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Striking a Balance Between Human Rights and Peace and Stability: A Review of the European Court of Human Rights Decision *Sejdić and Finci v. Bosnia and Herzegovina*

by Céline Tran*

INTRODUCTION

On December 22, 2009, the European Court of Human Rights issued its judgment in the *Case of Sejdić and Finci v. Bosnia and Herzegovina*, finding certain provisions of the Constitution of Bosnia and Herzegovina (BiH) in breach of the European Convention on Human Rights (ECHR) because they created ethnically discriminatory requirements for certain elected positions.¹ The Court's willingness to address ethnic discrimination in a post-conflict constitution, like BiH's, broke new ground in Europe's human rights framework. The legal significance of the decision is three-fold: 1) it marked the first time that the Court applied the general prohibition of discrimination prescribed by Article 1 of Protocol No. 12 to the ECHR; 2) it addressed intricate political considerations pertaining to peace and stability in deciding whether or not to uphold the ECHR; and 3) it confronted the sensitive issue of the ECHR's compatibility with a Member State's constitution, an issue with which it has rarely had to deal.² The Court held that finding the respondent state in violation of the ECHR was a sufficient remedy for the petitioners, but the legal significance of finding a power-sharing provision in a post-conflict constitution in violation of the ECHR remains.³

BiH has a distinctive political system by which the three largest ethnic groups are equally represented in the state's institutions. The Constitution of BiH distinguishes between "constituent peoples" (Bosniacs, Serbs, and Croats) and "Others" (members of all other ethnic minorities).⁴ Under the Constitution, only members of the constituent peoples are eligible to run for the Presidency and for the House of Peoples – one of two chambers in the Parliamentary Assembly.⁵ As of 2000, BiH was composed of 48 percent Bosniacs, 37.1 percent Serbs, 14.3 percent Croats, and 0.6 percent other minorities.⁶

The Presidency of BiH is a three member collective composed of one Bosniac, one Serb, and one Croat.⁷ The three Members of the Presidency are elected by popular vote for a four-year term.⁸ Every eight months, one of the three Members assumes the chair of the Presidency.⁹ Chairmanship does not entail any additional powers or functions, but instead serves to convey an image of leadership. Decisions are made by consensus among the three Members of the Presidency.¹⁰ However, when a consensus is not reached, the majority may take a decision and

Photo by U.S. Air Force/Staff Sgt. Brian Schlumbohm.



President Slobodan Milosevic of the Federal Republic of Yugoslavia, President Alija Izetbegovic of the Republic of Bosnia and Herzegovina, and President Franjo Tudjman of the Republic of Croatia initial the Dayton Peace Accords.

the third Member may challenge the decision by declaring it against his constituent peoples' best interests.¹¹ Similarly, each of the constituent peoples is represented by five members in the House of Peoples.¹²

This system of representation was established in the Constitution of BiH to ensure that none of the constituent peoples could dominate the government and override the interests of the other groups. BiH adopted its present Constitution as an annex to the Dayton Peace Agreement (DPA), a U.S.-brokered peace agreement between the respective presidents of Bosnia, Croatia, and Serbia signed on December 14, 1995.¹³ The goal of the DPA was to end the three-year-long armed conflict in BiH between Bosnian Serbs on one side and Bosnian Muslims (Bosniacs) and Bosnian Croats on the other. The DPA also aimed to secure peace in BiH and stability in the region by setting up a representative government structure for BiH and ensuring implementation of the peace agreement by international organizations, such as the United Nations (UN) and NATO.¹⁴ As such, the primary purpose of the DPA was to find an acceptable compromise between the three belligerent parties in order to end the war, and many believe that the constitutional provisions, challenged in the *Sejdić and Finci* case, made peace in BiH possible.¹⁵

This article reviews the *Sejdić and Finci* judgment, focusing on how the Court reconciled the interests of human rights versus those of peace and stability. This dichotomy continues

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to be intensely controversial and the outcome of the case was anything but self-evident. As the recent elections in BiH have shown, ethnic tensions and mistrust still pervade Bosnian society. However, while there are legitimate concerns and even fears that changing the Constitution to include the Others in the government will only spark tensions, there are ways to integrate minorities without encroaching on the representation of the three major ethnic groups. Denying certain categories of people one of the most fundamental rights is neither sustainable nor acceptable within European standards. While BiH is currently under European pressure to reform its constitution, the long term implications of the Court's decision for BiH are likely to be far reaching.

BOSNIA'S BREACH OF THE PROHIBITION OF DISCRIMINATION

In 2006, M. Sejdić, a Roma, and M. Finci, of Jewish descent, filed an application to the Court, contending that the Constitution of BiH deprives them of their right to run for public office on the sole basis of their ethnic origins in violation of several articles of the ECHR. Sejdić and Finci, both prominent Bosnian politicians, were ineligible to run for the Presidency and the House of Peoples, respectively. The two men challenged the Constitution under Article 14 of the ECHR, which prohibits discrimination in the exercise of any right set forth in the ECHR,¹⁶ in conjunction with Article 3 of Protocol No. 1, guaranteeing free and fair legislative elections.¹⁷ They also relied on Article 1 of Protocol No. 12,¹⁸ which prescribes a general prohibition of discrimination rather than specific discrimination related to another right under Article 14.¹⁹ While petitioners were not affected by an individual measure, they were nonetheless considered victims for purposes of admissibility because they were particularly at risk of being affected by the provisions in question.²⁰

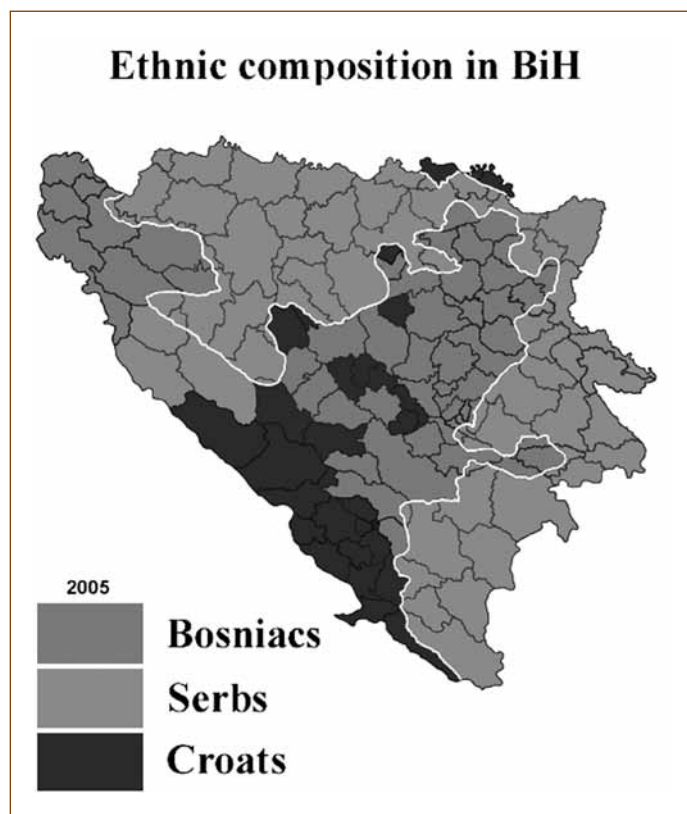
Supporting their claim that ethnic discrimination amounts to racial discrimination that can never be justified, the petitioners looked to the Court's extensive jurisprudence on discrimination. Specifically, the petitioners cited the case of *Timishev v. Russia*, where an ethnic Chechen was denied registration of his permanent residence in Nalchik (Kabardino-Balkaria Republic) on the basis of his former residence in the Chechen Republic. The Court found that a difference in treatment based exclusively on a person's ethnic origin cannot be objectively justified in a contemporary democratic society.²¹ The Court has consistently applied this long-standing "objective and reasonable" test when considering claims of Article 14 violations. Under the law of the Council of Europe, not every difference in treatment amounts to discrimination.²² A difference in treatment violates Article 14 of the ECHR only if it has "no objective and reasonable justification," namely, if it does not pursue a "legitimate aim" or if there

is no "reasonable relationship of proportionality between the means employed and the aim sought to be reali[z]ed."²³ Because differences in treatment are not all objectionable, states are granted a certain margin of appreciation "in assessing whether and to what extent differences justify a different treatment in law."²⁴ The scope of this margin of appreciation varies according to the subject matter of the discrimination and the circumstances of a particular case.²⁵

In its defense, BiH argued that the discriminatory provisions contained in the Constitution were objectively and reasonably justified. It relied on the case of *Zdanoka v. Latvia* in which the Court declared that:

[S]tates enjoy considerable latitude in establishing constitutional rules on the status of members of parliament, including criteria governing eligibility to stand for election . . . these criteria vary in accordance with the historical and political factors specific to each State.²⁶

According to BiH, the unique historical circumstances in which its Constitution had been adopted warranted the inclusion of the contested provisions to maintain the fragile equilibrium



Ethnic Composition Map of BiH.

Created by Zec and Nihad Hamzic.

of power needed to secure peace among the different ethnicities.²⁷ Because this fragile equilibrium still remains a challenge today, BiH urged that the provisions continue to be necessary. Changing the Constitution to integrate the Others into the Presidency and House of Peoples could only be achieved by eliminating the ethnic power sharing structures. BiH argued that such an amendment would be impractical because it was not yet prepared for a political system governed by majority rule.

Nevertheless, the Court concluded that ethnic-based discrimination is a form of racial discrimination,²⁸ which is a “particularly egregious kind of discrimination.”²⁹ As a result, the Court strictly applied the “objective and reasonable” test in considering the petitioners’ claim. It found that the provisions at stake had been legitimate at the time they were drafted because they aimed to restore peace in BiH.³⁰ However, the Court avoided the question of whether the provisions were *still* legitimate and, instead, focused on the criterion of proportionality.³¹ To decide the proportionality prong, the Court first examined BiH’s political progress and then considered whether other means exist to achieve proper power-sharing that do not discriminate against the Others.

The Court listed several positive developments in BiH to substantiate its position that BiH had undergone significant political progress since the DPA.³² For instance, it noted that in 2006, BiH joined NATO’s Partnership for Peace;³³ in 2008, BiH signed and ratified a Stabilization and Association Agreement with the European Union (EU),³⁴ and in 2009, BiH successfully amended its Constitution for the first time and was elected as a non-permanent member to the United Nations Security Council. Finally, the Court noted that the international administration of BiH (the Office of the High Representative), which had been set up to oversee the implementation of the DPA, had begun to close.³⁵

Another significant factor in the Court’s reasoning was that BiH had voluntarily agreed, through membership in the Council of Europe, to abide by its standards.³⁶ In fact, when BiH joined the Council of Europe in 2002, it agreed to review its electoral legislation for compliance with the ECHR within one year.³⁷ Moreover, BiH had undertaken the same promise upon entering the Stabilization and Association Agreement with the EU.³⁸ BiH knew that its Constitution was not in conformity with the ECHR, and therefore, it had the responsibility to reform it. Following this analysis of the political and legal situation of BiH, the Court concluded that the discriminatory provisions were not proportional to the aim sought.

Lastly, and most importantly, the findings of the European Commission for Democracy through Law (Venice Commission) showed that alternative means exist for a state to successfully maintain power-sharing mechanisms without discriminating against certain categories of people.³⁹ The Court agreed with

the Bosnian government that nothing in the ECHR commanded BiH to completely change its power-sharing mechanisms. In fact, the Court shared the belief that the time was not ripe for BiH to adopt a system reflecting majority rule,⁴⁰ echoing what the Venice Commission had recommended in its 2005 opinion.⁴¹ However, as long as there are other, non-discriminatory means to achieve power-sharing, the constitutional provisions cannot be objectively and reasonably justified, as they are not proportional to the aim sought.

Ultimately, the Court endorsed the Venice Commission’s recommendations for the Presidency and House of Peoples. For the Presidency, the Venice Commission proposed two possibilities: (1) replace the collective Presidency with a single president and confer most executive powers to the Council of Ministers in which all constituent peoples are represented alongside the Others, and allow all Bosnians, regardless of their ethnicity, to be eligible for the single Presidency; or (2) maintain

the collective Presidency, but allow all Bosnians to be eligible and devise a rule under which no more than one member of the Presidency belongs to the same constituent peoples or the Others.⁴² The Venice Commission did, however, express a preference for a single Presidency.⁴³ As for the House of Peoples, the Venice Commission proposed complete abolishment and retaining only the House of Representatives, which is the chamber that performs most of the legislative work and does

not discriminate against the Others.⁴⁴ The House of Peoples acts as a check on the House of Representatives, vetoing any piece of legislation that is perceived as harmful to a people’s interests. The Venice Commission’s proposal would transfer the exercise of the vital interest veto to the House of Representatives, which would become the sole legislative chamber.

The Court decided to strike the balance in favor of human rights, but did not do so in complete disregard of wider peace and stability considerations. On the contrary, the Court carefully assessed the situation, taking into account various amicus curiae briefs,⁴⁵ and concluded that BiH was ready to move away from its post-conflict government structure without completely abolishing it. Specifically, the Court found that other minorities could be integrated into the government without jeopardizing the protection of the constituent peoples’ interests, which it recognized as paramount.

CAN UPHOLDING HUMAN RIGHTS BE A THREAT TO PEACE AND STABILITY?

While the majority of the Court readily found BiH in violation of the ECHR, three judges wrote dissenting or partly dissenting opinions in which they criticized the Court for failing to account for the historical background and extraordinary circumstances of the Constitution of BiH.⁴⁶ On the issue of the House of

Photos by Vedran Savić



Dervo Sejdić.



Jacob Finci.

Peoples, the judgment was decided 14-3, while the Court ruled 16-1 on the issue of the Presidency.⁴⁷ According to the dissenting judges, the justifications for the constitutional provisions on the House of Peoples remained valid because BiH's ethnic and political situation had changed little since the signing of the DPA. Dissenting Judges Mijović and Hajiyev observed that BiH has not made significant progress and that the government still remains highly unstable. The judges provided several examples of signs of instability in BiH, such as the ongoing presence of military forces and advisories against travelling to BiH. The judges further emphasized that the failure to prosecute suspected war criminals, the thousands of missing people, and the segregation of schools underscored the judges' concern that progress in BiH was not as extensive as the majority suggested.⁴⁸ Therefore, Judges Mijović and Hajiyev argued that although the constitutional provisions at issue were discriminatory, they remained reasonable and proportional. The judges mentioned that it would be ill-advised, if not inappropriate, to strike down constitutional provisions that may be unjust from a human rights perspective, but are, nonetheless, necessary to achieve peace and stability.⁴⁹

The dissenting judges' main concern was that the changes in the electoral system, requested by the applicants and sanctioned by the Court, could completely reconfigure the power balance in BiH — a balance that many perceive to be extremely fragile. However, the dissenting judges did not consider whether alternate non-discriminatory mechanisms existed. While Judges Mijović and Hajiyev agreed with the majority that the constitutional provisions pertaining to the Presidency breached Article 1 of Protocol 12,⁵⁰ they did not find that the provisions concerning the House of Peoples violated the ECHR, partly because of the nature and purpose of the House of Peoples.⁵¹ While the Presidency is the body that represents the state as a whole, the House of Peoples is the institution where the vital interests of the constituent peoples are defended. Therefore, by its very nature, the House of Peoples should ensure specific representation of the constituent peoples. The argument follows that a change in the structure of the House of Peoples or its elimination may give Bosnians the impression that their interests are no longer protected, which could turn existing ethnic tensions into ethnic violence.

Judge Bonello, who dissented on both issues, strongly opposed what he perceived as interference by the Court with an international peace treaty, claiming that no state "should be placed under a legal or ethical obligation to sabotage the

very system that saved its democratic existence."⁵² He further described the ruling of the Court as a decision that "sows ideals and harvests massacres,"⁵³ asserting that peace, security and public order for all prevail over the right of two groups of peoples to stand for election.

The debate between the majority and the dissent is a recurring debate, and both opinions enjoy support. For instance, other international human rights bodies, such as the Committee on the Elimination of Racial Discrimination⁵⁴ and the Human Rights Committee,⁵⁵ support the reasoning of the majority. Their position is that BiH has made sufficient progress on the path of peace and reconciliation to depart from the DPA's original provisions. In contrast, the "peace by all means" approach advocated by the dissenting judges is the position currently endorsed by BiH's Constitutional Court.⁵⁶

These diverging opinions may suggest that national judges are better suited to assess the situation of BiH. Given BiH's extremely complex history, marked by religious tensions and centuries of ethnic strife, it may be difficult to argue that foreign jurists can better judge BiH's readiness to overcome ethnic power-sharing.

Favoring peace and stability over human rights may imply that the two goals can sometimes be incompatible. However, implementing the changes recommended by the Venice Commission will not drastically change BiH's government structure to the detriment of Bosnians, Croats, and Serbs. More significantly, promoting human rights through the establishment of full equality among all Bosnians is a step forward towards a country based on equal citizens. As long as there is a portion of the population that has inferior rights,

there can be no social peace. BiH needs to reform its institutions in order to reflect the principle of equality and ultimately national cohesion. Thus, human rights are interrelated with peace and stability.

IMPLICATIONS FOR THE GOVERNMENT OF BOSNIA AND HERZEGOVINA

The Court's judgment is a serious condemnation of BiH's Constitution and requires active measures to be taken by the government to fulfill its obligations under the ECHR.⁵⁷ Although the Court did not expressly order BiH to change its Constitution, the ruling implies that BiH must do so because it is the state's responsibility to avoid another violation of the ECHR on the same grounds. Consequently, the execution of this judg-

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ment requires BiH to enact amendments to the constitutional provisions governing the elections to the Presidency and the House of Peoples. As of this writing, the government of BiH has yet to take the necessary measures to ensure execution of the judgment. The government's inaction is hardly surprising given that constitutional reform in BiH has always proven a delicate matter. BiH faces two major constitutional reform issues: the discriminatory electoral system on the one hand, and wider state structure reforms on the other. While all political stakeholders recognize the need to change the discriminatory provisions in light of the Court's decision,⁵⁸ they consistently fail to reach a consensus on the broader state reforms.⁵⁹

As a result, two viewpoints have emerged. The first is espoused among the Bosnian Serbs who favor minimal changes that would only concern the discriminatory provisions. The second view is that of the other two constituent peoples who want these changes to be part of a greater reform package.⁶⁰ The delay in changing the discriminatory provisions has accordingly been caused by dissensions on the broader constitutional amendment package. Yet, the president of the Council of Europe's Parliamentary Assembly (PACE) stressed, during an official visit to BiH in March 2010, that while BiH needs a wide constitutional reform, the immediate first step is to change the provisions excluding the others from holding political office.⁶¹ With the rise to power of Serb nationalist hardliners following the 2010 election,⁶² the prospect of a broad constitutional reform seems bleak. Nevertheless, there is a greater chance that a constitutional reform limited to the discriminatory electoral rules will be carried out due to political consensus, the Council of Europe reprimand, and the lure of EU accession.

CONCLUSION

The Court's ruling does not compel BiH to completely disassemble its power-sharing mechanisms because a government based on purely majority rule is currently unrealistic for BiH. In its judgment, the Court referred to the Venice Commission's recommendations, which proposed ways to circumvent the exclusion of the Others while maintaining a balance of power between the three main ethnic groups. Both of the Venice Commission's proposals are reasonable and acceptable for political stakeholders. Therefore, nothing should continue to impede the execution of the Court's judgment. As the Council of Europe and other experts have stated,⁶³ changing the discriminatory provisions should be BiH's first priority.

There are various factors motivating BiH to adhere to the Court's judgment. Compliance with the human rights standards of the Council of Europe is essential not only to ensure that BiH respects its international obligations, but also as a prerequisite for EU integration. Furthermore, EU accession is one of the few common grounds that Bosnian political leaders share. What remains to be seen is how proactive the Council of Europe will be in urging BiH to implement the Court's ruling. While the Council has issued reports and statements on the situation in BiH, noting the state's obligation to enforce the ruling,⁶⁴ no coercive measures in the form of fines or suspension of rights in the Council of Europe have been taken. While this lack of pressure may be frustrating, it would be unrealistic for the Council to adopt a stricter position, as changing a state's constitution is altogether more challenging than striking down an individual measure. The EU may have more leverage to enforce compli-

ance with the Court's judgment, especially since it has identified BiH as the Balkan state lagging most in the EU integration process.⁶⁵

While the Court's decision is a positive step, as far as human rights are concerned, it does not directly address the more sensitive and challenging issue of the ethnic divide within the BiH government. The Court was neither asked, nor does it have the jurisdiction to decide upon this deeper issue. Yet, it is widely acknowledged that BiH

needs to overcome these wider divisions in order to have a better functioning government and a cohesive society. As previously mentioned, the DPA intended to end a war by providing sufficient ethnic safeguards in the constitution. Thus, the DPA was never designed to be an efficient instrument of government.⁶⁶ In effect, the DPA enabled fifteen years of political deadlock and unmanageable bureaucratic expenses.

Although BiH is still struggling to recover from the effects of civil war and Bosnians remain in some parts of the country profoundly divided and distrustful, the only way to achieve sustainable peace and stability is by fostering a sense of nationhood.⁶⁷ The persistence of institutionalized ethnic differentiation is an obstacle to building a country based on citizens, instead of peoples. Under the current constitution, BiH cannot avoid nationalistic divide,⁶⁸ which is its greatest obstacle to peace and stability. Accordingly, any reference to ethnicity in the government should be eliminated, as national unity begins with internal government unity. To overcome its many institutional defects, BiH should adopt a piecemeal and progressive approach as opposed to one that is more comprehensive and immediate. However, it may be a long time before Serbs, Bosniacs or Croats agree to be ruled by a unified government, and it is not difficult to understand why. **HRB**

ENDNOTES: Striking a Balance Between Human Rights and Peace and Stability

- ¹ *Sejdić v. Bosn. & Herz.*, no. 27996/06, 34836/06, ECHR 2009, available at <http://www.echr.coe.int>.
- ² Anne Rainaud, *La CEDH sanctionne les discriminations constitutionnelles contre les minorités ethniques (Rom et juive): atteinte au droit de se présenter aux élections parlementaires et présidentielles*, 208 BULLETIN HEBDOMADAIRE SENTINELLE (2010), available in French at http://www.sfdi.org/actualities/frame_sentinelle.html (follow “Anne 2010” hyperlink; then click “208”).
- ³ As BiH has still not complied with the Court judgment by failing to amend its Constitution, M. Sejdichas recently filed another complaint against BiH, based on the exact same grounds, but this time seeking damages.
- ⁴ BOSN. & HERZ. CONST. 1995, preamble.
- ⁵ *Id.* AT ART. IV, V.
- ⁶ *The World Fact Book 2002: Bosnia and Herzegovina*, CENTRAL INTELLIGENCE AGENCY, available at <http://www.faq.s.org/docs/factbook/print/bk.html> (Mar. 19, 2003).
- ⁷ BOSN. & HERZ. CONST., *supra* note 3, at art. V.
- ⁸ *Id.* at art. V(1)(b).
- ⁹ U.S. State Department, *Background Note: Bosnia and Herzegovina*, Jan. 4, 2011, <http://www.state.gov/r/pa/ei/bgn/2868.htm>.
- ¹⁰ BOSN. & HERZ. CONST., *supra* note 3, at art. V(2)(c).
- ¹¹ *Id.* at art. V(2)(d).
- ¹² *Id.* at art. IV(1).
- ¹³ General Framework Agreement for Peace in Bosnia and Herzegovina, Bosn. & Herz.-Croat.-Rep. Yugo., Dec. 14, 1995, 35 I.L.M. 75.
- ¹⁴ *See id.* at Annex I-A, Annex 10.
- ¹⁵ European Commission for Democracy Through Law [hereinafter Venice Commission], *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative* (March 2005), available at http://www.venice.coe.int/site/dynamics/N_Country_ef.asp?C=50&L=E.
- ¹⁶ Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Protocol No. 1), art. 14 (1952), available at <http://conventions.coe.int/treaty/en/treaties/html/009.htm>.
- ¹⁷ Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Protocol No. 1), art. 13 (1952), available at <http://conventions.coe.int/treaty/en/treaties/html/009.htm>.
- ¹⁸ Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Protocol No. 12), art. 1 (2000), available at <http://conventions.coe.int/treaty/en/treaties/html/177.htm>.
- ¹⁹ This was the first time that Article 1 of Protocol 12 was ever invoked and applied in a case before the Court, since few members of the Council of Europe have ratified this Protocol (18 out of 47 members, *see Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, COUNCIL OF EUROPE (Sep. 26, 2010), <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=177&CM=8&DF=26/09/2010&CL=ENG>). Its extensive formulation has dissuaded many states from ratifying it.
- ²⁰ *Sejdić v. Bosn. & Herz.*, *supra* note 1, ¶ 28-29.
- ²¹ *Timishev v. Russia*, no. 55762/00 and 55974/00, ¶ 56, ECHR 2009, available at <http://www.echr.coe.int>.
- ²² *See Explanatory Report*, Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Protocol No. 12) (2000). *See also Sejdić v. Bosn. & Herz.*, *supra* ¶ 18.
- ²³ *Abdulaziz v. U.K.*, no. 9214/80, 9473/81, 9474/81, ¶ 72, ECHR 1985, available at <http://www.echr.coe.int>.
- ²⁴ *Sejdić v. Bosn. & Herz.*, *supra* note 1, separate opinion of Judge Mijović, joined by Judge Hajiyev at 50.
- ²⁵ *Id.* at 42.
- ²⁶ *Zdanoka v. Latvia*, no. 58278/00, ¶ 83, ECHR 2006. *See also Mathieu-Mohin v. Belgium*, no. 9267/81, ECHR 1987; *See also Melnychenko v. Ukraine*, no. 17707/02, ECHR 2004 (the Court seemed willing to leave states a particularly wide margin of appreciation in the area of election law).
- ²⁷ *Sejdić v. Bosn. & Herz.*, *supra* note 1, at 34.
- ²⁸ International Convention on the Elimination of All Forms of Racial Discrimination, art. 1, Dec. 21, 1965, 660 U.N.T.S. 195, 212.
- ²⁹ *Sejdić v. Bosn. & Herz.*, *supra* note 1, ¶ 43.
- ³⁰ *Id.* ¶ 45.
- ³¹ *Id.* ¶ 46.
- ³² *Id.* ¶ 47.
- ³³ The Partnership for Peace is a program of practical cooperation between NATO and countries that have not yet met the full membership requirements or do not want to become Allies. Cooperation is implemented at the level and pace chosen by the Partner country. Many former Partners have now become Allies. *See The Partnership for Peace Programme*, NORTH ATLANTIC TREATY ORGANIZATION (Nov. 9, 2010), http://www.nato.int/cps/en/natolive/topics_50349.htm.
- ³⁴ Stabilization and Association Agreements aim at establishing special relations between non-member States and the EU in exchange for reforms with a view to accession. These countries are recognized as potential candidates for EU membership. *See Summaries of EU Legislation: Glossary*, EUROPA, http://europa.eu/scadplus/glossary/stabilisation_association_process_en.htm (last visited Feb. 13, 2011).
- ³⁵ *Sejdić v. Bosn. & Herz.*, *supra* note 1, at 47.
- ³⁶ *Id.* at 49.
- ³⁷ *Council Opinion No. 234, Bosnia and Herzegovina's application for membership of the council of Europe*. (2002), available at <http://assembly.coe.int>.
- ³⁸ 2008 O.J. (L 80) Annex.
- ³⁹ Venice Commission, *supra* note 15, ¶¶ 74-77.
- ⁴⁰ *Sejdić v. Bosn. & Herz.*, *supra* note 1, ¶ 48.
- ⁴¹ Venice Commission, *supra* note 15, ¶ 75.
- ⁴² *Id.* ¶ 77.
- ⁴³ *Id.* ¶ 70.
- ⁴⁴ *Id.* ¶ 80.
- ⁴⁵ The Venice Commission, the AIRE Center and the Open Society Justice Initiative were authorized to submit comments to the Court.
- ⁴⁶ *Sejdić v. Bosn. & Herz.*, *supra* note 1, separate opinion of Judge Mijović, joined by Judge Hajiyev at 50.
- ⁴⁷ *See id.* at 38-39.
- ⁴⁸ *Id.* at 50.
- ⁴⁹ *Id.* at 51.
- ⁵⁰ *Id.* at 44.
- ⁵¹ *Id.*