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Vladimir Mikić*
Institute for Comparative Law, Belgrade

ON THE CONSTITUTIONAL IDENTITY OF THE REPUBLIC OF SRPSKA**

Abstract

This paper is dedicated to determining which components make up the constitutional identity of the Republika Srpska (hereinafter: the RS). The basic theoretical and methodological approach is based on the study of the text of the 1992 Constitution of the RS (hereinafter: the CRS), which has had an unusually long life, but whose total revision has recently been officially announced. The draft Constitution was published on May 25, 2025, on the website of the National Assembly of the RS (hereinafter: NARS). The aim of the research is to attempt to identify the elements of the constitutional identity of the Republic of Srpska, in accordance with the instructions of scholars regarding what the notion of constitutional identity represents. The paper identifies certain comparative deficiencies in the authenticity of structure and content from which the Constitution of Bosnia and Herzegovina (hereinafter: the Dayton Constitution) and the Constitution of the RS suffer. Based on the analysis of the CRS, the texts of relevant constitutional documents of Bosnia and Herzegovina (hereinafter: BH) and its formal and informal quasi-state predecessors, and the 1990 Constitution of the Republic of Serbia (the 1990 Constitution of Serbia), it is concluded that there are two key elements of the constitutional

* E-mail: v.mikic@iup.rs; ORCID: 0009-0001-8706-4175

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identity of the RS. These are the Serb national foundation of the RS and of its constitutional order, as well as the highly positioned autonomous status of the RS as one of the two constitutional entities of BH. The paper establishes that less important, but obviously present, additional components of the constitutional identity of RS are its unitary order and the extinguished institutional role of its President of the Republic within the constitutional framework of the RS.

Keywords: Republic of Srpska, Constitutional Identity, Bosnia and Herzegovina, Constitution of the Republic of Srpska, the Dayton Constitution

INTRODUCTORY REMARKS

The year 2025 marks the "round" 30th anniversary of the conclusion of the peace, which ended the war in Bosnia and Herzegovina. Annex IV of the General Framework Agreement for Peace in Bosnia and Herzegovina, concluded on November 21, 1995, at Wright-Patterson Air Force Base near Dayton, Ohio, in the United States of America (hereinafter: the US), is actually the Constitution of BH. At the time of the conclusion of this Agreement, the constitutional act of RS, an internationally unrecognized state, chronologically "elder" than the war conflicts in BH, had already been in force for almost four years and, later, according to the newly created BH constitutional arrangement, became one of the two entities within BH.

The CRS was adopted on February 28, 1992, originally as the "Constitution of the Serb Republic of Bosnia and Herzegovina" and was amended "continuously and drastically" (Savanović 2021, 64), as many as 15 times. These amendments most often reflected the need to adapt the content of the CRS to the Dayton Constitution, but also due to various pressures resulting from (political) interventions of the High Representative for BH (hereinafter: the High Representative), the country's Constitutional court (Išerić 2020, 64–66; Kuzmanović 2012, 32–33; Marković 2011, 339; Nikolić 2025) and legislative practice at the level of BH (Marković 2011, 339). As early as 1995, the CRS was modified by as many as 65 amendments. In relation to the fact that the original text of the CRS had 145 articles, this meant that the number of amendments was "almost equal to half of the original number of

its articles" (Lukić 1997, 20). As it is known, in accordance with the principles of constitutional theory, amendments should not change the basic constitutional text, but only supplement it (which was not the case here). The Dayton Constitution itself has, over the years, undergone numerous changes *via facti* (Simović 2020, 203), probably because it "proved to be unchangeable in practice" (Stanković 2020, 41) and because it created "an inefficient system that is easily and quickly blocked" (Simović 2020, 201).

Despite the numerous amendments it has undergone, the CRS has remained in force for more than three decades. The same is true of the Dayton Constitution, which "owes" its longevity to the original text and the unsuccessful implementation of the "April Project," its extensive revision (from 2006), which aimed at the partial centralization of a unitary state. The revision project "failed" in the bicameral Parliamentary Assembly of BH (hereinafter: PABH) because it lacked only two votes for its adoption (Alijević 2011, 434; Bonifati 2023, 239), thus not fulfilling the procedural threshold of Article X, Paragraph 1 of the Dayton Constitution, which requires the consent of at least a two-thirds majority in this body for its amendments.

It is time to end the multiple (and most often forced) partial revisions of the CRS. Namely, in early 2025, the NARS, at a session held on March 12, determined that there was a need to proceed with the adoption of a new constitution (*Politika* 2025). This would open up space for the realization of the "idea of a 'second republic'" (Savanović 2021, 54), promoted nearly three decades ago, with the author's commentary conveying the "voices that it is necessary to adopt a new constitution [...], in order to remove any doubt about the content of the current constitutional norms" (Lukić 1997, 20). It seems that the CRS is indeed "overwhelmed by time and space, and incompatible with the requirements of the current RS" (Savanović 2021, 62). In this sense, it appears that the adoption of a draft of the new Constitution in 2025 is an expected move.

The intention to move towards the adoption of a new constitution of the RS was also expressed in the form of the adoption of a special act (Zakon o neprimjenjivanju zakona i zabrani djelovanja vanustavnih institucija BiH [ZNZ]), adopted on February 27, 2025. It expressly prohibits the application of the legal framework on the work of the Constitutional Court, the Public Procurator, of the High Judicial and Prosecutorial Council of BH on the territory of the RS (ZNZ, Art. 2–5), with, it should be added, a somewhat "legally pleonastic"

provision according to which the "competent institutions and bodies of the [RS]" are obliged to take "measures and actions within their jurisdiction to ensure the implementation of this law" (ZNZ, Art. 6). The act also stipulated that the exemption from criminal liability of persons who implement this law, as well as the obligation of the institutions and bodies of the RS to ensure and provide these persons with "all necessary protection" during its implementation (ZNZ, Art. 7). It is worth recalling that the LNA, adopted for the purpose of strengthening the independence of the institutions of the RS, was repealed by the Decision of the Constitutional Court of BH adopted on May 29, 2025.

In order to methodologically correctly determine what constitutes the constitutional identity of the RS, it is necessary to present a brief overview of the definition of the *concept* of constitutional identity, as a category that has increasingly, albeit recently, under that name, been researched in legal science. There are different, sometimes completely contradictory, interpretations of the concept of constitutional identity, from the view that it represents the core of the Constitution to the view that its content reflects the constitutional past of a state. It is "an expression of the democratic legitimacy and sovereignty of a nation," for it "encompasses the key values, principles and norms that determine the constitutional order," reflecting "the unique historical, cultural and social context of the nation," as well as its "self-determination" (Muharemović i Nurkić 2024, 133). Constitutional identity is the product of "the process of establishing the collective constitutional Self" (Belov 2023, 92). Although constitutional identity is "a relatively mysterious concept" (Dubout 2010, 453), it helps constitution-makers in their effort "to search for elements that serve to establish their common identity" (Van den Berg 2023, 36). Given that its function is to determine the "self-determination" of a political community (Belov 2023, 83), in addition to more former legal aspects, constitutional identity also encompasses philosophical, sociological, and psychological aspects (Allezard 2022, 59), as well as elements of constitutional history (Kruzslicz 2018, 119). *The text of a constitution* necessarily appears as the "most authentic source" of constitutional identity (Szente 2022, 7). Therefore, the author of this paper based his conclusions primarily on research into the text of the CRS, especially in its original form (before numerous revisions changed its content).

The introductory part of the paper explores the validity of the thesis in accordance with which the Dayton Constitution was completely imposed "from the outside," without connection with any legitimate, authentic need for establishing a constitutional framework for post-war life in BH. Since the aforementioned circumstance significantly complicates the possibility of determining the elements of the constitutional identity of BH, the paper examines in what way a similar problem, in terms of the constitutional identity of the RS, brings a very low level of originality to the solutions contained in the CRS, based on a comparison of its structure and provisions with the text of the 1990 Constitution of Serbia. The topic to which the second part of the paper is dedicated, and to which the reader is introduced by briefly being acquainted with the chronological basis for the construction of an independent constitutional framework for the RS, consists of establishing that the central constitutional-identity component of the establishment and existence of the RS is contained in the need to achieve a national state of the Serb people in BH. The concluding considerations of the paper are preceded by a part which presents the second element of the constitutional identity of the RS: its identification with the object of the aspirations of the Serb people in Dayton BH for the existence and protection of *political autonomy* in relation to the central government, followed by the thesis about the essentially *consensual* nature of the Dayton BH. To this end, the subject of the unitary structure of the RS and the existence of the institution of a strong president within the distribution of powers of the constitutional bodies of the RS were also investigated.

DEFICIT OF LEGITIMACY IN THE CONSTITUTION OF BOSNIA AND HERZEGOVINA AND OF THE ORIGINALITY IN THE CONSTITUTION OF THE REPUBLIC OF SRPSKA

In comparative law, it is possible to find examples of national constitutions that represent no more than a product of exogenous influences. There are countries whose (current) constitutions were written by the "hand of a foreigner," the victor in the armed conflict that preceded the adoption of a constitution. This is the case with the constitutions of Japan (1946), Germany (1949), Afghanistan (2003), and Iraq (2005), but also with the constitutions of North Macedonia, as amended in 2001, and with the constitutions of East Timor (2002)

and Namibia (2010). Similar is the origin of the Dayton Constitution. Written as an integral part of an *international* peace agreement, it was never ratified by the RS and the then Republic of Bosnia and Herzegovina (RBH), nor by BH (established in 1995), nor by citizens in a referendum.

Scholars unanimously share impressions about the *imposed* nature of the constitutional order of BH. The Dayton Constitution was "imposed [...] without prior public debate and without final adoption or approval in the constitutional body," which means that it is "deprived of democratic legitimacy" (Simović 2020, 210). It "did not grow as a result of the will of citizens and with the application of procedures that would give it democratic legitimacy, but as a product of the will of the international community" (Alijević 2011, 421), or "by the will of the great powers" (Kuzmanović 2012, 26), which is evidenced by the very – quite original – fact that it was adopted in the form of an international treaty (Stanković 2020, 40). The Dayton Agreement (meaning, actually, the Dayton Constitution) is merely a "synthesis of the arbitration process of the international community" (Nešković 2013, 412–413), which leads to the conclusion that BH is also a "paradigm of a multinational state community whose existence was imposed" (Stanković 2020, 51). This reflects the "crucial constitutional deficit" (Simović 2020, 190) of the constitutional order of BH.

The absence of constitutional sovereignty of BH is also reflected in the fact that the Dayton Constitution is "clearly based on the Anglo-Saxon legal and constitutional tradition," and that it was written in accordance with the model of the US Constitution of 1787, which is "clearly seen from the very form of the constitution: it is a short constitution with a small number of articles – merely twelve" (Savanović 2021, 62). The Dayton Constitution is also "a text with a lot of clumsy Anglo-Saxon diction" (Orlović 2020, 217). One author even explicitly points out that "the American lawyer Roberts B. Owen and his numerous associates" were "writers" of the Dayton Constitution (Lukić 1997, 16). It is obvious that the authenticity of the constitutional order of BH is "hindered" by the fact that the institution of the High Representative exists (Ustav BiH, Annex II, Art. 1, item c), and that *one third* of the members of the Constitutional Court of BH are elected by the President of the European Court of Human Rights (Art. VI, Paragraph 1, a). Truth be told, the Dayton Constitution has not been amended according to the procedure provided for the revision of international treaties, but, in

accordance with the provision of its Article X, Paragraph 1, by the way of a decision of the PABH (Marković 2011, 340).

In addition to the imposed nature of the Dayton Constitution, another characteristic reflects the fact that it did not represent and does not provide opportunities for the creation of an *authentic constitutional identity* of BH. Namely, if *constitutional history* is also considered an element of constitutional identity, then it is worth pointing out that the implementation of the Dayton Constitution has also greatly complicated the formation of the constitutional identity of BH, because the country's "constitutional law is not internationalized only in terms of the adoption process, but also in terms of the subsequent functioning of the constitutional system" (Simović 2020, 194). This is also evident from the fact that in the process of constituting post-war BH, "no one waited for a common state to be a freely perceived need, and then a voluntary and desired community," but rather the new competencies of BH and its institutions were created "artificially, which did not lead to the convergence of the interests of its constituent peoples" (Orlović 2024, 218). The constitutional order of BH, instead, reflects its "incomplete and truncated sovereignty," which is reliably indicated by the fact that "international bodies have retained a strong influence on the constitutional system of the country" (Simović 2020, 199).

The much narrowed possibility of discovering the constitutional identity of BH does not necessarily represent an obstacle to determining the elements of the constitutional identity of the RS as its integral part. Although it has been amended many times, the CRS remains a product of the authentic political will of the Serb people in the former Socialist Republic of Bosnia and Herzegovina (SRBH) and offers sufficient textual material for establishing the constitutional identity of the RS. Before that, it is worth recalling that the CRS has very limited originality.

The solutions contained in the CRS are indeed "not original," because "they have their models in foreign solutions," with "certain specificities that are the result of the manner [of its formation and position], but also the limitations of the effective constitutional capacity" of the RS (Golić 2021, 232). This act was adopted "with the pretense of being the constitution of a territory, which at that time was still neither clearly defined, nor precisely delimited" (Lukić 1997, 18). At the same time, the conditions in which the CRS was adopted speak of its short-term preparation, which conditioned its authors' reliance on "certain

models," among which the "basic" one was the 1990 Constitution of Serbia, since a comparison of these two documents "shows a very high degree of similarity" (Lukić 1997, 20).

With the exception of the Preamble (which the 1990 Constitution of Serbia did not contain, but the CRS does), the structure of the two documents is almost identical. The introductory part of both the CRS and the 1990 Constitution of Serbia consists of provisions dedicated to the fundamental issues of state organization. In the CRS, after the Preamble, come the "Basic Provisions" (URS, Art. 1–9), a unit whose object is the definition of the *state* (later – the RS as an *entity* within BH), the basic principles of the state organization, its official language and symbols. The same applies to the 1990 Constitution of Serbia (Ustav Srbije iz 1990, Art. 1–10). The next section regulates basic rights and freedoms (URS, Art. 10–49; Ustav Srbije iz 1990, Art. 11–54), followed by a section that in both acts contains the same *title* – "Economic and social organization" (URS, Art. 50–65; Ustav Srbije iz 1990, Art. 55–69), followed by "Rights and duties of the Republic" (URS, Art. 66–68), or "Rights and duties of the Republic of Serbia" (Ustav Srbije iz 1990, Art. 70–72).

The model of the almost identical structure of the two constitutions is also reflected in the section entitled "Organization of the Republic" (URS, Art. 69–99), or "Organs of the Republic" (Ustav Srbije iz 1990, Art. 73–107). The structural arrangement of institutions is very similar: the chapter dedicated to the legislative body (URS, Art. 70–79; Ustav Srbije iz 1990, Art. 73–82) "leans back" on those dedicated to the President of the Republic (URS, Art. 80–89; Ustav Srbije iz 1990, Art. 83–89), the Government (URS, Art. 90–97; Ustav Srbije iz 1990, Art. 90–94), and "territorial organization" (URS, Art. 100–103; Ustav Srbije iz 1990, Art. 108–118). The differences in the structure of the two documents are indeed minimal (there is no space in this paper to point out the deeper *details* according to which the authors of the CRS followed the example of the 1990 Constitution of Serbia). Although the CRS "does not differ dramatically nor crucially from other written constitutions that were adopted as part of overcoming socialist constitutionalism in former socialist states" (Lukić 1997, 33), it was written according to the model of the 1990 Constitution of Serbia. These reasons were probably more symbolic than technical, due to the nature of the political processes at the time of the adoption of the CRS, although its authors were inspired by

a constitution marked by a higher quality. One should add that the CRS was written in a very short period of time, in anticipation of the referendum on the independence of BH, and that its authors probably received expert assistance from colleagues from the Serbia, taking into account the compliance of the solution with the Serbia's constitutional document, since the issue of the dissolution of the common (Yugoslav) state had not yet been resolved at that time.

ETHNIC FOUNDATIONS OF THE CONSTITUTION OF THE REPUBLIC OF SRPSKA

The RS was created as a state of the Serb people in BH. The main purpose of its establishment was to send a message to both the political representatives of the other two constituent peoples in the SRBH, as well as to the Serb people in it, that Serbs have the right to create their own state, in the event of the secession of the SRBH from Yugoslavia. That the foundations of the RS contain a *national* urge for independence is confirmed, among other things, by the very *name* of the RS and by its state symbols – the traditional Serbian tricolor and the anthem "God of Justice" ('Bože pravde'), later replaced by the anthem "My Republic" ('Moja Republika').

The fact that the RS reflected the aspirations of the Serb people to establish a state in BH is also evidenced by the history of the adoption of the CRS, which was the *fourth* (and the last) in a series of its founding acts. This document was preceded by two *decisions* and a *declaration*, the acts by which the legitimate and democratically elected representatives of the Serb people expressed their desire for the continuity of the political representation of Serbs in the SRBH, for Serbs to remain in the Yugoslav state and, finally, for the establishment of the RS (Kuzmanović 2012, 26; Nešković 2013, 140–145). Since before the adoption of the CRS there were no other formal possibilities for protecting the legitimate interests of Serbs in the SRBH, a "own state-forming unit, the Republic of the Serb People of Bosnia and Herzegovina," was formed, the roots of which were "the need to preserve the identity" (Kuzmanović 2012, 25) and the "statehood" of Serbs in BH (Pilipović 2020, 249). The name of the Republic, which was created "through the process of territorialization of the constitutive nature of the Serb nation" (Nešković 2013, 208), was changed to its current name on August 12, 1992 (Nešković 2013, 211, 323).

In Paragraph 1 of the Preamble of the original text of the CRS, the existence of the "inalienable and non-transferable natural right of the Serb people to self-determination, self-organization and association" is confirmed, while the state is defined in the normative part of the text as "the state of the Serb people and the citizens who live in it" (URS, Art. 1). This provision represented a clear "expression of objective historical circumstances and the 'purpose' of the [CRS]: to ensure the political community of the Serb people in the territory with a Serb majority in the conditions of a state of emergency" (Savanović 2021, 58).[1]

Departing from the rule present in comparative constitutional law, the introductory article of the CRS does not contain references to the sovereignty and independence of the state, its democratic nature, nor to the rule of law (these components, among others, appear not before than in Article 5). At the time of its establishment, the self-identification of the RS was reduced to emphasizing the *attitude* of the constitution-maker on the *national* (ethnic) nature of its origins. The Serb people are also mentioned in Article 2 of the original CRS, in which it was emphasized that the state territory of the RS *also* includes the areas in which "the crime of genocide was committed against [the Serbs] during the Second World War" (URS, Art. 2). According to Article 7 of the same act, the official language in the RS is *Serbian*, and in Articles 100–101, the basic units of the "political-territorial community" are the *regions*, which represent "a single ethnic [...)] space." Finally, in addition to the explicit mention of the Serbian Orthodox Church as the religious community of the "Serb people" (URS, Art. 28, Para. 3), the provision of Article 112 is also instructive, because in accordance to it a member of the armed forces of the RS, in addition to *regular* military units, can also be "every citizen who participates in the defense" of the RS by arms or in another way. This indicates that the CRS truly was a "war constitution" (Savanović 2021, 58), adopted for the purposes of constituting a Serb state in conditions in which the help of the unorganized force of the people ("citizens"), not framed by the

[1] The founding (one could say 'quasi-constitutional') acts of the RBH from 1992 also include a Memorandum, declaratively confirming the sovereignty of that state. This document *recognized* the "right of the parliamentary minority" – that is, members of the Serb ethnic corps in the RBH "to demand their cultural, social and economic interests," which made the Serbs, as a *constituent* people, "a national minority that could not influence any decision on the structure" of BH (Kuzmanović 2012, 25; Pilipović 2020, 238).

traditional state monopoly on physical force, was obviously welcome for its defense.

The amendments to the CRS changed most of the aforementioned provisions in order to bring them into line with the Dayton Constitution. As they created a "stew," today the document "does not resemble itself as it was originally drafted" (Savanović 2021, 61), within the framework of the pre-Dayton RS. The concepts of the bearer of sovereignty,[2] "self-proclaimed statehood," territory, military formations (Šarčević 2023, 29), and other important *identity* elements of the RS have been changed. By means of the jurisprudence of the Constitutional Court of BH, all three "ethnic nations" have become "constitutive in both entities" throughout the entire territory of BH (Nešković 2013, 401), creating "tri-ethnic sovereignty" in the RS (323).

However, this does not change the fact that the RS was constituted as a *Serb* state-political community in BH. It emerged as a reaction to the events leading to the 1992 referendum on the independence of BH, which was largely boycotted by Serbs, was of "extremely dubious legality" and unconstitutional from the point of view of the constitutionality of the SRBH and the 1974 Constitution of the Yugoslavia (Pilipović 2020, 234–235; Kreća 2024, 29). This invalidates the thesis that the referendum ("plebiscite") of the *Serb people*, organized the same year, was illegal (Balić 2020, 22). The Serb *national* origin of the RS is also evidenced by the fact that, unlike the original CRS, the Constitution of the RBH stipulates that the RBH is "the state of equal citizens, [...] Muslims, Serbs, Croats, and members of other peoples living in it" (Ustav Republike BiH 1993, Art. 1), with the provision in accordance to which the "holders of power" are citizens (Art. 47). Likewise, the founding act of the Federation of Bosnia and Herzegovina (FBH) stipulated that "Bosniaks, Croats and Serbs [...] are constituent peoples, together with the Others" (Ustav Federacije Bosne i Hercegovine 1994, Preamble, Para. 6, Art. 1, Sect. 2). Therefore, in relation to the constitutional order of the RBH and, later, of BH, the RS was constituted as an authentic *national* state of one of the three peoples in BH.

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2 "Serbs, Bosniaks, and Croats, as constitutive peoples, the others, and the citizens, equally and without discrimination take part in the exercise of power" in the RS (URS, Article 1, Paragraph 4).

A HIGH DEGREE OF AUTONOMY OF THE REPUBLIC OF SRPSKA AS PART OF ITS CONSTITUTIONAL IDENTITY

After the adoption of the Dayton Constitution and the integration of the RS into the new state creation, the next element of the constitutional identity of the RS emerged – a very high degree of its autonomy. By creating a two-entity state union, the authors of the Dayton Constitution used the method of full symmetry in terms of protecting the most important interests of both entities. However, due to the subject matter of the paper, the emphasis in this chapter will be on examining those elements of the BH system that point to the autonomy of the RS as its second defining element of its constitutional identity. This is particularly important to emphasize because the FBH is the historical product of forced political and legal cooperation between the *two* of its constituent peoples, and the RS is an entity that contributed, by its statehood based on national foundations, to the statehood of the BH. This is a consequence of the fact that the period immediately preceding the start of the war in BH was marked by the existence of "completely different visions of the three constituent peoples about the future of the state" (Simović 2020, 225) – therefore, also the *disparate* visions of Croats and Bosniaks, who, later, in 1994 created the FBH.

Although the end of hostilities created the state of BH, into which the RS joined as a *non-independent* state, the RS did not simply "drown" into the new state system. It preferred to join BH, while retaining important features of its own constitutional and political independence and distinctiveness, including the fact that, within the newly created *composite* structure of BH, it retained its own Constitution. Thus, "the definitive existence of the RS was 'established' by the Dayton Peace Agreement" (Pilipović 2020, 232), or by the Dayton Constitution, although, formally observed, by the provision of its Article I, Paragraph 1, the international legal state continuity between the RBH and BH is "clearly emphasized" and "unquestionable" (Balić 2020, 21–22). By incorporating the key goals of the establishment of the RS into the Dayton constitutional framework, the equal representation of the political interests of the Serb people in BH was enabled – a federal arrangement that was *not offered* to the Serb people in the period preceding the Constitution of the RS and the outbreak of war, but *was guaranteed* by the Dayton Constitution and the maintenance of the RS within BH.

By the fact of the adoption of the Dayton Constitution, the RS was accepted "by the international community as a state-forming unit" (Pilipović 2020, 245) and, like the FBH, it received "international recognition" (Stanković 2020, 42), that is, "constitutional recognition [...] with a broad degree of independence" (Simović 2020, 225). In accordance with the determination of the authors of the Dayton Constitution (Ustav BiH, Article III, Paragraph 3, Pt. a), the RS retained functions and competencies other than those explicitly transferred to the institutions of BH by the Dayton Constitution (URS, Art. 3), thus acquiring its "internal sovereignty" (Pilipović 2020, 249), narrower than the previous (but internationally unrecognized) full sovereignty. It should be noted that constitutional identity also serves as a "guardian of sovereignty" (Belov 2023, 83), regardless of the fact that the sovereignty of the RS could theoretically be defined as *internal*.

According to the Dayton Constitution, BH "shall consist of two entities" (Ustav BiH, Article I, Paragraph 3). Indeed, "the word 'consists' refers to the contractual, confederative nature of [BH], in which there are two 'ingredients' – entities – which have brought (but not lost) their statehood and sovereignty into the newly created legal entity" (Nikolić 2025). According to conclusions that follow a similar logical course, BH "is not a federation, but a specific form of federalism with elements of a federation and a confederation" (Stanković 2020, 41). It should be recalled that during the war "entities with almost all the attributes of statehood were created," and that they "participated in the establishment of a new constitutional and legal order" and "preceded the Dayton constitutional creation as a new socio-political reality" in the form of "fully legally shaped entities" (Simović 2020, 195–196).

The high degree of autonomy of the RS is also evidenced by the parity composition of the highest bodies of BH, guaranteed by the Dayton Constitution: the houses of the PABH, the Presidency and the Constitutional Court (Ustav BiH, Article IV, Paragraph 1-2, Article V, and Article VI, Pt. a, respectively), in which representatives of the RS are represented in a ratio of one to two compared to representatives of the FBH (with the exception of the Constitutional Court, one third of whose members are determined by a completely external instance – the Council of Europe). Among other things, this form of representation of the RS in the institutions of BH leads to the conclusion that the position of the RS today is "at least equal to the position of federal units in looser federations" (Golić 2021, 232). It is also important to recall that the Serb and Croat political elites in BH have long opposed the tendency

to introduce a political regime based "on the principle of 'one man–one vote'," believing that it "cannot represent the basis for establishing a stable constitutional system" (Marković 2011, 339).

The constitutional position of the RS within BH also implies its (limited) competence in international relations, as the entities are authorized to establish "special parallel relations with neighboring states" (Ustav BiH, Article III, Paragraph 2, Pt. a). The RS took advantage of this opportunity by concluding a corresponding agreement with the former Federal Republic of Yugoslavia, and then with the Republic of Serbia, the latter of which is still in force (Zakon o potvrđivanju Sporazuma o uspostavljanju specijalnih paralelnih odnosa između Republike Srbije i Republike Srpske).[3] This circumstance is truly "the greatest curiosity" in the context of the entity's "specific position" within the constitutional order of BH (Stanković 2020, 42).

In the context of the emphasized autonomy of the RS, it should be said that its identity is also based on respect for the Dayton Constitution. For many years, "strong disintegration forces, instigated from the office of the so-called High Representative, as well as arbitrary interpretations" of the Dayton Constitution, "have forced political officials in [RS] to defend the Dayton [BH], its Constitution, and thus [the RS]" (Nikolić 2025). Thus, the literal implementation of the Dayton Constitution has truly become a guarantee of the existence of both BH and RS (Pilipović 2020, 248). This should not be particularly emphasized in the context of the current serious political tensions in RS and BH, based, among other things, on the potential imprisonment of the current President of the RS based on the first-instance verdict of the Court of BH, issued on February 26, 2025. The relativization of the Dayton Constitution's solution regarding autonomy of the entities, according to which their constitutional position arose as a consequence of "war-related territorial conquests," cannot be disputed by the fact that the entities are guaranteed a "high degree of autonomy" (Balić 2020, 37), within a "minimal and segmented" BH (Simović 2020, 189). Consequently, the understanding that the Dayton Constitution recognized "state institutions that the entities seized for themselves during the war" (Ibrahimagić 2011, 251) is not correct, since *there were no* entities in BH during the war.

[3] Article 9 provides for the termination of the validity of the "Agreement on the Establishment of Special Parallel Relations between the Federal Republic of Yugoslavia and the Republic of Srpska, signed on 5 March 2001."

The autonomy of the RS within the constitutional order of BH also contains in its foundations the *contractual nature* of (Dayton) BH. In this sense, the specificity of the constitutional arrangement in BH is manifested "in the very concept of 'entity', which is unusual in constitutional theory and practice" (Pilipović 2020, 245). Along with other strong features of political diversity within the constitutional order of BH, "vital interest" appears to be a limit to protecting the autonomy of the entity (and therefore, the RS). This phrase represents the main point by which the Dayton Constitution limits the possibility of making any decision by the PABH, in the event of an assessment that it "may be declared destructive to the vital interest" of any of the constituent peoples of BH, and the same applies to decisions of the BH Presidency (Ustav BiH, Article IV, Paragraph 3, Pt. e; Article V, Paragraph 2, Pt. d). The "tacit" right of veto of either entity over decisions of central authorities fits into the understanding that BH is only nominally a federal state, because, undoubtedly, "obligatory consensus is a hallmark of a confederation" (Stanković 2020, 43). That this is not an institute which would be the product of a kind of political *blackmail* as a condition for the establishment of Dayton BH is evidenced by the fact that a similar procedure is also recognized by the constitutions of two member states of the European Union: Belgium (Constitution of the Kingdom of Belgium [1831] 1994, Article 54) and Cyprus (Constitution of the Republic of Cyprus 1960, Article 133, Paragraph 1).

Two narrower components of the constitutional identity of the RS appear within the framework of this unit of the paper. These are: the unitary nature of the constitutional order of the RS and the overriding role of the President of the Republic.

Unlike the fragmented FBH, the RS is characterized by a *unitary* system of organization. The political-territorial organization of the FBH is based on the existence of "federal units – cantons" (Ustav Federacije Bosne i Hercegovine 1994, Art. 2), which, *nota bene*, were not mentioned in the Constitution of the Republic of Bosnia and Herzegovina, which was a unitary state until 1994. The constitutional system of the FBH is burdened with a "complex architecture" (Bonifati 2023, 233), and therefore, at the level of BH, "the most complex political system in Europe" was created (Alijević 2011, 425), which resulted in "the establishment of an extremely complexly structured and inefficient state" (Simović 2020, 188).

On the other hand, the territorial organization and local self-government of the RS are based, according to the provisions of the CRS, on the *municipality* as its sole unit (URS, Art. 102, Para. 1–2), with the legislator being given the option of entrusting the performance of local self-government tasks to the *city* as well (URS, Art. 102, Para. 3). These solutions introduced a simpler structure of the RS than the one which was prescribed by the provision of Art. 2 of the original text of the RS, which stipulated that the territory of the RS "consists of areas of autonomous regions, municipalities and other Serbian ethnic entities" – that is, two, and potentially three or more special types of local self-government units. Thus, subsequent amendments to the CRS established a "highly centralized and unitary system" (Bonifati 2023, 233), the first step of which was reflected in the abolition of "regions" and "districts," back in August 1992 (Nešković 2013, 211).

The entity constitutions have created "significant asymmetry" in their regulations (Bonifati 2023, 233), and a "highly asymmetric federal constitution" in BH (Sahadžić 2020, 284). The RS has a simpler and more *transparent* institutional structure than the FBH, which, in the opinion of the author of this paper, represents a less important, but present, component of the constitutional identity of the RS, such as the one reflected in the existence of a "strong" President of the Republic, who is the "central political institution" in the constitutional order of the RS (Golić 2021, 239), or the "center of state power" (Lukić 1997, 25).

As a monocratic body, directly democratically legitimized by election by citizens (URS, Article 83, Paragraph 2), the President of the RS has significant powers, probably modeled on the 1990 Constitution of Serbia (Golić 2021, 244), according to whose provision Article 86, Paragraph 1, the President of the Republic is also *directly elected*. According to the CRS, the President "represents" the RS and expresses "its state unity" (URS, Art. 69, Para. 3), but is also authorized to make a decision to dissolve the NARS, "after hearing the opinion" of the Prime Minister and of the President of the NARS (URS, Art. 72, Para. 7). In addition, during a state of war or emergency (which, admittedly, is declared by the institutions of BH), he can issue "decrees with the force of law and on issues within the competence" of the NARS and "appoint and dismiss officials" elected and dismissed by the NARS (URS, Art. 81, Para. 1). This is particularly important because, similarly to the usual comparative law solution, during irregular circumstances, the President's mandate is extended for the duration of such a state

of affairs (URS, Art. 85, Para. 1), so, according to one understanding, during the duration of a state of war or emergency, he can temporarily "take over all power" in the RS (Golić 2021, 239).

Indeed, the "mechanism of complex interrelations" between the institutions of the RS has been dynamically changing since the adoption of the CRS, but the "common denominator of such dynamics" was reflected in the strengthening of the "constitutional role" of the President, in relation to the NARS and the Government (Lukić 1997, 25). The President appoints the members of the Senate of the RS (URS, Art. 89, Para. 4). Although this body is only an advisory body of the "supreme constitutional institutions" of the RS (URS, Art. 89, Para. 3), it includes "prominent figures from public, scientific and cultural life" (Para. 6), which means that the President has a position of high authority in terms of institutional authority over who are *prominent public figures*, and which individuals deserve to be included in the circle of *advisors* to the highest institutions of the RS. In Article 101 of the Draft Constitution, the solutions on presidential authority in relation to the Senate are retained (Narodna skupština RS 2025).

The concept of a dominant President was established in the CRS from 1992, but it has, "despite the numerous changes it has undergone, been retained to this day" (Golić 2021, 237), regardless of the fact that the constitutional revision reduced the duration of his term of office from five to four years (URS, Art. 83, Para. 2, in accordance with the Amendment XCII); moreover, the provision of Article 93 of the Draft Constitution provides for a five-year presidential term. The original solution was probably based on the example of Article 86, Paragraph 2 of the 1990 Constitution of Serbia. On the other hand, unlike the solution contained in Article 88 of the 1990 Constitution of Serbia (no matter how much it, due to the complex procedure, favored the President of the Republic), the CRS does not provide for the possibility of impeachment of the President at all, although this solution is poorly regulated from a technical point of view. This fact "has serious consequences for the functioning of the political system" of the RS (Savanović 2021, 56), so the issue of the political responsibility of the President should be regulated in more detail (Golić 2021, 245), especially if one takes into account the "undesirably broad powers" of the President in terms of dissolving the NARS (Lukić 1997, 25). Perhaps the right opportunity for this would be the process of adopting the Constitution of the Second Republic.

CONCLUDING REMARKS

If constitutional identity is a category that serves the self-recognition of a certain political community, in terms of determining its political and constitutional traditions, key values, and consensus on fundamental social issues, then it can be concluded that the constitutional identity of the RS has two main components. The first is the fact that the RS was founded as a state of the Serb people in BH. This component of the constitutional identity of the RS did not disappear with its incorporation into BH after the signing of the Dayton Agreement. Another significant component is precisely the fact that by joining BH, the RS achieved a valuable degree of political and institutional autonomy, retaining its own Constitution, as well as other bodies and institutions that have accompanied its functioning since its very creation. In the context of emphasizing the importance of the elements of the constitutional identity of the RS, and as a special reflection of its autonomy, its unitary organization appears, unencumbered by the complex structure that characterizes the institutional system of the FBH, but also by the institution of the President of the Republic that dominates the constitutional landscape of the RS.

Given that we are witnessing officially announced changes to the constitutional order of the RS, in terms of adopting a completely new constitution for this entity, it is time to eradicate certain shortcomings reflected in some solutions contained in the CRS. The process of adopting the new highest legal act of the RS creates a suitable opportunity for more original normative solutions, which would move further from those contained in the 1990 Constitution of Serbia. The possibility for the drafter of the new CRS to be freer in devising an appropriate constitutional arrangement is particularly due to the fact that the previous constitutional model for the RS, namely the Republic of Serbia, has not had a constitutional document since 2006, from which a lot of quality solutions could be "borrowed," because the provisions according to which it does not coincide with the 1990 Constitution of Serbia are actually just a reflection of unprofessional editing and the penetration of numerous legislative matter into the Constitution. It is the sincere wish of this author that the future (next) constitutional act of the RS reverses the historical spiral of correlation of influence and prestige between the writers of the CRS and the Constitution of Serbia, so that, for a change, the *former* serves as a model for the *latter.*

One should hope that this exemplarity would be based on conciseness, positive authenticity, and bold steps forward in resolving issues worthy of constitutional regulation, without departing from the two essential components of the constitutional identity of the RS.

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Владимир Микић*

Институт за упоредно право, Београд

О УСТАВНОМ ИДЕНТИТЕТУ РЕПУБЛИКЕ СРПСКЕ**

Сажетак

Рад је посвећен утврђивању елемената уставног идентитета Републике Српске (РС). Основни теоријско-методолошки приступ темељен је на проучавању текста Устава РС из 1992 (УРС), који, за српске историјскоправне прилике, има неуобичајено дугачак живот, али чија је тотална ревизија недавно службено најављена (Нацрт Устава објављен је 25. маја 2025. године, на Интернет адреси Народне скупштине Републике Српске). Циљ истраживања састоји се у препознавању елемената уставног идентитета РС, у складу са закључцима теоретичара поводом питања шта представља уставни идентитет. У тексту се утврђују и извесни упоредноправни недостаци аутентичности структуре и садржине од којих пате Устав Босне и Херцеговине (Дејтонски устав) и УРС. На основу анализе УРС и других релевантних уставних текстова са подручја БиХ из ратног периода, те Устава Републике Србије из 1990 (Устав Србије из 1990), закључује се да постоје два средишња елемента уставног идентитета РС. То су континуирано српско национално утемељење РС и њеног уставног уређења и висок аутономни статус РС као ентитета у саставу Босне и Херцеговине (БиХ). Мање важне додатне компоненте уставног идентитета РС чине њено унитарно уређење и истакнута уставна улога институције председника Републике.

Кључне речи: Република Српска, уставни идентитет, Босна и Херцеговина, Устав Републике Српске, Дејтонски устав

* Имејл адреса: v.mikic@iup.rs; ORCID: 0009-0001-8706-4175

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