

Bosnia and Herzegovina: The 'Sejdić-Finci' case

Bosnia and Herzegovina (BiH) was identified as a potential candidate for EU membership in 2003. In order to join the EU, BiH has to meet the EU's human-rights criteria, among others. To this end, the execution of the Sejdić-Finci judgment of the European Court of Human Rights is a key prerequisite as it promotes equal political rights for all BiH citizens. Its implementation would not mean automatic accession to the EU, but would be a significant step in that direction. Since the judgment's delivery in 2009, however, little has been done to address this complex issue.

The Sejdić-Finci case: the facts and the ruling

The [Sejdić-Finci issue](#) started in 2006 when Jakob Finci, a Jewish lawyer, tried to run for BiH's presidency and parliament. The Central Election Commission [informed](#) him that, being Jewish, he was not eligible to stand for office. Dervo Sejdić, of Roma origin, met the same obstacles and both decided to challenge the situation in court. They fought for the right to be eligible as candidates for BiH's Presidency and the House of Peoples of the Parliamentary Assembly. BiH's [Dayton Constitution](#), however, reserves this right for individuals from one of the three 'constituent peoples': self-declared Bosniacs, Croats or Serbs. Its preamble makes a distinction between them and 'Others' (Jews, Roma, other minorities, as well as citizens who have not declared any affiliation). 'Others' can participate in power-sharing at entity level, but not at state level. They were not taken into account since the main political institutions were designed to balance power between the direct parties to the 1992-95 war.

In theory, BiH citizens [are free](#) to pronounce themselves as either Serbs, Bosniacs or Croats if they run for a public office. But for Sejdić, [to be forced to define himself](#) as a member of another ethnic group to become a candidate meant a violation of his human rights. Public figures with experience and professional qualifications could thus be prevented from accessing their rights as citizens on the grounds of their ethnic origins. In December 2009, the Grand Chamber of the European Court of Human Rights (ECtHR) issued its [historic ruling](#), holding that certain provisions of BiH's constitution were in violation of the European Convention on Human Rights (ECHR). It found that prohibiting a Roma or a Jew from standing for election for high public office amounts to discrimination and a breach of electoral rights. As regards the applicants' ineligibility to stand for election to the presidency, the Court [ruled](#) 16 to 1 that Article 1 of Protocol No 12 (general prohibition of discrimination) had been violated. It held by 14 to 3 votes that there had been a violation of ECHR's Article 14 (prohibition of discrimination) in conjunction with Article 3 of Protocol No 1 (right to free elections), as regards standing for election to parliament. A partly dissenting opinion, however, pointed out that a particularly important aspect of this case, the historical background to the constitution, was not taken into account. This ECtHR's decision has since become pivotal in the Bosnian political debate.

Why was the ruling defined as 'historic'?

The relevance of this ruling goes beyond BiH. For [various reasons](#), researchers define it as 'precedent-setting'. It is the [first ECtHR case](#) concerning Protocol 12, ECHR: the anti-discrimination provision, effective since April 2005, guaranteeing equal treatment on all legal rights. It broadens the scope of the right to equality as found in Article 14 ECHR (only used in conjunction with other rights protected by the ECHR). Secondly, it was the first ECtHR case to find a provision of a state's constitution discriminatory and require its amendment. It also evaluates an international treaty, the [Dayton Peace Agreement](#) (DPA).

Implementing the ruling: what it means for Bosnia and Herzegovina

Respecting international commitments

In 2002, BiH became a [member of the Council of Europe](#) (CoE), thus committing itself to respect ECtHR judgments. It ratified the ECHR and its Protocols, agreeing to meet the relevant requirements. In particular,

it [agreed](#) to 'review within one year, with the assistance of the European Commission for Democracy through Law (Venice Commission), the electoral legislation in the light of Council of Europe standards, and to revise it where necessary'. In the 2008 [Stabilisation and Association Agreement](#) (SAA) with the EU, BiH committed to amending its electoral law on the Presidency and House of Peoples to ensure full compliance with the ECHR and the Council of Europe post-accession commitments, within one to two years. Article II(2) of BiH's Constitution provides that '[t]he rights and freedoms set forth in the European Convention ... and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law'. This [clause is important](#), providing for primacy and direct applicability of ECHR and its Protocols.

Constitutional reform

[Constitutional reform is vital](#) for accession to the EU and for compliance with the ECHR. This is reinforced further by the Venice Commission in its [multiple opinions](#) on BiH matters. In [a 2005 opinion](#) it concluded that the 'time seems ripe' for what it defines as 'indispensable' constitutional reform. The Sejdić-Finci decision gave '[a new sense of urgency](#)' to removing discriminatory provisions, rooted in the Constitution (a DPA annex, drafted under international oversight) and in the [2001 electoral law](#). BiH's '[consociational](#)' model includes a tripartite state structure, the concept of constituent peoples, and power-sharing among them. The [real challenge](#) is how to combine the concept of the three constituent peoples and the principle of equality. Apart from the 'Others' issue, the Constitution should also allow representatives of the three main ethnic groups to be able to [take public office in all counties](#), including the state presidency and parliament (i.e. Serbs elected in the Federation of BiH, as well as Bosniacs and Croats – in the Republic of Serbia).

Bosnia's attempts to find a solution

Generally, BiH's leaders agree that formal discrimination has to be eliminated, but finding a solution has proven difficult. Three major initiatives to amend the constitution have failed so far. The so-called 2006 '[April package](#)', the first serious discussion of constitutional reform since Dayton, fell two votes short of reaching the required two thirds majority. The 2008 '[Prud Process](#)' and the 2009 '[Butmir Process](#)' are two other major attempts for constitutional reform: the first one ended before a debate on concrete reform proposals had actually started and the second failed to secure the accord of key domestic political stakeholders. Ahead of the 2010 general elections, [a Parliamentary working group and an Action plan](#) for addressing the ECtHR ruling were set up, again yielding no results.

The EU's position: from a key condition to delayed implementation

The Council's 2010 [conclusions](#) put Sejdić-Finci case at the top of the EU's agenda, making its resolution a condition for BiH to submit a credible membership application. Since then, [considerable time and multiple efforts](#) have been dedicated to this issue, to no avail. In 2012, a [high-level EU-BiH dialogue](#) was launched to support the ruling's implementation, among other things. It ended in February 2014, when Commissioner Stefan Füle expressed '[deep disappointment](#)' with the lack of results. The EU hoped that making implementation an EU accession requirement would encourage BiH to align its constitution with the ECHR. [Opposing views](#) held that EU's insistence on the ruling was not justified, as it concerns Protocol 12 (ratified so far by only [eight EU Member States](#)). Another argument in that respect was that similar legislative provisions [exist](#) in Belgium, South Tyrol (Italy) and Cyprus, for example. The Sejdić-Finci case contributed to the stalemate in BiH's EU accession prospects. Its SAA [was blocked](#) due to failure to implement the ruling. In this context and following the 2014 [citizens' protests](#), the EU sought a renewed approach towards BiH, which the Council approved in [December 2014](#). Its aim is to reach a pre-accession deal with BiH, without it having to change its constitution first. In return, in January 2015 the BiH leaders signed a [written commitment](#) to a package of reforms, including [compliance](#) with the Sejdić-Finci ruling. This made possible the [unfreezing](#) of the SAA, in force since [1 June 2015](#). In practical terms, this new approach '[resequences](#)' EU conditionality: it '[sidelines](#)' the Sejdić-Finci precondition. Although still on the agenda, the ruling appears to have gone from the top to '[the back seat](#)', to be paid special attention 'at a later stage'. Apart from the wording 'as soon as possible', however, the written commitment of BiH's leaders has [no specific deadlines](#) for delivering results.

In its [2010 resolution](#) the EP called upon BiH's authorities 'to amend ... the relevant constitutional provisions and respective provisions in the BiH Electoral Law ... to comply with the ECHR ruling in the Sejdić-Finci case'. In its [2013 resolution on BiH's progress report](#), the EP regrets the cancellation of the third meeting of the High-Level Dialogue due to lack of progress on the same case. Subsequently, in its [2014](#) and [2015](#) resolutions, the EP again called on the Commission to strengthen efforts to facilitate an agreement on implementation of the Sejdić-Finci ruling.