



Elections undemocratic in Bosnia and Herzegovina since main ethnic groups enjoy a privileged position

In today's **Chamber** judgment¹ in the case of [Kovačević v. Bosnia and Herzegovina](#) (application no. 43651/22) the European Court of Human Rights held, by six votes to one, that there had been:

- **violations of Article 1 of Protocol No. 12 (general prohibition of discrimination)** of the European Convention on Human Rights 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 Court found that the current political system rendered ethnic representation more relevant than political, economic, social, philosophical and other considerations and thus amplified ethnic divisions in the country and undermined the democratic character of elections. The "constituent peoples" (Bosniacs, Croats and Serbs) clearly enjoyed a privileged position in the current system.

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

Principal facts

The applicant, Slaven Kovačević, is a national of Bosnia and Herzegovina national who was born in 1972 and lives in Sarajevo. 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 Peace Accords) at the end of the 1992-1995 war. Since then, Bosnia and Herzegovina has been composed of two Entities – the Federation of Bosnia and Herzegovina and the Republika Srpska – plus the Brčko District which belongs to both.

The Constitution makes a distinction between different categories of the population: the so-called "constituent peoples" (Bosniacs, Croats and Serbs) and "Others and citizens of Bosnia and Herzegovina" (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 themselves.

Provisions pertaining to ethnic privileges for the "constituent peoples" – the three dominant ethnic groups – were included in the Constitution after the basic outline of the Dayton Agreement had been agreed, reportedly because of strong demand from some of the parties. At the State level, power-sharing arrangements were introduced. 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 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 dominant ethnic groups are thus entitled to run for the House of Peoples and the Presidency. Moreover, only the voters residing in the Republika

1. 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.

Srpska may participate in the election of Serb members of the House of Peoples (through indirect elections) and the Presidency (through direct elections), whereas only the voters residing in the Federation may participate in the election of Bosniac and Croat members of those institutions. In contrast, no ethnic requirements apply in elections to the House of Representatives (the first chamber of the State Parliament).

Mr Kovačević does not declare affiliation to any particular ethnic group. He lives in Sarajevo, which is situated in the Federation. He alleged that the candidates best representing his political views were not from the “right” Entity and/or of the “right” ethnic origin, so he had not been able to vote for them in the 2022 legislative and presidential elections.

Complaints, procedure and composition of the Court

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), the applicant complained that because of a combination of the territorial and ethnic requirements applicable to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, he had been unable to vote for the candidates of his choice in the latest legislative elections, which had taken place in 2022. Similarly, he had been unable to vote for the candidates of his choice in the most recent presidential elections at the State level in 2022.

He raised additional 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).

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

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

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,
Tim **Eicke** (the United Kingdom),
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Armen **Harutyunyan** (Armenia),
Ana Maria **Guerra Martins** (Portugal),
Anne Louise **Bormann** (Denmark),

and also Andrea **Tamietti**, *Section Registrar*.

Decision of the Court

[Article 1 of Protocol No. 12](#)

The Court observed that the essence of the applicant’s case was that because of the power-sharing arrangements, Bosnia and Herzegovina was not a genuine democracy but an “ethnocracy” in which ethnicity – and not citizenship – was the key to securing power and resources and in which the three dominant ethnic groups controlled the State institutions to further their interests, whereas all the others were akin to second-class citizens.

The Court was aware of the historical context, notably that the power-sharing arrangements had been designed to end a brutal conflict marked by genocide and “ethnic cleansing”. The nature of the conflict had been such that the approval of the “constituent peoples” was necessary to ensure peace. It was therefore conceivable that the existence of a second chamber, composed of representatives of the three main ethnic groups only, would have been acceptable in the special

case of Bosnia and Herzegovina, had the powers of the House of Peoples been limited to the precisely, narrowly and strictly defined vital national interests of the “constituent peoples”. However, the House of Peoples had to approve all legislation. Therefore, all segments of society should be represented in it. As it stood, the current arrangements rendered ethnic considerations and/or representation more relevant than political, economic, social, philosophical and other considerations and/or representation and thus amplified ethnic divisions in the country and undermined the democratic character of elections.

Moreover, the Court observed that a reform of the electoral system was an outstanding post-accession obligation of Bosnia and Herzegovina. On becoming a member of the Council of Europe in 2002, Bosnia and Herzegovina had undertaken to “review within one year, with the assistance of the European Commission for Democracy through Law (Venice Commission), the electoral legislation in the light of Council of Europe standards, and to revise it where necessary”. Thereafter, the Parliamentary Assembly of the Council of Europe had periodically reminded Bosnia and Herzegovina of this post-accession obligation and urged it to adopt a new Constitution with a view to replacing “the mechanisms of ethnic representation by representation based on the civic principle”.

In particular, the Court saw no reason to depart from its previous case-law and in particular, [Sejdić and Finci](#), [Zornić](#), and [Pilav](#) in which the Court found discrimination against persons not affiliated with the three main ethnic groups in Bosnia and Herzegovina, or those failing to meet a combination of the requirements of ethnic origin and place of residence as regards their right to stand for election to the House of Peoples and the Presidency of Bosnia and Herzegovina. Moreover, on 7 June 2023, the Committee of Ministers of the Council of Europe had examined the state of implementation of the *Sejdić and Finci* group of judgments and had adopted a [decision](#).

Lastly, although the Convention did not prohibit member States from treating groups differently in order to correct “factual inequalities” between them, none of the “constituent peoples” was in the position of an endangered minority which had to preserve its existence. On the contrary, the “constituent peoples” clearly enjoyed a privileged position in the current political system.

The Court held that there had accordingly been a **breach of Article 1 of Protocol No. 12** of the Convention in relation to the applicant’s complaint concerning the composition of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina.

Mr Kovačević complained that in elections to the Presidency of Bosnia and Herzegovina, his choice was limited to those candidates who declared affiliation with Bosniacs and Croats. Only the residents of the Republika Srpska were entitled to vote for those candidates who declared affiliation with Serbs. Lastly, those who did not declare affiliation with any “constituent people” were not entitled to stand for election to the Presidency of Bosnia and Herzegovina. He argued that because of that combination of territorial and ethnic requirements, his statutory right to vote was limited in a discriminatory fashion on the grounds of his place of residence and on ethnic grounds.

As the Court had found that this combination of territorial and ethnic requirements amounted to discriminatory treatment in breach of Article 1 of Protocol No. 12 in the context of the right to participate in elections to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, it considered that the same was true in respect of the right to vote in elections to the Presidency of Bosnia and Herzegovina.

First, the applicant did not have the option of voting for candidates who did not declare affiliation with any of the “constituent peoples” (since such candidates were not even entitled to stand for election). Furthermore, being a resident of the Federation, the applicant was not entitled to vote for the candidates who declared affiliation with Serbs. Therefore, unlike persons from the Federation who declared affiliation with Bosniacs and Croats and persons from the Republika Srpska who declared affiliation with Serbs, the applicant was not genuinely represented in the collective Presidency. He was thus treated differently on the grounds of his place of residence and ethnicity. In

this connection, the Court observed that the Presidency was a political body of the State and not of the Entities. Its policy and decisions affected all citizens of Bosnia and Herzegovina, whether they lived in the Federation, the Republika Srpska or the Brčko District.

In addition, it considered that peace and dialogue were best maintained by an effective political democracy, of which the ability to freely exercise one's right to vote was a pillar. Therefore, no one should be forced to vote only according to prescribed ethnic lines, irrespective of their political viewpoint. Even if a system of ethnic representation were maintained in some form, it should be secondary to political representation, should not discriminate against "Others and citizens of Bosnia and Herzegovina" and should include ethnic representation from the entire territory of the State.

[Article 3 of Protocol No. 1 taken alone and/or in conjunction with Article 14](#)

By six votes to one, the Court did not find it necessary to examine separately the admissibility or the merits of Mr Kovačević's complaint concerning restrictions on the right to vote stemming from the composition of the House of Peoples of the Parliamentary Assembly.

In respect of his complaint that the territory of Bosnia and Herzegovina was divided into constituencies, that some members of the House of Representatives (the first chamber of the State Parliament) were elected from compensatory lists, and that the delegates to the House of Peoples (the second chamber of the State Parliament) were not directly elected, the Court, unanimously, agreed with the Government that he had failed to use all legal avenues available at national level, and in particular a constitutional appeal. It therefore rejected this complaint.

[Article 13](#)

With regard to Mr Kovačević's submission that he had not had an effective domestic remedy in respect of his discrimination complaints, the Court considered unanimously that, since those complaints concerned the content of constitutional and statutory provisions, as opposed to an individual measure of implementation, his complaint under Article 13 was ill-founded and had to be rejected.

[Article 17](#)

The Court considered his complaint under this article ill-founded and rejected it unanimously.

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

As Mr Kovačević had not submitted a claim for just satisfaction, the Court made no such award.

Separate opinion

Judge Kucsko-Stadlmayer expressed a dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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Press contacts

echrpres@echr.coe.int | tel.: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Jane Swift (tel.: + 33 3 88 41 29 04)

Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)

Denis Lambert (tel.: + 33 3 90 21 41 09)

Inci Ertekin (tel.: + 33 3 90 21 55 30)

Neil Connolly (tel.: + 33 3 90 21 48 05)

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.