

The International Institute for Middle-East and Balkan Studies (**IFIMES**) in Ljubljana, Slovenia, regularly analyses events in the Middle East and the Balkans. In view of the failure to implement the judgement in the Sejdić-Finci case adopted by the European Court of Human Rights in Strasbourg, IFIMES has analysed current situation in relation to the vital constitutional changes and the background of the reconstruction of power in Bosnia and Herzegovina, Federation of Bosnia and Herzegovina and its cantons. The most interesting sections from the analysis entitled “**SEJDIĆ-FINCI CASE IN THE SHADOW OF (INTER)MAFIA CLASHES**” are published below.

BOSNIA AND HERZEGOVINA:

SEJDIĆ-FINCI CASE IN THE SHADOW OF (INTER)MAFIA CLASHES

The leaders of the main political parties in Bosnia and Herzegovina often meet at informal meetings. Those meetings are attended by presidents of the leading parties in the Parliamentary Assembly of Bosnia and Herzegovina: the Social Democratic Party of BiH (SDPBiH), the Alliance of Independent Social Democrats (SNSD), the Party of Democratic Action (SDA), the Union for a Better Future of BiH (SBBBiH), Serbian Democratic Party (SDS), Croatian Democratic Union of BiH (HDZBiH) and Croatian Democratic Union 1990 (HDZ 1990).

Frequent informal meetings of party leaders point to the non-functioning of formal institutions in Bosnia and Herzegovina, the majority of political decision-making taking place outside the state institutions. Formal institutions such as the Parliament represent merely the transmission of political will and agreements determined informally by party leaders.

WHAT IS HIDING BEHIND THE RECONSTRUCTION OF POWER?

At the recent meeting between Bosnian-Herzegovinian party leaders and EU high representatives in Brussels it was agreed that by 31 August 2012 BiH authorities should provide the solution for the implementation of the European Court ruling in the case of “Sejdić and Finci against Bosnia and Herzegovina”.

On December 22, 2009, the Grand Chamber the European Court of Human Rights (Applications Nos. 27996/06 and 34836/06) adopted the judgement in the Sejdić-Finci case, finding that the applicants **Dervo Sejdić** (Roma) and **Jakob Finci** (Jewish) as the members of minority communities were deprived of their right to stand for election to the House of Peoples, which is contrary to Article 14 of the

European Convention (prohibition of discrimination in relation to the rights laid down in the Convention) in conjunction with Article 3 of Protocol No. 1 thereto, and to stand for election to the Presidency of Bosnia and Herzegovina, which represents a violation of Article 1 of Protocol No. 12 (general prohibition of discrimination).

The judgement in the Sejdić-Finci case represents the most significant judgement adopted so far by the European Court of Human Rights against Bosnia and Herzegovina. In the judgement Bosnia and Herzegovina was ordered to amend the provisions of its Constitution as well as the Election Act so as to enable the individuals who do not declare themselves as members of “constituent peoples” to stand for election as members of the BiH Presidency and delegates to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina.

Analysts have warned that behind the discussions on the implementation of the Sejdić-Finci judgement attempts have been made to introduce certain fundamental constitutional changes by providing solutions for the implementation of the judgement that would enable certain political elites to take control over their respective ethnic communities and to form election units at their own will in order to control all social aspects in those units.

SECRET NEGOTIATIONS BETWEEN SDP and HDZ IN RELATION TO THE SEJDIĆ-FINCI JUDGEMENT

2

Divergent opinions held by Bosnian-Herzegovinian political parties regarding the amendments of the Constitution of Bosnia and Herzegovina have prevented the implementation of the judgement in the Sejdić-Finci case. From the legal point of view, the judgement of the European Court of Human Rights in the case of “Sejdić and Finci against Bosnia and Herzegovina” questions the foundations of the constitutional system in Bosnia and Herzegovina. The most burning questions are how to change the relevant constitutional provisions in order to enable individuals who are not members of the constituent peoples (i.e. belonging to ethnic minorities) to stand for election without jeopardising the present division of authority between the constituent peoples of Bosnia and Herzegovina? Should the process of implementing this judgement be extended in order to amend other provisions of the Constitution which also represent the source of discrimination on the basis of ethnic origin? And most importantly, is the international community giving up the Dayton Agreement, or in other words, does the current pressure exerted by the international community on BiH authorities to implement the judgement in the Sejdić-Finci case represent a period of new constitutional uncertainty for Bosnia and Herzegovina? Analysts have warned that the implementation of the judgement serves as the excuse for a new political reorganisation and that by introducing cosmetic changes required to remove the discriminating provisions against minorities in Bosnia and Herzegovina the politicians are trying to introduce a new constitutional system through the back door. The implementation of the European Court decision has

opened new questions in relation to the judgement – while it would enable members of minority communities to stand for election to the Presidency of Bosnia and Herzegovina there would be no guarantee that they would actually be elected since the Constitution does not provide for a representative of ethnic minorities to be a member of the Presidency. This points to the absurdity of the implementation of the Sejdić-Finci judgement: if no minority representative or the fourth member of the Presidency of Bosnia and Herzegovina is ensured, the question of minority representation in the BiH Presidency would not be resolved by the Sejdić-Finci judgement. This inevitably leads to the need to introduce the fourth member of BiH Presidency and can incite constitutional changes that may eventually enable the state of Bosnia and Herzegovina to have one common president. Bearing in mind that according to some estimates about one fifth of the population in Bosnia and Herzegovina are minorities whose numbers even exceed those of Croats in Bosnia and Herzegovina, this question will inevitably come on the agenda. Moreover, if the solution was reached in the House of Peoples it would mean that the representatives of minorities to the House of Peoples would be appointed by the representatives of constituent peoples through the Parliament of the Federation of Bosnia and Herzegovina and the National Assembly of Republika Srpska and not by minority representatives, which would be unacceptable. The most appropriate solution would be for minority representatives to the House of Peoples to be appointed at the state level by the Council of National Minorities. According to analysts' estimates minorities represent one of the healthiest parts of Bosnian-Herzegovinian society.

3

The discussions and procedures taking place in the Council of Ministers and the Parliament of Bosnia and Herzegovina have been discontinued for some unknown reasons, while the resolving of the most vital and fateful issues has been moved to the level of political parties where they have become the subject of interparty negotiations and political trading. An even more worrying fact is that the amendments of the Constitution of Bosnia and Herzegovina are being discussed without consulting any experts on the constitutional and international law. Secret meetings which have been taking place for one year between SDP and HDZ high officials **Lidija Korać** (SDP), **Josip Merdža** (HDZ), **Saša Magazinović** (SDP) and **Borjana Krišto** (HDZ), who are definitely no legal experts, can not help Bosnia and Herzegovina on its way to implement the Sejdić-Finci judgement, but merely point to the lack of transparency on the political scene in this country.

Euro-Atlantic integration of Bosnia and Herzegovina does not imply the privatisation of the state, therefore European officials engaging in inter-party negotiations should be aware that everywhere in the world and in Europe, except in Bosnia and Herzegovina, discussions on constitutional amendments are not held at private party meetings but in the highest legislative bodies and in consultation with experts.

The pressure exerted by the EU in view of the implementation of the Sejdić-Finci judgement and setting this as the condition for EU accession of Bosnia and

Herzegovina represents another mistake in European politics. Requiring domestic politicians to take some decisions on their own undermines the foundations of the Dayton Agreement and opens Pandora's Box, bringing Bosnia and Herzegovina in political insecurity. The imposition of asymmetrical and partial solutions by the EU, that would actually change the vital parts of the Constitution of Bosnia and Herzegovina, leads to a political crisis in this country and yet another manipulation of its citizens. The most illustrative example of the manipulation of Bosnian-Herzegovinian citizens is the absolute disregard of minority representatives in all negotiations related to the implementation of the Sejdić-Finci judgement. Instead of involving the representatives of minorities – which account for 1/5 of the population in Bosnia and Herzegovina – in the discussions on legal proposals and solutions, they are ignored and removed from the decision-making process by the international community and domestic political actors. This actually proves the intention of individual political elites in Bosnia and Herzegovina to apply some cosmetic changes in order to redesign the political and legal system with the aim to promote the interests of certain constituent peoples and further strengthen the instruments of power between and within those constituent peoples in Bosnia and Herzegovina. Current solutions according to which BiH Presidency member from the Republika Srpska entity would be elected directly while the member from the Federation of Bosnia and Herzegovina would be elected indirectly through the Parliament mean that BiH Presidency would be reduced to a satellite function, making it hostage to the political will of the leading parties in the Federation of Bosnia and Herzegovina. Analysts believe that the present situation resembles that in 2000/2001 when certain political parties from the Federation of Bosnia and Herzegovina enabled the present positions of the president of Republika Srpska, prime minister of Republika Srpska and speaker of the National Assembly of Republika Srpska to be occupied only by the representatives of the Serbian people instead of ensuring equal representation of Serbs, Croats and Bosniaks at these three highest functions. The political hoaxes about the authentic and non-authentic representatives of individual nations are hiding behind cosmetic political actions as well as current activities to implement the European Court judgement regarding human rights of ethnic minorities. The appropriate path would therefore be to start eliminating the existing asymmetries related to entities in Bosnia and Herzegovina instead of creating new asymmetries.

4

Being the authors of the Dayton Agreement, both the EU and the US should be actively involved in the implementation of the Sejdić-Finci judgement in order to stop its private implementation. The implementation of the judgement should be brought back in the Parliamentary Assembly of Bosnia and Herzegovina. Moreover, representatives of Bosnian-Herzegovinian minority nations should be involved in the discussion on possible solutions for the Sejdić-Finci judgement.

The representatives and leaders of parliamentary parties bear and will bear the responsibility for partial and inadequate changes to the Dayton Agreement, since the implementation of the Sejdić-Finci judgement should be carried out on the basis of

the guarantees and the clear position of the international community (notably the US) who is the author and the guarantor of the Dayton Agreement. For example, regarding the failed constitutional amendments in 2006 the international community had insisted on the comprehensive reorganisation of the Constitution of Bosnia and Herzegovina and categorically opposed partial and asymmetric solutions.

(INTER)MAFIA CLASHES

The announcement made by the president of the Union for a Better Future of BiH (SBBBiH) **Fahrudin Radončić** that he will eradicate state mafia and tear out its heart sounds very cynical. This statement could attract the attention of lay public outside Bosnia and Herzegovina. However, in Bosnia and Herzegovina there is no organised fighting against mafia but rather (inter)mafia clashes or the fighting of one political-criminal group against another political-criminal group, of which the one currently in power misuses state institutions in order to realise its goals.

Bosnia and Herzegovina is thus in an absurd situation where mafia leaders are undertaking the fight against mafia. The origin of property belonging to political leaders who are meeting at informal meetings still has not been investigated. Analysts have warned that for the past 15 years a global crisis has been present in the printed media with even some leading newspaper houses being unable to survive on the market. On the other hand, certain printed media in Bosnia and Herzegovina have reached fantastic business results, which justifiably raises doubts about their connections with organised crime.

5

FOUR OUT OF SEVEN LEADERS CANDIDATES FOR THE “BLACKLIST”

While the political situation in Bosnia and Herzegovina might appear quite confusing to those who are not familiar with the political scene in this country, several directions of political development are clearly visible.

Citizen protests in Banja Luka represent an introduction into the fall of **Milorad Dodik's** regime and remind of events in 2004 when Dodik initiated protests in Banja Luka as the centre of Republika Srpska, which led to the overthrowing of SDS government. Investigations carried out against Dodik in Croatia, Bosnia and Herzegovina and Lithuania regarding cash transfers will reveal Dodik's real character even to his most loyal followers.

Implementation of the Sejdić-Finci judgement represents an introduction into radical constitutional changes in Bosnia and Herzegovina.

If SDP continues its present policy it will lose a significant share of popularity which will most probably lead to the end of political career for **Zlatko Lagumdžija**.

The so called “blacklist” will see some changes with certain individuals from Bosnia and Herzegovina being erased while the names of some current political party leaders will be put on it. As many as four out of seven current political leaders will most probably be blacklisted.

Recent decision of the Constitutional Court of Bosnia and Herzegovina on war gains in which it held that such property should be owned by the state and not by the entity points to the strengthening of state institutions as one of the preconditions for speeding up EU accession of Bosnia and Herzegovina.

The fight against organised crime will show its first results with the prosecution of present and past leading politicians and functionaries at the state, entity, canton and municipality levels. This will create the situation in which mafia leaders will no longer be able to present themselves to the public as fighters against mafia.

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6