

A Federation Like No Other: The Case Of Bosnia And Herzegovina

Abstract

Bosnia and Herzegovina is a complex state composed of two entities: the Federation of BiH and Republika Srpska, and one independent unit - Brčko District, as well as three constituent peoples: Bosniaks, Croats and Serbs. The Constitution does not mention the word federation, thus it is not formally defined whether BiH has a federal or confederal character. Strengthened competences of the state and a clear direction towards greater empowerment of the state level institutions suggest a movement from a confederation to a federation. However, while there is no agreement on what exactly Bosnia is, what is even more alarming is the abuse of the concept of federalism by Bosnian elites. Serbs consciously misinterpret federalism to underline their demand for more autonomy and, ultimately, secession. Croats see federalism as a tool to argue for a third entity, while Bosniaks promote the idea of regionalism instead. Thus, despite the fact that it has been twenty years since the first post-war elections, nothing has really changed; Bosnia and Herzegovina remains a highly unbalanced and badly constructed federation.

Introduction

Bosnia and Herzegovina is a complex state composed of two entities: The Federation of BiH and Republika Srpska, and one independent unit - Brčko District, as well as three constituent peoples: Bosniaks, Croats and Serbs. Since the Constitution does not mention the word federation, it is not formally defined whether the autonomy principle implemented in BiH has a federal or confederal character. In fact, answers stretch out from a union to a decentralised unitary state. For Mirjana Kasapović (2005: 3) BiH is a specific type of an asymmetric confederation, while for Sumantra Bose (2003: 21) it is a consociational confederation (emphasis on self-rule instead of shared-rule). For others, such as Omer Ibrahimagić

(Kurtćehajić & Ibrahimagić 2007: 185) it is just a decentralised state. The most optimal definition seems to be that suggested by Florian Bieber (2006: 60-62) who defines BiH as a 'loose multinational federation' with a weak central authority, while the federal nature of the state is seen as an aspect of its consociational structure. What is more, the Bosnian constitutional system is based on ethnic and territorial power-sharing which has an imposed character, thus it might be described as an 'ethnic federation sui generis' (Keil 2013: 95-96). Nowadays, strengthened competences of the state and clear direction towards greater empowerment of the state level institutions suggest a movement from a confederation to a federation.



(U.S. Department of State 2017)

In BiH, the crucial element of each federal system - the division of competences - took the form characteristic of dual federations, but was combined with the broad participation of the constitutional units in the federal government, something that is usually characteristic of cooperative ones (in fact it is a combination of two patterns of representation: ethnic and territorial since both entities and constituent nations are included in the federal institutions). The Bosnian Constitution defines the exclusive competences of the state and entities while over time shared/concurrent competences have been gradually added (interpreted) (Marković 2012: 141; Steiner & Ademović 2010: 539-540; Sahadžić 2011: 22-3). The entities have the residual powers and take the main level of decision-making, yet in the FBiH power was decentralised to the smallest homogenous units - cantons (while up to 2002, in the multi-ethnic cantons it went further to the mono-ethnic municipalities) (Keil 2013: 110-11; Jokay 2001: 97). The entities transferred competences to the state level based on mutual

agreements regarding: state-level indirect taxation, judiciary (creation of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina), defence (creation of the Armed Forces of BiH), and police (Marković 2012: 372-381). Consequently, since Dayton, the separation of competencies between the BiH state and entities has become less clear. Part of the state-building process has involved assigning partial responsibilities to the state in matters that were previously generally in the exclusive domain of the entities, requiring cooperation in many areas. The state framework legislation was first introduced in 1998. Yet, the state generally lacks effective means of enforcing its own or even jointly-agreed decisions at lower levels of government (FPI 2008: 30, 32).

Shortly after its enactment it has become clear that the 1995 Dayton Agreement gave BiH the worst of all federal models: the still limited number of exclusive competencies given to the state is exercised only with the consent of representatives elected by, or loyal to, the entities (effectively wielding a veto over decisions within the state's responsibilities) and has almost no independence in fiscal matters. Unlike cooperative systems, there is no trade-off for strong representation of the federal units in central decision-making in the form of state-level involvement in entity responsibilities or joint responsibilities (an exception is the presidency's competence to facilitate inter-entity cooperation). On the contrary, the entities are granted autonomy in most sectors of governance (FPI 2006: 29-30).

Moreover, due to a broad implementation of the parity principle, not only the constituent units but also nations are represented at the state level in all main federal institutions. Most of them: second chamber of the Parliament, both parts of the executive (Council of Ministers and Presidency) are perceived rather as representations of the peoples, not really the territorial units – even if the territorial variable is involved in its creation. Thus, the distribution of powers by levels of governance in BiH contains the following: a weak position of the municipalities (too many responsibilities with no adequate powers or sources of funding); a dominant position of the cantons in FBiH (too many powers and too few responsibilities and limited resources); a high level of responsibility and wide powers of Republika Srpska; and a weak position of the state (Miovcic 2006: 376).

In addition to being a highly decentralised state with two levels of federalism (as one of the entities, the FBiH is further divided into 10 cantons), Bosnia is also an asymmetric federation. First, the subunits are constituted very differently: one is a loose federation consisting of ten cantons and two predominant nations and the other is a centralised republic of one dominant nation. Second, the existence of a third unit, the Brčko District provides for additional asymmetry. Furthermore, the asymmetric nature of the state means that members of the three constituent peoples enjoy different degrees of political representation and rights: while Serbs have been dominant in the Serb Republic and could be said to enjoy territorial autonomy on the basis of ethnicity created at the level of an entity, territorial autonomy for Croats and Bosniaks is limited to cantons, which are bestowed with fewer powers.

Each of the ten cantons has an organised legislative, executive and judicial power. Out of ten, two are ethnically mixed, namely the Herzegovina-Neretva and the Central Bosnian cantons, which both had seen considerable fighting between Croats and Muslims in 1993/4. Of the remaining eight cantons, three are predominantly Croat and five are Bosniak (Bieber 2006b: 60-3). The RS constitutional structure is more centralised and less convoluted than that of the Federation due to its ethnic homogeneity within the electoral body and domination of the Serb population. Unlike the FBiH, the RS does not have cantons and it is a highly centralised entity with all the insignia of a classical state, but without internationally recognised independence. There are also only two levels of government within the RS: central and municipal (Rasidagić 2006:185).

In the framework indicated by the federal constitution the entities enact and change their own constitutions, including their own organisation of governance (Marković 2012: 167). They are provided with self-governing institutions, including legislative, executive and judiciary institutions and independently perform their functions (legislative, executive and judiciary), freely organise their structure and legal order; as well as enter into international agreements with other countries and international organisations – including 'special parallel relations' with neighbouring countries (Golijanin 2011: 438, 441). In fact, both entities have had, now weakened, state-like features: territory, population, citizenship, constitution, parliament, government, judiciary, administrative system, military, police, official languages, flag, coat of arms, anthem, and so on (Kasapović 2005: 3-4; Keil 2013: 107, 111, Omerović 2011: 487) but they differ significantly in the character and

organisation of their political systems.

The Contested Federation

One of the main problems of the whole state is the fact that political elites of the three constituent peoples do not really accept the status quo created after the war. A Majority of the leaders of the RS have been constantly striving to resist and obstruct any consolidation of the overarching Bosnian state (their rhetoric extends to threats to hold a referendum on independence), whilst some within the Bosniak leadership want to revise the DPA, end the division of Bosnia into two entities, and create a genuinely unitary state (arguing that it is an expression of the pressures of the international community, and that it legitimises the aggression and the genocide). Furthermore, the Croats have never been satisfied with

their status within the FBiH and have never accepted it voluntarily; in result, some within their ranks wish for the creation of a third (Croat-dominated) entity which is viewed as a logical, justified, and programmatic goal of the Croat people in Bosnia (Morrison 2009: 7; Kasapović 2005: 12,14; Bose 2002: 257; Bieber 2006: 25).

Yet, critique of the federal nature of the state goes beyond pure rhetoric. In 2008 Milorad Dodik, who later became the president of RS, announced that no more transfers of competences from the entities to the state would take place in the future and that the 50 transfers already in place would be revised. Consequently, in May 2009 he passed a resolution in the RS parliament pledging a review of competences already transferred (Sebastian-Aparicio 2014: 153, 156). On the other hand, the Croats decided to create parallel structures: first, after the November 2000 elections, when HDZ (Hrvatska demokratska zajednica, Croatian Democratic Union) convened a so-called Hrvatski narodni sabor (HNS, Croat National Congress) which later created the Croat self-government by establishing an Inter-cantonal and Inter-Municipal Council (Međužupanijsko-međuopćinsko vijeće) as a parallel government (Grandits 2007: 118). It was dissolved only a few days later when on March 7th the High Representative removed the Croat member of the Bosnia Presidency (Ante Jelavić) from his post and SFOR took over the Hercegovačka Banka, closely tied to both HDZ and the self-government (Bieber 2001: 1-2). Yet, again in 2010, the Croats re-created the Croat National Assembly as an extra-constitutional representative institution (Kivimäki, Kramer and Pasch 2012: 27). This time however, during its first congress, it was decided that Croats in Bosnia - instead of radical attempts to block state institutions, should concentrate on a subtler long-lasting fight for equality of Croats in Bosnia, implying support for future constitutional change (Krešić 2011).

Concluding Reflections

The electoral campaign of the 1996 general election already foreshadowed the coming problems of federalism in Bosnia. Momcilo Krajisnik, the candidate for the B&H Presidency of the Serb Democratic Party (SDS) labelled the RS an independent state. HDZ demanded a Bosnia and Herzegovina with equal rights and refused to dissolve their ethnically-exclusive statelet Herceg-Bosna, while the structures of the meanwhile extra-constitutional Republic of B&H, dominated by SDA (Stranka demokratske akcija, Party of Democratic Action) also continued to exist (Gromes 2010: 368). Nowadays, while there is no agreement on what exactly Bosnia is, what is even more alarming is the abuse of the concept of federalism by Bosnian

elites. Serbs – seeing their entity as the main frame of reference and neglecting the central level – misinterpret federalism to underline their demand for more autonomy and, eventually, secession. Bosnian Croats see federalism as a tool to argue for a third entity, while Bosniaks discuss the scenario of regionalism and have not yet distinguished between regionalism and federalism (Keil 2013: 153). Thus, despite the fact that it has been twenty years since the first post-war elections, nothing has really changed. Bosnia and Herzegovina remains a highly unbalanced and badly constructed federation.

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