



Barrier to the EU membership: The institutional discrimination of minority groups in Bosnia and Herzegovina

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Abstract

Although Bosnia and Herzegovina (BiH) has been going through extensive European Unionisation over the last 10 years the country is still facing serious democratic deficit. In particular, the post-Dayton public sphere has been dominated by ethno-nationalist political elites who are doing everything they can to exclude non-nationalists and members of minority groups from the decision-making process. This is a nagging paradox since one of the main objectives behind the integration of the European countries into the European Community was to reduce disintegrative and dangerous influences of nationalists to establish peaceful, prosperous, and secure community. This article examines how the process of the post-Dayton ethno-nationalization has resulted in widespread discrimination against the so-called Others as they are defined in the Constitution. In the post-war BiH democratic participation has turned into a competition between the three ethnic communities, Bosniaks, Serbs, and Croats, rather than between individual nationalities having equal rights of vote. This is why Bosnian people are still living under a political system which is closer to ethno-democracy or ethnocracy rather than a democratic regime. Under such discriminatory regime BiH cannot enter the European Union which is a model of open and democratic society.

Keywords: Dayton Agreement, ethno-nationalism, Europeanisation, European Union, individual rights, minority groups

Democracy without minority groups and non-nationalists

Following widespread democratisation processes in Eastern and Central Europe, in November 1990 the first multi-party elections were held in Bosnia and Herzegovina (hereinafter, Bosnia or BiH). These elections were among the first indicator that marked the democratic transition of the country from the communist regime to liberal democracy. However, since political parties in the country were allowed to be organised along ethnic lines resulting in the nationalist parties together collecting 84% of the vote (Arnautović, 2007: 7) the first democratic elections also marked the beginning of the political hegemony of nationalist political parties as the majority of the electorate voted for respective nationalist parties, that is, Bosniaks voted for the Party of Democratic Action (SDA), Bosnian Serbs for Serbian Democratic Party (SDS) and Bosnian Croats for the Croatian Democratic Union (HDZ) (Freedom House, 2010: 122). To illustrate, even the post-election distribution of power was based upon the ethnic principles so that the President of the Republic of Bosnia and Herzegovina was a Bosniak, president of the Parliament was a Serb, and the prime minister was a Croat. Furthermore, the war that broke out in 1992 further increased ethnic hatreds and intolerance resulting in ethnicity and ethnic solidarity as a dominant social and political cleavage.

In other words, the conflict between the three ethnic groups intensified inter-ethnic polarization and massively strengthened the political domination of ethno-nationalist political parties in the decision-making processes. What is more, the Dayton Peace Agreement, signed in 1995 and brought the war to the end, not only created an extremely cumbersome policy process that would frequently result in deadlock, it also left unresolved the conflicts that had come to the fore in the 1992-1995 war and enshrined the ethno-nationalist principle as the foundation of public discourse (Vogel, 2006: 2). While the DPA brought the war to an end and laid the foundation for consolidating peace, many

observers also believe that the agreement document reflects wartime circumstances and cannot by itself ensure BiH's future as a functioning and democratic state (Ashdown, 2005). Thus, the post-war political and social space has been largely dominated by three ethnic groups leading to institutional marginalization of the minority groups. While transition to democracy should bring about participation and inclusion of diverse groups into public policy-making the post-war Bosnian public sphere has been dominated by ethno-political matrix causing discrimination against minority groups.

Such a discriminatory political system stands in the way of the country's efforts to enter the European Union in the foreseeable future. In fact, by the end of 1990s and in June 2000 through the newly initiated Stabilization and Association Process (SAP) the European Union has paved the way for the BiH's integration into the Bloc (Becker, 2008: 20). Bosnia Herzegovina has signed the Stabilization and Association Agreements (SAA) with the EU in June 2008 signifying its first pre-accession to eventual EU membership. This is tantamount to the Europeanisation of the BiH's political, economic, administrative and social policy-making (Anastasakis, 2005: 80) and as and other structural elements such as political ideologies (identity politics), the legal framework, and the party system (Kubicek, 2005:374; Ladrech (1994). However, it is highly debatable if this Europeanisation process has influenced the idea of citizenship in Bosnia since minority groups and non-national members are alienated both at state and society levels. In fact, widespread ethnic polarisations over the public sphere have become the most staggering challenge to the country's journey to Brussels. The post-war Bosnia's Europeanisation has become closer to the process of 'Balkanization' (Todorova, 1994). This paper examines how the post-Dayton process of ethno-nationalisation has resulted in widespread discrimination against the so-called Others as they are defined in the Constitution.

Hegemony of ethno-nationalist elites

More than 15 years since the Dayton Agreement was signed the political tensions are still predominant across Bosnia with nationalist leaders challenging the Peace Accord more openly and more harshly than ever before. This signifies that in the post-Dayton Bosnia the exclusive ethno-nationalist approach to politics has managed to gain upper hand over reconciliation and consensus (Bianchini, 2000: 79). Thus, BiH is still far from being a functioning democratic state that the accord had envisioned. Today, the country still consists of de facto three mono-ethnic territories, three education systems and a national government where ethnic identity is the rule of the game. In fact, the whole state structure is built according to the ethno-nationalist model. The three majority ethnic groups dominate the public discourse in every aspect of life to the exclusion of minorities and non-nationalists. The best example is the Bosnian rotating presidency which comprises the three Bosniac, Croat and Serb, each of whom must be directly elected in their respective entity. This means that the Bosnian constitution is treating the non-ethnic members of its community as aliens. Under such political regime it is shameful and sometimes even dangerous to declare yourself as a non-nationalist or minority member.

In fact, as stated in the Dayton Agreement the Constitution of BiH prevents candidacy of "others", i.e. the minority groups, to the Presidency and the House of Peoples on the ground of their ethnic origins because these positions are preserved for the so-called 'constituent' peoples, i.e. Bosniaks, Serbs, and Croats. Thus, ethnic groups are represented as communities in different power-sharing levels institutionalising ethnic nationalism as a dominant political objective. The hegemony of ethno-politicians has been perpetuated by the vague and manipulative ideology of "constituent peoples". As a result, minority groups and non-ethnic members of Bosnian society are completely excluded from the current power-sharing model. As Touquet and Vermeersch argue:

"These people have now been excluded from mainstream accounts of the outcomes of the recent conflict: it is not possible to be a Yugoslav, a Bosnian or an Eskimo in a situation in which ethnic nationalism has transcended all else and in which there are intensely localized variations in identity and 'national' sentiments" (2008: 280).

To put it differently, a number of scholars regularly point out that DPA was negotiated by the nationalist actors, who actually were one of the main causes of the war, and this just extended the power of the ethnic-nationalist parties and their leaders (Kaldor, 1997: 28-30). Bosnian citizens that do not belong to the so-called "constituent peoples" were forgotten during the negotiations in Dayton and

latter completely excluded from the institutional framework. Thus, the so-called “Others” in the Bosnian constitution, namely Jews, Roma and all other national minorities together with those who do not declare affiliation with the three ethnic groups have become citizens without institutional space to exercise their political and social rights. Given such an unlawful provisions of the Bosnian constitution the country has faced deep institutional and constitutional crisis which openly threatened democratic participation. With the absence of a genuine multi-national Bosnia the “Others” have been marginalized from the public space.

In fact, the category of “others” and non-nationalists are openly perceived as a threat to the power-sharing model of rotation where the three ethnic groups chose their representatives respectively. Clearly, the “rotation model” is a form of political engineering to achieve the objective of ethnically-divided Bosnia where democratic participation and competition that prevails in the country are only for three ethnic communities rather than for all citizens. All these 17 minority people who are categorized as “others”, namely, Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, the Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks and Ukrainians (Hammarberg, 2010: 6) are reduced to just playing the role of mere spectators during democratic elections. This is how the post-war hegemony of ethno-nationalists has paradoxically increased democratic deficit in the country.

Exclusion of the minority members from the policy-making process

By forbidding minority members the right to run for office Bosnian constitution violates fundamental human rights though in 2002 its government ratified the ECHR (European Convention on Human Rights) and its Protocols. Jakob Finci and Dervo Sejdić who are respectively Jewish and Roma by their ethnicity, contested these provisions before the European Court of Human Rights since they were banned from running for office. On December 2009 the Court ruled that the exclusion of minority groups from Bosnia’s highest elected offices constituted unjustified discrimination. “The European Court has made it clear that race-based exclusion from political office has no place in Europe,” said Clive Baldwin, senior legal advisor at HRW (Guardian, 2009). If correctly implemented, the decision of the ECHR will assist in breaking down ethnic and religious divisions in Bosnia and Herzegovina by encouraging political participation and representation, and thus promoting social cohesion (Claridge, 2010: 2).

Two years had since passed and the discriminatory provisions are still yet to be removed from the constitution. While most of Europe is going towards multi-national structures Bosnia is still pushing for ethno-nationalisation. The Roma problem in the country is the most illustrative case. Although in 2008 Bosnia and Herzegovina adopted the Action Plan to Address the Problems of Roma in Employment, Housing and Healthcare, this minority group of between 75,000-100,000 is still discriminated against with respect to education, employment, health and political representation. More than 70 % of Roma do not have a house. According to a 2007 report by UNICEF, up to 80% of Roma children in Bosnia and Herzegovina did not attend school, only 20% of Roma had secondary education, and less than 1% were in higher education (2007). The proportion of Roma employed within the public sector in Bosnia and Herzegovina was estimated at 2–3%. Thus, they were discriminated against even in terms of basic human rights.

In the media the Roma are degraded and described as “problematic”, “violent”, “dangerous” etc. For instance, when an incident involving Roma happens, their full names are given in sensational headlines, even if they are minors, to emphasise their being Roma (Turcilo, 2009). The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, and his delegation visited Bosnia and Herzegovina, from 27 to 30 November 2010 in order to evaluate the living conditions of minority groups in BiH. The Delegation noted that the State had excluded the Roma from the country’s statistics on living conditions due to prejudice rather than discrimination (2011). The Delegation recommends that the Bosnian government intensify efforts to improve the social and economic conditions of the Roma community drawing upon the Council of Europe Committee of Ministers’ Recommendation on the Policies for Roma and/or Travellers in Europe (CM, 2008).

Institutionalization of ethno-nationalist paradigm

The Bosnian education system has been mobilised by the ruling ethno-nationalists to strengthen their ethnic hegemony. Ethnic leaders have not demonstrated the necessary political will and commitment to establish genuine multi-ethnic schools. Education policies have promoted ethnic segregation. As the European Commission pointed out in its 2009 Progress Report for BiH: “Divisions in the education system through continuous development of mono-ethnic schools in both entities are still a matter of concern and result in de facto segregation of pupils from the very beginning of their schooling” (2009). The model of “two schools under one roof” is practiced where children from two ethnic groups, Croats and Bosniaks, attend classes in the same building, but physically separated from each other and taught separate curriculum. Today, there are 57 such schools in this part of Bosnia. Some ethnic politicians oppose integrated multi-ethnic schools on the ground that their people would lose their ethnic identity mixing with others. Ethno-nationalists have used education for the systematic indoctrination of their respective ethnic group. Although the OECD stresses in its report published in September 2001 that “education systems should not just be ‘fair’ to minorities – they should promote a spirit of equality and tolerance among ethnic and cultural groups” (2001), However, in the post-Dayton Bosnia minorities have become “invisible” in an education system bent on hammering out ethno-nationalist paradigms. As Perry observes:

“Let us take a look at language. The official language in the Republika Srpska is Serbian, and in the Federation the official languages are Bosnian or Croatian, depending on the canton. The ‘others’ learn the language that is dominant in their particular surrounding. It is worth stressing that we have three official languages in one country. ‘Others’ have been assimilated into an official language, but only the language of their specific territory, which in my opinion is not in accordance with their human rights” (2002: 27)

Probably marginalization of minority groups has to do with the fact that the main objective of the Dayton negotiations was peace rather than equality, hence the discrimination against non-nationalist groups. As the European Court of Human Rights concludes in their ruling concerning the Sejdic-Finci case:

“a very fragile cease-fire was in effect on the ground. The provisions were designed to end a brutal conflict marked by genocide and ‘ethnic cleansing’. The nature of the conflict was such that the approval of the ‘constituent peoples’ ... was necessary to ensure peace. This could explain, without necessarily justifying, the absence of representatives of other communities ... at the peace negotiations and the participants’ preoccupation with effective equality between the ‘constituent peoples’ in the post-conflict society” (2009: 34).

As a result, BiH has become a bi-cameral legislature where the three so-called “constituent peoples”, Bosniacs, Serbs and Croats, are represented in parity (5:5:5) in the second chamber, the House of Peoples (Marko, 2005: 6). The state presidency and the ministries are composed according to this consociationalist ethnic power-sharing (Lipjhart, 1994), a form of power-sharing which main purpose is reconciliation of diverse social preferences along ethnic and religious lines (Schneckener 2002: 203-206). In other words, Dayton Agreement has resulted in an institutional framework in which the largest three ethnic groups are officially recognised as legitimate power holders and decision-makers enjoying the same right of veto when their respective “vital national rights” are endangered (Bieber, 2004). However, consociationalist model of power-sharing in Bosnia has not bring about necessary democratic transformation and reconciliation even after the 15 years of transition period as it completely excluded minority members and non-nationalists from the decision-making process.

Institutional engineering that kills the idea of citizenship

Post-war power-sharing in Bosnia has privileged the constituent ethnic groups in order to bring peace and stability among warring factions (Grofman & Stockwell 2003) but weak performance of democracy and ethnic tolerance under the current rules reveals the limits of such institutional

engineering (Manning & Antić 2003, 55-56). It has resulted in a political concept that was counterproductive and amplified ethnic tensions among warring groups. As Prof. Zarije Seizovic points out: “The “ethnic criteria” introduced in the Preamble of the Constitution of BiH (being reinforced in number of places in its normative part) prevents BiH authorities from sharing power equally within the civil society, favouring ethnic groups to the detriment of the individual citizen” (2007: 2). The power-sharing model has been interpreted in essentialist and absolutist terms by ethnic groups.

To be sure, the Constitution of BiH does recognise basic human rights and protection of minority groups and requires the State to ensure the highest level of internationally recognised human rights and freedom from discrimination (Art. II 4). Yet, in practice not all the country's citizens enjoy these fundamental rights. This means that the current BiH constitutional order was unsuccessful from the very outset (Seizovic, 2007: 2). As Sarajlic points out:

“In addition to the malaise of postsocialist transition, shared by all the Yugoslavian successor states, the existing Bosnian citizenship regime has been strongly influenced by a heritage of ethnic conflict and the provisional constitutional set-up of the country, ... the conceptualization of citizenship in Bosnia and Herzegovina has been dependent on the definition of the community of citizens who constitute the state. Since Bosnia and Herzegovina is not a nation-state (and has never been one) but a federal union based on the sovereignty of ethnic groups which have political supremacy over individuals, making clear-cut assumptions and definitions of Bosnian citizenship is close to impossible (2010: 2).

This is why it has become almost illogical to talk in terms of the citizens of Bosnia and Herzegovina since more than half of the country's population still think and feel as Serbs, Croats, or Bosniaks more than as Bosnians. The BiH political discourse has become limited and even restrictive for the members perceiving themselves as Yugoslavs, Bosnians, Romas, Jews, and so forth. In that regard, Prof. Atajic points out that “Everything – from the greeting you use to the dialect you speak and the newspaper in your coat pocket – is judged, commented upon and categorized in terms of an omnipresent, mysticised ‘ethnicity’. Under such circumstances, defining oneself as a citizen of the BiH state is tantamount to a betrayal of one’s national identity” (2002:118).

In fact, by vast majority of people in Bosnia ethnicity is perceived as a religious dogma that must be respected. Such situation has impacted negatively on the development of common sense of belonging and Bosnian citizenship. The absurdity of it all is that even those citizens who are truly Bosnians (as distinguished from being Serbs, Bosniaks or Croats) constitute a minority in BiH (Turcilo, 2009: 1).

“Vital national interest” as a rule of the game

Pervasive institutionalisation of ethno-nationalist politics in the post-Dayton Bosnia has been realised through structural framework where ethnic rights are safeguarded on the basis of the so-called “vital national interest” (VNI). In this regard, the representatives in the House of Peoples of BiH has a right to block a law if it is against the VNI of their respective community. Similarly, the tripartite state presidency has the power of veto on legislative decisions if a threat to the vital interests of their ‘nations’ is perceived. The problem with all this is that the notion of the VNI in the Bosnian case is usually interpreted simplistically as ‘ethnic’ interest (Mujkic, 2007). This is why the principle of VNI is highly discriminatory against minority groups and non-nationalists since they do not have a right to use veto. Simply put, widespread politicisation of ethnicity and the success of ethnically-oriented political parties are serious obstacles to the long-term democratisation process (Chandler, 2000: 111) in the country.

The main agenda behind the vital national interest was really to ensure the ethnic rights of Bosnia and Herzegovina’s “constituent peoples”, i.e. Bosniaks, Croats and Serbs. State and Entity constitutions establish blocking mechanisms to protect the "vital interests" of these constituent peoples (EC, 2005: 9). The effect of this alienation of the non- constituent peoples is to further slow down legislative process of the country entry into the Euro-Atlantic union. It has impaired the quality of Bosnian democracy where citizens are represented only as members of one of the three constituent

peoples, placing ethnic representation before general interest and making “ (ethnic) nations rather than citizens the bearers of all rights” (Katana & Igric, 2005). As stated in the report of the USAID (2007: 6), “Bosnia’s constitution enshrines the “vital national interests” of the constituent peoples and in doing so guarantees both political inclusion and exclusion by ethnicity... Bosnians filter public discourse by ethnicity, including as valid their group’s views, excluding as invalid the views of other groups. The public square is available to all – one opinion, one voice and one group at a time”.

With democratic deficit towards Brussels!

Bosnian social context has been dominated by the idea of *Volksgemeinschaft* or the people's community rather than community of free individuals. In this manner, Živanović highlights the post-war political constellations in Bosnia and Herzegovina as following: “Here, we do not live as human beings but as Serbs, Croats and Bosniacs” (2005). In fact, the post-Dayton regime has dehumanised the public space in Bosnia. Today’s Bosnia resembles a kind of “illiberal democracy” as where free elections take place without the provision of basic human rights and freedoms (Zakaria, 1997). Thus, post-war Bosnian political regime represents a kind of ethnocracy rather than a truly democratic system as it is a regime that facilitates “the expansion, ethnicization and control of contested territory and state by a dominant ethnic nation” (Yiftachel & Ghanem, 2004: 649). In fact, extreme prioritization of ethnic values over individual principles has made it threatening to democracy. As Mujkic points out:

“I call a community characterized by the political priority of the ethnic group(s) over the individual that is implemented through democratic self-legislation, and a community characterized by the political priority of the ethnic group’s right to self-determination over the citizen’s right to self-determination where the citizen’s membership in a political community is determined by her or his membership in ethnic community, Ethnopolis. And I call the political narrative and practice intended to justify this ethnically-based social construct, ethnopolitics” (2007: 116).

Clearly, the protection of the rights of minority groups has not been incorporated into Bosnia’s legal framework although the Venice Commission proposed in March 2005 a range of constitutional reforms that are necessary to prepare Bosnia and Herzegovina for the future EU membership. These stipulate transfer of competencies from the entities to the state, reform of inefficient state legislative and executive structures, elimination of “prerogatives for ethnic or group rights, strengthening citizens’ rights, and clarification of the entities’ future relationship to the state (Joseph & Hitchner, 2008: 5).

The Venice Commission also summarizes that Bosnian integration into the EU is under threat since its institutional framework is in direct breach of ECHR stated rules highlighting “the existence of tensions between a constitutional system based on collective equality of ethnic groups on one hand, and the principle of individual rights and equality of citizens on the other.” (2005: 17).

In this regard, the Venice Commission (2005: 12) highlights that:

First of all, the interests of persons not belonging to the three constituent peoples risk being neglected or people are forced to artificially identify with one of the three peoples although they may, for example, be of mixed origin or belong to a different category. Each individual is free to change his political party affiliation. By contrast, ethnic identity is far more permanent, and individuals will not be willing to vote for parties perceived as representing the interest of a different ethnic group, even if these parties provide better and more efficient government. A system favoring and enshrining a party system based on ethnicity therefore seems flawed.

Concluding remarks

Bosnia and Herzegovina is the product of formerly communist countries which became democracies in the aftermath of turbulent disintegration of Yugoslavia in early 1990s. While democratic transition is expected to bring about incorporation of diverse groups into policy-making the post-war Bosnian

public sphere has been dominated by ethno-nationalists resulting in wholesale discrimination against minority groups and those self-declared non-nationalists. Going by the Copenhagen political criteria which require applicant countries to achieve “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities” the BiH as of today is still in serious democratic deficit. The BiH cannot enter the EU while its public sphere is extremely fractured and dominated by ethno-nationalist elites that prevent the development of a truly open and democratic society. The BiH politicians, media, civil society and other pro-EU societal actors must make extra efforts to include diverse societal groups, including minority members and non-nationalists, into the decision-making process to make them a part of country's decade-long deadlock solution.

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