



# HELSINKI COMMISSION REPORT

September 13, 2017

## IN BRIEF

### Political Participation and Ethnic Division in Bosnia and Herzegovina

While denial of equal opportunities for all citizens to participate in the political life of their country is a concern in many OSCE countries, the ethnic restrictions in the constitution of Bosnia and Herzegovina which deny Bosnian citizens the right to run for certain political offices is perhaps the most blatant example of this problem among the OSCE participating States.

#### The Dayton-Negotiated Constitution and the Sejdic-Finci Case

There has always been an effort to balance, at least to some degree, the political interests of the three leading ethnic groups of Bosnia and Herzegovina: the Bosniaks<sup>1</sup>, the Serbs and the Croats.

A significant rise in nationalism, which affected all three groups but took a particularly aggressive and violent form among Serbs as well as many Croats, helped cause and certainly accompanied the break-up of the former Yugoslavia, making efforts to maintain any balance to each group's satisfaction within the newly independent state of Bosnia impossible.

As a result, in early 1992 Bosnia descended into a horrific conflict instigated particularly by the regime of Slobodan Milosevic in Serbia and marked by ethnic cleansing and associated atrocities that included the July 1995 genocide at Srebrenica<sup>2</sup>. International intervention to end the conflict later that year eventually centered on negotiations hosted by the United States in



Dayton, Ohio, where compromises to accommodate the ethnic interests of the negotiating parties were designed to end the hostilities as soon as possible and yet maintain the country's territorial integrity.

The result was a new constitution that not only officially recognized the three leading groups as the "constituent peoples," but also gave them collective privileges, including legally designated positions in certain government institutions and veto powers when any one of the three groups asserted that its interests were being threatened. Other senior government posts would also be allocated in a less formal, political

attempt to balance power among the three groups.

Dayton did restore peace, and with the help of the international community, Bosnia made considerable progress in its first decade of recovery –from improved freedom of movement and some increase in the return of the displaced to defense-sector reforms– after overcoming some early internal resistance. The accommodation of ethnic interests, however, became increasingly viewed as a hindrance to the same democratic development, economic progress, and European integration being achieved by other transition countries, including other newly independent states among Bosnia’s neighbors.

It also became obvious that the collective privileges of Bosniaks, Serbs, and Croats were being respected at the expense of the internationally recognized human rights and fundamental freedoms of the individual, particularly those of Bosnian citizens who identified with other ethnic groups, identified with more than one group, or wished simply not to be defined by ethnicity at all. In short, the officially recognized place of ethnicity in politics was at odds with the democratic norms of the 21<sup>st</sup> century, particularly in Europe.

Most visible among the privileges is membership in the collective state presidency, comprised of three persons – one ethnic Serb specifically from the Republika Srpska, an entity created as a subdivision of Bosnia; one ethnic Bos-

niak specifically from the Federation entity created as the other subdivision; and one ethnic Croat, also specifically from the Federation. Excluded from this leading state institution are citizens who identify as Romani, Jewish, Albanian, Montenegrin, Hungarian, Ruthenian or numerous other minority groups in Bosnia, or who identify themselves as of mixed ethnicity. Serbs residing in the Federation as well as Bosniaks and Croats residing in Republika Srpska are also excluded.

“...the Court considers that the time has come for a political system which will provide every citizen of Bosnia and Herzegovina with the right to stand for elections to the Presidency and the House of Peoples of Bosnia and Herzegovina without discrimination based on ethnic affiliation and without granting special rights for constituent people to the exclusion of minorities or citizens of Bosnia and Herzegovina.”

– European Court of Human Rights, 2014

“Political participation represents one of the rights and responsibilities that maintains the legal bond between a citizen and a State. In most jurisdictions, the rights to vote, to be elected and to stand for office are what most clearly distinguishes a citizen from an alien. Restrictions on these rights, particularly on the suspect grounds of race and ethnicity, are not only discriminatory, but undermine the meaning of citizenship itself.”

– Open Society Foundations  
Litigation Paper on Sejdic-Finci, 2015

Similar privileges exist for representatives in the House of Peoples, one of the two chambers of Bosnia’s Parliamentary Assembly (state-level parliament). These privileges exclude on the basis of ethnic self-identification an uncertain, but not insignificant, number of Bosnian citizens from eligibility for these elected offices.

In 2006, Dervo Sejdic and Jakob Finci, leading members of Bosnia’s Romani and Jewish communities respectively, brought separate complaints to the European Court of Human Rights. They claimed that the Bosnian consti-

tution’s provisions regarding the Presidency, House of Peoples, and vital interest veto, as adopted in Dayton, discriminated on the basis of race, religion, and association with a national minority.

The court combined the complaints and ruled in December 2009 that such ethnic discrimination violated the European Convention of Human Rights. Observers also noted that these

constitutional provisions also violate most other relevant international human rights documents, including those of the OSCE.

### **A Failure to Reform**

The European Court's ruling bolstered hopes that efforts at constitutional reform designed to improve governance in Bosnia and Herzegovina would finally succeed, after several previous attempts to reform had failed. The action needed to come into compliance with the European Convention was clear, linked by the European Union to Bosnia's aspirations for integration, and generally supported by the international community.

However, the decision came during a period of dwindling spirit of cooperation among the country's political players generally, a development of continuing concern.

Defiantly nationalistic, Republika Srpska officials in particular have actively sought to undermine the authority of Bosnia's state-level institutions in order to garner popular support for their separatist aims, as well as international acquiescence to those aims.

Some Bosnian Croat leaders, feeling especially vulnerable as the smallest of the three constituent peoples and perhaps encouraged by the extent to which Bosnian Serb recalcitrance has been tolerated, have expanded their interpretation of collective privileges to challenge the right of ethnic Bosniak voters to participate in the selection of the Federation/Croat candidate for the state presidency; the legitimacy of Croat candidates not nominated specifically by an ethnically Croat-based political party (as opposed to a multi-ethnic party); and the desirability of remaining in a federation with Bosniaks as opposed to creating their own, ethnically based entity.

Bosniak leaders, some of whom might have been more amenable to de-emphasizing ethnicity in politics, have nevertheless simply en-

trenched themselves in political power as the claimed defenders of the conflict's primary victims, making positive change less of an imperative.

International frustration gradually deflated outside pressure to achieve concrete results on constitutional reform, even as reform efforts narrowed from making constitutional arrangements more efficient to finding a fix only in regard to the Sejdic-Finci ruling. As a result, implementation of the European Court decision has not been implemented or adopted.

"The law provides that Serbs, Croats, and Bosniaks, whom the constitution considers the 'constituent peoples' of the country, as well as undefined 'others,' must be adequately represented at all levels. The government did not respect this requirement. Apart from the three constituent peoples, the country's 16 recognized national minority groups remained significantly underrepresented in government. There were no members of a minority group in the state-level parliament. The government made no effort to implement changes required by ECHR rulings dating back to 2009 that the country's constitution discriminates against "others," such as Jews and Roma, by preventing them from running for the presidency and seats in the parliament's upper house.

- U.S. Department of State, Country Report on Human Rights Practices in 2016

Political leaders acknowledge the constitutional flaw, and various proposals have been put forward to fix it. Some are cosmetic while others are more substantial. They have thus far failed, however, because they threatened the existing political power arrangement and, in some cases, were little more than disingenuous efforts to camouflage the underlying discrimination revealed by the Sejdic-Finci case. Some citizens have further challenged the ethnic restrictions on the elected positions by seeking to run for office without declaring a specific ethnicity.<sup>3</sup>

### **Other Problems with Ethnically Based Politics**

Meanwhile, a 2013 census – the first since the conflict and its dramatic impact on the county’s demography – was conducted with some intent of encouraging stronger ethnic identification generally and among the constituent peoples in particular. Government appointments continue to be negotiated on the basis of a rotating ethnic balancing act, to the dismay of qualified citizens who wish to be considered instead on the basis of their qualifications and merit.

Bosnia’s frustrated youth, regardless of ethnicity, seek a future of greater opportunity outside the country if they can. In the Federation, many students are themselves challenging a “two schools under one roof” policy that ethnically segregates them into different schools that oc-

cupy the same building, but that often meet at different times and teach separate curricula, despite no genuine language differences between them.

Within both entities, the increased ethnic homogeneity of the population resulting from conflict-era ethnic cleansing can lead to the isolation of, and instances of discrimination against, those who have returned to their pre-conflict homes, now as local minority community members. Local authorities often do not investigate and prosecute physical attacks, harassment and discrimination targeting of members of such minority communities in Republika Srpska, while officials of that entity make little if any effort to accommodate Bosniak calls for reasonable accommodations in areas of education and culture<sup>4</sup>.

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## **About the Helsinki Commission**

The Commission on Security and Cooperation in Europe, also known as the U.S. Helsinki Commission, is an independent agency of the Federal Government charged with monitoring compliance with the Helsinki Accords and advancing comprehensive security through promotion of human rights, democracy, and economic, environmental and military cooperation in 57 countries. The Commission consists of nine members from the U.S. Senate, nine from the House of Representatives, and one member each from the Departments of State, Defense, and Commerce.

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<sup>1</sup> Until the early 1990s, Bosniaks were officially considered to be ethnic “Muslims.”

<sup>2</sup> An estimated 8,000 or more Bosniak men and boys were killed by Serb forces that overran the town which was designated by the United Nations as a “safe area” more than two years earlier, with a Dutch contingent to the U.N Protection Force (UNPROFOR) present.

<sup>3</sup> See in particular reporting on the case of Azra Zornic case, including at [https://www.coe.int/documents/1498993/0/CASE+OF+ZORNIC+v++BOSNIA++AND+HERZEGOVINA\\_ENG.pdf/82285021-bbec-4ffd-a4a0-72b23225332a](https://www.coe.int/documents/1498993/0/CASE+OF+ZORNIC+v++BOSNIA++AND+HERZEGOVINA_ENG.pdf/82285021-bbec-4ffd-a4a0-72b23225332a) and at <http://www.balkaninsight.com/en/article/another-human-rights-ruling-pressures-bosnia>.

<sup>4</sup> See U.S. Department of State, Report on Human Rights Practices in 2016 (<https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265402#wrapper>), as well as International Religious Freedom Report for 2016 (<https://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper>).