



## Bosnia and Herzegovina must establish a political system for elections without discrimination

In today's Chamber judgment in the case of [Zornić v. Bosnia and Herzegovina](#) (application no. 3681/06), which is not final<sup>1</sup>, the European Court of Human Rights held:

by six votes to one, that there had been a **violation of Article 14 (prohibition of discrimination) in conjunction with Article 3 of Protocol No. 1 (right to free elections)** to the European Convention on Human Rights as regards Ms Zornić's ineligibility to stand for election to the House of Peoples of Bosnia and Herzegovina ; and,

unanimously, that there had been a **violation of Article 1 of Protocol No. 12 (general prohibition of discrimination)** to the European Convention as regards Ms Zornić's ineligibility to stand for election both to the House of Peoples as well as to the Presidency of Bosnia and Herzegovina.

The case concerned Ms Zornić's ineligibility to stand for election to the House of Peoples and the Presidency of Bosnia and Herzegovina because she refuses to declare affiliation to any particular ethnic group but declares herself as a citizen of Bosnia and Herzegovina and, in accordance with the Constitution, only those who declare affiliation with the so-called "constituent peoples" (namely, Bosniacs, Croats and Serbs) are entitled to stand for election.

The Court held that Ms Zornić's case was identical to the *Sejdić and Finci v. Bosnia and Herzegovina* case of December 2009 concerning the inability of a Roma and a Jew to stand for elections to the House of Peoples and to the Presidency of Bosnia and Herzegovina. It therefore came to the same conclusions as in that case, namely that the constitutional provisions which prevented Ms Zornić – and the applicants in that case – from running for election were on the ground of origin and had been put in place to ensure peace following a brutal conflict in Bosnia and Herzegovina between 1992 and 1995 marked by genocide and "ethnic cleansing". However, noting the significant positive developments in the country and the existence of other mechanisms of power-sharing which did not automatically lead to the total exclusion of representatives of other communities, the Court held that Ms Zornić's continued ineligibility to stand for election had lacked objective and reasonable justification, amounting to a discriminatory difference in treatment.

The nature of the conflict was such that the approval of the "constituent peoples" was necessary to ensure peace. However , the Court considered that, even more so now, more than 18 years after the end of the tragic conflict, there could no longer be any reason for the contested constitutional provisions to be maintained. Indeed, the time had come for a political system which would provide every citizen of Bosnia and Herzegovina with the right to stand for elections to the Presidency and the House of Peoples without discrimination based on ethnic affiliation and without granting special rights for "constituent peoples" to the exclusion of minorities or citizens of Bosnia and Herzegovina. This would necessarily require constitutional changes.

<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

## Principal facts and complaints

The applicant, Azra Zornić, is a citizen of Bosnia and Herzegovina who was born in 1957 and lives in Sarajevo. She actively participates in the political life of her country, notably having stood for election in the 2002 parliamentary elections as a candidate of the Social Democratic Party of Bosnia and Herzegovina.

The Bosnian Constitution makes a distinction between different categories: the so-called “constituent peoples” (Bosniacs, Croats and Serbs), “Others” (members of ethnic minorities) and citizens (those who do not declare affiliation with any particular ethnic group because of intermarriage, mixed parenthood or other reasons). In the former Yugoslavia no objective criteria such as language or religion was required to determine one’s ethnicity, people deciding themselves their ethnic affiliation. This traditional system of self-classification has been assumed under the Bosnian Constitution as it stands today. In accordance with the Constitution, only those who declare affiliation with a “constituent people” are entitled to stand for election to the House of Peoples and the Presidency of Bosnia and Herzegovina.

Ms Zornić complained that, under the Constitution, she was ineligible to stand for election to the House of Peoples and the Presidency of Bosnia and Herzegovina because she refuses to declare affiliation to any particular ethnic group, but declares herself simply as a citizen of Bosnia and Herzegovina, alleging in particular that this amounted to discrimination. She relied on Article 14 (prohibition of discrimination), Article 3 of Protocol No. 1 (right to free elections) and Article 1 of Protocol No. 12 (general prohibition of discrimination) to the European Convention.

## Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 19 December 2005.

Judgment was given by a Chamber of seven judges, composed as follows:

Ineta **Ziemele** (Latvia), *President*,  
Päivi **Hirvelä** (Finland),  
George **Nicolaou** (Cyprus),  
Nona **Tsotsoria** (Georgia),  
Zdravka **Kalaydjieva** (Bulgaria),  
Krzysztof **Wojtyczek** (Poland),  
Faris **Vehabović** (Bosnia and Herzegovina),

and also Fatoş **Aracı**, *Deputy Section Registrar*.

## Decision of the Court

As concerned the **admissibility** of Ms Zornić’s case, the Court noted in particular that she had not used a constitutional appeal before lodging her application with the European Court of Human Rights. However, given the Constitutional Court’s approach to the matter in a similar case<sup>2</sup> in which it declared that it lacked jurisdiction to examine a discrimination complaint concerning ineligibility to stand for election to the Presidency on the ground of ethnic origin, the Court considered that a constitutional appeal was not an effective remedy for Ms Zornić’s complaints. It therefore rejected the Government’s allegation that Ms Zornić had failed to exhaust national remedies.

As regards Ms Zornić’s complaint about **ineligibility to the House of Peoples of Bosnia and Herzegovina**, the Court found that, whatever her reasons were for not declaring affiliation with any

<sup>2</sup> Decision no. AP 1945/10 of 29 June 2010.

particular group (intermarriage, mixed parenthood or simply that she wished to declare herself as a citizen of Bosnia and Herzegovina ), she should not be prevented from standing for such elections on account of her personal self-classification, no objective criteria being required under the Constitution for one's ethnic affiliation.

Indeed, the Court had already found that the very same constitutional provisions preventing Ms Zornić from running for election had amounted to discriminatory treatment in the case *Sejdić and Finci v. Bosnia and Herzegovina* (application nos. 27996/06 and 34836/06) of December 2009 concerning the inability of a Roma and a Jew to stand for parliamentary elections. The Court considered that Ms Zornić's case was identical to the *Sejdić and Finci* case. Like the applicants in that case Ms Zornić was excluded from running for election to the House of Peoples on the ground of her origin.

In the judgment *Sejdić and Finci*, the Court held that such exclusion had pursued an aim broadly compatible with the European Convention, namely that of restoring peace. The nature of the conflict in Bosnia and Herzegovina between 1992 and 1995, marked by genocide and "ethnic cleansing", had been such that the approval of the "constituent peoples" had been necessary to ensure peace and could explain the absence of representatives of other communities – such as local Roma and Jewish communities – at the peace negotiations. However, noting the significant positive developments in the country after the Dayton Peace Agreement<sup>3</sup> and the existence of other mechanisms of power-sharing which did not automatically lead to the total exclusion of representatives of other communities, the Court held that the applicants' continued ineligibility to stand for election to the House of Peoples had lacked objective and reasonable justification, amounting to a discriminatory difference in treatment in breach of Article 14 taken in conjunction with Article 3 of Protocol No. 1.

For the same reasons as in that case, it therefore concluded that there had been a violation of Article 14 taken in conjunction with Article 3 of Protocol No. 1 as well as a violation of Article 1 of Protocol No. 12 resulting from Ms Zornić's continued ineligibility to stand for election to the House of Peoples of Bosnia and Herzegovina.

It considered, however, that it was not necessary to examine separately whether there had also been a violation of Article 3 of Protocol No. 1 taken alone as regards the House of the Peoples.

As regards Ms Zornić's complaint about **ineligibility to the Presidency of Bosnia and Herzegovina** the Court similarly reiterated the findings of the *Sejdić and Finci* case which had held that the constitutional provisions preventing the applicants from running for election to the Presidency had been discriminatory, seeing no reason to depart from that jurisprudence in Ms Zornić's case. The Court therefore held that there had been a violation of Article 1 of Protocol No. 12 as regards Ms Zornić's ineligibility to stand for election to the Presidency.

#### [Article 46 \(binding force and implementation\)](#)

The finding of a violation in Ms Zornić's case had been the direct result of the national authorities' failure to introduce constitutional and legislative measures to ensure compliance with the judgment in the *Sejdić and Finci* case, which has been under the supervision of the Committee of Ministers of the Council of Europe, the body responsible for the supervision and implementation of the judgments of the European Court of Human Rights, since 2009. Given that delay, the Court, like the Committee of Ministers, was anxious to encourage the speediest and most effective resolution of this situation.

The nature of the conflict was such that the approval of the "constituent peoples" was necessary to ensure peace. However, now, more than 18 years after the end of the tragic conflict in Bosnia and Herzegovina, there could no longer be any reason for the contested constitutional provisions to be

<sup>3</sup> On 14 December 1995 the General Framework Agreement for Peace in Bosnia and Herzegovina, ("the Dayton Peace Agreement") entered into force which put an end to the 1992-95 war in Bosnia and Herzegovina.

maintained. The Court considered that the time had come for a political system which would provide every citizen of Bosnia and Herzegovina with the right to stand for elections to the Presidency and the House of Peoples without discrimination based on ethnic affiliation and without granting special rights for “constituent peoples” to the exclusion of minorities or citizens of Bosnia and Herzegovina. This would necessarily require constitutional changes.

#### [Article 41 \(just satisfaction\)](#)

Ms Zornić had not submitted any claim for just satisfaction and therefore the Court made no such award.

#### Separate opinion

Judge Wojtyczek expressed a partly dissenting opinion. This opinion is annexed to the judgment.

*The judgment is available only in English. This press release is available also in French and in the official languages of Bosnia and Herzegovina.*

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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.