



Paris Lodron University of Salzburg
Department of Political Science



University of Sarajevo
Faculty of Political Sciences

POSIG Joint Master in Political Science – Integration and Governance

**POLITICAL PARTICIPATION IN BOSNIA AND HERZEGOVINA IN THE
LIGHT OF DECISIONS OF THE EUROPEAN COURT OF HUMAN
RIGHTS**

Master thesis

Candidate

Emina Mušija

Mentors:

Dr. Zarije Seizović, Full Professor

Dr. Simona Kukovič, Assistant Professor

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INTRODUCTION

Political participation in Bosnia and Herzegovina is to be considered as a broader phenomenon that includes not only elections as a base of democracy and precondition for effective and legitimate decision making, but also citizen's participation in everyday political events and life. Furthermore, political participation in the state is limited to the ethnicity and territorial origin. This means that only constituent peoples, guaranteed by the Constitution and many laws, are allowed to run for the tripartite Presidency of the State or House of Peoples. National minorities are excluded from this branch of government and their political participation is restricted only to the local levels of legislative government, meaning municipality councils and (cantonal) assemblies. Constitutional minorities have similar position with national minorities meaning that constituent people living in territory where other constituent people is majority, for example Bosniaks or Croats in Republic of Srpska or Serbs in Federation of Bosnia and Herzegovina are unable to run for presidency since they do not live in the administrative-territorial unit where their ethnicity is majority.

The topic of political participation of both constitutional and national minorities in Bosnia and Herzegovina is important to this day due to the limitations and impact that it has on the state's integration towards the European Union and the process of democratization. Even though Bosnia and Herzegovina is considered to be a democratic state by its Constitution, it is unable to implement one of the most important principles of democracy which is elections and that makes this state democratic only in the narrative and legal point of view. Unfair and in most cases stolen elections with many electoral frauds, legal and constitutional discrimination of non-privileged citizens with full emphasis on the "constituent supremacy" make this country less and less democratic by every year that passes without constitutional reforms. All mentioned motivated the author to examine and conduct thorough research on the constitutional discriminatory restrictions and provisions that jeopardize regular "non-constituent" citizens and fulfillment of its basic human rights guaranteed by many internationally recognized conventions but primarily European Convention for Protection of Human Rights and Fundamental Freedoms. Following all of the above mentioned, it is important to say that state of Bosnia and Herzegovina is still seen as the

only country in the entire world with Constitution that directly discriminates part of its citizens labeling them as “The Others”. This thesis is backed up by the opinion of Clive Baldwin, senior legal adviser at Human Rights Watch, that during one occasion said how Bosnia and Herzegovina being European country and having constitution that has been discriminating against its own citizens for more than 20 years to be outrageous, following with opinion that Bosnian authorities should stop prioritizing main ethnic groups’ interests over equal rights for all citizens (Zivanovic 2019).

Furthermore, this master thesis focused on electoral rights of the national and constitutional minorities in Bosnia and Herzegovina and reflected upon how those rights have been violated though the text of Constitution of Bosnia and Herzegovina (Constitution). Also, we elaborated the decisions of the European Court of Human Rights (ECHR) in cases where constitutional and national minorities in Bosnia and Herzegovina sued the state for not allowing them to participate in the elections. All Court decisions were in favor of the applicant. However, the state of Bosnia and Herzegovina with its institutions failed to implement those decisions. It was explained why even after twenty years since those decisions had been adopted, above mentioned minorities are still unable to run for office or even to vote. Finally, a critical view on the setbacks which this situation presents for the integration of Bosnia and Herzegovina towards the European Union were discussed and elaborated on.

The theoretical framework included definitions of political participation, democracy and positive discrimination, further elaboration on recognized national as well as constitutional minorities in Bosnia and Herzegovina with particular emphasis on the administrative-territorial division and all decisions of the European Court of Human Rights in the timeframe 2000-2020.

The general objective of this research was to examine the constitutional ban of recognized national as well as constitutional minorities and those who do not declare themselves neither as constituent nor as belonging to any of national minorities in Bosnia and Herzegovina, to participate actively and passively in political life (constitutional discrimination), its legal and constitutional sources of verification and consequences thereof. Specific objectives include the impact of the above mentioned “embargo” for the integration process to the European Union as well as description of the State's Constitution that had been declared discriminatory by few relevant decisions of the European Court of Human Rights.

Definition of key terms

Constituent peoples - Preamble of the Constitution of Bosnia and Herzegovina, as integrated part of the Dayton Peace Accords, define Bosniaks, Croats and Serbs as *constituent peoples* while *The Others* and *citizens* are rarely mentioned (Seizović, 2014:19).

Minorities - Capotorti (1977:1-7) offered definition of minorities stating that it is a group numerically inferior to the rest of the population of a state whose members as nationals of the state, possess ethnic religious or linguistic characteristics that are different from the rest of population (Capotorti, 1997, UN Document E/CN.4/Sub.2/384/add. 1-7). Similarly, Deschenes defined minorities as a group of citizens of one state that are constituting a numerical minority and that differ from the majority of the population by ethnic, religious or linguistic characteristics (Deschenes, 1985 UN Document E/CN.4/Sub.2/1985/31).

National minorities¹ - Law on rights of national minorities defines the term of national minority in its Article 3., (“Official Gazette of Bosnia and Herzegovina”, No 12/03 and 76/05) where it clearly states that

A national minority, in terms of this Law, shall be a part of the population – citizens of Bosnia and Herzegovina that does not belong to any of three constituent peoples and it shall include people of the same or similar ethnic origin, same or similar tradition, customs, religion, language, culture and spirituality and close or related history and other characteristics.

Bosnia and Herzegovina shall protect the status and equality of members of national minorities as follows: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Romas, Romanians, Russians, Rusins, Slovaks, Slovenians, Turks, Ukrainians and other who meet requirements referred to in Paragraph 1 of this Article.

¹ Nation and national interest is not translated to the B/C/S language as state interest but as an interest of one ethnic group. For vital national interest see more in Seizović, Z. (2014). *Constituent Peoples and Constitutional Changes*. Second updated edition. Sarajevo: Dobra knjiga, pp.16 – 17.

Constitutional minorities - Decision of the Constitutional Court of Bosnia and Herzegovina of July 2000 (Constitutional Court of Bosnia and Herzegovina, *Partial Decision, Case No U 5/98 III*, July 1 2000 – Official Gazette of Bosnia and Herzegovina, No. 23/00) ruled that Federation of Bosnia and Herzegovina and Republic of Srpska had to amend its constitutions so that it can ensure full equality of the constituent peoples throughout the state territory (Seizović, 2014:22). By this Decision, constitutional peoples were equal on the territory of the entire state. However, for the purpose of this thesis, we will define constitutional minorities to be constitutional peoples who live in the entity where its constitution is minority, e.g. Serb in Federation or Croat and Bosniak in Republic of Srpska. This means that due to the Electoral Law of Bosnia and Herzegovina, regardless of being constituent by the Constitution of Bosnia and Herzegovina, this people are unable to run for tripartite Presidency of the state nor House of People, since political system of the state is structured in a manner of two entities.

The Others – this minority for the purpose of this thesis is seen as a specific constitutional minority and it gathers citizens of Bosnia and Herzegovina who do not declare themselves either as members of constituent peoples nor as members of seventeen recognized national minorities. We perceive them as minority since Constitution itself does not allow them to run for elections.

Democracy - Democracy can be defined as a political regime in which all government belongs to the people through the elections or direct government representatives. Lefkofridi argues that democracy emerged as one form of a regime that was quite different from the rule of minority, adding that contemporary democracy is a representative democracy. Concept of democracy throughout years has been used to denote representative government and it often occurs in empirical research, to combine democracy and representation (Lefkofridi 2017:13).

Constitutional discrimination – For the purpose of this paper, we will define term constitutional discrimination as discrimination of national and constitutional minorities grounded in the Constitution of Bosnia and Herzegovina and Electoral Law of Bosnia and Herzegovina. This discrimination refers to the impossibility of mentioned minorities to be active in politics (ground in the Electoral Law) and distinction between three constituent people and those who are not members of those groups (Constitution of Bosnia and Herzegovina). Articles in the two mentioned documents that back up this definition were elaborated on in the appropriate chapter of this thesis.

Positive discrimination - According to the Australian Human Rights Commission, concept of positive discrimination is often used in the literature when describing state's decision to introduce measures that would ensure equal opportunities to all of its citizens, including vulnerable categories. (Australian Human Rights Commission, n.d.).

Political participation, according to the Verba and Nie (1972:2) refers to those activities by citizens that aim at influencing the government by affecting the choices of its personnel and is therefore seen as influencing attempts. For the purpose of this thesis, term political participation will refer to the participation in the elections, either on passive on active way.

METHODOLOGY

Since this research is qualitative, the main methods which has been used is document analysis, comparison of cases, including comparative historical research and literature reviews. Document analysis was conducted through primary and secondary data, including legal sources, scientific books, articles as well as internet sources. Comparative case analysis examined cases of Sejdić-Finci, Pilav, Zornić, and Baralija before the European Court of Human Rights. Since timeframe covers period of twenty years, longitudinal study was used. Due to the complexity of the topic, it is necessary to use meta-analysis, which means that previous research studies were thoroughly examined in order to clarify conclusions. In addition, semi-structured interviews with representatives of the European Union in Bosnia and Herzegovina, the Office of the High Representative, and two applicants from the above mentioned cases were conducted.

The timeframe, as mentioned, is the period of twenty years, more precisely from 2000 until 2020, encompassing all cases heard by the European Court of Human Rights that are being connected to the above stated violation of minority rights in Bosnia and Herzegovina.

The existing literature on this topic and research area is mostly based on the reports by non-governmental organizations or European Union and other organizations for protection of minority and human rights. It is notable that literature focuses on single category / decision rather than observing Decisions of the ECHR as evidences of multiple discrimination on different levels of government but all with the same ground – Constitution.

1. PROBLEM OF THE STUDY

The issue of political participation of constitutional and national minorities in Bosnia and Herzegovina is an on-going problem for more than two decades. When talking about political participation of minorities, it is important to distinguish two types of minorities: constitutional and national minorities. Problem arises during every electoral year since Electoral law and Constitution itself discriminate participation of minorities in the general elections. Minorities in Bosnia and Herzegovina face many problems in its everyday life, starting from poorer approach to food, employment (mostly for members of the Roma Community) and concluding with political life. State has done nothing or little in order to move forward with creating better living environment for members of both mentioned minorities. For the purpose of this thesis, focus was on the political rights. Those rights of minorities in Bosnia and Herzegovina are limited to some laws and conventions in theory, while in practice, they are jeopardized by the lack of political will and state apparatus to implement above mentioned laws and international conventions as well as international standards.

Even though there have been many qualitative and normative research on the topic of political participation of national minorities in Bosnia and Herzegovina, the lack of quantitative research is notable and surprisingly low, almost non-existing.

This study explored in depth limitations that political system of Bosnia and Herzegovina puts on two forms of minorities as well as how decisions of the European Court of Human Rights have its theoretical but not practical impact on the Bosnia and Herzegovina's integration to the European Union.

2. OBJECTIVES OF THE STUDY

Objectives of this study are conducted in the following lines thesis':

- To assess the limitation of political participation of constitutional and national minorities in Bosnia and Herzegovina
- To assess the meaning of constitutional discrimination in political life of constitutional and national minorities

- To examine to which level non-implementation of the ECHR decisions influences Bosnia and Herzegovina's integration to the EU

3. *HYPOTHESIS*

The General Framework Agreement for Peace in Bosnia and Herzegovina, known also as the Dayton Peace Agreement, Dayton Accords, Paris Protocol or even Dayton-Paris Agreement, that was initiated in Dayton on 21st of November 1995 and signed in Paris on 14th of December 1995, stopped the aggression on Bosnia and Herzegovina, established peace and confirmed legal state status from 6th of April 1992. Dayton Peace Agreement resulted with federalization of Bosnia and Herzegovina where 51 percent of state was constituted with Bosniak-Croat Federation and 49 percent with Republic of Srpska. Annex IV of the Dayton Peace Accords is the Constitution of Bosnia and Herzegovina that stipulates how only constituent people, meaning Bosniaks, Croats and Serbs, can run for presidency or House of People, in line with its territorial origins while minorities are excluded. On the contrary, that same Constitution states complete respect of international conventions for protection of human rights. All mentioned motivated the author to write this thesis and formulate main hypothesis as follows: *Minority rights in Bosnia and Herzegovina are violated during the elections which requires the change of the State Constitution and its harmonization with the European Convention on Human Rights.*

4. *SIGNIFICANCE OF THE STUDY*

This study can be used as qualitative background for further research on the topic and as good review of political system and normative / legal framework. Besides mentioned, this research located issues that above defined minorities face in everyday life as well as level of legal violation of their rights even though those should be ensured through international conventions and protocols. Moreover, this thesis will give insight on the complexity of Bosnia and Herzegovina's political system and state apparatus in the manner of decision-making process.

5. *SCOPE OF THE STUDY*

This study was conducted in order to elaborate issues of constitutional and national minorities in Bosnia and Herzegovina and its political rights. To be more precise, this thesis elaborated

impossibility of both national and constitutional minorities to participate in politics due to the discriminatory provisions of State's Constitution and Electoral law. With full respect of methodological approaches, qualitative research method has been used.

6. LIMITATIONS OF THE STUDY

As a qualitative theoretical research study, this thesis faces with the following limitations. Methodologically, only qualitative research has been used in this thesis, due to the lack of statistical information on political participation of national and constitutional minorities in Bosnia and Herzegovina. Another important and considerable challenge that researcher has faced was unwillingness of one significant applicant to participate in the interview. Even though that applicant won the case and it is the only case whose decision will be implemented in the Elections 2020, the applicant could not find time to talk with the researcher. Furthermore, one of the respondents in the interview did not gave satisfactory nor detailed answers, rather it gave just general and informational answers. Another factor that influenced on the limitation of this thesis is the COVID-19 outbreak due to which half of the interviews had to be done online.

7. DATA COLLECTION

Data was collected through primarily and secondary sources. Primarily sources were based on the qualitative research of previous work, meta-analysis and comprehensive literature reviews while secondary data was collected through in-depth interviews both face-to-face and through virtual meetings, due to the COVID-19 outbreak. Participants in the interviews were selected based on the importance of its decisions – for applicants and based on the importance of its institution in the process of decisions' implementation – for representatives of the international community. Both of these data sources have been used in this thesis while qualitative thematic analysis was used for normative and legal analysis. Secondary sources completely supported the primary data and its theoretical assumptions.

THEORETICAL AND LEGAL FRAMEWORK

1. HISTORICAL BACKGROUND OF BOSNIA AND HERZEGOVINA

Bosnia and Herzegovina has a long history but for the purpose of this thesis, the focus will be on recent history. Bosnia and Herzegovina was part of the Socialistic Federative Republic of Yugoslavia, in most literature known just as Yugoslavia. After death of Josip Broz Tito, president of the Yugoslavia in 1980s, Yugoslav economy had rapid decline which led to widespread dissatisfaction with political system at the time and tendency of Yugoslav republics for independence (Pejanović, 2017:37). Lead politicians began to show nationalistic feelings that even further undermined political system and destabilized it. In the early 1990s, Slovenia in December 1990 and Croatia in May 1991 held multiparty elections (Ibrahimagić, 2009:325). Bosnia and Herzegovina also held elections in November 1990 and results were formed in a manner of new parties that represented three national communities. This led to creation of tripartite coalition government in a form that member of Bosniaks Alija Izetbegović was named a leader of joint presidency (Pejanović, 2017:37-38).

However, Radovan Karadžić, leader of the Serb Democratic Party (SDS), make cooperation within and outside of the Bosnia and Herzegovina almost impossible. In 1991, so called „Serbian Autonomous Regions“ were formed and declared in areas of Bosnia and Herzegovina holding large number of Serb population. In August the same year, political party of Radovan Karadžić began to boycott meeting of Bosnia and Herzegovina tripartite presidency and in October 1991 it formed „Serbian National Assembly“(Kulenović, 1998:93). At the same time, war occurred in Croatia and breakup of Yugoslavia was on its way which led to position of Bosnia and Herzegovina to be vulnerable.

On 6th of April 1992, independency of Bosnia and Herzegovina was recognized by members of the European Community at the time, today's European Union, and one day later, by the United States of America (Ibrahimagić, 2009:334, Pejanović 2017:38). Bosnia and Herzegovina became member of the United Nations on 22nd May 1992. On 1st of March 1992 referendum on independence was held and boycotted by Serbs. Radovan Karadžić obstructed voting in Serb-populated areas which led to the fact that almost no Serbs voted and Karadžić did not accept the referendum results (Pejanović, 2017:38). Following, of the nearly two-thirds of voters, almost all

(99,44%) voted for independence that has been proclaimed on 3rd March 1992 by Alija Izetbegović (Ibrahimagić, 2009:329). After recognition of Bosnia and Herzegovina's independence by the USA and EC, Bosnian Serb paramilitary forces began with attacking Sarajevo and artillery bombarding the city (Kulenović, 1998:98). Zvornik, Foča, Višegrad and many other towns in Eastern Bosnia were attacked by combination of Serbian paramilitary forces and Yugoslav army units since Milošević put Yugoslav army units under his control. (Kulenović, 1998:96, Pejanović 2017:39). This led to expelling Bosnian population from mentioned areas, process known also as ethnic cleansing. Aggression on Bosnia and Herzegovina produced the biggest crime against humanity after the Holocaust, genocide in Srebrenica on July, 1995 where more than 8000 Bosniak men were killed, executed and tortured while hundreds of woman were raped (Brunborg et al 2005:2).

The General Framework Agreement for Peace in Bosnia and Herzegovina, known also as the Dayton Peace Agreement, Dayton Accords, Paris Protocol or even Dayton-Paris Agreement, that was initiated in Dayton on 21st of November 1995 and signed in Paris on 14th of December 1995, stopped the aggression on Bosnia and Herzegovina, established peace and confirmed legal state status from 6th of April 1992. The Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina forms actually the Constitution of Bosnia and Herzegovina. Within it, state of Bosnia and Herzegovina is the successor and legal of the Republic of Bosnia and Herzegovina and continues its legal existence within the rules of international law as a state, including internal structure and internationally recognized borders (Ademović 2010:886).

The Constitution stipules that Bosnia and Herzegovina is a democratic country that is based on the law and free democratic elections. The country is divided into two entities: Federation of Bosnia and Herzegovina and Republic of Srpska as well as one district Brčko. According to the Thematic Bulletin of Agency for Statistics Bosnia and Herzegovina, Federation of Bosnia and Herzegovina consists of ten cantons as administrative – territorial units and within them seventy-nine municipalities. Republic of Srpska on the contrary has no cantons but it has sixty-three municipalities (Agency for Statistics, 2020:5)

2. *POLITICAL SYSTEM OF BOSNIA AND HERZEGOVINA*

Dayton Peace Agreement signed in Paris in December of 1995 created the political system of Bosnia and Herzegovina as it is today. Agreement includes Bosnia and Herzegovina's Constitution as one of its annexes and is still in force. Bosnia and Herzegovina applied for the EU membership in February 2016 and aspires for Euro-Atlantic integrations. Regarding political system, power is exercised by two entities, Republic of Srpska with major of Serb population and covering 49% of the territory and Federation of Bosnia and Herzegovina with Bosniak majority and significant Croat population as well as 51% of the territory. Brčko District is a third administrative-territorial unit. Bosniaks, Serbs, and Croats are constitutionally equal and labeled as constituent people while national minorities and Bosnian citizens that do not identify themselves as members of any of the constituent people are very often discriminated. Regarding population, Bosniaks are accounting for around 51% of the populations, Serbs account for around 30%, Croats account for around 15% and minorities account for around 3% (Agency for Statistic's web portal, n.d.) Due to this division, political system of Bosnia and Herzegovina is structured in a way that enables and encourages ethnic domination by territory.

Minorities are labeled and in Constitution named as "The Others" whereby they are not allowed to vote for certain high offices or even to participate in the politics just by the virtue of its ethnicity. Even the name "The Others" is discriminatory by itself, since it puts all national minorities into one group, taking away its identity, as we see it.

The main institutions at the state level are (bicameral) Parliamentary Assembly, Council of Ministers, Presidency, Constitutional Court and the Central Bank. According to the Thematic Bulletin of Agency for Statistics Bosnia and Herzegovina, Federation of Bosnia and Herzegovina consists of ten cantons as administrative – territorial units and within them seventy-nine municipalities. Republic of Srpska on the contrary has no cantons but it has sixty-three municipalities (Agency for Statistics, 2020:5)

According to the research conducted by the N1 journalist Crnogorac (2017), in numbers state apparatus of Bosnia and Herzegovina has

- 14 governments
- 120 ministers

- Around 600 delegates as parliament members on different levels
- Around 200 000 employees in public administration
- Around 3.2 billion of BAM is spent every year on maintenance of public administration system.

3. *DEMOCRACY AND HUMAN RIGHTS*

Democracy can be defined as a political regime in which all government belongs to the people through the elections or direct government representatives. Lefkofridi argues that democracy emerged as one form of a regime that was quite different from the rule of minority, adding that contemporary democracy is a representative democracy. Concept of democracy throughout years has been used to denote representative government and it often occurs in empirical research, to combine democracy and representation (Lefkofridi 2017:13).

Many can argue that democracy is closely connected to the human rights but for the purpose of this thesis, we will refer only to the natural and political rights. Natural rights by universal definitions are those which every man acquires by its birth, regardless of race, gender, religion or any other factor. Dworkin argues that equal treatment is itself a fundamental natural right as well as the right to equal concern and respect (Dworkin, 1977:327). Political rights as we see it, can be best described as active and passive right to vote.

What marks democracy and is relevant to this thesis is to be equal before the law, to respect human rights and freedoms, to have fair court procedures and for us, first one on the list of priorities, government of majority with respect for the rights of minorities. All mentioned is a precondition for one state to be called a democracy. However, in the case of Bosnia and Herzegovina, these requirements are not fulfilled. Even though Bosnia and Herzegovina is a democratic country defined in its Constitution, rights of constitutional and national minorities are discriminated by the Constitution in many aspects, with special emphasis on the electoral system and political participation.

Even though marks of nondemocratic political regimes are government of one individual or a party, unequal treatment of people before the law, disrespect of human rights, we can freely say, without a zero benefit of a doubt, that Bosnia and Herzegovina is democratic only on the paper,

while every aspect of its structure, from the lowest level of the government until the highest, is way undemocratic.

On November 3rd 2004, Lord Paddy Ashdown spoke to the Venice Commission where he said that:

If Bosnia and Herzegovina wants to enter in the European Union and NATO, it will have to be functional state and nothing less. Political leaders of Bosnia and Herzegovina begin to understand that they are faced with choice: to keep current Constitution and deal with economic, social and political consequences or to carry out constitutional changes by which Bosnia and Herzegovina will become stable, functional and prosperous state within the EU.²

National and constitutional minorities in Bosnia and Herzegovina still do not have an effective approach towards their rights. This is mainly caused by the institutional discrimination and lack of political will for change of the laws and Constitution. What does this mean? Public life in Bosnia and Herzegovina is still marked by huge level of segregation and discrimination which not only national minorities face, but also constitutional people living outside the territory that corresponds with their ethnicity. For example, Roma people are having major difficulties while applying for a job, having health care or even regular education. Protection of the minority rights comes from the principle of equality as extremely important part in the bare concept of human rights.

How absurd it can be, Framework Convention for the Protection of National Minorities is part of the Bosnia and Herzegovina's Constitution, Annex 1, stating that more measures should be adopted in order to promote equality between members of the constitutional people and national minorities. Even though Council of National Minorities is part of the Parliamentary Assembly of Bosnia and Herzegovina, members are representatives of seventeen recognized national minorities, with role of giving suggestions and advices regarding rights and interests of the national minorities in Bosnia and Herzegovina, that is all that state gives to the minorities. According to the Article 6 of the Law on the Council of Ministers Bosnia and Herzegovina, Council of Ministers should have one member/representative of "The Others".

²Lord Paddy Ashdown in his speech stated clearly that he believes how people of Bosnia and Herzegovina will not accept that their constitution should be a barrier to security and prosperity but that he can not remove that barrier for them.

Election law in its Article 13.14 states that national minorities can have representatives only on the local level, by being on the special list. Until these requests for more space for political participation of national and constituent minorities are achieved, we could not help but to ask: Who represents “The Others” in Bosnia and Herzegovina’s democratic processes? In the light of this, it is important to mention that European Court of Human Rights in Strasbourg has reached a number of decisions (for example Sejdić-Finci, Zornić, Baralija and Pilav) which should have stopped the discrimination from the Constitution and Electoral Law with aim of enabling every citizen to have active and passive right to vote. This will not happen until institutions and government in Bosnia and Herzegovina start to respect and implement the decisions.

Members of the national minorities should have the right to be politically active on the all levels of governments, especially those which directly concern them. European Court of Human Rights ruled in 2009 in the case Sejdić-Finci against State Bosnia and Herzegovina in the favor of the Sejdić-Finci applicants, stating that State needs to change discriminatory acts in the Constitution and Electoral Law. However, Commission for implementation of decision had many meetings but without any concrete result. All members of the Commission publicly declared themselves as protectors of the human rights while at the same time, they are unable to provide political participation for the non-constituent people. We honestly and deeply hope that Bosnia and Herzegovina will be excluded from the Council of Europe until it starts to respect and implement decisions of the European Court of Human Rights. Since the first lawsuit, many other lawsuits against the State happened, all adjudicated in the favor of suitor, but without concrete consequences for the State’s inability to implement the decisions.

Even though all Conventions on the topic argue for the highest norms of human rights, Convention itself cannot be directly implemented on the individual cases. For example, European Convention for protection of human rights in its Article 8 guaranteed every individual its right for private life but does not state which state organ is in charge for protection of that right, how to ensure it or what concrete actions should be undertaken in case of violation. Due to this, key conventions for protection of human rights predicted existence of the international bodies with mandate to monitor convention’s implementation, to affect the revision of legislations, to give suggestions and to submit reports. However, we find it difficult to believe that those bodies are doing their job

properly, since for many years now, state of Bosnia and Herzegovina is becoming more and more constitutionally discriminatory.

Every democratic state should develop and maintain existence as well as autochthony of national minorities due to the fact that citizens of different religions, nationals, languages and cultures present its biggest fortune. Bosnia and Herzegovina as a state adopted legal acts and even established institutions according to the international standards of minority rights protection, but level of its implementation is still quite low especially when the word is on participation in public and political life, education and employment. Government with its all branches should introduce appropriate terminology on the constitutional level that refers to the national minorities, in accordance with the terminology used in the Law on national minorities. Term “The Others” used in the Constitution of Bosnia and Herzegovina and entity constitutions can be understood as less valuable from the term “constituent people” since “The Others” is used to label those who are not declared as constituent people and those who do not consider them neither constituent nor as member of other nationality (Raosavljević 2014:11). Political participation of minorities and respect for democracy is taken down to the few reserved seats on the local level of government and form of consultative bodies on the state and entity level. One of main problems is common understanding that minorities should have representative in the local assembly which is primary reason why question on minority political participation on the local level equalizes with political representation while process of consultation is still highly neglected. In order to raise awareness on minority rights it is crucial to include minorities more in the employment in public administration and public jobs.

After writing these paragraphs, few questions arise. Is it possible for this Constitutional discrimination to be solved? If yes, how? Does it mean that New Dayton should be written or change already existing Constitution? More importantly, is it feasible to change people’s mentality, citizens of Bosnia and Herzegovina? Is it feasible to see minorities as equally important in the social, political and legal life in this country? Based on everything written before, we could not agree more on the statement that consolidation democracy is creation of the institutions and power share between united political elites (Axford et al, 1997:134) which puts Bosnia and Herzegovina into this form of democracy.

How can we even mark one state as democratic, if it does not ensure the right on political participation for all of its citizens? It seems like that condition called *the white supremacy* in the rest of the World, in Bosnia and Herzegovina becomes *the constitutional supremacy*. Everyone sees it expect those who enforce it. Everyone is fighting to change it, yet nothing changes. Constituent peoples and political elites in Bosnia and Herzegovina are constantly arguing about the war topic and who started it, making it an existential question, while “The Others” are fighting their own war on being recognized institutionally and politically.

4. POSITIVE DISCRIMINATION

According to the Australian Human Rights Commission, concept of positive discrimination is often used in the literature when describing state’s decision to introduce measures that would ensure equal opportunities to all of its citizens, including vulnerable categories (Australian Human Rights Commission, n.d.). For example, on call for job competition if its highlighted that woman has advantage for the position, it means that the company saw disproportionate number of woman hired in that company in relation to man. State authorities can found out that specific groups of people are exposed to the long term consequences of discrimination and neglect which is why it is possible to adopt and implement special measures – measures of positive discrimination in order to prevent and mitigate already existing consequences. (Idžaković, F., Vukmanić, V. n.d.:14).

Bosnia and Herzegovina adopted Strategy and Action plans for solutions of problems that Roma people face in the view of employment, housing and healthcare; Strategy for equalization of possibilities of people with disabilities, as well as Gender action plan. State adopted special laws such as Law on Gender Equality, Law on protection of national minorities, Law on professional rehabilitation, prequalification and employment of people with disabilities. These measures are often labeled as positive discrimination. However, positive discrimination, as well as implementation of many laws in Bosnia and Herzegovina, exists only in theory and on paper, which was proven through this thesis.

5. *POLITICAL PARTICIPATION*

Teorell argues that political participation as a study within the time became one of the most important subfields of political science, beginning in 1950s as part of American election studies. In order to define human types that fall under the term of political participation, Teorell explains how conceptual question can be answered depending on the normative models of democracy. (Teorell, 2016:788). Verba and Nie (1972:2) argue that

Political participation refers to those activities by private citizens that ... aim at influencing the government, either by affecting the choice of government personnel or by affecting the choices made by government personnel' and this sees participation as influencing attempts.

Other form is defined by Verba (1996:1) as participation as mechanism for representation, followed by the form of responsive model of democracy, as Teorell (2016:789) calls it. He also argues that participation can be seen as political discussion within the deliberative model, while in responsive model, participation is seen as an attempt to influence government officials (Teorell 2016:791). When it comes to participatory democrats, it is important to know what develops desirable personal and social qualities in the citizens when it comes to democracy. Kaufman (1960:6) as one of the coiners of 'participatory democracy' as term, argues that strength and importance of political participation lies in the fact that it contributes to fostering of human thoughts, feelings and actions. People decide to participate in politics in many ways, including social movements, interest groups, political parties, elections but also violent organizations. There are many other forms of political participation but until today, the biggest form as we see it is through the elections.

Comprehensive overview of the literature on the topic of political participation shows that there are many elements for complete theory of political participation that could enable standardized research in the area of national and international frameworks. Unconventional political participation became more often in use in democratic countries rather than conventional than is in the process of stabilization. Findings on the relationship of standardized SES model and valuable orientation model became interesting with time in the area of left-right materialism. Many authors including H. Arendt, C. Putman, G. Almond, S. Verba in its work emphasized significance of

political and citizens' participation for maintenance of democracy and its functioning. Following this, participatory democracy receives its strength in comparison with elitist or even formal-representative. In relation with democracy, this broad phenomenon is interpreted mostly as government of the people which leads us to the logical conclusion that democracy cannot be established without participation of the people, meaning that people shall constantly participate in the control of government as well as in the processes of decision making. Besides having importance as form of demand communication towards the government, participation also has significant meaning in a form of freedom expression and ensuring good quality of life and political satisfaction of citizens. S. Verba and N.H. Nie (1972:5) argued that new requests for participation have instrumental – as means for other objectives and consumable – as objectives for itself, components.

S. Verba and N.H. Nie (1972:153) wrote about importance of political participation in the United States of America where they empirical found out that political participation has an impact on political rights and equality of people. As they state, political participation remains a powerful social force for increase or decrease of inequality of people. In this manner, same quote can be perceived in Bosnia and Herzegovina. Principle of hierarchy and stability moves backwards as principle of participation and dynamic change in the society demands for appropriate political socialization of all citizens. Following, this demands unique approach consisting of responsible, flexible and innovative behavior of political leaders. (Vujčić, 2000:118).

In literature, political participation is often described as political involvement, grass-roots activity or even political action. Some authors such as Verba and Nie (1972:2) differentiate between political participation and political involvement where they consider political interest and conversations on politics to be measures on political involvement. On the contrary, political participation in their opinion are activities with which citizens can influence on the process of government. Accordingly, Verba, Nie and Kim (1978:75) consider the phenomenon of political activity to be broader and to include both types – participation and involvement. These authors for years now argue that political participation shows activities of citizens that have an impact on election of government or functioning of government. In their opinion, focus is on those activities whose main objective is to influence governmental decisions and with that being said, this definition can include classical activities such as voting on elections and participation in political

campaigns as well as multiple other forms by which citizens can be active. Those are all participative activities and are therefore limited to a participation of vis-à-vis government, rather than those in different institutions and charities.

Literature on the topic of political participation also recognizes two forms of citizen's participation and political involvement. First form is electoral while second form is non (or even outside) electoral involvement. Many analysis show that citizens can obtain three functions of impact on politics and government. Those are electoral-supportive (to be constituent and stabilization), demanding and control-critical function. First two forms are mostly used in the literature while the third one is not so operationalized or empirically researched. G. Parry, G. Moyser and N. Day (1992:427) categorized political participation in the Great Britain to be either voting on elections, party campaign, contacting politician, group activities or protesting where protesting shows up to be base of measurement of political acting.

M. Kaase and S.H. Barnes (1979:530-531) developed similar model of political acting based on the elaboration of political activities such as voting and campaigns in order to explain rationale of political participation. They did it on the grounds of differentiation between modernistic and post-modernistic conception of political participation of people. Modernistic participation is rationally based with objective to fulfill which is why is often described as instrumental participation in literature. Post modernistic participation on the contrary based on the work of Kaase and Barnes (1979:532) does not have clear rationale but rather it tries to explain freedom of expression and to achieve higher quality of life – humanization of relationships. It is important to mention also that Kaase and Barnes combined political interest of people and orientation and concluded four models of political participation: model of political apathy (people with no interest), model of political detachment (people with interest but without participation), model of expressive participation (without interest but with participation) and model of instrumental participation (combined interest and participation).

Another interesting view on political participation is given by above mentioned Verba and Nie (1972:54) where they defined four ground dimensions of participation, categorized by type of impact, level of consequences, amount of conflict and amount of initiative. Therefore, models are voting, campaign activities, cooperative activities and individual contacts. For the purpose of this thesis, important are first two: voting and campaign activities. These two have high level of

pressure and low level of information, are defined by conflict, collective consequences and low / high initiative. This means that both models of activities are referred to the electoral activities. Voting as the most spread form of citizens' activity contains high pressure on parties and candidates but low information due to the fact that voting as process itself does not require high information on side of citizens in order to be achieved. Similarly, voting follows up as conflict activity since it challenges divisions in society, even conflicts itself where every individual has to in the act of voting, choose one specific side which later on draws collective consequences because voting reflects on all citizens (Verba and Nie, 1972:54). But, one question arises. What happens when citizens are not allowed to vote, such as case of Mostar? In Mostar, citizens are not allowed to vote because, for many years now, elections have not been held due to ethnical division and high, significant lack of political will.

6. LEGAL FRAMEWORK ON PROTECTION OF NATIONAL AND CONSTITUTIONAL MINORITIES IN BOSNIA AND HERZEGOVINA

Legal framework in Bosnia and Herzegovina for protection of human rights of all citizens within the highest standards is in line with international conventions for protection of human rights and are directly implemented in the domestic legal system in theory. In practice, level of achieved rights is extremely low which is shown through different indexes and statistics of the institutions relevant for human rights protection and implementation of international standards. In order for one democratic country to be stable and to maintain peace, it is crucial to respect minority rights, ethnic and cultural diversity.

Governments in Bosnia and Herzegovina signed Framework Convention for the Protection of National Minorities, International Covenant on Economic, Social and Cultural Rights as well as Convention on the Elimination of All Forms of Discrimination, all as part for the Constitution of Bosnia and Herzegovina. Being member of the Organization for Security and Co-operation in Europe, Bosnia and Herzegovina accepted recommendations of High Commissioner on National Minorities and Guidelines for implementation of rights of national minorities in 1996, Oslo Recommendations Regarding the Linguistic Rights of National Minorities in 1998, Lund Recommendations for Effective Participation of National Minorities in Public Life in 1999 and Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations in 2008.

According to the international standards (*Universal Declaration of Human Rights, Act 2*) every person has available all rights and freedoms without differences of any form, such as race, color, gender, language, religion, political or other standpoint, national or social origin, property, birth or any other status and states are obliged to respect and guarantee recognized rights to all individuals that are on its territory.

International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in its article 5 obliges member states to forbid and abolish racial discrimination in all of its forms and to guarantee right for equality before the law regardless of race, color or national or ethnical origin.

Furthermore, Protocol 12 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* states that every member state is obliged to ensure to every person enjoyment of all rights established by law without discrimination based on any ground. This Protocol 12 has been base-ground for suits before the European Court of Human Rights.

Framework Convention for the Protection of National Minorities, signed and ratified in 2004, states that protection of national minorities, its rights and freedoms is part of international protection of human rights and as such is part of international cooperation, meaning that signed parties are obliged to guarantee equality before the law and equal law protection all to all members of national minorities.

7. Domestic Laws on protection of persons belonging to the national minorities

Constitution of Bosnia and Herzegovina in its Article II 1 and 2, Section Human Rights and International Standards states that

Bosnia and Herzegovina and both entities will ensure the highest level of internationally recognized human rights and fundamental freedoms” as well as that “rights and freedoms foreseen in European Convention for Protection of Human Rights and Fundamental Freedoms and in its protocols are directly implemented in Bosnia and Herzegovina. These acts have priority over all other laws.

In addition to this Constitution, Annex VI of the Dayton Peace Agreement includes extensive human rights provisions, such as institutions that should safeguard them (Ortlieb et al, 2019:765). Since Constitution of Bosnia and Herzegovina is part of Dayton Peace Accords, it has been created and adopted without usual procedures that could ensure democratic legitimacy. Being like that, it presents one unique case of constitution that has never been published on official languages of the

state but rather on English as foreign language. In its introduction part, Constitution states that Bosniaks, Croats and Serbs are “constituent people”. On the state level, many mechanisms have been introduced for government share that enable adoption of decisions against the will of representatives of any constituent people. Those mechanisms often include veto for protection of national interests, entity veto, and system of two houses (with House of Peoples whose members are 5 representatives of each of the constituent peoples) and collective Presidency of three members: one Croat and one Bosniak from the Federation of Bosnia and Herzegovina and one Serb from the Republic of Srpska. However, Constitution does not describe determination of ethnicity.

Article IV of the Constitution states that:

The Parliamentary Assembly shall have two chambers: The House of Peoples and the House of Representatives. The House of Peoples shall comprise 15 Delegates, two-thirds from the Federation (including five Croats and five Bosniaks) and one-third from the Republic of Srpska (five Serbs). The designated Croat and Bosniak Delegates from the Federation shall be selected, respectively, by the Croat and Bosniak Delegates to the House of Peoples of the Federation. Delegates from the Republic of Srpska shall be selected by the National Assembly of the Republic of Srpska. Nine members of the House of Peoples shall comprise a quorum, provided that at least three Bosniaks, three Croat and three Serb Delegates are present.

This article of the Constitution directly discriminated “The Others”, increasing constitutional supremacy on the higher level, since it does not even recognize the existence of “The Others”.

Bicameral systems are typical for federal states which is why it is logical that Constitution of Bosnia and Herzegovina defines two chambers. Theoretically, second chamber in federal states has function to ensure stronger representation of smaller entities. One chamber is compound based on the number of population while in the other chamber all entities have the same number of seats. The best example is Switzerland or the United States of America. However, in Bosnia and Herzegovina case with bicameral systems is completely different, meaning that in both chambers two thirds of delegates come from Federation (in House of Peoples only Bosniaks and Croats from Federation) and one thirds comes from the Republic of Srpska (only Serbs). Mentioned in the strongest reason why state of Bosnia and Herzegovina is not characteristic of federal state but

rather some additional mechanism for constituent people. According to the Constitution, primarily function of the House of Peoples is to be a chamber of use of veto for protection of national interest. During drafting Dayton Peace Accords, international community was well aware that this state structure is contrary to human rights which is why international community considered important to make Constitution changeable and to predict gradual termination of those solutions. Accordingly, Article II, paragraph 2 of the Constitution states that

The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other laws.

When the word is on the constitutional changes, Article X states that:

This Constitution may be amended by a decision of the Parliamentary Assembly, including a two-thirds majority of those present and voting in the House of Representatives.

Similarly, section on Human Rights and Fundamental Freedoms clearly states that

No amendment to this Constitution may eliminate or diminish any of the rights and freedoms referred to in Article II of this Constitution or alter the present paragraph.

Representatives of the International Community that have been interviewed for this thesis agrees that amendment procedures are possible but that it would be equivalent to opening a Pandora box. More on this standpoint can be found below.

Preamble of Constitution of Republic of Srpska stated that

Respecting the will of all its constituent people and citizens to preserve Republic of Srpska and that constitutional arrangement of the Republic ground on respect of human dignity, freedom and equality, national equality, democratic institutions, rule of law, social justice, pluralistic society, guarantee and protection of human freedoms and rights as well as rights of minority groups in line with international standards, prohibition of discrimination and respect for the rights of the market economy.

While on the article 1 under the chapter General Provisions is stated that

Serbs, Bosniaks and Croats, as constituent people, Others and citizens, equally and without discrimination participate in exercising authority in Republic of Srpska. Furthermore, article 10 of the Constitution of Republic of Srpska forbids discrimination regardless of race, gender, language, nationality, religion, social origin, birth, education, property, political and other standpoints, social position or other personal property.

Constitution of Federation of Bosnia and Herzegovina in Article 2 state that:

Federation will ensure implementation of the highest level of internationally recognized rights and freedoms, especially prohibition of any form of discrimination based on race, skin color, gender, language, religion or belief, political or other standpoints, national or social origin.

Statute of District Brčko in its Article 13 states that

Everyone has right to enjoy all rights and freedoms guaranteed by the Constitution and laws of Bosnia and Herzegovina, this Statute and District laws, without discrimination on any ground, including discrimination based on gender, race, sexual orientation, skin color, language, religion, national or social origin, political or other standpoint, belonging to a national minority, material status, birth or other status.

Bosnia and Herzegovina is diverse country whose nature of diversity has been shaped by many factors, out of which the most important are political, economic and social. Being this multi-ethnic, it creates ground for areas of segregation and inter-ethnic tension. Even though state has extensive anti-discrimination legislation comparable to standards of the European Union, its effectiveness is limited (Ortlieb et al, 2019:764). In the following paragraph, domestic laws will be elaborated. With Law on Prohibition of Discrimination in Bosnia and Herzegovina entered into force on 5th of August 2009, comprehensive framework of citizen and administrative regulations for protection

from discrimination has been created. Besides prohibition of different treatment by any ground, law also made a distinction between indirect and direct discrimination and special forms of discrimination have been determined: harassment, gender harassment, mobbing, segregation, issuing discrimination orders to others as well as victimization. Law also defined area of implementation and as central institution for protection from discrimination - Institution of Ombudsmen for Human Rights Bosnia and Herzegovina has been designated. For the purpose of this thesis, it is highly important to say that members of Ombudsmen for Human Rights Bosnia and Herzegovina can only be constituent people. Another question arises – Who represents interests of minority rights on the state level when even umbrella organization for its protection is created on the national key? Law on the prohibition of discrimination can be seen as the most important law that addresses equal treatment in Bosnia and Herzegovina. However, full capacity of this law has still not been implemented even though 11 years have passed since this Law has been adopted.

Law on the protection of rights of persons belonging to national minorities in Bosnia and Herzegovina (Law on National Minorities) was created following obligations from ratification of International Convention on the Elimination of All Forms of Racial Discrimination. This law defines obligations of lower levels of government (entities, cantons, cities and municipalities in Bosnia and Herzegovina) that are in line with its authorization, laws and other regulations, are obliged to, according to the articles 7 and 8, more fully regulate rights and obligations that define questions important for national minorities and in line with its budget are obliged to ensure funding for achieving rights that belong to the national minorities. Law on minorities regulates scope of rights that authorities in Bosnia and Herzegovina shall ensure to minorities including right for language (Article 12), informing, insurance of economic-social rights (Article 18) as well as participation in government authorities (Articles 19 and 20). Even though this Law provides support for political participation and representation of minorities, they are still mostly excluded from the state institutions since institutions still rests on constituent people.

In line with the principles defined in the above mentioned law, entities in Bosnia and Herzegovina also passed its own laws on minorities whose provisions mostly on the same way define minority rights. In Republic of Srpska, Law on protection of rights of persons belonging to national minorities National Assembly of the Republic of Srpska adopted in December 2004 (Official Gazette of the Republic of Srpska, number 2/04) and almost four years later, in July 2008, Law on

protection of rights of persons belonging to national minorities Federation of Bosnia and Herzegovina was adopted (Official Gazette of the Federation of Bosnia and Herzegovina, number 56/08).

When it comes to cantons in Federation of Bosnia and Herzegovina, they were obliged to adopt its legislation on national minorities, according to the article 23 of Law on Minorities Federation of Bosnia and Herzegovina. Protection of Roma national minority is achieved with Framework Convention for protection of minorities, Law on prohibition of discrimination, Constitution of Federation of Bosnia and Herzegovina, cantonal constitutions and legislation in the area of elementary and high education.

One of the most important laws recently in Bosnia and Herzegovina is the Electoral Law that states obligation of persons belonging to national minorities in elections for local level of government in a manner that ensures its “representation in Municipality Council, City Council, City Assembly or Municipality Assembly proportional to percentage of its participation in population according to the last census in Bosnia and Herzegovina” (Article 13 and 14). Article 1.4 paragraph 1 of the Electoral Law Bosnia and Herzegovina clearly states that every citizen of Bosnia and Herzegovina being 18 years old have right to vote and to be elected in accordance with provisions of this law. Article 4.19, paragraphs 5-7 state that on the candidate list should be written name and surname of each candidate, unique identification number, address, other relevant documents and declaration of nationality. Declaration of nationality, meaning declaration of being one of the constituent people or one of “The Others” will be used as basis for exercising rights on elected / named function. Candidate has right to not declare about its nationality, but that will be considered as withdrawal from rights to be elected / named function for which such a declaration is a condition.

Article 8.1 of the Electoral Law defines members of tripartite presidency. It states that members of the presidency of Bosnia and Herzegovina are directly elected from the territory of Bosnia and Herzegovina – one Bosniak and one Croat and are elected by voters registered in Central voter list for voting in Federation of Bosnia and Herzegovina, voters can vote either for Bosniak or for Croat, not for both. Member of the Presidency from the Republic of Srpska is directly elected from the territory of Republic of Srpska, one Serb is elected by voters registered in Central voter list for voting in the Republic of Srpska. In all three ways, candidate from each constituent people with the biggest number of votes is elected.

Similarly, Article 9.12a defines delegates of the House of People Parliamentary Assembly Bosnia and Herzegovina. It states that Bosniak and Croat delegates in HoP are elected by Bosniak and Croat Delegate Club, meaning that constituent people of each Club delegate one of its representatives. Five delegates from the Republic of Srpska are delegated by National Assembly of the Republic of Srpska.

Generally speaking, Bosnia and Herzegovina adopted legal acts and established institutions according to the internationally recognized standards for protection of minority rights, but scope of the achievement of those rights is still low, especially in the area of participation in public and political life.

8. NATIONAL AND INTERNATIONAL INSTITUTIONS FOR PROTECTION OF MINORITY RIGHTS

As mentioned above, Bosnia and Herzegovina has strong legislation, harmonized with the highest European standards, for protection of minority rights in theory, developed through adoption of many laws on all levels of government, from the highest until lowest. By analogy, state of Bosnia and Herzegovina created institutions for protection of minority rights. Below each of those will be elaborated.

According to the Constitution of Bosnia and Herzegovina, Article II.6:

Bosnia and Herzegovina and all courts, institutions, government bodies and bodies directly governed by entities, or those that act within entities are subject to, or implement human rights and fundamental freedoms.

This means that state institutions have jurisdiction to ensure minority rights but key role have Parliamentary assemblies as the highest legislative body, Council of Ministers, Ministry of Human Rights and Refugees, Ministry of Security, Ministry of Justice, Directorate for European Integration, Agency for Gender Equality as well as entities and district governments.

Parliamentary Assembly of Bosnia and Herzegovina established Council of national minorities Bosnia and Herzegovina, as special advisory body of the Assembly. Members of the Council are representatives of 17 recognized national minorities each. Mandate of the Council is to give

opinions, advices and suggestions to the Parliamentary Assembly on all questions related to rights, status and interests of national minorities.

Accordingly, entities and district established its own government bodies for protection of minority rights. National Assembly of the Republic of Srpska established Council of National Minorities as special advisory body with representatives of all national minorities as members. Candidates to the Council are delegated by the Alliance of National Minorities of the Republic of Srpska that has 15 members as activists of existing associations of national minorities.

In 2009, Parliament of Federation of Bosnia and Herzegovina established Council of National Minorities of the Federation of Bosnia and Herzegovina, as special advisory body of the Parliament of Federation Bosnia and Herzegovina. Representatives of this Council have mandate to participate in public discussions, round tables and consulting related to the status of national minorities.

District Brčko adopted draft of Law on National Minorities on 24th of July 2020 by which Council for National Minorities will be provided.

Ministry of Human Rights and Refugees Bosnia and Herzegovina established Sector for Protection of Human Rights while another important role plans Ministry of Civil Affairs that often coordinates many areas related with the Roma community.

The Institution of Human Rights Ombudsmen is dealing with protection of rights of natural persons and legal entities in accordance with the domestic legislation and international human rights instruments and it handles complaints related to the human rights violations. Absurd as it can be, only constituent people can be Ombudsmen. In the Annual Report on Occurrences of Discrimination in Bosnia and Herzegovina in 2014 is clearly stated that Law on minorities provides wide range of competences of the Ombudsman including promotional activities, research in the field of discrimination and even acting in complaints of individuals that claim to be victims of discrimination. Following, role of Ombudsman in the legal jurisdiction is in line with international standards for the protection of equality. However, Report also states that in order to combat with discrimination in Bosnia and Herzegovina, with strong legal framework is significant to ensure proper implementation of mentioned Law which is currently very low. This can be done through strengthening of institutions whose task is anti-discrimination protection based on the roles given by the law and within complete support of the key stakeholders. In 2014, specific

Department for elimination of all forms of discrimination has been established whose primarily role is to ensure standardization of approach in exercise and protection of citizens' rights on the territory of entire Bosnia and Herzegovina as well as to take effective measures to prevent any form of discrimination.

I. POLITICAL PARTICIPATION IN BOSNIA AND HERZEGOVINA

1. POLITICAL PARTICIPATION OF CONSTITUTIONAL AND NATIONAL MINORITIES IN BOSNIA AND HERZEGOVINA

Political participation in Bosnia and Herzegovina is ensured through Constitution of Bosnia and Herzegovina, constitution of entities and Electoral Law of Bosnia and Herzegovina. Due to the complexity of state's political system, not every citizen of Bosnia and Herzegovina has the right to be active in politics. Grounds for this discrimination can be found in the previously mentioned legal acts, where supremacy of constituent peoples is on the point and suppression of „The Others“ is put to another plan. Members of seventeen recognized national minorities as well as those who do not declare themselves neither as constituent nor as member of any of the national minority, in Bosnia and Herzegovina are labeled as „The Others “. This humiliating term, used in the legal acts, can be seen and interpreted as less valuable from the term of „constituent “people because it refers to the persons belonging to national minorities and persons who do not belong to any of recognized national minority but those persons rather do not want to identify as member of any of the constituent people.

Participation, according to the Lamb, Varettoni and Shen (2015: 171-172) must include inclusiveness of the various groups. Accordingly, participation of national minorities can mitigate or avoid crisis' such as political representativeness and can led to good governance since it allows participation from the below and revaluation of local identities. Mentioned minorities must be active in politics, participation of people, political parties, elected bodies of government or seats and any other form of political participation. (Banducci, Donovan and Karp, 2005:534). Political participation of national minorities also leads to the integration of society and prevention of potential conflicts.

Political participation is brought down to initiation of reserved minority seats on the local levels and formulation of consultative bodies on the state or entity levels. One of primary problems is seen in the dominant understanding that for minorities is important to have representative in municipality/city council/assembly which is why political participation of minorities on the local level evens with political representation, while process of consultation is still neglected (Raosavljević 2014:12-13).

Despite the comprehensive legislation related to the discrimination and anti-discrimination in theory, there is strong evidence that discrimination towards persons belonging to the both national and constitutional minorities in practice occurs in many institutions and branches of society where ethnicity, being closely connected with religion, is the most common ground for discrimination. Evidence for this thesis was found in research conducted by Kadribašić in 2019 where findings showed that 85% of the respondents stated that discrimination is a very pressing social problem but only 36% knew about Law on the Prohibition of Discrimination and only 25% were familiar with the content of this law (Kadribašić, 2019:70). Another evidence for this statement is personnel selection and promotion procedures that are ethnically biased. Basically, in public institutions where statutory ethnic quotas apply, non-members of the three constituent people are disadvantaged (Demir, 2015:24).

Constitution of Bosnia and Herzegovina has extensive mechanisms for ethnic representation. When it comes to the presidency, state's presidency is formed by three members according to the Article 5 of the Constitution, but in this tripartite form, the Bosniak and the Croat members are elected from Federation of Bosnia and Herzegovina while Serb member of presidency is elected from the Republic of Srpska. This form suits the best for constituent people but violates political rights of minorities since it excludes members of other ethnicities for presidency as well as members of the constitutional minorities.

Article 8.1 of the Electoral Law Bosnia and Herzegovina defines members of tripartite presidency. It states that members of the presidency of Bosnia and Hercegovina are directly elected from the territory of Bosnia and Herzegovina – one Bosniak and one Croat and are elected by voters registered in Central voter list for voting in Federation of Bosnia and Herzegovina, voters can vote either for Bosniak or for Croat, not for both. Member of the Presidency from the Republic of Srpska is directly elected from the territory of Republic of Srpska, one Serb is elected by voters registered in Central voter list for voting in the Republic of Srpska. In all three ways, candidate from each constituent people with the biggest number of votes is elected. This law rule creates constitutional minorities meaning Serbs living in the “wrong territory” – Federation of Bosnia and Herzegovina or Croats and Bosniaks living in the Republic of Srpska. This constitutional discrimination was ground for suit of *Pilav v. Bosnia and Herzegovina* before the ECHR.

Similar to this is case of House of Peoples Bosnia and Herzegovina (HoP) as upper house of the Parliamentary Assembly. Similarly, Article 9.12a defines delegates of the House of People Parliamentary Assembly Bosnia and Herzegovina. It states that Bosniak and Croat delegates in HoP are elected by Bosniak and Croat Delegate Club, meaning that constituent people of each Club delegate one of its representatives. Five delegates from the Republic of Srpska are delegated by National Assembly of the Republic of Srpska. Since Constitution and Electoral law allows it, participation in the presidency and HoP is restricted only to the constituent supremacy (constituent people). However, when constituent people are resident in administrative entity that is not predominately “theirs”, for example, Bosniak or Croat in Republic of Srpska or Serb in Federation of Bosnia and Herzegovina, they become minority since are not eligible for Presidency or HoP (case of Pilav or Zornić v. Bosnia and Herzegovina).

Bosnia and Herzegovina’s Constitution does not recognize obligatory representation / participation of other social groups in any areas of public life or state institutions (Ortlieb et al, 2019:767). Constitution of Bosnia and Herzegovina and the entire legal system do provide legal background for group representation and diversity but it is mostly restricted to members of the constituent supremacy. Other groups are very often blocked or even delayed since there is high level of ethnic polarization.

Pressure should be given from The Council of Europe in order to use available mechanisms to push state of Bosnia and Herzegovina to comply with all Court rulings. European Court of Human Rights in its decisions stated that exclusion of minorities from public institutions and politics is unlawful ethnic discrimination. December of 2009 is remembered by decision of the European Court of Human Rights that Constitution of Bosnia and Herzegovina violated European Convention on Human Rights by discriminating leading members of Roma and Jewish communities only because of its ethnicity. Sejdić and Finci v. Bosnia and Herzegovina is known as the landmark case where the ECHR found that constitution as well as electoral laws to be discriminatory. Accordingly, Council of Europe states mandated urgent implementation of this decision.

2. *CONSTITUTIONAL DISCRIMINATION AND NATIONAL MINORITIES*

In the Report for 2011 published by The Economist Intelligence Unit, condition of the democracy is measured by five criteria: electoral process and pluralism, civil liberties, functioning of the government, political participation and political culture. Based on this simple measurement tool, countries can be evaluated as a democratic or not. We will refer now only on the electoral process and political participation. There are many ways in which citizens of one democratic country can be politically active and participate in the politics but we will emphasize here only one sphere: elections. To vote and to be voted for. For example, if an individual has place of residence in the Federation of Bosnia and Herzegovina and is Serb by nationality, it cannot vote on the presidential elections for the Serb member of the presidency. If an individual is member of “The Others” by nationality, it cannot run for the presidency at all. If an individual live in Mostar, it cannot vote nor be voted for in the local elections, since they have not been held since 2008. They will maybe be elected in 2020 (case of Baralija v. Bosnia and Herzegovina).

National as well as constitutional minorities in Bosnia and Herzegovina still do not have an effective approach towards their rights. This is mainly caused by the institutional discrimination and lack of political will for change of the laws and Constitution. What does this mean? Public life in Bosnia and Herzegovina is still marked by the huge level of segregation and discrimination which not only national minorities face, but also constitutional people living outside the territory that corresponds with their ethnicity. For example, Rome people are having major difficulties while applying for a job, having health care or even regular education. Protection of the minority rights comes from the principle of equality as extremely important part in the bare concept of human rights.

How absurd it can be, Framework Convention for the Protection of National Minorities is part of the Bosnia and Herzegovina Constitution, Annex 1, stating that more measures should be adopted in order to promote equality between members of the constituent people and national minorities. Even though Council of National Minorities is part of the Parliamentary Assembly of Bosnia and Herzegovina, members are representatives of seventeen recognized national minorities, with role of giving suggestions and advices regarding rights and interests of the national minorities in Bosnia and Herzegovina that is all that state gives to the minorities. According to the Law on the Council of Ministers Bosnia and Herzegovina article 13.14, Council of Ministers should have one

member/representative of “The Others” and Council on National Minorities even asked for this, but without any reply given.

Election law states that national minorities can have representatives only on the local level which is why we could not help but to ask: Who represents “The Others” in Bosnia and Herzegovina’s democratic processes? In the light of this, it is important to mention that European Court of Human Rights in Strasbourg has reached a number of decisions (for example Sejdić-Finci, Zornić, Baralija and Pilav) which should have stop the discrimination from the Constitution and Electoral Law with aim of enabling every citizen to have active and passive right to vote. This will not happen until institutions and government in Bosnia and Herzegovina start to respect and implement the verdicts.

Members of the national minorities should have the right to be politically active on the all levels of governments, especially those which directly concern them. European Court of Human Rights ruled in 2009 in the case Sejdić-Finci against State Bosnia and Herzegovina in the favor of Sejdić-Finci, stating that State needs to change discriminatory acts in the Constitution and Electoral Law. However, Commission for implementation of decision had many meetings but without any concrete result. All members of the Commission publicly declared themselves as protectors of the human rights while at the same time, they are unable to provide political participation for the non-constituent people. We honestly and deeply hope that Bosnia and Herzegovina will be excluded from the Council of Europe until it starts to respect and implement decisions of the European Court of Human Rights. Since the first lawsuit, many other lawsuits against the State happened, all adjudicated in the favor of suitor, but without concrete consequences for the State’s inability to implement the decisions.

Even though all Conventions on the topic argue for the highest norms of human rights, convention itself cannot be directly implemented on the individual cases. For example, European Convention for protection of human rights guaranteed every individual its right for privacy but does not state which state organ is in charge for protection of that right, how to ensure it or what concrete actions should be undertaken in case of violation. Due to this, key conventions for protection of human rights predicted existence of the international bodies with mandate to monitor convention’s implementation, to affect the revision of legislations, to give suggestions and to submit reports. However, we find it difficult to believe that those bodies are doing their job properly, since for

many years now, state of Bosnia and Herzegovina is becoming more and more constitutionally discriminatory.

Constituent people is a discriminatory phenomenon in the Bosnia and Herzegovina, emerged from the General Framework Agreement for Peace in Bosnia and Herzegovina which ended 1992-1995 armed conflict in this country. However, this Agreement has caused establishment of new, silent war, based on the ethno-national division between constituent people and the others on the one side and between members of the constituent government, on the other side. Ethnical nationalism in Bosnia and Herzegovina, as country in transition, is shown to be the main obstacle on the country's process towards the democratization (Seizović Z, 2014:10). This phenomenon allows Bosnia's elites, privileged constituent people, to share almost all power in the country, neglecting the fact that in this country also live people who are not members of the constituent supremacy. To answer above mentioned question, political populist leaders are aiming only at their voters and since "The Others" mostly, do not belong to any ruling party and therefore they are not in the focus of interest.

Even though racial discrimination is, according to the report by Minority Rights Group International (MRG) included in different frameworks of Bosnia and Herzegovina that include politics, legislation, education and society, that discrimination is still the main generator of human rights violations. Constitution and political system itself legitimize this discrimination which lead to ethnic division that has pervaded of parts of public and political life. (HRHF 2010:4).

During 2014, as stated in the Annual Report on Occurrences of Discrimination in Bosnia and Herzegovina, Department for Elimination of All Forms of Discrimination registered total of 230 complains which presents increase in the number of complaints by 32 cases (16.16%) in comparison with 2013 (Institution of the Human Rights Ombudsman, 2015:5). This Department had the highest percentage of increase in relation with other departments of the Institution of Ombudsman, excluding Department for the rights of national, religious and other minorities that had total annual increase with 23,08% Institution of the Human Rights Ombudsman, 2015:122). There have been 22 complaints on discrimination based on ethnic origin (11 in Sarajevo, 11 in Banja Luka) and 19 complains on discrimination based on national or social origin (11 in Sarajevo, 5 in Banja Luka and 3 in Brčko).

Article 20 of the International Covenant on Civil and Political Rights states that any reference to national racial or religious hatred that constitutes incitement to discrimination shall be prohibited by law. Significant and important view for this position can be seen in the concerns that general prohibition of incitement to discrimination would be misused by the authorities which could later on led to discourage of citizens from participating in legitimate political dialogue, including rights of national minorities.

Constitutional discrimination was seen not only in political participation but also in the labor vacancies by the state institutions. Cases of Ž-SA-06-187/17 and Ž-SA-06-318/14 were cases where two complains to the Institution of the Human Rights Ombudsman referring to the violation of the provisions on the Law on Prohibition of Discrimination in a manner that Border Police published a public competition procedure for junior inspector, 38 positions all reserved for the constituent people which means that only those who declare themselves as Bosniaks, Croats and Serbs can apply. "Others" and those who do not declare themselves as constituent could not apply which means that they do not have equal opportunities. After Ombudsman Institution intervened, Border Police stated that they would publish a new internal advertisement for the vacant positions though the advancement to two positions, one to be filled from the ranks of "The Others". Even though these cases were closed due to the "good co-operation" of the Border Police, we do not consider this response to be successful and we do think that Ombudsman Institution failed while accepting this response.

3. *LEGAL FRAMEWORK*

3.1. Reports by the United Nations

19th International Convention on the elimination of all forms of racial discrimination is adopted on 21st of December 1965 and entered into force in 1993 in Bosnia and Herzegovina. What is relevant for this thesis is article 1 of this Convention that states:

In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and

fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Accordingly, part of Article 5 states that:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.

Committee on the elimination of racial discrimination with independent experts as members, in 2006 gave its final conclusions (document CERD/C/BIH/CO/6):

The Committee is deeply concerned that under Articles IV and V of the State Constitution, only persons belonging to a group considered by law to be one of Bosnia and Herzegovina's "constituent peoples" (Bosniaks, Croats, and Serbs), which group also constitutes the dominant majority within the Entity in which the person resides (*e.g.*, Bosniaks and Croats within the Federation of Bosnia and Herzegovina, and Serbs within the Republic of Srpska), can be elected to the House of Peoples and to the tripartite Presidency of Bosnia and Herzegovina. The existing legal structure therefore excludes from the House of Peoples and the Presidency all persons who are referred to as "Others," that is persons belonging to national minorities or ethnic groups other than Bosniaks, Croats, or Serbs. Although the tripartite structure of the State party's principal political institutions may have been justified, or even initially necessary to establish peace following the armed conflict within the territory of the State party, the Committee notes that legal distinctions that favor and grant special privileges and preferences to certain ethnic groups are not compatible with Articles 1 and 5 (c) of the Convention. The Committee further

notes that this is especially true when the exigency for which the special privileges and preferences were undertaken has abated. (Arts. 1 (4) and 5 (c)).

International Covenant on Civil and Political Rights, adopted in December 1966, entered into force for Bosnia and Herzegovina in March 1992 contains some important provisions for protection of rights. Article 2 paragraph 1 states that:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Relevant for the topic is also Article 25:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors

Human Rights Committee also published final observations on Bosnia and Herzegovina. Committee members are independent experts formed in order to supervise implementation of Dayton Peace Agreement. Relevant part of this document (CCPR/C/BIH/CO/1) from November 2006 is Article 8:

The Committee is concerned that after the rejection of the relevant constitutional amendment on 26 April 2006, the State Constitution and Election Law continue to exclude “The Others,” i.e. persons not belonging to one of the State party’s “constituent peoples” (Bosniaks, Croats and Serbs), from being elected to the House of Peoples and to the tripartite Presidency of Bosnia and Herzegovina. (arts. 2, 25 and 26) The State party should reopen talks on the constitutional reform in a

transparent process and on a wide participatory basis, including all stakeholders, with a view to adopting an electoral system that guarantees equal enjoyment of the rights under article 25 of the Covenant to all citizens irrespective of ethnicity.

3.2. Reports by the European Union

In the EU Progress Report 2019, section for B – Criteria for membership, point 1 – Political Criteria and rule of Law issues is clearly stated that Constitution of Bosnia and Herzegovina guaranteed fundamental principles of democratic state, meaning that it includes rule of law, free election and protection of human rights. Accordingly, Constitution commits Bosnia and Herzegovina to ensure the highest level of internationally recognized human rights and fundamental freedoms set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms with its following protocols. Constitutional Court in its decisions U-5/04 as well as U-13/05 stated that ECHR does not have priority over the Constitution. In its decision U-5/98 Constitutional Court stated that Preamble contains a constitutional principle of equality of constituent peoples that prohibits any privilege or domination of any group over the others in any parts of country, meaning that Bosnia and Herzegovina is labeled as democratic and multi-ethnic state.

Since 2009, European Court of Human Rights established decisions Sejdić-Finci, Zornić, Pilav, and Baralija that electoral restrictions for those who do not declare themselves as Bosniaks, Croats or Serbs or Serbs living in Federation of Bosnia and Herzegovina or Croats and Bosniaks living in the Republic of Srpska are in violation with the ECHR and its Protocols. In order to ensure electoral rights and democratic values for all citizens of Bosnia and Herzegovina it is necessary to implement significant reforms.

Annex VI of the GFAP provided Human Rights Commission that included the Ombudsman for Human Rights and the Human Rights Chamber that was later transformed into the Human Rights Commission within the Constitutional Court. Since 2001 domestic institutions assumed responsibility over the Institution for the Ombudsman for Human Rights, currently being the national human rights institution as well as equality / supervisory body for freedom of accession to information.

Regarding Constitution provisions, in Progress report 2019, Commission stated that Constitution holds ethnic and residence-based provisions that are not in line with the ECHR and its Protocols. What is more important, appointment, composition and decision-making procedures of the head of state, executive and legislative bodies as well as certain electoral rights are reserved only for citizens that declare themselves as constituent – Bosniaks, Croats and Serbs. In order to ensure equal electoral rights for all citizens it is necessary and mandatory to implement significant incremental reforms that are of course in line with the Sejdić-Finci case-law. Similarly, elections in Bosnia and Herzegovina by the opinion of the Commission are organized in an orderly and competitive manner but characterized by segmentation along ethnic line. Even though legal framework ensures democratic elections, in practice effective exercise of the voting rights is not ensured equally for all citizens, meaning that rights to stand for Presidency or office is restricted based on ethnicity and residence.

Accordingly, Chapter 23: Judiciary and fundamental rights describes level of Bosnia and Herzegovina for implementation of the acquis and European standards in the area of judiciary and fundamental rights to have some level of preparation with legislative and institutional framework for the protection of fundamental rights to be largely in place but still not implemented and it should be substantially improved by harmonizing legislation throughout state and with EU standards. Also, Report clearly states that Bosnia and Herzegovina should apply FRA methodology for the collection of relevant fundamental rights' data, since Bosnia and Herzegovina is not an observer country of the EU Agency for fundamental Rights. Even though state has ratified all major European as well as international human rights instruments, there is still no available data on the direct enforcement of mentioned treaties by courts. UN Universal Period Review, as stated in the Progress Report, gave 125 recommendations in 2014 that have not still been implemented.

Report indicated judgments of the ECHR delivered in 2018:

The European Court of Human Rights (ECHR) delivered 6 judgments in 2018 finding that Bosnia and Herzegovina had violated rights guaranteed by the ECHR, most of them related to the protection of property and non-enforcement. Since September 2016, the ECHR has found violations of the ECHR in 10 cases (out of 11) relating mainly to the right to a fair trial. 898 applications have been submitted

to the Court during 2018, bringing the total number of applications pending before the court to 901. Outstanding cases relate mainly to property rights, missing persons and discrimination on the grounds of ethnic origin. There are six cases against Bosnia and Herzegovina under the enhanced supervisory procedure of the Council of Europe. The Sejdić-Finci, Zornić, Šlaku and Pilav rulings have not been implemented as they require constitutional amendments to ensure the equality of political rights among all citizens.

Relevant for this thesis is paragraph *Respect for and protection of minorities and cultural rights* where it is clearly stated that minority rights are guaranteed by Constitution and numerous other laws and conventions but country still does not have a countrywide strategic document on national minorities and therefore capacity of institutional framework to engage in policy-making is highly limited. Another lack in this regard is the fact that there is no comprehensive data on the civil, political and socio-economic status of national minorities.

Conclusion by the EU on this matter is that Bosnia and Herzegovina needs to adopt comprehensive policy framework on the promotion and enforcement of human rights that include protection of minorities and non-discrimination. Uneven protection of human rights across the country is caused by the absence of strategies that could set minimum standards as well as lack of harmonization of legislation. Report also describes working bodies on human rights, gender equality and protection of national minorities that include Human Rights Ombudsman, Joint Committee on Human rights as well as Committee on gender equality. To sum up, opinion of the Commission is that significant reforms are needed to ensure that all citizens are able / have right to exercise their voting rights which means that constitutional and legislative framework has to be in line with the Sejdić-Finci case-law.

While doing research for this thesis, we came to interesting findings in the EU Progress Reports. When it comes to the minority rights in Bosnia and Herzegovina, in the period of 2006-2019 every progress report states almost the same – no or little progress has been achieved in that year. The only changes in this regard that occurred during that timeframe are adopted new laws and established new councils / committees / sectors. Progress report for 2010 only states that Bosnia and Herzegovina achieved limited progress regarding human rights and protection of minorities by ratifying major human rights conventions.

4. DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS

4.1. CASE OF SEJDIĆ – FINCI V. BOSNIA AND HERZEGOVINA

Case of Sejdić-Finci is seen to be a landmark ruling since it is the first case brought before the European Court of Human Rights by Bosnian Roma Dervo Sejdić and Bosnian Jew Jakob Finci.

In an interview for Human Rights Watchers, Dervo Sejdić, plaintiff in Sejdić-Finci v. Bosnia and Herzegovina stated that there is a direct connection between discriminatory constitution and ongoing marginalization followed by discrimination against Bosnian Roma that are considered to be the state's largest national minority. In his opinion, greater political participation of minorities can be achieved through change of constitution. Furthermore, if there is possibility that Roma representatives are present and participate in decision-making processes, Sejdić argues, Roma-relevant topics will be discussed more in relevant areas. Sejdić in his interview also gave an example why is important for Roman people to participate. In 2009, government commission created to disperse 10.75 million euros to internally displaced people with propose to be divided equally among Bosniaks, Serbs and Croats. Thankfully to Roma with observer status on the commission, that successfully argued for funds, 3 million of BAM was allocated to assist returns of displaced Roma (Human Rights Watch 2019).

The Grand Chamber of the European Court of Human Rights within applications number 27996/06 and 34836/06 discussed the suits by Dervo Sejdić and Jakob Finci. In the case of Sejdić and Finci vs. Bosnia and Herzegovina, European of Human Rights in its Grand Chamber consisting of seventeen judges³ that make a decision after sessions on 3rd of June and 25th of November 2009 adopted on the last day. Procedure in this case started with two different appeals (number 27996/06 and 34836/06) against Bosnia and Herzegovina, brought before the Court on 3rd July and 18th August 2006 by two Bosnia and Herzegovina citizens, Dervo Sejdić as Bosnian Roma and Jakob Finci as Bosnian Jew. The applicants brought this suit in accordance with article 34 of Convention for protection of human rights and fundamental freedoms. The plaintiffs complained how for them is disabled to candidate on elections for House of People and Presidency of Bosnia and

³Judges on the case were (Jean-Paul Costa as president, Christos Rozakis, Nicolas Bratza, Peer Lorenzen, Francoise Tulkens, Josep Casadevall, Giovanni Bonello, Lech Garlicki, Khanlar Hajiyev, Ljiljana Mijović, Egbert Myjer, Davit Thor Bjorgvinsson, George Nicolaou, Luis Lopez Guerra, Ledi Bianku, Ann Power, Mihai Poalelungi) and one legal advisor (Vincent Berger).

Herzegovina due to their Roma and Jewish origin, calling upon articles 3., 13. and 14., article 3. of Protocol number 1 and article 1. of Protocol number 12.

Applications have been assigned to the Fourth Section of Court (in accordance with Rule 52. paragraph 1). Council of the mentioned Court section on 10th of February 2009 consisting of eight judges concede jurisdiction to the Great Chamber whose composition is defined in line with Convention. In the name of Government of Bosnia and Herzegovina Z. Ibrahimović as deputy agent, B. Skalonjić as assistant agent and F. Turčinović as counselor showed up while in the name of applicants, F.J. Leon Diaz, S.P. Rosenberg and C. Baldwin as counselor showed up.

Background for this case is found in the Bosnia and Herzegovina Constitution that represents annex to the General Framework Agreement for Peace in Bosnia and Herzegovina, initialed in Dayton on 21st of November 1995 and signed in Paris on 14th of December 1995. In the introductory part of the constitution, Croats, Serbs and Bosniaks are defined as “constituent people” while members of national minorities or simply those who do not declare themselves as “constituent” are labeled as “The Others”. Following this, applicants Sejdić and Finci, declaring themselves as Jews and Roma are excluded from participating in the elections in a manner that they cannot candidate on the elections for Presidency of House of People while on the 3rd of January 2007 Finci received this in a written form. Relevant international and domestic law and practices, mentioned in the Decision by the ECHR included Dayton Peace Accords, Constitution of Bosnia and Herzegovina, Electoral law from 2001, the United Nations, Council of Europe, Organization for Security and Cooperation in Europe (OSCE) and European Union. All international and domestic standards and its specific parts relevant for this case have been in depth analyzed in the mentioned decision.

Applicants argued that inability to run for presidential elections or to be elected for House of People because of its ethnicity led to the racial discrimination, calling upon article 14., article 3. Protocol number 1 and article 1. Protocol number 12.

Article 14. of the Convention clearly states that:

The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, color, language,

religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 3. of Protocol 1 states that:

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Article 1 of Protocol No. 12 to the Convention states that:

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Bearing in mind active participation of applicants in the public life, if was completely justified that they considered about running for seats and therefore they can claim to be victims of alleged discrimination, as stated in the Decision. Even though applicants are citizens of Bosnia and Herzegovina, their political rights have been denied due to its racial / ethnical origin and therefore applicants argued that difference in the treatment based only on the race or ethnicity cannot be justified and it represents direct discrimination. Government on the contrary argued that disputed constitutional provisions should be perceived in line with historical background and circumstances under which they have been created. The Court repeated that discrimination means different treatment of people that are in similar situation without objectified and reasonable justification. Court also recognizes that individual has to declare themselves as member of specific constituent people in order to run for House of People of the Parliamentary Assembly Bosnia and Herzegovina. Due to this, members of Jews, Roma or those who do not declare themselves as constituent are unable to run for seats.

Decision also mentions that at the end of 2002 when Bosnia and Herzegovina became member of the council of Europe and ratified Convention with its protocols, it accepted to respect relevant

standards. It especially committed that it will in the deadline of year with help of Venice Commission to re-question electoral law in light of Council of Europe's norms and to conduct changes where are needed. Similarly, by signing Stabilization and Association Agreement, Bosnia and Herzegovina accepted to implement changes of electoral law that reflect on election of Presidency and delegates in the House of People so that Law can be harmonized completely with the European Convention on human rights.

Based on all arguments by the applicants and strength of those above mentioned, Court:

1. Decides unanimously to join the applications;
2. Declares by a majority the applicants' principal complaints as regards their ineligibility to stand for election to the House of Peoples of Bosnia and Herzegovina admissible;
3. Declares unanimously the applicants' principal complaints as regards their ineligibility to stand for election to the Presidency of Bosnia and Herzegovina admissible;
4. Declares unanimously the remainder of the applications inadmissible;
5. Holds by fourteen votes to three that there has been a violation of Article 14 of the Convention taken in conjunction with Article 3 of Protocol No. 1 as regards the applicants' ineligibility to stand for election to the House of Peoples of Bosnia and Herzegovina;
6. Holds unanimously that there is no need to examine the same complaint under Article 3 of Protocol No. 1 taken alone or under Article 1 of Protocol No. 12;
7. Holds by sixteen votes to one that there has been a violation of Article 1 of Protocol No. 12 as regards the applicants' ineligibility to stand for election to the Presidency of Bosnia and Herzegovina;
8. Holds unanimously that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;

9. Holds (a) by sixteen votes to one that the respondent State is to pay the first applicant, within three months, EUR 1,000 (one thousand euros) in respect of costs and expenses, to be converted into convertible marks at the rate applicable at the date of settlement, plus any tax that may be chargeable to the first applicant; (b) by fifteen votes to two that the respondent State is to pay the second applicant, within three months, EUR 20,000 (twenty thousand euros) in respect of costs and expenses, to be converted into convertible marks at the rate applicable at the date of settlement, plus any tax that may be chargeable to the second applicant; (c) unanimously that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

10. Dismisses unanimously the remainder of the second applicant's claim for just satisfaction.

4.2. CASE OF PILAV V. BOSNIA AND HERZEGOVINA

The Fifth Section of the European Court of Human Rights within application number 41939/07 discussed the suits by Ilijaz Pilav. In the case of *Pilav vs. Bosnia and Herzegovina*, European of Human Rights in its Fifth Section consisting of seven judges⁴ make a decision after session on 17th of May 2016, adopted on the mentioned date.

Procedure in this case has been initiated with application number 41939/07 vs. Bosnia and Herzegovina by Ilijaz Pilav in accordance with article 34. Convention for protection of human rights and fundamental freedoms on 24th of September 2007. Applicant complained about legal impossibility to run for elections for Presidency and to vote for member of his community for that function, calling upon article 1. Protocol number 12 within Convention. Ilijaz Pilav tried in 2006 and again in 2010 to run for elections, both times denied out of the same reason – because he is constitutional minority in Republic of Srpska, being Bosniak in that entity. On 20th of September 2006 applicant and its political party complained to the Constitutional Court by calling upon

⁴Judges on the case were (Ganna Yudkivska as president, Nona Tsotsoria, Erik Mose, Andre Potocki, Siofra O'Leary, Carlo Ranzoni and Martin Mits) and one court registrar (Claudia Westerdiek).

violation of article 1. Protocol number 12 of Convention where Court decided that violation did not occur (Decision no AP 2678/06). In 2010 Applicant again applied for candidacy but has been rejected again on 29th of July 2010 due to the same reasons as 2006.

Relevant domestic legal framework is conducted in decision Sejdić-Finci vs Bosnia and Herzegovina (number 27996/06 and 34836/06) as described in the Decision. In this document, relevant international documents have been elaborated with special emphasis on the Bosnia and Herzegovina membership in the Council of Europe. Applicant complained that constitutional ban that disables his candidacy on the elections for Presidency member because of its ethnicity presents racial discrimination. He also stated that it is disabled for him to vote for member of its ethnicity for that function, calling upon article 1. Protocol number 12. within Convention that clearly states:

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Government stated that Bosnia and Herzegovina cannot consider to be responsible for constitutional provinces since Constitution presents part of international agreement – Dayton Peace Accords. Furthermore, Government argued that applicant cannot state that he is “victim” of mentioned violation since he as Bosniak is not treated differently in relation to members of other constituent people, concluding with ridiculous statement that his problems would be solved if he only decided to move to Federation of Bosnia and Herzegovina and live there. However, Court decided that state of Bosnia and Herzegovina can consider responsible because constitutional provinces are still and force and therefore considers this application to be allowed. The strongest argument that Government had was that it is necessary to maintain constitution as it is now in order to maintain peace in the entities. Court in this Decision also clearly stated that Presidency of Bosnia and Herzegovina is political body of both state and entities. Its politics and decisions have impact on all citizens of Bosnia and Herzegovina, regardless on their territorial place of living and even though applicant is included in the political life in Republic of Srpska by being delegate to the National Assembly of RS, political activities of collective head of state concerns him as well.

Having in mind all of the above, Court unanimously:

1. Joins to the merits the Government's objection regarding the applicant's lack of victim status and rejects it after considering the merits;
2. Declares the application admissible;
3. Holds that there has been a violation of Article 1 of Protocol No. 12 to the Convention;
4. Holds that there is no need to examine separately the applicant's complaint under Article 1 of Protocol No. 12 concerning his inability to vote for a member of his own ethnic community to the Presidency;
5. Holds that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
6. Holds (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,607 (six thousand six hundred and seven euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant, in respect of costs and expenses; (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. Dismisses the remainder of the applicant's claim for just satisfaction.

4.3. CASE OF ZORNIĆ V. BOSNIA AND HERZEGOVINA

The Fourth Section of the European Court of Human Rights within application number 3681/06 discussed the suits by Azra Zornić. In the case of Zornić vs. Bosnia and Herzegovina, European

of Human Rights in its Fourth Section consisting of seven judges⁵ make a decision after session 24th of June 2014 adopted on the mentioned date.

Procedure in this case was initiated by application number 3681/06 by Azra Zornić, citizen of Bosnia and Herzegovina calling upon article 34. Convention for protection of human rights and fundamental freedoms on 19th of December 2005. Applicant complaint about inability to run for seats at House of People nor Presidency since it does not declare as member of the constituent people. She calls upon article 3. Protocol number 1 within Convention and article 14. Of Convention as well as article 1. Protocol number 12.

As applicant does not declare herself as member of either one of the constituent people (Bosniak, Croat or Serb) but rather as citizen of Bosnia and Herzegovina, she cannot be candidate on elections for second home of state parliament (House of People) nor she cannot be candidate for collective head of state (Presidency). Relevant domestic law and practice in this decision has been given through case *Sejdić-Finci vs. Bosnia and Herzegovina* and Constitution of Bosnia and Herzegovina. relevant documents of international law include Committee of Ministers of the Council of Europe.

Applicant complained about inability to run on the elections for House of People and Presidency since she refused to declare herself as member of any of the constituent people and it is perceived in her opinion as discrimination, calling upon article 14. of Convention, article 3. Protocol number 1 and Article 1. Protocol 12.

Article 14 of the Convention states:

The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

⁵Judges on the case were (Ineta Ziemele as president, Paivi Hirvela, George Nicolaou, Nona Tsotsoria, Zdravka Kalaydjieva, Krzysztof Wojtyczek and Faris Vehabović) and one section deputy registrar (Fatos Araci).

Article 3 of Protocol number 1 states:

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Article 1 of Protocol No. 12 to the Convention provides:

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Government stated that Bosnia and Herzegovina cannot be held responsible for constitutional provisions since Constitution of Bosnia and Herzegovina is part of peace accords as international contract, adding that applicant is not included in political life and therefore cannot claim to be victim of mentioned violation. Court disagrees so it considers application to be allowed.

Government stated also that still is not right time to change political system of Bosnia and Herzegovina and that, as ridiculous as it sounds, applicant is not member of any “minority” but rather she decided not to declare herself as member of any constituent people. In order to participate in political life in Bosnia and Herzegovina, as Government stated, the applicant can anytime change her identity decision.

Application calls upon article 14 of the Convention in relation with article 3 of Protocol number 1, article 3 of Protocol 1. Court considers appropriate to this complaint perceive at the same time in relation to the article 1 Protocol number 12, adding that article 14 of Convention in relation with Article 3 Protocol number 1 is applicable in this case. Court recognizes that according to the Constitution, only people declaring themselves as members of one of the constituent people have right to run for House of People. Applicant, not declaring herself as member of any of the constituent people but as a citizen of Bosnia and Herzegovina, is excluded from this process which makes this case identical to the case-law *Sejdić-Finci*. Court also recognizes that, as it was case in

the Sejdić-Finci, identical constitutional provisions present discriminatory different acting opposite from the article 14 in line with article 3 Protocol number 1. Court concludes that there is violation of article 14 in line with article 3 Protocol number 1 as violation of article 1 Protocol 12 adding that applicant should not be disabled to run on elections for her personal identification.

Court in this decision also reminds that article 46 of Convention, perceived in the light of article 1, imposes that state has legal obligation to, under supervision of the Minister's Committee, implement appropriate general and/or individual measures in order to achieve right of applicant. Court also reminded in this Decision, conclusions on the Sejdić-Finci case.

Due to the all of the above mentioned, the Court:

1. Declares unanimously the application admissible;
2. Holds by six votes to one that there has been a violation of Article 14 of the Convention taken in conjunction with Article 3 of Protocol No. 1 as regards the applicant's ineligibility to stand for election to the House of Peoples of Bosnia and Herzegovina;
3. Holds unanimously that there has been a violation of Article 1 of Protocol No. 12 as regards the applicant's ineligibility to stand for election to the House of Peoples of Bosnia and Herzegovina;
4. Holds unanimously that there is no need to examine the same complaint under Article 3 of Protocol No. 1 taken alone;
5. Holds unanimously that there has been a violation of Article 1 of Protocol No. 12 as regards the applicant's ineligibility to stand for election to the Presidency of Bosnia and Herzegovina.

4.4. CASE OF BARALIJA V. BOSNIA AND HERZEGOVINA

The Fourth Section of the European Court of Human Rights within application number 30100/18 discussed the suits by Irma Baralija. In the case of Baralija vs. Bosnia and Herzegovina, European

of Human Rights in its Fourth Section consisting of seven judges⁶ make a decision after session on 8th of October 2018, adopted on the mentioned date.

Procedure in this case has been initiated based on the application number 30100/18 vs. Bosnia and Herzegovina brought by Irma Baralija on 4th of June 2018 calling upon article 34. Convention for protection of human rights and fundamental freedoms. Applicant complained on inability to vote and run for local elections.

Last local elections in Mostar have been held in 2008 which is why Baralija decided to sue the state. Local elections in Mostar could not be held in 2012 nor 2016 because since 2012 relevant provisions of Electoral law from 2001 are out of force. Current mayor of Mostar was elected by City council in 2009 since 2012 he is in technical mandate due to failure to hold local elections in Mostar.

Relevant domestic laws and practices mentioned in this decision consists of Constitution of Bosnia and Herzegovina, Constitution of Federation of Bosnia and Herzegovina, Electoral law from 2001 (especially articles 1.4, 1.5, 19.2 and 19.4) as well as Statute of Mostar. Relevant international documents include documents by the United Nations (International Covenant on Civil and Political Rights – article 25.), Council of Europe and European Union.

Applicant stated inability to vote and to be voted for on local elections in Mostar to present discrimination based on her place of residence, calling upon article 1. Protocol 12:

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Government stated that this application is *action popularis* since applicant's right to vote was not directly taken away as result of specific and individual measure. In this case, applicant is member

⁶Judges on the case were (Jon Fridrik Kjolbro as president, Faris Vehabović, Branko Lubarda, Carlo Ranzoni, Stephanie Mourou-Vikstrom, Georges Ravarani and Peter Paczolay) and one court registrar (Andrea Tamietti).

of political party and president of local party branch in Mostar and therefore is politically active person. Having this in mind, applicant is seen as a person directly affected by the situation and therefore can state to be victim of mentioned discrimination and Court concluded that this application is allowed.

Court recognized existence of state's responsibility and discrimination that applicant complains about to be conducted from failure of the state to ensure rights recognized by the Convention and that applicant enjoys protection given by the article 1. Protocol 12. Importantly, Court mentioned that not a single one of provision of the Convention does not requires complete abandon of power-sharing mechanism unique for Bosnia and Herzegovina. In this case, unlike previous, legal gap is existing that disabled applicant to vote and be voted for on the local elections after longer period of time. Court considers that state did not fulfil its positive obligations on adopting measures for holding democratic elections in Mostar and therefore, violation of article 1. Protocol 12 occurred. Respondent state has to, as Court considers, have to in deadline of six months from the day this judgement becomes final, change Electoral law form 2001 in order to enable holding of local elections in Mostar.

Having in mind all of the above mentioned, the Court unanimously:

1. Declares the application admissible;
2. Holds that there has been a violation of Article 1 of Protocol No. 12 to the Convention;
3. Holds that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
4. Holds
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

5. Dismisses the remainder of the applicant's claim for just satisfaction.

Table 1. Comparative view of ECHR decisions

Applicant	Reason for Application	Violation	Decision
Dervo Sejdić and Jakob Finci	Unable to run for member of tripartite presidency nor to be chosen as a delegate for the House of People because of its ethnicity and belonging to the national minority	Article 14 of the Convention taken in conjunction with Article 3 of Protocol No1; Violation of Article 1 of Protocol No 12	There has been violation of mentioned articles, State should change discriminatory provinces.
Ilijaz Pilav	Unable to run for member of the tripartite presidency since it is Bosniak with place of residence in Republic of Srpska and unable to vote for representative of its own ethnicity in the presidency.	Article 1 of Protocol No. 12 to the Convention	There has been violation of mentioned article, State should change discriminatory provinces.
Azra Zornić	Unable to run for member of the tripartite presidency and House of People since it does not declare herself as either member of the national minority nor constituent people	Article 14 of the Convention taken in conjunction with Article 3 of Protocol No. 1; Article 1 of Protocol No. 12	There has been violation of mentioned article, State should change discriminatory provinces.
Irma Baralija	Unable to vote or be voted for in the local elections in Mostar since those have not been held since 2008.	Article 1 of Protocol No. 12 to the Convention	Imposing change of the Electoral Law.

5. *EMPIRICAL ANALYSIS OF THE INTERVIEWS*

5.1. DESCRIPTION OF DESIGN

The design of the interviews conducted for the purpose of this study was based on five semi-structured questions. Interviews with applicants Finci and Pilav were conducted in-depth in a face to face situation while interviews with representatives of the Office for High Representative in Bosnia and Herzegovina and Delegation of the European Union and EU Special Representative were conducted online through virtual video meeting. Participants were selected based on the significance of its decisions for applicants and significance of its institutions for international community representatives.

The case of Sejdić-Finci represents a unique case-law in Bosnia and Herzegovina, explaining why national minorities are unable to run for presidency while case of Pilav explains discrimination towards constituent minorities – constituent people living in administrative-territorial unit where its ethnicity is minority. Representatives of the EU were significant due to the Bosnia and Herzegovina candidate status and interview with OHR representative was significant for impact and importance that OHR has on the state as whole. Researcher used qualitative research to openly interact with participants and gather data that has been analyzed inductively and individually later on. In order to understand the topic from the point of view of the minorities, it was crucial to apply qualitative design with intense overview of the general and individual context. Lack of statistical data only deepen the need for qualitative research.

5.2 ANALYSIS OF INTERVIEWS WITH THE APPLICANTS

Interviews with applicants were based on the five semi-structured interviews. Both Finci and Pilav described process with the lawsuit before the ECHR to be long. Pilav explained that he firstly used all domestic legal frameworks and procedures before applying to the ECHR. Pilav came to this idea of lawsuit in the 2006 electoral cycle when his candidacy has been rejected due to the fact that he is Bosniak living in territory with Serbs as majority.

Pilav's application started before the Sejdić-Finci but finished later and Pilav considers this to be due to the political impact, stating that Sejdić-Finci bypassed domestic regulations and procedures and went directly to the ECHR. As he explains, complete process of four years passed by without

any movement, we he repeated the same procedure in the next electoral cycle of 2010 but in the meantime, Sejdić-Finci was resolved. On the question of why it took so long to resolve this case, Pilav's opinion is that many strong political impacts happened but after resolution of Sejdić-Finci, something had to be changed, bearing in mind strength and importance of that decision. He also thinks that, following to the previous, that here was fear of strong decision that will be in his case that will bring up many political and legal problems along. He thinks that everything in his application was clear, from the rejection of the Central Electoral System where his discrimination was confirmed and even called justified to the Electoral Law itself.

Finci on the contrary states that for individual is not possible to sue the state and agrees that all domestic legal procedures should be used firstly. He applied with his complaint individually, but then Dervo Sejdić, Bosnian Roma also applied so ECHR decided to combine these two appeals. Sejdić-Finci called upon violation of Protocol 12 and they had idea to change in the Constitution only articles that define election of the presidency members and House of People delegates.

Pilav comments the fact that not a single judgment (except maybe Baralija vs. Bosnia and Herzegovina) is still not implemented tells more about state's political-legal system and its complexity as well as that it confirms the already known status of Bosnia and Herzegovina political leaders. He argues that there is no will nor political consensus to move forward with better political improvement of the state. He is well aware that it will take long time to implement these decisions but that satisfaction lied in the utopist idea that one day all decisions will have to be implemented in order to access the EU. Finci has similar opinion and believes that something will change until 2022. His opinion is that for Europe, these decisions are not as important as to maintain peace (*"da se ne puca"*). He mentions constant question on when will decisions be implemented and constant answer that it is working on it.

Both Pilav and Finci would not run again if decisions are implemented. Both stated that they sued the state for the general better being of minorities. For them there is no individual, personal importance but rather to have the theoretical possibility to run for elections, regardless on the place of residence, name or any other identification status. Unfortunately, as both argue, we are living in a divided society where nationality is consisted out of religion. Pilav also stated that he fought for rights of all disenfranchised people with category to be enormously wide-spread and those rights have been violated in many ways.

Pilav explains that further steps in implementation of decisions have to include complete change of the Bosnia and Herzegovina Constitution and Electoral law and by this, at least on the administrative form, entity lines would be less visible. Finci on the contrary explains that it is necessary to receive an authoritative opinion on forms of implementation, in line with the international standards. He also argues that it is necessary to change only those articles in the Constitution that define election of the members of Presidency and House of People and even suggest that House of People has 18 members and that Presidency has one member from the Republic of Srpska and two from the Federation of Bosnia and Herzegovina, with emphasis that two members cannot be out of the same constituent people and the Others.

On the question of importance of the international community in this process, both Pilav and Finci agree that international community is not effective enough. Finci argues that international community does not have a unique decision-making process and that it forgot that Bosnia and Herzegovina is not only post-conflict country but also country in transition, explaining that international community for ten years now is trying to find exit from Bosnia and Herzegovina but cannot find appropriate way to finish its own job due to the lack of political will. Similarly, Pilav's opinion is that if international community decides to solve this problem, problem will be solved because community behaves in accordance with institutions, solving problems ad-hoc. He strongly believes that international community did not answer to this task properly because decisions are not to be commented but to be implemented. This is why, as Pilav argues, international community is the strongest brake in this process.

5.2 ANALYSIS OF THE INTERVIEWS WITH REPRESENTATIVES OF THE INTERNATIONAL COMMUNITY

Interviews have been conducted with Mr. Javier Leon Diaz, Head of Legal Department at the Office of the High Representative and a representative of the Legal department of the Delegation of the European Union to Bosnia and Herzegovina and European Union Special Representative who requested to remain anonymous.

On the question on who should be behind the entire process of implementation of decisions by the ECHR, standpoint of the legal department of the DEU and EUSR is that Constitution itself states that all human rights recognized by the European conventions and UN conventions should be respected. Since 2009, Bosnia and Herzegovina has legal obligation to implement SF case-law

decision. In the EU opinion and in the context of implementation of the ECHR decisions, it is obligation of a state to implement decisions, especially member states of the Council of Europe and those are sets of conditions to be fulfilled on the path towards the EU. Everything is in hands of a state and institutions, to implement decisions and to arrange a form for doing so. It comes to the level of state Parliament since that body adopts amendments and changes. IC and EU supports internal processes that are owned by the institutions. Implementation of the SF was followed by many attempts, all failed. Diaz argues that process of implementation of decisions is job of the parliament since it is the relevant body. Bosnia and Herzegovina has international obligation to implement decisions and discrimination is for sure founded in provisions of the constitution. There have been many attempts, as Diaz agrees, to solve and implement the Sejdić-Finci case-law but Diaz thinks that main reason why this decision as well as related cases are difficult to process is because of Croat main party in Bosnia and Herzegovina sees it as somehow limiting the power-sharing agreements. Diaz also mentioned case of Ljubić before the Constitutional Court of Bosnia and Herzegovina that was case of legitimate representation of the constitutional people where concept of non-discrimination and concept of legitimate representation is exclusive and hard to achieve.

On the simple question on whether is it possible to implement decisions of the ECHR without help of the international community, Diaz thinks that in 2006, IC took a stand on the position with ownership of the process and with strengthening of the EU in Bosnia and Herzegovina but implementation of decisions in the test of maturities for the authorities where Bosnia and Herzegovina should be democratic and mature enough to take its decisions and what it should be, based on the Stabilization and Association Agreement and Copenhagen criteria. Similarly, legal department of DEU think that in the ideal scenario, state can do this itself, but there is lack of political will for any reform.

Following this question, we asked representatives of two institutions of the international community that if no agreement is reached soon, is it possible that international community forces upon solutions or even to use pressure measures. Legal department of the EU states that Council of Europe has sets of instruments for states that violate implementation of its decisions, but CoE rarely goes for restrictive measures. EU gave opinion with 14 priorities, progress will be analyzed. This means that the higher level of progress, the higher chances for opening negotiations for EU

accession. 14 priorities are on the table; state has obligation as well as foreign policy priority to fulfil those priorities. State itself has to decide and coordinate, find appropriate modules for implementation of all decisions that will guarantee equal approach to everyone in line with the SF case-law. Diaz emphasizes one important question: “How EU will accept the country that has this background and directly discriminates its citizens?” and he also argues that it is up to state to decide how to implement decisions if the state has will to become a member state.

Representative of the DEU and EUSR Legal department argues that role on the EU and IC in this process at the moment in to support process inside Bosnia and Herzegovina and on its path towards the EU integration, stating that EU financially and declaratively supports the state. OHR representative, Diaz states that OHR was a crucial when the Agreement was signed, doing on so many things, from policy reform to many other. OHR was behind many reforms until IC decided in 2006 that Bosnia and Herzegovina authorities take its state in its own hands with Peace Implementation Council as a steering board of OHR. Role of his institution in 2020 can be perceived through two tendencies in Bosnia and Herzegovina, tendency to go towards the EU integration, another pulls of forces that would like to see a state to at least loose some of the responsibilities it has in favor of entities it has or in case of Croats in Herzegovina or in case of cantons. Another important role that OHR plans in Bosnia and Herzegovina as Diaz argues are reforms with the state judiciary that are crucial with fighting against corruption.

Finally, we asked representatives of the international community two institution on how difficult it will be to change the Constitution. Diaz argues that it would be equal to the opening the Pandora box since this constitution cannot lead this country to the process, constitutional reform will be one of the most important steps towards the integration, with special emphasis to the annexes 4, 6, 7 and 10 of the Dayton Peace Accords. He states that it is very complex constitutional framework, if constitutional reform is opened in the Parliament, it will not stop only on presidency or HoP and that these processes require one profound constitutional reform. Representative of the DEU and EUSR on the contrary consider this process to be easy if there is political will. If there is political arrangement and movement direction, their opinion is that legal solution is easiest to be found. It is legally the easiest for form one norm into arrangement. Majority, opposition, arrangements, everything has to follow EU standards and values.

6. *CONSEQUENCES OF NON-IMPLEMENTATION OF THE ECHR DECISIONS FOR BOSNIA AND HERZEGOVINA'S INTEGRATION TO THE EU*

Bosnia and Herzegovina submitted its application for membership in the European Union in February 2016. Same year in September Council of European Union invited Commission for opinion in this matter. In June 2000, European Council stated that countries of the Western Balkan that are participating in the Stabilization and Association Process are seen as potential candidates for membership. In 2018 European Council agreed that Bosnia and Herzegovina could become a candidate for accession with sustained effort and engagement as stated in Document COM (2018) – Communication on a credible engagement perspective for and enhanced EU engagement with the Western Balkans (European Commission 2018:2).

Commission's opinion on Bosnia and Herzegovina's application has been given based on the state's capacity to meet Copenhagen and Madrid Criteria. European Council concluded in Madrid in 1993 that:

Accession will take place as soon as a country is able to assume the obligations of membership by satisfying the economic and political conditions required. Membership requires: – that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; – the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union; – the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union

Accordingly, within Opinion total of 3 897 questions have been prepared that cover all Union policies, 3 242 questions have been answered after 14 months and additional 655 follow-up questions have been answered after 8 months. Remaining 22 questions were debatable since Bosnia and Herzegovina authorities were unable to agree on answers that included 1 on the political criteria, 4 on regional policy and 17 on education policies. Special emphasis was given to the political criteria which is why Commission organized number of expert missions to Bosnia and Herzegovina. Furthermore, those expert missions helped Commission to have a better view on the state institution's administrative capacity and ways on which legislation can be implemented.

The Stabilization and Association Agreement between European Union and Bosnia and Herzegovina was signed on 16th June 2008 in Luxembourg. In 2011 SAA was ratified by all EU Member States but it could not enter into force due to the fact that Bosnia and Herzegovina had not fulfilled the condition set on the compliance with the 2009 decision of the ECHR in the Sejdić – Finci case. Sejdić- Finci case law is important for the EU integration since it requires the country to amend the Constitution in order to remove discriminatory provisions from the electoral rules in the Presidency and House of Peoples on the state level. In 2014 Council renewed its approach towards Bosnia and Herzegovina without changing accession conditions that include implementation of the Sejdić-Finci case which was followed by Council's agreement to entry into force SAA in 2015. By this, Bosnia and Herzegovina opened a new chapter in relations with the EU. However, parliamentary dimension of the SAA is not properly functioning, as stated in the Union Progress report from 2019. Even though Stabilization and Association Parliamentary Committee has been established in 2015 as integrated part of the SAA bodies, it failed to adopt rules of procedure. This failure is caused by the fact that some Bosnia and Herzegovina delegates were insistent with the inclusion of ethnic voting provisions that are not in line with EU standards.

The Opinion of the European Commission on Bosnia and Herzegovina request for membership in the European Union from 29th of May 2019 clearly states that European Commission considers that negotiations for Bosnia and Herzegovina accession to the Union should open when state achieved needed level of harmonization with criteria for membership, especially with political criteria from Copenhagen by which stability of institutions is required that for sure guarantee democracy and rule of law. Additionally, Bosnia and Herzegovina shall thoroughly improve its legal and institutional framework in order to achieve fulfillment of key priorities such as democracy and functionality. Democracy and functionality will be ensured through held elections in accordance with the European standards and by implementation of relevant OSCE recommendation and Venetian commission's recommendations, as well as through insurance of transparency of the funding of political parties and finally, through holding elections in Mostar.

CONCLUSION

In this thesis we analyzed the theoretical status of Bosnia and Herzegovina as a democratic country and political participation of both constitutional and national minorities in the state. It is important to mention that we made distinction between seventeen recognized national minorities and constitutional minorities – term that we defined as those who are members of constituent peoples but live on a territory where its constitutionality is minority, for example Croat and Bosniak in Republic of Srpska or Serb in Federation of Bosnia and Herzegovina. Besides this, comprehensive analysis of four important decisions by the European Court of Human Rights in cases of violations of internationally recognized political rights of minorities was conducted, as well as empirical analysis of interviews held with two applicants, Jakob Finci and Ilijaz Pilav and two representatives of institutions of the international community in Bosnia and Herzegovina, Javier Leon Diaz from the Office of the High Representative and one representative of the Delegation of the EU in Bosnia and Herzegovina. We offered historical background of the Bosnia and Herzegovina political system and theoretical approach to the terms of democracy and political participation. Finally, we explained what consequences non-implementation of decisions can and should have to the Bosnia and Herzegovina integration to the EU.

We came to a conclusion that Bosnia and Herzegovina has strong legal framework for the protection of national minorities but has enormous lack in respecting those rights (discrepancy between proclamation and reality). Main reasons for this discrimination are stated in the Constitution of Bosnia and Herzegovina. Since Constitution of Bosnia and Herzegovina is part of the Dayton Peace Accords that ended aggression on Bosnia and Herzegovina and war, it was written in a manner that its purpose is to satisfy three sides, without thinking about other people living in the country. By State Constitution and Peace Accords, state is divided into three administrative-territorial units - two Entities and one District and with three constituent people – Bosniaks, Croats and Serbs. Members of seventeen recognized national minorities and those who do not declare themselves as constituent but rather as ordinary citizens, are labeled as “The Others”. This division between citizens looks a lot alike white supremacy in the United States of America, but in the case of Bosnia and Herzegovina, it is the “constituent supremacy”. Regardless of the field, constituent supremacy is present in everyday life. It does not include only restrictions

in political participation of “The Others” but it also includes disadvantages and discrimination of non-constituent in education, employment and state institutions.

While conducting theoretical and empirical research, we have faced many obstacles. In analysis of literature, we found out that many authors wrote about this constitutional discrimination but in a view of individual cases of one specific minority or one specific ECHR court decision. Little academic papers were written combining all ECHR cases together. Little or no statistical data could be found on political participation of minorities in Bosnia and Herzegovina, but data on complaints to the Bosnia and Herzegovina Ombudsman for human rights on violation of minority rights is existing. While conducting interviews, we have faced with lack of will of one of the applicant whose case is important for this thesis since it will be the only decision of the ECHR that will be implemented in the 2020 elections. Another limitation with the interviews was notable in the interview with one of the representative of international community whose answers to the posted questions have not been satisfactory in a manner that answers were generalized, without concrete answers to the questions.

Applicants consider important for decisions to be implemented but they have little hope that it will happen in close future since both Pilav and Finci argue that there is no political will for implementation and both agree that international community is not effective in this process. Also, applicants with whom we have talked, stated that even if decisions are implemented, they will not run again for elections. Rather, they fought for rights of minorities and for possibility for them to be active in politics. On the other side, representatives of two institutions of the international community put blame on the state saying that state should be a driver of positive change in the process of decisions’ implementation but they agree with the applicant that there is no political will for significant constitutional reforms.

When considering the country’s political system, it is important to have in mind its multilayered structure and a myriad of institutions, including discriminatory Presidency with three members, two entities, one district, ten cantons within one of two entities and more than a hundred municipalities. All mentioned makes extremely complex and slow implementation of important decisions.

After writing this thesis, we came to logical conclusion that political participation in Bosnia and Herzegovina on the state level is reserved for those who enjoy all benefits of the constitutional

supremacy, discriminating non-constituent people and taking its participation to the local level of government. We have once again proved the thesis that Bosnia and Herzegovina is democratic country only in theory, having strong legal framework for full enjoyment of all internationally recognized rights and freedoms while in practice it openly discriminates other citizens, justifying that discrimination through Constitution who was initially planned to be just temporary solution to end of armed conflict. Dayton Peace Accords ended war and armed conflict but for sure it caused silenced unarmed war between ethnicities and even deepen division of small state into three parts. It legally allowed division of citizens to “first class” and “second class” citizens. This is even confirmed by the legal “experts” that represented state of Bosnia and Herzegovina before the ECHR where they said that in order for minorities to participate in politics, all they have to do is either declare themselves as constituent or change its place of residence to the territory where their ethnicity is majority. By doing this, minorities would lose its identity and become part of already (mostly) brained-washed population, filled with mental divisions and nationalism who believe that in this country is possible to achieve anything if you sold your principles to your political leaders.

Many solutions can be defined on the problem of constitutional discrimination. One of the acceptable solutions for the implementation of the ECHR decisions, as described in the Sejdić – Finci decision, is that executive government concentrates on the Council of Ministers as collegium with representation of all constituent people. Therefore, one president as head of state would be acceptable. Since Bosnia and Herzegovina is multiethnic, indirect election of president in Parliamentary assembly with majority that ensures that president will enjoy broader trust of all people seems like an option that could be preferred in relation to direct elections.

It is without doubt that it is necessarily to conduct constitutional reforms in Bosnia and Herzegovina, in order to eliminate discrimination of national and constitutional minorities and to ensure higher political participation of all citizens of this small but divided state.

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ANNEXES

ANNEX I

Questions for semi-structured interviews

1. For representatives of international community
 - a) Who should be behind the entire process of implementation of decisions by the ECHR?
 - b) Is it possible to implement decisions of the ECHR without international community?
 - c) If no agreement is reached soon, is it possible that international community forces upon solution(s) or to use pressure measures?
 - d) What is the role of international community and your institution in above mentioned process at this moment?
 - e) Would it be difficult to adopt amendments to the Constitution?
2. For applicants
 - a) Can you describe the entire process with suit before the ECHR?
 - b) How do you comment the fact that decisions by the ECHR have still not been implemented?
 - c) In your opinion, what is / what are further step(s) regarding implementation of decisions?

Average interview duration was 36 minutes. Interviews have been conducted individually and each of the respondent was introduced with purpose of this research.

Descriptive qualitative research has been conducted where findings have not been shown individually but rather combined as total research results.

ANNEX II

List of respondents

Name and surname	Function	Representative
Javier Leon Diaz	Head of Legal Department of	Office of the High Representative
Demanded to be anonymous	Legal Service	European Union Special Representative to Bosnia and Herzegovina
Jakob Finci	Plaintiff/Applicant	Sejdić – Finci v. Bosnia and Herzegovina
Ilijaz Pilav	Plaintiff/Applicant	Pilav v. Bosnia and Herzegovina

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