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Ungovernable Bosnia? From the Ruling of the European Court of Human Rights on the Sejdić-Finci Case to the Government Crisis

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In the past years, politics in Bosnia and Herzegovina has been marked by continuous crisis and blockade. Reforms in the country have largely stagnated and the accession process is stalling. Despite the offer of EU accession and the reduction of international intervention that had predominated the first decade of post-war Bosnia and Herzegovina, institutions have failed to foster compromise, and multiple-veto mechanisms and complex mechanisms of governance have blocked key legislation.

The Sejdić-Finci Case and the Failure of Implementation

In 2009, the European Court of Human Rights (ECHR) found Bosnia and Herzegovina in violation of the European Convention on Human Rights for not allowing a Roma and a Jew to stand in elections for the state Presidency and the second chamber of the Bosnian Parliament, the House of Peoples.¹ In both bodies, all seats are reserved for members of the three constituent peoples: Bosniaks, Croats and Serbs. Following the inability of the Bosnian institutions to revise the constitution and the electoral law to accommodate this ruling, the Council of the EU has made implementation of this judgement a condition for a “credible application” for membership. Since 2010, there have been several efforts by the

EU and by individual Member States to negotiate constitutional reforms to accommodate the judgement, but all efforts have come to naught as the representatives of the leading political parties have been unable to agree on a universally acceptable compromise.²

While the main political parties have not rejected a change to the constitution per se, their views have diverged substantially and, in spite of the multiple deadlines set by the EU, they have failed to agree on a solution. The debates again highlighted deeper disagreements between the political parties, whose voters are from different parts of the country and represent different constituent peoples. In effect, few of the controversies were related to the representation of citizens who do not hail from the three constituent peoples, while the most difficult question concerned the balance of power between the State and its entities and the representation of the three dominant nations.

The Croat Question

The Sejdić-Finci case was rendered more difficult to resolve due to the continued grievances of Croatian parties in Bosnia and Herzegovina. In both 2006 and 2010, the Croat member elected to the state Presidency was Željko Komšić of the Social Democratic Party (SDP). Although a Croat himself, he and his party led a campaign that was not limited to Croat issues and appealed to many non-Croat voters. By not running a Bosniak candidate for the presidency, the SDP ensured that the support of its electorate

¹ ECHR, Grand Chamber, Case of Sejdić and Finci v. Bosnia and Herzegovina, 22.12.2009. Available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96491#%7B%22itemid%22:%5B%22001-96491%22%7D>

² For a good overview of the challenges of the Sejdić-Finci case, see: HODŽIĆ, Edin and STOJANOVIĆ, Nenad. *New/Old Constitutional Engineering?: Challenges and Implications of the European Court of Human Rights Decision in the Case of Sejdić and Finci v. BiH*. Sarajevo: Analitika, 2011.

went to Komšić. As a result, he won both elections resoundingly and with the support of many voters who did not hail from the Croat community. Technically, this did not present a problem for the electoral system, which merely prescribes that a Croat from the Federation has to be elected to the state Presidency. However, Komšić's victory undermined the presumption that the victorious candidate would also represent the interests of the Croat community. As non-Croats (Bosniaks and others) by far outnumber Croats in the Federation, Croat parties claimed that their constituencies were marginalised by the outcome of the election.³

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The resulting marginalisation of Croats in the Federation led to demands from Croat parties to ensure that any reform of the state Presidency to reflect the Sejdić-Finci ruling would also secure the election of a Croat member of the state Presidency who would represent the Croat community. This has complicated a compromise on Sejdić-Finci and shifted the attention in the negotiations from the inclusion of those citizens who are not members of the three constituent peoples to the inclusion of all three dominant nations.

The Permanent Government Crisis

The difficulty in resolving the Sejdić-Finci case was compounded by unstable governments in Bosnia and

Herzegovina both at the state level and in the Federation of Bosnia and Herzegovina. Following the 2010 general elections, it took over a year for a state government to be formed, as the divergent views of the main parties and the power-sharing requirements made a government formation difficult. In the Federation, the victorious Social Democratic Party (SDP), mostly voted for by Bosniak voters and voters who identify as Bosnians, sought to take control, but could rely only on marginal Croat parties, leading to an instable coalition that could only take office after a controversial intervention of the High Representative. The governing coalitions have thus been unstable and subject to changing alliances. For example, there was a major government reshuffle in the Federation and at the state level in 2012, resulting in the controversial businessman Fahrudin Radončić joining the government as Minister of Security.⁴

Protests and the Government Response

In 2013 and 2014, Bosnia and Herzegovina experienced two waves of protest. In June 2013, protests erupted in Sarajevo over a Parliament impasse on a new law on personal identification numbers. Because the law had stalled in Parliament, newborn babies could not receive identification numbers and documents. As some newborns needed urgent medical treatment abroad, the blockage became life-threatening, mobilising citizens to protest in front of Parliament. However, the protests quickly petered out as a parliamentary decision enabled the issuing of identification numbers.

Another wave of protests, this time much broader in scope and larger in number, broke out in February 2014. Starting in Tuzla over factory closures, the protests spread to several towns across the Federation and led to large-scale violence against local and cantonal government buildings, as well as the state Presidency. Several buildings were severely damaged, including part of the state archives housed in the Presidency building. As the protests quieted down, a number of citizens' assemblies sprung up to articulate citizens' demands, including

³ BIEBER, Florian. "Croats in Bosnia and Herzegovina." In: LISTHAUG, Ola and RAMET, Sabrina P. (eds.). *Bosnia-Herzegovina since Dayton: Civic and Uncivic Values*. Ravenna: Longo Editore, 2013.

⁴ For an overview of the government crises, see: JAHIC, Dino. "Bosnia and Herzegovina." *Nations in Transit 2013*, Freedom House. Available at: www.freedomhouse.org/report/nations-transit/2013/bosnia-and-herzegovina#.U5lzCSjm411.

the resignation of local and cantonal officials and other reforms. While a number of cantonal governments resigned as a result of the protests and assemblies, known as plenums, the protests and assemblies themselves also lost their momentum.⁵

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Although the protests have failed to bring about large-scale change in Bosnia and Herzegovina, they highlight a deep-seated sense of frustration among many citizens. The fact that the protests primarily focused on the Federation suggests that citizens do not perceive Bosnia and Herzegovina as a single polity. In the Republika Srpska, the fundamental causes of the grievances articulated in the protests continue to exist, but a combination of more authoritarian government – control of the media and public debate – and less complex institutions has reduced the number of public protests.

International Responses

For most of the post-war period, Bosnia and Herzegovina has been a partial protectorate with the Office of the High Representative (OHR) wielding considerable power and influence over the government, including the ability to dismiss elected and appointed officials and to impose legislation. Since 2006,

this influence has considerably declined. Although formally the OHR retains the powers to make such impositions, it has made little use of them over the past eight years. This has been in part due to the decision of key international actors (primarily the EU) to reduce the use of the OHR's executive powers, a critical report of the OHR's role by the Venice Commission, and, later on, divergent views on the use of these powers between different key countries overseeing this body's work.

Instead, the EU has become engaged as the prime international actor. The shift from state-building by decree of the OHR to state-building through EU accession was the primary conceptual change around 2006. However, the remoteness of eventual membership and intransigent elites have led to a stalemate that the country continues to experience. Several efforts by the EU and, to a lesser degree, the USA to induce fundamental reforms, such as the April 2006 package of constitutional reforms, the 2009 Butmir Process of constitutional reforms, the police reform or, most recently, the implementation of the Sejdić-Finci judgement, have all failed. Instead, a number of state-building measures undertaken by the OHR during the 1997-2006 period have been rolled back in recent years and institutions at the state level have been blocked by the intransigence of the political parties. In the Serb Republic in particular, the dominant party since 2006, Milorad Dodik's Independent Alliance of Social Democrats, has pursued an uncompromising nationalist line, seeking to strengthen the Serb Republic and blocking decisions at the state level.⁶

The failure to implement the ECHR's Sejdić-Finci ruling is a reflection of the broader stalemate in Bosnia and Herzegovina and the EU's inability to provide sufficient incentives for reform by offering the prospect of EU membership.

⁵ The 2014 protests are documented at: <http://bhprotestfiles.wordpress.com>.

⁶ See: JUNCOS, Ana E. "Member state-building versus peacebuilding: the contradictions of EU state-building in Bosnia and Herzegovina." *East European Politics*, vol. 28, 2012, p. 58-75.