



## Grand Chamber judgment *Kovačević v. Bosnia and Herzegovina* – case inadmissible

In the **Grand Chamber** judgment<sup>1</sup> of 25 June 2025 in the case of [Kovačević v. Bosnia and Herzegovina](#) (application no. 43651/22) the European Court of Human Rights upheld, by a majority, the Government's objection to the admissibility of the application.

The case concerned the applicant's allegation that the requirements applicable to elections for the House of Peoples of the Parliamentary Assembly and for the Presidency of Bosnia and Herzegovina were discriminatory and prevented him from voting for candidates of his choice in those elections in 2022.

Having delivered the operative provisions (conclusions) of the judgment on 25 June 2025 at a public hearing in the Human Rights Building and by live broadcast on its YouTube channel, the Court has now published the complete text of the judgment.

The Court upheld the Government's objection to the admissibility of the application on the grounds that Mr Kovačević had abused the right of application within the meaning of Article 35 § 3 (a) of the European Convention on Human Rights, and that he lacked victim status under Article 14 (prohibition of discrimination) in conjunction with Article 3 of Protocol No. 1 to the Convention (right to free elections), and under Article 1 of Protocol No. 12 (general prohibition of discrimination).

The Court found in particular that Mr Kovačević's claims were directed at effecting a change to the constitutional and electoral structure of Bosnia and Herzegovina – purportedly in the general public interest – rather than vindicating his individual rights protected under the Convention and the Protocols thereto.

A legal summary of this case is available in the Court's database HUDOC ([link](#)).

### Principal facts

The applicant, Slaven Kovačević, is a national of Bosnia and Herzegovina as well as of Croatia, who was born in 1972. He is a political scientist and adviser to a member of the Presidency of Bosnia and Herzegovina.

The Bosnian Constitution has its origins in the 1995 General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Agreement) which ended the 1992-1995 war. Since then, Bosnia and Herzegovina has been composed of two Entities – the Federation of Bosnia and Herzegovina (the Federation) and the Republika Srpska – plus the Brčko District which belongs to both. Mr Kovačević lives in Sarajevo, which is situated in the Federation.

The Constitution makes a distinction between different categories of the population: the so-called "constituent peoples" (Bosniacs, Croats and Serbs) and "Others" (members of ethnic minorities and those who do not declare affiliation with any particular ethnic group). No objective criteria such as language or religion are required to determine one's ethnicity; people decide for themselves.

The Constitution sets out power-sharing arrangements between the "constituent peoples". For instance, the second chamber of the State Parliament, the House of Peoples, is composed of five Bosniacs and five Croats from the Federation and five Serbs from the Republika Srpska. The Presidency

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

comprises three members: one Bosniac and one Croat from the Federation and one Serb from the Republika Srpska.

Only persons declaring affiliation with one of the three “constituent peoples” are thus entitled to run for the House of Peoples and the Presidency. Moreover, only the voters residing in the Republika Srpska may participate in the selection or election of the Serb members of the House of Peoples (indirectly) and the Presidency (through direct elections); similarly, only the voters residing in the Federation may participate in the selection or election of the Bosniac and Croat members of those State bodies (indirectly in respect of the members of the House of Peoples, and directly for the Presidency). In contrast, no ethnic requirements apply in elections to the House of Representatives (the first chamber of the State Parliament).

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 30 August 2022.

Relying on Article 14 (prohibition of discrimination) of the European Convention on Human Rights taken in conjunction with Article 3 of Protocol No. 1 (right to free elections) and on Article 1 of Protocol No. 12 (general prohibition of discrimination), Mr Kovačević complained that he was discriminated against because of the ethnic and territorial requirements applicable to elections for the House of Peoples and the Presidency which had prevented him from voting for the candidates of his choice in the latest legislative and presidential elections of October 2022. He also raised other complaints under Article 3 of Protocol No. 1 taken alone and/or in conjunction with Article 14, and under Articles 13 (right to an effective remedy) and 17 (prohibition of abuse of rights).

In its [judgment](#) of 29 August 2023, the Chamber held, by a majority of 6 votes to 1, that there had been violations of Article 1 of Protocol No. 12 (general prohibition of discrimination) of the European Convention in respect of Mr Kovačević’s not being genuinely represented in the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina and the Presidency of Bosnia and Herzegovina. The Chamber also held, by a majority of 6 votes to 1, that there was no need to examine either the admissibility or the merits of the applicant’s complaint about the composition of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina under Article 14 of the Convention taken in conjunction with Article 3 of Protocol No. 1. The remainder of the applicant’s complaints were declared inadmissible, unanimously.

On 14 December 2023 the case was referred to the Grand Chamber at the request of the Government of Bosnia and Herzegovina.

The Government of Croatia and the High Representative for Bosnia and Herzegovina were granted leave to intervene in the written and oral proceedings as third parties.

A public [hearing](#) in the case was held on 20 November 2024.

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

Mattias **Guyomar** (France), *President*,  
Arnfinn **Bårdsen** (Norway),  
Ivana **Jelić** (Montenegro),  
Lado **Chanturia** (Georgia),  
Ioannis **Ktistakis** (Greece),  
Faris **Vehabović** (Bosnia and Herzegovina),  
Stéphanie **Mourou-Vikström** (Monaco),  
Alena **Poláčková** (Slovakia),  
Gilberto **Felici** (San Marino),  
Darian **Pavli** (Albania),  
Erik **Wennerström** (Sweden),

Saadet Yüksel (Türkiye),  
Lorraine Schembri Orland (Malta),  
Anja Seibert-Fohr (Germany),  
Peeter Roosma (Estonia),  
Davor Derenčinović (Croatia),  
Mykola Gnatovskyy (Ukraine),

and also Marialena Tsirli, *Registrar*.

The Court delivered the operative provisions (conclusions) at a public hearing on 25 June 2025. The [delivery](#) was also broadcast live on the European Court's YouTube channel.

## Decision of the Court

### Challenge to the authority of the Government's acting Agents in this case

Shortly after the delivery of the Chamber judgment in this case, Mr Kovačević challenged the authority of the acting Agents of the Government to represent the latter before the Court.

The Court rejected the challenge mainly because the arguments relied on by Mr Kovačević were not based on new developments that had followed the delivery of the Chamber judgment, but had been equally applicable during the Chamber proceedings. Allowing the applicant to challenge the authority of the acting Agents at this stage of the proceedings would be detrimental to legal certainty and stability, as well as contrary to the proper administration of justice. There had, moreover, been no official decisions in the meantime by the Council of Ministers of Bosnia and Herzegovina, or any other competent State bodies, to withdraw the request for the referral of the case to the Grand Chamber or the authority of the incumbent acting Agent. Accordingly, for the purposes of Rule 35 of the Rules of Court, the acting Agent had maintained her status as the representative of the Government in the Grand Chamber proceedings. If there was any actual irregularity in terms of domestic law, that was not for the Court to resolve.

### Abuse of the right of individual application

Noting that Mr Kovačević had engaged in some highly reproachable conduct in the course of the proceedings before the Grand Chamber, the Court found, by 16 votes to 1, that he had abused the right of application within the meaning of Article 35 § 3. The Court noted in this regard that he had made certain remarks and accusations relating to the Court's judges, in particular the Court's then President, the Government's acting Agents and the High Representative for Bosnia and Herzegovina which amounted to gratuitous personal attacks, intimidation, and malicious accusations that overstepped the bounds of admissible criticism. The Court underlined that by attacking the Court's then President so disdainfully, Mr Kovačević had shown disrespect to the very institution to which he had applied for the protection of his rights. The Court also considered that in the course of the proceedings he had engaged in deceptive behaviour in relation to a matter of potential relevance to the case (whether or not he had affiliated as a Croat when serving as a member of Sarajevo City Council).

### Victim status

Before proceeding with the assessment of Mr Kovačević's victim status, the Court had to first establish the exact nature and content of his discrimination complaints relating to the House of Peoples and the Presidency of Bosnia and Herzegovina. Based on his written and oral submissions before the Grand Chamber, the Court found that the thrust of his discrimination complaints related to the different treatment accorded to him compared with voters residing in the Republika Srpska, because of his

residence in the other Entity of Bosnia and Herzegovina. The assessment of his victim status was therefore principally guided by that comparator group and that ground of distinction.

Regarding elections to the House of Peoples, the Court observed that the applicant's eligibility to vote in elections to a cantonal assembly and thus, indirectly, in elections to the House of Peoples was not sufficient to establish his status as a victim of discrimination. Otherwise, he – and by analogy the entire voting population – would have virtually automatic victim status in respect of the electoral rules, without having demonstrated that those rules had a direct and personal discriminatory impact on him. Nor was it sufficient that he was subject to the legislative authority of the House of Peoples, like all citizens of Bosnia and Herzegovina. A more targeted assessment had to be carried out on the basis of the specific complaints he raised.

What is more, he could not be recognised as having victim status simply by virtue of the Court's findings in the case of [Sejdić and Finci v. Bosnia and Herzegovina](#) and the similar cases that followed ("the *Sejdić and Finci* group of cases"). Although the electoral rules at issue in this case were the same as those found to be in breach of Article 14 of the Convention, in conjunction with Article 3 of Protocol No. 1, and Article 1 of Protocol No. 12 in the *Sejdić and Finci* group of cases, the Court underlined that this case differed significantly in that the challenge to the rules was not from the standpoint of the right to stand for election – that is, the "passive" aspect of the right to vote safeguarded under Article 3 of Protocol No. 1 – but from that of a voter in the exercise of the "active" right to vote.

The Court noted that Mr Kovačević essentially contested his inability, as a resident of the Federation, to take part in elections in the Republika Srpska and argued that Bosnia and Herzegovina should become a single electoral unit, where all citizens could be involved in the election of all delegates throughout the entire territory of the State, regardless of ethnic affiliations. However, the Court did not find that Mr Kovačević's arguments contained any substantiated element of discriminatory treatment directly and personally affecting him, whether at the individual or the group level.

The Court observed that the administration of legislative elections in each Entity of Bosnia and Herzegovina was governed by different electoral rules, specific to the structure of the Entities as laid down in their respective Constitutions. For the purposes of the composition of the State House of Peoples, each set of voters exercised their voting rights in their respective constituencies within each Entity, not directly but via the separate legislative bodies that governed their respective Entities. Just as the applicant was not able to take part in the process of electing Serb delegates to the House of Peoples from the Republika Srpska, so the voters from that Entity were excluded from the corresponding process in the Federation.

The separation of Bosnia and Herzegovina into different electoral units along Entity lines for the purposes of the composition of the House of Peoples was a result of its highly decentralised and uniquely complex constitutional structure embedded in an international peace agreement. In that structure, voters found themselves in materially different situations as residents of distinct Entities; yet from a territorial perspective, both Entities enjoyed representation in the House of Peoples, and all eligible citizens in those Entities participated indirectly in the election process. In so far as Mr Kovačević complained of his inability to take part in the election process in the other Entity and called for the electoral system to function on the basis of a single electoral unit, he was effectively contesting the fundamentals of the electoral and constitutional system in place in Bosnia and Herzegovina as a federal State made up of two Entities, rather than raising a genuine difference in treatment between two different groups of voters in the exercise of a right provided under the Convention or national law.

The Court emphasised that it could neither engage in a general review of the Convention compliance of the configuration of the electoral system in the respondent State along Entity lines, nor could it compare in the abstract the manner in which the elections were administered in each of the Entities. The Court's task was to determine whether the specific rules had a direct and personal discriminatory impact on the applicant. It noted that Mr Kovačević had not provided any evidence as to whether and

how, as an individual voter resident in the Federation, he had been disadvantaged or otherwise subjected to a difference in treatment as a result of the organisation of the elections along Entity lines, and had provided no information as to how the operation of the voting system in practice had impacted his vote at the cantonal level, and his representation in the State House of Peoples, differently as compared with the general body of voters in the Republika Srpska. The Court considered, therefore, that rather than alleging a violation of any of his individual rights protected under the Convention and the Protocols thereto, Mr Kovačević's complaints relating to the House of Peoples were intended to effect fundamental and conceptual changes to the constitutional structure and electoral legislation in Bosnia and Herzegovina in general.

In respect of the complaints regarding elections to the Presidency of Bosnia and Herzegovina, the Court acknowledged that they differed in some respects from the complaints relating to the House of Peoples – such as by reason of the direct nature of the vote to the Presidency and the specific nature and scope of the Presidency's executive powers. It nevertheless found that Mr Kovačević had failed to demonstrate that he had been a "victim" of discrimination in respect of any perceived deficiency in the process of elections to the Presidency, largely for the reasons given in the context of his complaints pertaining to the House of Peoples. Beyond expressing his strong preference for a single electoral unit where all voters would be entirely free to vote for any candidate, Mr Kovačević had not provided information on how the electoral rules in question discriminated against him as a voter in elections to the Presidency. Voters from both the Federation and the Republika Srpska were represented in the collective Presidency and were equally deprived of the opportunity to vote outside their Entity. Accordingly, and in so far as Mr Kovačević complained of having been discriminated against on the basis of his place of residence, it remained unclear how the territorial limitations produced any discriminatory effects bearing on his rights protected by the Convention and the Protocols thereto, individually or as part of a group, in comparison with voters resident in the Republika Srpska.

The Court concluded, by 12 votes to 5, that Mr Kovačević lacked victim status in respect of the alleged violation of his rights under both Article 14, in conjunction with Article 3 of Protocol No. 1, and Article 1 of Protocol No. 12, in relation to each of his complaints relating to the House of Peoples and the Presidency. It considered that Mr Kovačević's claims amounted to an abstract critique of the "state of the law" of an *actio popularis*<sup>2</sup> nature.

## Separate opinions

Judge Pavli expressed a concurring opinion. Judges Bårdsen, Chanturia, Yüksel and Schembri Orland made a joint statement of partial dissent. Judge Vehabović expressed a dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available in English and French.*

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<sup>2</sup> The term *actio popularis* refers to actions taken to obtain a remedy by a person or a group in the name of the general public. Those persons or groups are neither themselves victims of a violation nor have they been authorised to represent any victims or potential victims. Such complaints are incompatible with the Convention system.

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