

CONSOCIATIONALISM, DEMOCRACY AND DISCRIMINATION

The Prospects for Constitutional Reform
in Bosnia and Herzegovina

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Master's Thesis

European Master's Degree Programme in
Human Rights and Democratisation

Academic year 2010/2011

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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 Convention of Human Rights in the Sejdić 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, Sejdić and Finci.

Acknowledgments

To begin with, I would like to thank the Kalevi Sorsa Foundation for granting me study leave so that I could attend the E.MA programme, and the Education Fund and Työväen Opintorahasto for the financial assistance that made it possible.

I owe a great many thanks to my thesis supervisor Assistant Professor Milan Brglez for his comments and his help in structuring the thesis, as well as E.MA Director, Professor Bojko Bučar for his support and kind welcome to the Faculty of Social Sciences at the University of Ljubljana.

I had the great pleasure and privilege to join a field trip to Bosnia and Herzegovina in May organised by the Ludwig Boltzmann Institute for Human Rights. I would like to extend a special thanks to Professor Manfred Novak, Researcher Roland Schmidt and Tina Hofstätter for the opportunity and the very interesting programme and meetings they arranged for us. The meetings and informal discussions during the trip were a great source of inspiration for my thesis and helped structure my thoughts. My fellow E.MA students Diarmuid Cunniffe, Michaela Povolná and Jasmina Sehic made it an unforgettable experience.

Carissa Borlase, Maria Häggman and Kaija Korhonen deserve thanks for taking the time to read, comment and correct the text. I am grateful to many more of my friends for allowing me to talk and think out loud about the topic.

Finally, I owe a great deal to the support and encouragement of my parents, Terttu Lehtimäki and Peter Boldt. I am ever grateful to Mathias Hæggröm for his loving support, patience and advice.

Abbreviations

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

Table of Contents

Abstract.....	2
Acknowledgments	3
Abbreviations	4
Table of Contents	5
1. Introduction	7
1.1. Methodology and Structure of the Research	9
2. Corporate Consociation and Democracy in Bosnia and Herzegovina	14
2.1. Consociational Democracy and the Institutions of Bosnia and Herzegovina	16
2.1.1. The Theory of Consociational Democracy.....	16
2.1.1.1. Definitions of Consociational Democracy	17
2.1.1.2. Power-sharing, Consensus democracy and Consociational democracy	19
2.1.1.3. Corporate and Liberal Consociation.....	21
2.1.1.4. Consociationalism as a Transitional Phenomenon	23
2.1.2 The Institutional Design of Bosnia and Herzegovina.....	24
2.1.2.1. The Federal Structure	25
2.1.2.2. The Office of the High Representative.....	26
2.1.2.3. The Executive Branch	27
2.1.2.4. The Legislative Branch.....	28
2.1.2.5. The Judiciary	29
2.1.2.6. The Complex Consociation of Bosnia and Herzegovina	30
2.2. Unintended Consequences of Corporate Consociationalism.....	31
2.2.1. The Quality of Democracy	31
2.2.1.1. Political Equality and Participation	32
2.2.1.2. Immobility and Paralysis	35
2.2.2. Institutionalisation of Ethnic Division.....	37
2.3. Interim Conclusion	40
3. Sejdíć and Finci v. Bosnia and Herzegovina.....	42
3.1. Legal Interpretation of the European Convention on Human Rights.....	43
3.1.1. The Rules of Interpretation.....	44
3.1.2. The Margin of Appreciation Doctrine	46
3.2. Legal Analysis of the Judgment	47
3.2.1. Relevant Law and Practice	48
3.2.2. Submissions to the Court.....	50
3.2.3. Applicability and Scope of the Law	52
3.2.5 A Justified Interference?.....	54
3.2.5.1. Judge Mijović’s Separate Opinion	56
3.2.5.2. Judge Bonello’s Dissenting Opinion	57
3.3. The Effects of the Judgment	59
3.3.1. Constitutional Reform	60
3.3.2. International Shame and Exclusion	62
3.3.3. Challenges to Corporate Consociational Systems	65
3.4. Interim Conclusion	65
4. Ending consociationalism and the prospects for Bosnia and Herzegovina.....	67

4.1. Previous efforts at constitutional reform	70
4.1.1. Fears, Tactics and Propositions	70
4.1.2. The Failed Attempts at Constitutional Reform	72
4.1.3. The Reasons for Failure.....	74
4.2. Lessons from Austria, the Netherlands and South Africa	77
4.2.1. The Netherlands and Austria	78
4.2.2. South Africa.....	82
4.3. Variables Affecting the Dissolution of Consociations	85
4.3.1. Macro Variables	85
4.3.1.1. The Question of Stateness	85
4.3.1.2. The Nature of the Previous Regime	87
4.3.2. Actor-Centred Variables.....	88
4.3.2.1. Leadership Base.....	88
4.3.2.2. Who Initiates and Controls the Transition.....	89
4.3.3. Context Variables	91
4.3.3.1. International Influences	91
4.3.3.2. Political Economy of Legitimacy and Coercion.....	93
4.3.3.3. Constitution-Making Environment.....	95
4.4. Interim Conclusions.....	96
5. Concluding Remarks	98
Bibliography	101