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Human Rights Plaintiff: US-EU Election Plan for Bosnia Rewards Nationalist Agendas

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The Biden administration and European Union officials are barreling ahead in Bosnia with a politically expedient “fix” for the country’s electoral and political dysfunction. But the result would not only irrevocably damage my country and further undermine stability in the Western Balkans, it also would produce the opposite of one of the apparently motivating intentions. I know — I sued over this dysfunctional system in the European Court of Human Rights (ECtHR) and won. But the United States and the EU, by taking the low road to “get results” with a counterproductive amendment to the Constitution and election law of Bosnia and Herzegovina (BiH) before elections a year from now, are rewarding the nationalist agendas that shattered and divided my country and the former Yugoslavia in the wars of the 1990s.

Those pursuing this course may believe that geopolitics – reducing the growing influence of Russia and China in the region – justifies this policy. But it is likely to have the inverse effect: feeding the popular cynicism that opportunistic Russia and China wield to gain more influence these days than an unmoored “West,” and further degrading any belief that governance based on human rights and accountability can work. By rewarding those who stoke division, the United States would make further division more likely, and that in turn could well result in violence. It also puts the Biden administration in the position of effectively opposing its own agenda of inclusion and democracy, while still proclaiming those as its values.

Judged by My Name – the Pernicious Institutionalization of “Othering”

Like my father and grandfather, I was born in Sarajevo and have lived there all my life. Since the brutal, ethnically charged violence of the war, I, like my fellow citizens, have had the bitter experience of having others define me and in turn limiting my rights and dignity. During the war in Bosnia, I was living in besieged Dobrinja, a neighborhood of Sarajevo near the airport. A Muslim charity, Merhamet, distributed small amounts of coffee as part of its humanitarian aid. When it was my turn to get coffee, they said no coffee for me – because I was married to a Serb.

In 1998, two years after the siege of Sarajevo was finally lifted and the war ended, my

husband and I planned a trip to the coast of neighboring Montenegro (then part of a federation with Serbia, before its independence in 2006). When we reached the border, a customs officer looked at our passports and told my husband that he could cross the border (because he had a Serbian name) and that I could not (presumably because I have a Muslim name). We were determined to go, so we drove to find another border crossing - and entered Montenegro successfully. It was another example of the arbitrary and capricious idea of what constitutes "law," not only then, but still today.

I could cite many more similar examples of discrimination by name, even though my late husband did not identify himself as a Serb, nor do I identify as a Bosniak (Bosnian Muslim). We considered ourselves simply citizens of Bosnia and Herzegovina.

But the 1995 Dayton Peace Agreement that ended the war in Bosnia also baked in its ethnic divisions, including in a constitution that was an annex to the accord. The Constitution created two "entities" within the country, the Republika Srpska, which is majority Serb, and the Federation, which is mainly Muslim (Bosniak) and Croat. And the Constitution specified that only Bosniaks, Croats and Serbs — as "constituent peoples" - could stand for election to the country's House of Peoples (the second chamber of the State Parliament) and the Presidency, the tripartite head of state made up of 1 representative of each of those three ethnic groups.

The Dayton agreement was drafted and signed solely to stop the bloodshed and was to be a temporary step on the way to a functional social contract. It was not intended to cement the divisions and results of the war. But it was hardly surprising that those who benefitted most from the division and the control they gained during the conflict have fought so hard to maintain it. For a decade, the United States and the EU - mainly through the internationally appointed High Representative - worked to reduce the power of these nationalists and the corresponding backing from neighboring Croatia and Serbia.

The Nationalist Agendas of Neighbors

Yet in the past 15 years, first Serbia, and then Croatia (despite being an EU member since 2013) have increasingly pursued their own nationalist agendas in BiH. This direct interference of foreign states in the internal political and legal system of BiH has been abetted by a divided EU and a deferential United States, further strengthening the ethnonational divisions.

Nor has this been the case for Croatia only when the hardline Croatian Democratic Union (HDZ) has been in power and assisting its Bosnian sister-party leader, Dragan Čović, but also when the ostensibly social democratic Zoran Milanović became president. Likewise, Serbia's President Aleksandar Vučić has not only consolidated autocratic power at home, but demands the rights of a "guarantor" of Dayton and openly supports Republika Srpska leader Milorad Dodik in his aggressive attacks on the Bosnian state. In the meantime, Vučić has been coddled by the EU and the United States alike in their hopes for a mutual-recognition deal between Serbia and Kosovo and in fear of "losing Serbia" to geopolitical rivals like Russia and China.

The result has been a feeling of discrimination and disenfranchisement on the part of many citizens of BiH who, like myself, don't subscribe to either ethnic delineations or the physical segregation of people into units "where they should live" or "where they should vote" - and the frequently accompanying animosity. We constantly feel that our dignity is trampled by government and political dysfunction and corruption.

European Court Cases

The institutionalization of such an ethnically hamstrung system compelled me to take my case to the European Court of Human Rights in Strasbourg in December 2005, to petition for my right to run for the highest elective office, the presidency, as a citizen of BiH, without an ethnic label. In July 2014, the Court found in my favor. I actually have no political ambitions to run for or participate in government at any level in Bosnia and Herzegovina. What drives me to further this legal struggle is the goal of a multiethnic, civil, legally regulated state. Bosnia should have a single president chosen in democratic elections by all citizens of BiH and responsible to everyone, not just their self-selected "tribe."

The first ECtHR ruling to demand amendment of the BiH Constitution was in December 2009 in the case of Dervo Sejdić and Jakob Finci. The decision demanded equality for national minorities (BiH has 17) who are not among the three main ethnic groups. The ruling in my case essentially requires even greater change - the extending of such rights to any citizens of BiH. This could be done by amending a foundational sentence in the BiH Constitution so that it confirms that BiH is a state of all its citizens. By naming the three ethnic groups with specificity, the clause currently elevates those who purport to represent those groups as the only bearers of sovereignty, rather than acknowledging that right for all citizens. The Court judgments have confirmed that citizens' rights cannot be ignored.

"The Court expects that democratic arrangements will be made without further delay," according to the ruling in my case, already seven years ago. "In view of the need to ensure effective political democracy, the Court considers that the time has come for a political system which will provide every citizen of Bosnia and Herzegovina with the right to stand for elections to the Presidency and the House of Peoples of Bosnia and Herzegovina without discrimination based on ethnic affiliation and without granting special rights for constituent people to the exclusion of minorities or citizens of Bosnia and Herzegovina."

None of the political leaders in Bosnia have openly militated against implementation of my verdict and those of the other ECtHR claimants. Yet the elite in power, including some of those who claim to support the decisions, are doing all they can to block meaningful implementation. Their apparently insincere declarations of support show that they recognize their formula of fomenting ethnic division no longer has the same potency with BiH citizens, as recent nationwide demonstrations illustrate.

International Responsibility

The progress that I and so many other citizens want to see is always impeded by those who profit from fear and division. The timeline leading to the October 2022 elections

is too tight to resolve this fundamental question adequately - and the current U.S.-EU effort to achieve “limited constitutional changes” and amend the election law in the next months would almost certainly make the situation more unfavorable to citizens like myself.

The 2022 general elections should be held under the existing, albeit deeply flawed, legal framework - undeterred by the “blackmail” of Čović and Dodik, who have threatened to boycott the vote. The discussion of what sort of Bosnia and Herzegovina the country’s citizens want to live in is now open - perhaps the only (unintended) benefit of the current process. This development of an alternative social contract needs to continue leading up to the 2022 election, in the hope that a new parliamentary constellation will offer greater opportunity to make fundamental and substantial changes to the connection of government to the governed in BiH: a new social contract, which can then be reflected in constitutional and electoral law.

International pressure - as well as enforcement of existing rules - is a vital element in this equation. Yet it is not sufficient. Those of us who fought to open the system in the ECtHR need a voice in this process. But so do ordinary citizens, so the rules are not determined, as they were 26 years ago, by party leaders. This offers the only likely path to achieving the conditions for a truly free and fair municipal electoral process in 2024 and general election in 2026 - creating the incentives for leaders to emerge to help citizens build BiH into a prosperous and functional civic state.

The United States and the EU are well-acquainted with the discriminatory Constitution and the election law of BiH. But Europe itself is divided and inconsistent on issues of individual and collective rights even within its own ranks, so perhaps seeking compromise among nationalist leaders rather than pursuing the correct solution — full implementation of the letter and spirit of the ECtHR rulings — seems a more familiar and easier route. To the chagrin of many, the United States is effectively backing the EU by energetically pushing for a deal without regard to the long-term implications. Such “unity” is not one with moral or philosophical depth, but of amoral utilitarianism.

As Kurt Bassuener and Valery Perry wrote in *Just Security* earlier this year, the current U.S.-EU diplomatic push “could fundamentally change the current election law in a manner that would effectively partition the country into three ethnically gerrymandered political units. This has been a risk for years under the unfortunately drafted and haphazardly implemented Dayton Peace Agreement, and this new move would be the final blow.”

The international community bears considerable responsibility for the situation in Bosnia from Dayton to the present day. The control it once exerted through the High Representative’s office to prevent the worst has long since evaporated, leaving these warlords-in-waiting unbridled ability to do harm. Instead of using the court rulings that I and fellow citizens achieved to make Bosnia a legally, economically, socially, and politically functional and stable state, the United States, the EU, the U.K., and others have let those who were implicated by those rulings draw up their own sentences.

President Joe Biden and the U.S. government should not be complicit in this misrule

by drafting, with the EU, their pre-election incumbency protection plan. “Containing” BiH’s maladies clearly has not worked to date. Only a stable, prosperous, and truly democratic BiH can ensure a peaceful Europe and help restore some of the credibility that the United States has recently lost in the world.

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