



**WRITTEN CONTRIBUTION
TO THE 2014 PROGRESS REPORT¹**

ETHNICALLY BASED DISCRIMINATION IN BIH CONSTITUTIONAL SYSTEM

ECHR decision in the “Sejdić and Finci” case

1. The ECHR decision in the “Sejdić and Finci” case has not been implemented. Although several deadlines for the implementation of ECHR decision have been posed, none has been met and BiH is still far away from adjusting its Constitution to the human rights standards of European declaration on human rights.
2. The negotiations around constitutional amendments to implement the “Sejdić and Finci” decision continued to be held outside of official institutions and the BiH Parliamentary Assembly has been stripped of its legitimate role in this process. Instead, the entire process has been taken over by political parties’ leaders, who established the practice of holding non-transparent meetings, closed to the public, often followed by contradictory statements of the participants. None of these meetings brought the issue any closer to agreement on constitutional amendments.
3. Judging by the participants’ statements, the focus of the negotiations between party leaders has been shifted entirely from the actual focus of the ECHR decision - that is, political and civic rights of non-constituent citizens - to the issue of Croat member of BiH Presidency election. This shift came as a result of political dynamics imposed primarily by HDZ BiH leader Dragan Čović, who managed to put the “Croatian issue” on the negotiating table as the primary topic in negotiations on constitutional reform.
4. While the unsuccessful negotiations of party leaders continued, the three proposals, which have been submitted to the BiH Parliamentary Assembly in August 2012, remained out of the parliamentary procedure. Although it has been announced by the PA BiH that these proposals will be put into procedure and voted on, this still has not happened, and the PA BiH continues to have no role in the process of constitutional reform, which should be happening in this very institution. The citizens’ inclusion in the process has also remained nonexistent.
5. As a result of all these factors, the ECHR decision, which was supposed to bring change of BiH constitution for the better, is being actively abused by political parties to promote even more severe constitutional discrimination based on ethnicity. While the position of HDZ on this issue has been very

¹ The contribution has been written by the Citizens Association WHY NOT/ZASTO NE, in consultation with the other member organizations of the Coalition JEDNAKOST.

overt from the beginning, new voices also started appearing, taking the discriminatory rhetoric's further. Some politicians from SNSD have expressed their dissatisfaction with the fact that EU continues to hold Sejdić and Finci case as a conditionality for EU accession process, following this with remarks that BiH Constitution is not, in fact, discriminatory, since Sejdić and Finci "could easily declare as either Serbs, Croats or Bosniaks and run for presidency".² Similar remarks have been heard from members of SDS regarding another ECHR case, the one of Ilijaz Pilav vs. BiH, where a court decision has not yet been reached. In this case, it was Aleksandra Pandurević who stated, in a similar manner, that Ilijaz Pilav can run for presidency if he moves out of Republika Srpska and into the Federation of BiH.³ Apart from the fact that nothing has been done to implement the "Sejdić and Finci" decision, distorting its focus into issues of constitutive peoples' position and commenting on the ECHR cases in this manner, are very disturbing signs that BiH political elites are not approaching the issue of constitutional discrimination seriously, nor are they making any effort to bring it to an end. Quite the contrary, this issue has so far been treated only as a ground for political battles between parties, with no regards whatsoever to the actual problems which should have long been solved.

Constitutional discrimination on other governance levels and in other institutions on state level

6. While the ethnically based discrimination in BiH Constitution has been recognized in ECHR's decision in "Sejdić and Finci" case; similar provisions, which also exist in laws and constitutions on lower levels of governance, are not being tackled at all. It is very indicative that the BiH Constitutional Court still has not reached a decision in the case no. U 14/12 of the applicant Mr. Željko Komšić, a Member of the BiH Presidency, who filed a request for the review of the constitutionality of provisions in the Constitution of Republika Srpska, Constitution of Federation of Bosnia and Herzegovina and the Election Law of Bosnia and Herzegovina, which regulate the election of presidents and vice presidents of both entities.
7. Problems with entity citizenship have also been recorded in Brčko District, where an organized campaign has been launched by Brčko mayor, Ante Domić, against a public servant Mujo Hadžić who refused to register a citizenship of either entity in his personal identification document.⁴ The case of Mujo Hadžić has clearly shown that repressive mechanisms are being put to use to force Brčko's citizens to choose an entity citizenship, even though the Constitution does not make it obligatory to do so. This way, citizens of Brčko

² *Mazalica: Neka se Sejdić i Finci izjasne kao Srbi, Hrvati ili Bošnjaci*, Anadolu Agency, 13.10.2013. URL: <http://www.klix.ba/vijesti/bih/mazalica-neka-se-sejdic-i-finci-izjasne-kao-srbi-hrvati-ili-bosnjaci/131013023>

³ *Pandurević: Glasači ne mogu u Srebrenicu, ali kandidati mogu iz Srebrenice?*, 28.10.2013. URL: <http://istinomjer.ba/aleksandra-pandurevic-glasaci-ne-mogu-u-srebrenicu-ali-kandidati-mogu-iz-srebrenice/>

⁴ The reaction of coalition "Jednakost" and an open letter to Brčko mayor on this issue is available at the address <http://jednakost.ba/site/koalicija-jednakost-gradonacelniku-brckog-izvinite-se-muji-hadzicu-i-hitno-osigurajte-postivanje-zakona-u-brckom/>

have been put in a de facto discriminatory position compared to citizens of Republika Srpska and Federation of BiH, where such pressures have not been documented. There have, however, been reports on Republika Srpska's attempts to make entity citizenship mandatory for public service jobs, through indirect means. One such example is an adoption of Rulebook on procedure and criteria of employment in elementary schools⁵ in August 2013, which states that the candidate for this job has to be a citizen of Republika Srpska.

Other issues

8. The 2013 Census on population, households and dwellings has been conducted with severe irregularities and breaches of citizens' personal data security and privacy.⁶ It has also been followed with highly discriminatory campaigns aimed at ethnicity/nationality declaration on Census, to which no reaction came from the institutions in charge of the process. Civic monitoring of the 2013 Census has also shown that the level of public trust in this process is low and that preliminary results raise concerns of organized census fraud in several municipalities, especially those which recorded unrealistic increase or decrease in population number compared to the existing demographic data.
9. The breach of political rights of returnees in Republika Srpska has continued, with the strong campaign against Bosniak returnees who had recently registered to vote in local/general elections in this entity. These persons were subject to illegal check-ups of their residencies by the police, some of which resulted in their residencies being annulled in official register. These cases have been brought to trial and the courts have decided that in doing so, the police did act out of its competences. However, even though at present time it is illegal to conduct such raids, strong attempts are being made by SNSD to change the Law on Residency in order to make these very procedures legal and legitimate. So far, the amendments to the law have not been passed, but it is no less worrying that such attempts are taking place at all.
10. In February 2014, social unrests busted out throughout Bosnia and Herzegovina, sparked by workers' protests in Tuzla, resulting in resignation of governments in four cantons. As a reaction to the protests, cases of severe police repression against protestors have been recorded in several cities where protests took place, including Sarajevo, where some of protestors who were beaten and arrested were minors.⁷ Additionally, it has been reported in the media that protestors, who attacked several government buildings on February 7th, are being charged for terrorism, on account of "attempting to violently change the constitutional order of the state", even though no attempts to "change the constitutional order" were actually made. These charges show

⁵ *Pravilnik o proceduri i kriterijumima prijema radnika u radni odnos u osnovnoj školi*, 16.08.2013. (Službeni glasnik RS, 70/13)

⁶ *Report on the Civic Monitoring of the 2013 Census in BiH – Popismonitor.ba*, CA "Why not", Sarajevo, 2014. URL: http://zastone.ba/site/wp-content/uploads/2014/03/Report-on-the-Civic-Monitoring-of-the-Census-in-BiH-2013-%E2%80%93-Popismonitor.ba_.pdf

⁷ *Brutalnost policije prolazi nekažnjeno*, Diskriminacija.ba, 25.3.2014. URL: <http://diskriminacija.ba/brutalnost-policije-prolazi-neka%C5%BEenjeno>

that the legal system is being instrumentalised by political parties in order to intimidate the citizens and silence the protests, rather than establish the real responsibility for the outburst of social unrests, which clearly lie in criminal privatization, continuous breach of workers' rights and massive corruption which lead to large-scale impoverishment of socially vulnerable categories in the whole society.

11. The latest developments in Mostar are also alarming, with the peaceful protestors being beaten, arrested and held in custody without access to legal aid.⁸ Protests in Mostar have also been followed by several repressive measures by the local police, such as establishing a cordon between the eastern and western part of the city, preventing the protestors to move freely through the city. This action, which shows alarming resemblance to war-time violent division of the city into Bosniak and Croat territory, has been going on repeatedly for weeks and has been made worse by the local police official's statement that the protesters are free to protest "at their own homes or at the Heliodrom" – the Heliodrom being a location of one of the most notorious wartime concentration camps in Mostar.⁹
12. The reactions of political parties to the protests were marked by inflammatory nationalist rhetoric's and attempts to portray the protests as attacks on the ethnic/national groups they claim to represent. This was another attempt to stop the protests by manipulating the ethnic-based fear and stirring up wartime ethnic animosities, which was particularly severe in reactions of politicians from the ruling party in Republika Srpska.¹⁰

⁸ *Mostar Citizens Accuse Police of Brutality at Protest Yesterday*, 26.3.2014. URL:

<http://www.balkaneu.com/mostar-citizens-accuse-police-brutality-protest-yesterday/#sthash.eQ1Nk5Ba.dpuf>

⁹ *Draženko Miletić: Policija neće dozvoliti nikakvo okupljanje danas u Mostaru!*, 10.02.2014.

URL: <http://www.pogled.ba/clanak/drazenko-miletic-policija-neece-dozvoliti-nikakvo-okupljanje-danas-u-mostaru/46015#sthash.SITIARVs.GfeD7t6e.dpuf>

¹⁰ An analysis of the discriminatory rhetoric's in political parties' comments and statements on protests can be found at the address <http://zastone.ba/en/the-success-of-the-protest-is-serb-croat-and-bosniak/>