

Grand Chamber hearing on voting rights in legislative and presidential elections in Bosnia and Herzegovina

The European Court of Human Rights is holding a **Grand Chamber**¹ hearing today **Wednesday 20 November 2024 at 9:15 a.m.** in the case of **Kovačević v. Bosnia and Herzegovina** (application no. 43651/22).

The case concerns the applicant's voting rights in legislative and presidential elections in Bosnia and Herzegovina. Due to a combination of the territorial and ethnic requirements applicable to elections for the House of Peoples of the Parliamentary Assembly and for the Presidency, he was unable to vote for the candidates of his choice in those elections in 2022.

A recording of the hearing will be available this afternoon on the Court's internet site (www.echr.coe.int). After the hearing the Court will begin its deliberations, which will be held in private. Its ruling in the case will, however, be made at a later stage.

The applicant, Slaven Kovačević, is a national of Bosnia and Herzegovina and Croatia, 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) signed 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. 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 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 for themselves.

Provisions pertaining to 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 Srpska may participate in the election of Serb members of the House of Peoples (through indirect

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-judges Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

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 (indirectly in respect of the election 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).

It appears from his submissions that Mr Kovačević does not declare affiliation with any “constituent people” or with any other ethnic group.

Procedure

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), the applicant complains 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 was unable to vote for the candidates of his choice in the latest legislative elections, which took place in 2022. Similarly, he was unable to vote for the candidates of his choice in the most recent presidential elections at the State level in 2022. He raises 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).

In its [judgment](#) of 29 August 2023, the Court held, by a majority of six votes to one, 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.

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 in conformity with, respectively, Article 36 § 1 of the Convention and Rule 44 § 1 of the [Rules of Court](#) and Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court.

Composition of the Court

The case will be heard by a Grand Chamber, composed as follows:

Marko **Bošnjak** (Slovenia), *President*,
Arnfinn **Bårdsen** (Norway),
Ivana **Jelić** (Montenegro),
Mattias **Guyomar** (France),
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), *judges*,
Mykola Gnatovskyy (Ukraine),
Raffaele Sabato (Italy),
Úna Ní Raifeartaigh (Ireland), *substitute judges*,

and also Johan Callewaert, *Deputy Grand Chamber Registrar*.

Representatives of the parties

Government

Monika Mijić, *Acting Government Agent*,
Sandra Malešić, *Assistant to the Acting Government Agent*,
Davor Bunoza, *Minister of Justice of Bosnia and Herzegovina*,
Vedran Škobić, *Minister of Justice of the Federation of Bosnia and Herzegovina*,
Miloš Bukejlović, *Minister of Justice of Republika Srpska*
Ljiljana Mijović, *Adviser*;

Applicant

Slaven Kovačević, *Applicant*,
Azra Zornić and Joseph Marko, *Counsel*.

Third parties

Government of Croatia

Štefica Stažnik, *Representative of the Republic of Croatia before the Court*, will attend the hearing with Ana Patiniotis, Ivan Pepic and Matija Očuršćak, *Advisers*;

High Representative for Bosnia and Herzegovina

Timothy Otty KC, *Counsel*, will attend the hearing with Edouard d'Aoust and Javier Leon Diaz, *Advisers*.

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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.