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The ‘European civic’ vs ‘Daytonian ethnic’ Bosnia & Herzegovina false dilemma

In a continent where democratic participation in regular elections is taken for granted, the broken electoral system of Bosnia and Herzegovina (BiH) is an embarrassment to the EU’s supposed commitment to that fragile country. Indeed, BiH is all the more fragile because Brussels prefers to turn a blind eye to the blatant abuse and injustice of the current electoral system, for which it is largely responsible.

The impasse gripping BiH politics since the general election two months ago is nothing new. However, it could have been avoided with decisive action by the international community, which should have insisted on a new electoral law as mandated by the BiH Constitutional Court.

The essence of the problem is that the largest of the country’s three constitutionally identified nations, Bosniak-Muslims, are able to elect representatives of BiH’s smallest such group, Croat-Catholics. Indeed, this is what has happened with the seat on the tripartite presidency allocated to Croats, which was taken yet again by Željko Komšić – [elected by Bosniak votes after a campaign imbued with sexism and placards containing violent messages.](#)

The BiH Constitutional Court, in a key ruling two years ago, identified this unfair and illegitimate situation for the election of the parliament’s upper house of the Federation of BiH, and demanded action to fashion a new electoral law which would restore the principle of legitimate political representation at all administrative-political levels. As usual in BiH, nothing happened because powerful majority interests stood in the way of implementing the rule of law – a principle, ironically, that the EU keeps telling BiH it must adhere to.

The root of this problem lies in the viceroy-like powers of the Office of the High Representative (OHR), which imposed the current electoral law through legal fiat, under the influence of Brussels, between 2000 and 2005. The illogical approach of the OHR is sadly not only confined to the state-level scene: the Constitutional Court’s decision to annul the OHR’s directives on elections in Mostar has meant that the citizens of this city have not been able to express their democratic voices in local polls since 2008.

This lamentable situation belatedly grabbed the attention of the EU Foreign Affairs Council (FAC) last month. It appears some EU foreign ministers are exploiting their own lack of positive engagement with BiH to press for wholesale changes to the country’s governance that are inimical to the country’s ‘Dayton’ constitution, which is based on the three nations – ‘constituent peoples’ – of Bosniak-Muslims, Croat-Catholics and Serb-Orthodox.

In an interview after the November FAC, Slovakia’s foreign minister Miroslav Lajcak, who has since left office, said: “We have two realities in Bosnia. We have the Dayton reality, built on ethnic principles, and the European reality, built on civic principles. We should head from one reality to the other”.

The reality of Dayton, however, is very different from his view. It was not built exclusively on ethnic principles. It contains provisions that defend both civic and constituent peoples’ interests.

At the state level, the Parliamentary Assembly has a House of Representatives and a House of Peoples. The first defends the interests of all citizens of BiH, regardless of the way they self-identify, while the second chamber, composed of 15 delegates (five from each of the three constituent peoples) protects the interests of constituent peoples.

The Federation of BiH also has a bicameral parliament. The House of Representatives is elected by all citizens. The House of Peoples represents the Bosniaks, Croats, Serbs and Others. Similarly, the tripartite Presidency of BiH represents constituent peoples and BiH citizens' interests as written in the constitution and defined in the constitution and in the decision 5/98 by the Constitutional Court in 2000.

The 'European reality' as defined by Lajcak must not become a unitarist tool to deny the existence, interests and equality of constituent peoples as defined by the constitution. Today, 96.3 percent of the BiH population declare with one of the three constituent peoples, while Others and unaffiliated represents 3.7 percent of the population. Building a state exclusively on civic rights would permit the largest constituent people, Bosniaks, to dominate and centralise political power, as they have already done in the Federation of BiH (70% Bosniaks, 22% Croats).

Belgium has a deeply asymmetrical system that accommodates three separate and divided ethnic and linguistic groups. Why do European bureaucrats and EU foreign ministers not ask Belgians to switch from federal power-sharing to a centralised 'European reality', against an 'ethnic model'?

BiH will be discussed again at the forthcoming December FAC. Ministers must address the root causes of BiH's political stagnation, and rethink the EU's strategy before the state begins to disintegrate. They might even insist that democracy and the rule of law should mean something in BiH beyond their own platitudes and bromides.

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