

Virtual Electoral Units = Virtual Accountability



The past year, capped by the recent meeting of the Peace Implementation Council Steering Board, has clearly demonstrated that the primary priority of the European Union (and the broader international community in its wake) is the implementation of the so-called Reform Agenda

This was formally adopted in July, and aimed to operationalize the autumn 2014 German/UK/EU initiative to kick-start the moribund BiH economy through a laser-focus on socio-economic reforms, putting more troublesome matters such as implementation of Sejdic-Finci reforms aside. To date, two laws were adopted in the Federation as a part of the Agenda (the Labor Law and Law on Civil Service.) They have not been implemented. Nothing has been adopted in the RS or at the state level.

Functional Discrimination

While the EU and its partners seek to focus on the economy rather than core BiH political debates, BiH's own political party leaders have not forgotten about Sejdic-Finci, or how creative and strategic implementation could have the double benefit of a) intimidating credible good will for reform, while b) locking in a system of functional discrimination and electoral engineering that will preserve the politically advantageous status quo - and ensure dominant party access to resources - for the foreseeable future. It is therefore worth explaining what is at stake, and how it could play out. The Sejdic-Finci case challenged the structural discrimination in the BiH Constitu-

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tion that denies the possibility of any citizen who is not a declared Bosniak, Croat or Serb to even stand for election to the Presidency or House of Peoples. The plaintiffs' interest was to broaden political participation so that national minorities, the undeclared and people self-identifying simply as BiH citizens could stand for office as the three constituent peoples are legally able to do. At the time, idealists believed this could begin to loosen the tripartite constituent peoples' straitjacket that has hamstrung the country's functionality and cohesiveness since the war.

Instead, however, the primary focus of BiH's political leaders during negotiations on how to implement Sejdic-Finci - very often with the support of international legal experts - has been less on removing structural discrimination from the constitution and more on replacing it with continued (but allowable) functional discrimination.

The difference between structural and functional discrimination is important. As an example: in the United States, it would be illegal to enact a provision that allowed either only a Republican or Democratic candidate to hold office in a certain electoral

district; this would be structural discrimination, and unconstitutional. Nevertheless, effective gerrymandering has resulted in increasingly homogenous electoral units (units that overwhelmingly consist of only likely Republicans or Democrats) which present a considerable barrier to genuine and non-discriminatory political competition. (This practice is being challenged, both in the courts and through the establishment of independent commissions to remove political meddling in the redistricting process.)

Such a type of electoral engineering is also underway in BiH. For a number of years now, the goal of BiH's leading parties has been twofold: 1) eliminate the troublesome structural discrimination on paper; 2) engineer new election techniques and rules in the Federation that maintain the privileged position of the three constituent peoples and their dominant parties, to ensure that, for example, non-approved (read: non-HDZ) Croats will not be elected, as Zeljko Komsic was on two occasions.

Electoral Engineering

The parties who want to preserve the constituent peoples' straitjacket on the country are looking for a way to ensure that, in the