2013), the fifty per cent of Bosnian citizens who also hold Croatian and Serbian passports will become citizens of the EU, while the other half will remain excluded from the European legal framework (Sarajlić 2012a). In such scenario, it is very likely that Bosniaks (Bosnian Muslims who predominantly hold only Bosnian citizenship) will feel ostracised on the basis of their Muslim identity, while the overall ethnic and political situation in the region might become more sensitive.

The European integration process in the states of Western Balkans is very significant for citizenship issues and relations in Bosnia and Herzegovina. It may further complicate the situation by adding new political dimensions to the issue, but it may also contribute to additional consolidation of norms leading to a more reliable and democratic citizenship practices. In any case, if Bosnia and Herzegovina becomes a member of the European Union in the foreseeable future, another layer of citizenship will be created. Bosnian citizens will thus be entitled to three types of citizenship: entity, state and European.

## 5 Conclusions

Bosnia and Herzegovina almost perfectly exemplifies what happens to citizenship in contexts determined by transition, conflict and identity politics. The Bosnian citizenship regime has been influenced by a complex history, where distant imperial and recent socialist pasts merged with ethnonationalism and conflict to create unique social and political context.

In a historical sense, the most striking feature of the Bosnian political system, discernible through the nature of its citizenship regime, is its structural resemblance to the former Yugoslavia. As in the case of the SFRY, Bosnia and Herzegovina has a bifurcated citizenship system, with state and entity citizenships as complementary layers of citizens' legal belonging. As with socialist Yugoslavia, Bosnia and Herzegovina also faces challenges and debates on the legal primacy of its citizenship layers and sovereignty claims based on such structural assumptions. The existing citizenship legislation seems to indicate the supremacy of the entity over the state citizenship, although there are elements pointing in the opposite direction, reflecting not only the Yugoslavian constitutional legacy but also priorities established by ethnic policies of the country's constituent groups and their political elites.

However, the existing citizenship legislation in Bosnia and Herzegovina has been put to practice thanks to the influence and direct involvement of the international community in the country's political life. Its contribution has been crucial for establishing a democratic citizenship regime that corresponds to the main international conventions and standards in this area. Nonetheless, ethnic nationalism still continues to challenge Bosnia's democratic transformation. This challenge is most visible in relations between individuals and the state, encumbered by the primacy of group rights and identities over the liberty and entitlements of individual citizens. Basically, this means that what needs to change in the future of Bosnia and Herzegovina pertains more to the social, political and partially constitutional context, than to the concrete citizenship legislation. The reforms of ethnocentric laws and constitutional

provisions are already on their track and it is a matter of time and the evolution of the EU integration dynamic as to when most of this legislation is going to be amended. What will be left to change are the traditional patterns of politicisation in Bosnia and Herzegovina, in which ethnicity remains the ultimate principle of citizen participation in political life.

The regional context of Bosnian citizenship issues also plays a key determining role. This is not only a matter of European integration but also of the specific relations of the neighbouring states with Bosnia and Herzegovina, both within and without the broader “citizenship constellations” and the European framework (Bauböck, 2010; Shaw, 2010). How Croatia and Serbia frame their relationship to the state institutions of Bosnia and Herzegovina and to Bosnian citizens who hold Serbian and Croatian passports will have effect on how things will develop in the future and how the issues of dual loyalties and legal obligations will be resolved.

Citizenship in Bosnia and Herzegovina is, obviously, still tied to dominant issues of politics and identity in which group and state values have a larger say than the concrete individuals whose everyday lives are shaped by the given citizenship regime. The global trend of post-Westphalian erosion of the authority and the sovereignty of the state still has to affect Bosnia and Herzegovina and entitle individuals with more rights and significance than they have had so far. The citizenship regime might play a key role in this transformation. Instead of being a tool of ethnic politics, it needs to become a crucial cornerstone of individual human rights and democracy. How can this be successfully achieved is a question not yet fully answered. Among those who might provide parts of the answer are not only legislators and decision makers, but social scientists, legal scholars and members of civil society. It is up to them to come up with collaborative solutions for creating and sustaining democratic forms of citizenship in the future of Bosnia and Herzegovina.

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