



Court rejects complaints about Slovenian authorities' rejection of two electoral lists due to a lack of female candidates

The case of [Zevnik and Others v. Slovenia](#) (application no. 54893/18) concerned the authorities' rejection of lists submitted by a coalition party for elections in 2018 owing to the lists' lack of female candidates.

In its decision in the case the European Court of Human Rights has **unanimously declared the application inadmissible**. The decision is final.

The Court found in particular that the rules on gender representation for party lists on which the rejections had been based and the penalties for non-compliance with the rules were clear and that the coalition party should have been aware of them. Such quotas also helped ensure democratic legitimacy and were compatible with the European Convention on Human Rights.

Principal facts

The applicants are three Slovenian nationals, Metka Zevnik, born in 1946, Aleš Primc, born in 1973, and Franc Kangler, born in 1965, and two political parties, Lista Franca Kanglerja – Nova ljudska stranka (Kangler's New People's Party) and Glas za otroke in družine (The Voice for Children and Families).

The fourth and fifth applicants, political parties, formed a coalition in 2018 for early parliament elections due in June of that year. The coalition submitted lists of candidates to all of Slovenia's eight constituencies.

In May 2018 the electoral commissions of the first and sixth constituencies rejected the coalition's lists, which included the first and second applicants, as they had not met the required level of 35% gender representation, in this case for females, as a share of the total actual number of candidates on each list.

Representatives of the rejected lists appealed to the Supreme Court: they argued that the number of women on both lists was more than 35% of the total number of candidates as the same female candidates would run in more electoral districts in the constituencies in question. Alternatively, the electoral commissions should have given the party time to correct the problem.

The Supreme Court dismissed their appeals. Among other things, it held that the gender quota requirement in the law was clear and that what mattered was the number of actual candidates rather than the fact that the same person would stand in several districts.

The representatives of the rejected lists appealed further to the Constitutional Court, which voted by seven to two against considering the case. It found that election lists had to be submitted in good time and be in conformity with the law, which was clear on the quota requirements.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 16 November 2018.

The applicants complained that the rejection of the lists of candidates had violated Article 3 of Protocol No. 1 (right to free elections) to the European Convention. They complained under the same provision and under Article 10 (freedom of expression) that they had been denied free air-time

and access to radio and television debates. They complained in addition that they had not had a public hearing in the Supreme Court, relying on Article 6 § 1 (right to a fair hearing).

The decision was given by a Committee of three judges, composed as follows:

Julia **Laffranque** (Estonia), *President*,
Ivana **Jelić** (Montenegro),
Arnfinn **Bårdsen** (Norway),

and also Hasan **Bakırcı**, *Deputy Registrar*.

Decision of the Court

Article 3 of Protocol No. 1

The Court noted that the rejection of the lists in the two constituencies could have affected the coalition's result at national level and thus the third applicant's chances of being elected as he had been on a list which had been accepted. The rejection of the two lists had thus interfered with the passive electoral rights guaranteed by the Convention.

The applicants had argued that the legislation on gender representation was unclear and ambiguous but the Court noted that Slovenia's two highest domestic courts, relying on a literal reading of the Election Act and on their own case-law, had held that the provisions and the penalties for non-compliance with them were clear and foreseeable.

The Court agreed that the provisions on gender requirements were indeed sufficiently clearly defined in national law and that the applicants had been able to foresee that non-compliance would result in the rejection of their candidate lists.

The Court, noting that the advancement of equality of the sexes was a major goal among Council of Europe States, also held that the interference in question had pursued the legitimate aim of strengthening democratic legitimacy by ensuring a better balance of women and men in political decision-making.

The Court lastly dealt with the question of whether the rejection of the lists had been proportionate to the legitimate aim pursued. Guidance could be found in Council of Europe documents, which not only allowed but also encouraged the adoption of gender quotas in electoral systems, with strict penalties for lack of compliance. The Court also gave weight to the Constitutional Court's view that there was a strong impetus for political parties to respect gender representation rules if they knew beforehand that they could be excluded from elections for failure to observe them.

The domestic courts had also taken account of the reasons for non-compliance, with the outcome of the balancing of the right to stand for election against the need to ensure observance of the gender quota rules depending on whether the list had been composed in a diligent manner and whether the organisation which had drawn it up had knowingly breached the gender rule.

In the applicants' case, the courts had established that the coalition had acted without due diligence and had been the only one to blame for the fact that the rules had not been met.

Nor could the courts have arbitrarily excluded male candidates from the lists or given the applicants more time to correct the shortcomings. The Supreme Court and the Constitutional Court had found that remedying the issue would have required the necessary electoral tasks being carried out anew. However, the original lists had been handed in only one day before the end of the deadline, meaning that the necessary changes would have had to be done after that date.

The Court therefore accepted that the decision not to allow the corrections had been based on the legislature's legitimate concern to ensure the timely completion of the electoral process and respect for the principle of equal suffrage.

Given its considerations in the case and the wide discretion ("margin of appreciation") given to States when organising and running electoral systems, the Court found that the rejection of the lists of candidates could not be considered as disproportionate. The applicants' complaint was therefore manifestly ill-founded and had to be rejected.

[Article 10 and Article 3 of Protocol No. 1](#)

The Court noted that that the applicants had also complained under Article 3 of Protocol No. 1 about broadcaster RTV Slovenia's refusal to give the coalition free airtime at national level because it had not had electoral lists in all the constituencies.

The Court observed that the broadcaster's decision had been based on the legislation and rules which it followed, which gave airtime without distinction between political forces as long as they had lists of candidates in all eight constituencies, meaning that it was afforded to those who attempted to cover the electorate as a whole and not just the constituency in which they had their list.

Furthermore, the applicants had not argued that they had not been able to access paid airtime, prevented from campaigning where their lists had been accepted or hindered from using other available methods of electioneering.

The Court took the view that the measure criticised by the applicants had been based on an objective and reasonable justification and it did not discern any exceptional circumstances to warrant a different conclusion. The complaint was therefore manifestly ill-founded and had to be rejected.

It made the same finding about the applicants' near identical complaint under Article 10.

[Article 6](#)

The Court reiterated that this provision did not apply to proceedings concerning electoral disputes and the applicants' complaint under this heading had to be rejected as inadmissible.

The decision is available only in English.

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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.