CONSOCIATIONALISM, DEMOCRACY AND DISCRIMINATION

The Prospects for Constitutional Reform in Bosnia and Herzegovina

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Abstract

Consociationalism is frequently adopted as a tool to resolve conflicts in deeply divided societies. It is increasingly considered only a transitional arrangement, because it is an impediment to democracy and social peace in the long-term. It is relevant to explore what the possibilities to end consociational arrangements are.

Bosnia and Herzegovina has by all accounts a dysfunctional and discriminatory political system based on ethnic representation. Corporate consociational provisions of the constitution have been found to be in violation of the European Covention of Human Rights in the Sejdijć and Finci case. This thesis seeks to understand the legal and political effects of that judgment and the prospects of ending the corporate consociational arrangements in Bosnia and Herzegovina, in order to allow for politics that are not only based on ethnicity.

The prospect for constitutional reform are discussed based on previous attempts at constitutional reform in Bosnia and Herzegovina; the Dutch, Austrian and South African experiences; and insights from theory of democratic transitions.

Keywords: Bosnia and Herzegovina, consociationalism, constitutional reform, democracy, discrimination, Sejdijć and Finci.
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<table>
<thead>
<tr>
<th>Abbreviations</th>
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<tr>
<td>BiH</td>
<td>Bosnia and Herzegovina</td>
</tr>
<tr>
<td>CoE</td>
<td>Council of Europe</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
</tr>
<tr>
<td>ECTHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>EUSR</td>
<td>European Union Special Representative</td>
</tr>
<tr>
<td>FBiH</td>
<td>Federation of Bosnia and Herzegovina</td>
</tr>
<tr>
<td>HDZ</td>
<td>Hrvatska Demokratska Zajednica (Croatian Democratic Union)</td>
</tr>
<tr>
<td>HR</td>
<td>High Representative</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organisation</td>
</tr>
<tr>
<td>ODIHR</td>
<td>Office for Democratic Institutions and Human Rights</td>
</tr>
<tr>
<td>OHR</td>
<td>Office of the High Representative</td>
</tr>
<tr>
<td>OSCE</td>
<td>Organisation for Security and Cooperation in Europe</td>
</tr>
<tr>
<td>PACE</td>
<td>Parliamentary Assembly of the Council of Europe</td>
</tr>
<tr>
<td>PIC</td>
<td>Peace Implementation Council</td>
</tr>
<tr>
<td>RS</td>
<td>Republika Srpska</td>
</tr>
<tr>
<td>SAA</td>
<td>Stabilisation and Association Agreement</td>
</tr>
<tr>
<td>SDA</td>
<td>Stranka Demokratske Akcije (Party of Democratic Action)</td>
</tr>
<tr>
<td>SNSD</td>
<td>Savez Nezavisnih Socijaldemokratna (Union of Independent Social Democrats)</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
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<tr>
<td>UNSC</td>
<td>United Nations Security Council</td>
</tr>
<tr>
<td>US</td>
<td>United States</td>
</tr>
<tr>
<td>VCLT</td>
<td>Vienna Convention on the Law of Treaties</td>
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