

Press release issued by the Registrar

Grand Chamber judgment¹

Sejdic and Finci v. Bosnia and Herzegovina (application nos. 27996/06 and 34836/06)

**PROHIBITING A ROM AND A JEW FROM STANDING FOR ELECTION TO THE HOUSE
OF PEOPLES OF THE PARLIAMENTARY ASSEMBLY AND FOR THE STATE
PRESIDENCY AMOUNTS TO DISCRIMINATION AND BREACHES THEIR ELECTORAL
RIGHTS**

***Violation of Article 14 (prohibition of discrimination)
of the European Convention on Human Rights
taken together with Article 3 of Protocol No. 1 (right to free elections),
and Violation of Article 1 of Protocol No. 12 (general prohibition of discrimination) to the
Convention.***

Principal facts

The applicants, Dervo Sejdić and Jakob Finci, are citizens of Bosnia and Herzegovina. They were born in 1956 and 1943 respectively and live in Sarajevo. The former is of Roma origin and the latter is a Jew. They are both prominent public figures. The Bosnian Constitution, in its Preamble, makes a distinction between two categories of citizens: the so-called “constituent peoples” (Bosniacs, Croats and Serbs) and “others” (Jews, Roma and other national minorities together with those who do not declare affiliation with any ethnic group). The House of Peoples of the Parliamentary Assembly (the second chamber) and the Presidency are composed only of persons belonging to the three constituent peoples. Mr Jakob Finci enquired with the Central Election Commission about his intentions to stand for election to the Presidency and the House of Peoples of the Parliamentary Assembly. On 3 January 2007 he received a written confirmation from the Central Election Commission that he was ineligible to stand to such elections because of his Jewish origin.

Complaints, procedure and composition of the Court

The applicants complained that, despite possessing experience comparable to that of the highest elected officials, they were prevented by the Constitution of Bosnia and Herzegovina, and the corresponding provisions of the Election Act 2001, from being candidates for the Presidency and the House of Peoples of the Parliamentary Assembly solely on the ground of their ethnic origins. They relied on Articles 3 (prohibition of inhuman and degrading treatment), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the European Convention on Human Rights, Article 3 of Protocol No. 1 (right to free elections) and Article 1 of Protocol No. 12 (general prohibition of discrimination) to the Convention.

¹ Grand Chamber judgments are final (Article 44 of the Convention).

The applications were lodged with the European Court of Human Rights on 3 July and 18 August 2006 respectively. On 10 February 2009 the Chamber before which the case was pending decided to relinquish jurisdiction in favour of the Grand Chamber pursuant to Article 30 of the Convention. The Venice Commission, the AIRE Centre and the Open Society Justice Initiative were authorised to intervene as third parties pursuant to Article 36 of the Convention. A public hearing was held at the Human Rights Building, Strasbourg, on 3 June 2009.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Jean-Paul **Costa** (France), **President**,
Christos **Rozakis** (Greece),
Nicolas **Bratza** (the United Kingdom),
Peer **Lorenzen** (Denmark),
Françoise **Tulkens** (Belgium),
Josep **Casadevall** (Andorra),
Giovanni **Bonello** (Malta)
Lech **Garlicki** (Poland),
Khanlar **Hajiyev** (Azerbaijan),
Ljiljana **Mijović** (Bosnia and Herzegovina),
Egbert **Myjer** (the Netherlands),
David Thór **Björgvinsson** (Iceland),
George **Nicolaou** (Cyprus),
Luis **López Guerra** (Spain),
Ledi **Bianku** (Albania),
Ann **Power** (Ireland),
Mihai **Poalelungi** (Moldova), **judges**,

and also Vincent **Berger**, **Jurisconsult**.

Decision of the Court

Admissibility

In the first place, the Court considered that, given the applicants' active participation in public life, it was entirely coherent that they would have considered running for the House of Peoples or the Presidency. The applicants could therefore claim to be victims of the alleged discrimination. The fact that the present case raised the question of the compatibility of the national Constitution with the Convention was irrelevant in this regard.

The Court also noted that the Constitution of Bosnia and Herzegovina was an annex to the Dayton Peace Agreement, itself an international treaty. The power to amend it was, however, vested in the Parliamentary Assembly of Bosnia and Herzegovina, which was clearly a domestic body. In addition, the powers of the international administrator for Bosnia and Herzegovina (the High Representative) did not extend to the State Constitution. Accordingly, the contested provisions came under the responsibility of the respondent State.

Merits

House of Peoples of the Parliamentary Assembly

The Court noted that although the House of Peoples of the Parliamentary Assembly was composed of indirectly elected members, it enjoyed very wide legislative powers. Article 14 taken in conjunction with Article 3 of Protocol No. 1 was therefore applicable.

The Court reiterated that discrimination occurred every time that persons in similar situations were treated differently, without an objective and reasonable justification. Where a difference in treatment was based on race or ethnicity, the notion of objective and reasonable justification had to be interpreted as strictly as possible. The Court had already held in its case-law that no difference in treatment which was based exclusively or to a decisive extent on a person's ethnic origin was capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.

In the present case, in order to be eligible to stand for election to the House of Peoples of Bosnia and Herzegovina, one had to declare affiliation with one of the "constituent peoples" of Bosnia and Herzegovina, which the applicants had not wished to do on account of their Roma and Jewish origins respectively.

Under the Constitution, Bosnia and Herzegovina is composed of two Entities: the Federation of Bosnia and Herzegovina and the Republika Srpska. The rule limiting the applicants' eligibility rights was based on power-sharing mechanisms that made it impossible to adopt decisions against the will of the representatives of one of the "constituent peoples" of Bosnia and Herzegovina. Thus, relevant provisions included a "vital interest veto", a "veto of the Entities", a two-Chamber system (with a House of Peoples made five Bosniacs and five Croats from the Federation of Bosnia and Herzegovina and five Serbs from Republika Srpska) and a collective Presidency of three members, composed of a Bosniac and a Croat from the Federation of Bosnia and Herzegovina and a Serb from Republika Srpska.

The Court acknowledged that this system, put in place at a time when a fragile ceasefire had been accepted by all the parties to the inter-ethnic conflict that had deeply affected the country, pursued the legitimate aim of restoring peace. It noted, however, that the situation in Bosnia and Herzegovina had improved considerably since the Dayton Peace Agreement and the adoption of the Constitution, as borne out by the fact that closure of the international administration of the country was now being envisaged.

The Court recognised the recent progress following the Dayton Peace Agreements and noted that, for the first time, Bosnia and Herzegovina had amended its Constitution in 2009 and that it had recently been elected a member of the United Nations Security Council for a two-year term. Nonetheless, the Court agreed with the Government that the time was perhaps still not ripe for a political system which abandoned the power-sharing mechanism in place and would be a simple reflection of majority rule. As the Venice Commission had clearly demonstrated in its Opinion of 11 March 2005, however, there existed mechanisms of power-sharing which did not automatically lead to the total exclusion of representatives of the communities which did not belong to the "constituent peoples". Furthermore, when it joined the Council of Europe in 2002, Bosnia and Herzegovina undertook to review the electoral legislation within one year, and it had ratified the Convention and the Protocols thereto without reservations. By ratifying a Stabilization and Association Agreement with the European Union in 2008, it had committed itself to amending electoral legislation regarding members of the Bosnia and Herzegovina Presidency and House of Peoples delegates to ensure full compliance with the European Convention on Human Rights and the Council of Europe post-accession commitments within one to two years.

In consequence, the Court concluded by 14 votes to 3 that the applicants' continued ineligibility to stand for election to the House of Peoples of Bosnia and Herzegovina lacked an objective and reasonable justification and had therefore breached Article 14 taken in conjunction with Article 3 of Protocol No. 1.

Presidency of Bosnia and Herzegovina

With regard to the eligibility to stand for the Presidency of Bosnia and Herzegovina, the applicants relied only on Article 1 of Protocol No. 12. The Court noted that whereas Article 14 of the Convention prohibited discrimination in the enjoyment of “the rights and freedoms set forth in ... the Convention”, Article 1 of Protocol No. 12 extended the scope of protection to “any right set forth by law”. It thus introduced a general prohibition of discrimination. The applicants contested the constitutional provisions rendering them ineligible to stand for election to the Presidency of Bosnia and Herzegovina. Consequently, whether or not elections to the Presidency fell within the scope of Article 3 of Protocol No. 1, their complaint concerned a “right set forth by law”, which made Article 1 of Protocol No. 12 applicable.

The Court reiterated that the concept of discrimination was to be interpreted in the same manner with regard to Article 14 and in the context of Article 1 of Protocol No. 12, although the latter provision had a different scope. It followed that, for the reasons put forward with regard to the elections to the House of Peoples, the constitutional provisions under which the applicants were ineligible for election to the Presidency had also to be considered discriminatory. Accordingly, the Court concluded by 16 votes to one that there had been a violation of Article 1 of Protocol No. 12.

The Court also considered, unanimously, that it was not necessary to examine the case under Article 3 of Protocol No. 1 taken alone or in conjunction with Article 1 of Protocol No. 12.

Finally, it considered that the finding of a violation constituted in itself sufficient just satisfaction in respect of any non-pecuniary damage suffered by the applicants and ordered the respondent State to pay 1,000 euros (EUR) to the first applicant and EUR 20,000 to the second applicant for costs and expenses.

Judge Mijović, joined by Judge Hagiye, expressed a partly concurring and partly dissenting opinion. Judge Bonello expressed a dissenting opinion. The texts of these opinions are annexed to the judgment.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.