

WHO DO MEMBERS OF THE PRESIDENCY OF BIH AND DELEGATES TO THE HOUSE OF PEOPLES OF BIH AND THE HOUSE OF PEOPLES OF FBiH REPRESENT?

Why vital interest of Republika Srpska/Federation of BiH exists in BiH constitution rather than Bosniak/Croat/Serb vital national interest?

Bosnia and Herzegovina (BiH) is, according to the Dayton Constitution and structure, a country made up of three constituent peoples and two entities. The Presidency of BiH upholds that basic structure of administrative and political division of BiH. The Presidency of BiH is composed of **three members** (One Serb, One Bosniak and One Croat) because the Constitution of BiH names **three constituent peoples** (Serbs, Bosniaks and Croats). However, due to the two-entity structure (RS and FBiH) all three members are not elected from the whole territory of BiH. Serb Members is elected from Republika Srpska entity, while Bosniak Member and Croat Member are elected from the Federation of BiH entity.

Therefore, each member of the Presidency of BiH represent:

- Entity (territory) from which he is elected, or in other words, all citizens of that entity
- A particular constituent peoples

The fact that each member of the Presidency of BiH is a representative of a specific entity is reflected in the fact that each member of the Presidency of BiH has a right and possibility to evoke “entity veto,” or in other words, he has an obligation and a duty to protect the “vital interest of the entity.”

The fact that every member of the Presidency of BiH is also a representative of a specific constituent peoples is reflected in the fact that “entity veto” has to be confirmed in entity legislative body which is designated for representation of constituent peoples.

Republika Srpska

In the case of the “vital interest of entity RS” the “entity veto” must receive two-thirds support from the delegates in the National Assembly of RS. According to the original, Dayton, Constitution of BiH, only Serbs were constituent in Republika Srpska, while Bosniaks and Croats were not constituent at the RS entity level. Therefore, National Assembly of RS was unicameral, and it only had the equivalent of a lower house (House of Representatives), but no upper house (House of Peoples). The House of Peoples is an expression of mutual equality of constituent peoples. Given that in RS only one people was constituent originally, there was no need for the House of Peoples. That means that National Assembly of RS was both a representative body of all citizens of RS, as well as of all Serbs as a constituent people. Therefore, National Assembly of Republika Srpska was deciding both about the “vital interest of entity RS” and about the “vital national interest of Serbs as constituent people.”

The Federation of BiH

The situation in Federation of BiH (FBiH) entity was more complicated. In FBiH, both Bosniaks and Croats were constituent and mutually equal, while Serbs did not have a status of a constituent

people in FBiH. Therefore, the Parliament of FBiH was bicameral and it consisted of: the **House of Representatives (lower house)** designated for representing all citizens of FBiH entity, and the **House of Peoples (upper house)** designated for representing peoples which were constituent in entity FBiH. As we already stated, *the House of Peoples is an expression of mutual equality of the constituent peoples*. Given that according to the original BiH constitution only Bosniaks and Croats were constituent at the FBiH entity level, the House of Peoples of the FBiH originally had two mutually equal clubs: Bosniak Club (30 delegates) and Croat Club (30 Delegates). The Serb Club did not originally exist in the House of Peoples of the FBiH because until 2000 Serbs did not have a constituent peoples status in FBiH entity. In addition to the Bosniak and Croat Club in the House of Peoples of the FBiH, there was also an Others Club (people who did not declare themselves as Bosniak or Croat). The number of the Others Club delegates was determined by the percentage of Others in cantonal assemblies, from which the delegates were elected to the House of Peoples of the FBiH.

As, we already stated, *each Member of the Presidency of BiH represents:*

- *Entity (territory) from which he is elected, or in other words, all citizens of that entity*
- *A particular constituent peoples*

The fact that each member of the Presidency of BiH is a representative of a specific entity is reflected in the fact that each member of the Presidency of BiH has a right and possibility to evoke "entity veto," or in other words, he has an obligation and a duty to protect the "vital interest of the entity."

In the case of the Federation of BiH, both Bosniak Member and Croat Member in the Presidency of BiH have a right and a possibility to evoke "entity veto" for FBiH, or in other words, he has a duty and obligation to protect "vital interest of entity FBiH." The Serb Member does not have a right or possibility to evoke "entity veto" on the behalf of the FBiH because he is not elected in the FBiH and because the Serbs were not originally constituent in the FBiH.

The fact that each Member of the Presidency of BiH is also a representative of a specific constituent people is reflected in the fact that "entity veto" has to be confirmed in the entity legislative body which is designated for representing constituent peoples.

In the case of the Federation of BiH, the legislative body designated for representing constituent peoples is the House of Peoples of the Federation of BiH. This means that "entity veto" if it is evoked by a Bosniak Member has to be confirmed in the Bosniak Club in the House of Peoples of the FBiH, while the "entity veto" evoked by a Croat Member has to be confirmed in the Croat Club in the House of Peoples of the FBiH.

Why vital interest of Republika Srpska / Federation of BiH exists in BiH constitution rather than Bosniak/Croat/Serb vital national interest?

Because each Member of the Presidency of BiH represents: a) entity in which he was elected, or in other words, all citizens of that entity, and b) a specific constituent peoples, or in other words, because the *vital national interest of a constituent people* integral and indispensable part of the *vital interest of an entity* in which that specific peoples are constituent.

Until 2000, in RS only Serbs were constituent, while in the Federation of BiH only Bosniak and Croats were constituent and mutually equal.

If the Members of the Presidency of BiH would only representing the entities from which they are elected from and only protecting the “vital interest of an entity” then the Presidency of BiH would only have two members – given that there are only two entities in BiH.

If the Members of the Presidency would only represent a specific constituent peoples and only protect “vital interest of a specific constituent people” then the electoral unit for the Members of the Presidency would have been constituent peoples and not the entities. In that case the mutual equality of the constituent peoples would have been guaranteed (each constituent people would have a right and a possibility to exclusively elect their Member of the Presidency of BiH) but by doing so the citizens of BiH which do not declare themselves as a member of one of the three constituent peoples would have been discriminated against. They could not participate in the process of election of the Members of the Presidency as either candidates nor voters.

Therefore, “entity veto” is an undeniable evidence that each Member of the Presidency of BiH represents a specific constituent people, but also represents all the citizens of the entity from which he comes from and which do not identify as the members of the people which are constituent in that entity.

Therefore, constitutional stipulation from Article IV of the BiH Constitution is necessary and only correctly interpreted in the following way:

- **One Serb** – as a representative of the Serbs as constituent peoples and all other citizens of RS entity
- **One Bosniak** – as a representative of the Bosniaks as constituent peoples and all other citizens of FBiH entity which at the census did not declare themselves as either Bosniaks or Croats
- **One Croat** - as a representative of the Croats as constituent peoples and all other citizens of FBiH entity which at the census did not declare themselves as either Bosniaks or Croats

Therefore, the interpretation of the constitutional norm “One Serb/Bosniak/Croat” in a way that it would require “One Serb/Bosniak/Croat (Member of the Presidency)” to be a **member** of Serbs/Bosniaks/Croats as constituent peoples is opposite to the spirit, principles and other constitutional norms of the BiH Constitution.

One Serb – Member of the BiH Presidency from Republika Srpska

Every citizen of Republika Srpska, no matter how they identify nationally, has the right and possibility to be a candidate for “One Serb Member” in the Presidency of BiH because “one Serb” is a representative of Serbs as constituent peoples, but also, a representative of all citizens of Republika Srpska entity. Therefore, it is not necessary for “One Serb” to be a **member** of Serb people, but rather a legitimate **representative** of Serb people. He becomes a legitimate representative by winning the most votes out of all votes casted in RS for the Member of the Presidency of BiH. Given that only Serbs were constituent in RS and that all other citizens of RS which do not identify as Serbs were part of the Others category, as well as that the Serbs make up 81.5% of RS population, the candidate which wins the most votes at the RS level is, both legally and in practice, gained double legitimacy: both entity and the national one.

Given that only one Member of the Presidency of BiH is elected from RS, and given that he refers to the National Assembly of RS in “entity veto” questions, it is not necessary or needed that a candidate for “One Serb” declares its nationality when becoming a candidate for a Member

of the Presidency of BiH – there is a clear connection between voters, the legislative body which confirms the veto and a Member of the Presidency of BiH which is evoking the veto.

One Bosniak and One Croat – Members of the BiH Presidency from the Federation of BiH

Each citizen of the Federation of BiH, no matter how they state their nationality, has the right and a possibility to become a candidate for “One Bosniak,” as well as for “One Croat” in the Presidency of BiH.

Given that the Federation of BiH was originally Bosniak-Croat entity (just like RS was a Serb entity), or in other words, **both** Bosniak **and** Croat entity, **both** One Bosniak **and** One Croat were equal representative of (their) while entity. Figuratively speaking, entity Federation of BiH was **both** 100% Bosniak **and** 100% Croat entity. Therefore, as full and equal representative of the FBiH entity, both One Bosniak and One Croat had a right and possibility to independently evoke the question of the protection of the “vital interest of the entity” FBiH. In addition to the fact that they were full and equal representatives of the whole (their) entity, One Bosniak was also a representative of Bosniaks as a constituent peoples in FBiH, while One Croat was a representative of Croats as constituent peoples in FBiH.

As such, One Bosniak was tasked with the protection of the “vital national interest” of Bosniaks, while One Croat was tasked with the protection of the “vital national interest” of Croats. Therefore, “vital national interest” of Bosniaks as constituent peoples in FBiH is an integral and indispensable part of the “vital interest of the entity” FBiH, as well as “vital national interest” of Croats as a constituent peoples in FBiH is also integral and indispensable part of the “vital interest of the entity” FBiH. This is confirmed by the norm of the BiH Constitution which states that in the case that One Bosniak is evoking the question of the “vital interest of the entity” FBiH, then the “entity veto” is voted on and confirmed by the Bosniak Club in the House of Peoples of the FBiH, and when One Croat is evoking the question of the “vital interest of the entity” FBiH, then the “entity veto” is voted on and confirmed by the Croat Club in the House of Peoples of the FBiH.

Given that, in accordance with the Constitution of BiH, it is not possible for One Bosniak to refer the question of the “entity veto” to the Croat Club in the House of Peoples of the FBiH, nor is it possible for One Croat to refer to the Bosniak Club in the House of Peoples of the FBiH with the same question, then it is clear that One Bosniak must get Bosniak election legitimacy in order to be legitimate, and that One Croat, in order to be legitimate, must get Croat election legitimacy. It is illogical and anti-constitutional that “vital national interest” of Croats is protected by a member of the Presidency of BiH which was elected by majority of Bosniaks, and vice versa.

Therefore, One Bosniak in order to be legitimate has to gain double legitimacy:

- The legitimacy to represent Bosniakas as Constituent Peoples in the FBiH
- The legitimacy to represent entity FBiH

One Croat too in order to be legitimate has to gain double legitimacy:

- The legitimacy to represent Croats as Constituent Peoples in the FBiH
- The legitimacy to represent entity FBiH

We still need to determine what these two legitimacies are based on, or in other words, where do they come from and what is their mutual relation.

“Entity legitimacy” of One Bosniak comes from the constitutional norm in which Bosniaks have the status of constituent peoples in the Federation of BiH. The Federation of BiH, according to its constitution, Bosniak entity, or in other words, Bosniak entity as well. This tells us that the Member of the Presidency of BiH which has a Bosniak electoral legitimacy, also automatically is a legitimate representative of the whole entity FBiH. Analogous to this, Member of the Presidency of BiH which has Croat electoral legitimacy, also automatically has “entity legitimacy.”

This points out that the “Bosniak electoral legitimacy” and Croat electoral legitimacy” of the two Presidency of BiH members which are elected in the FBiH comes before the “entity legitimacy.” “Entity legitimacy” of One Bosniak in the Presidency of BiH comes from the “Bosniak electoral legitimacy,” rather than the other way around. The same is true for the other constituent people in the FBiH – “entity legitimacy” of One Croat in the Presidency of BiH comes from “Croat election legitimacy,” rather than they other way around.

Specific demos for the election of the Memembers of the Presidency of BiH

As we already state, each Member of the Presidency of BiH has a double legitimacy:

- Legitimacy of a specific constituent people
- Entity legitimacy

“Entity legitimacy” of each Member of the Presidency of BiH is further strengthened by the fact that people who are not members of the constituent peoples also voted for him. Therefore, One Serb is not only a Serb representative, but also representatives of all citizens in RS which do not identify as Serbs. One Bosniak is not only a Bosniak representative, but also representatives of all citizens in FBiH which do not identify as Bosniaks and Croats. One Croat is not only a Croat representative, but also representatives of all citizens in FBiH which do not identify as Bosniak or Croat.

Therefore, **specific election units**, or **specific demos** for the election of the Members of the Presidency of BiH are (in order to simplify things and to allow for the better understanding of the logic of the election process, we did not include voters from District Brcko in this formula):

- **“One Serb”** – Serbs from RS + Bosniaks and Croats in RS + Others in RS
- **“One Bosniak”** – Bosniaks from FBiH + Serbs from FBiH which decide to vote for One Bosniak + Others from FBiH which decide to vote for One Bosniak
- **“One Croat”** – Croats from FBiH + Serbs from FBiH which decide to vote for One Croat + Others from FBiH which decide to vote for One Croat

One Serb, One Bosniak and One Croat are legitimate Members of the Presidency of BiH **only if** they won most votes within their specific electoral unit and their specific demos at the elections for the Presidency of the BiH. From this example it is clear and undisputable that a case in which Bosniaks in FBiH are voting for One Croat is neither legitimate or allowed, as well as the case in which Croats in FBiH vote for One Bosniak.

Furthermore, it is not necessary that One Serb is a member of the Serb constituent people, but rather that he is a legitimate representative of Serbs as constituent people. One become a legitimate representative of Serbs as constituent people if they win the most votes in their own

“specific electoral unit / specific demos” - **Serbs from RS + Bosniaks and Croats in RS + Others in RS + Serbs from DB + Others from DB who decide to vote for One Serb.** By gaining this legitimacy, he also gains entity representation legitimacy.

Analogous to this, One Bosniak is a legitimate representative of Bosniaks as a constituent peoples and the entity of FBiH if he wins most votes at the election in his “electoral units / his specific demos” – **Bosniaks from FBiH + Serbs from FBiH who decide to vote for One Bosniak + Others from FBiH who decide to vote for One Bosniak + Bosniaks from DB + Others from DB which decide to vote for One Bosniak.** By gaining this legitimacy, he also gains entity representation legitimacy.

Likewise, One Croat is a legitimate representative of Croats as a constituent peoples and the entity of FBiH if he wins most votes at the election in his “electoral units / his specific demos” – **Croats from FBiH + Serbs from FBiH who decide to vote for One Croat + Others from FBiH who decide to vote for One Croat + Croats from DB + Others from DB which decide to vote for One Croat.** By gaining this legitimacy, he also gains entity representation legitimacy.

IDPI Proposal of the election law reform respects the structure of all specific demos for the election of the tripartite Presidency of BiH and does not require changes to any existing administrative borders, or borders of the existing electoral units. Moreover, **IDPI proposal** does not require any personal declaration of voters at the polls, nor does it require a change to the current format of voting. **IDPI proposal** solves both of these items with mathematical models and coefficients. The mentioned models and coefficients ensure that every vote within a specific demos, no matter from which canton/entity/district it comes from has an exactly equal value, or in other words, respecting the recommendation of the Venice Commission and ensuring that the value of the vote does not vary more than the 10% allowed by the Commission.

IDPI proposal also respects the fact that One Serb/Bosniak/Croat are **representatives** and not **members** of a specific constituent peoples. Therefore, IDPI proposal instead of national identification/statement by the candidate simply requires the candidate to state for which Member of the Presidency of BiH they are running for, One Serb, One Bosniak or One Croat. That statement is necessary in order to establish the link required by the Constitution of BiH between One Serb and the National Assembly of RS, One Bosniak and the Bosniak Club in the House of Peoples of FBiH and One Croat and the Croat Club in the House of Peoples of FBiH.