

## Grand Chamber Panel's decisions - December 2023

At meetings on 11 and 14 December 2023, the Grand Chamber panel of five judges decided:

- to refer the case **Kovačević v. Bosnia and Herzegovina** (application no. 43651/22), and
- to reject the request to refer the case of **Osman and Altay v. Türkiye** (applications nos. 23782/20 and 40731/20)<sup>1</sup>.

A legal summary on the case *Kovačević v. Bosnia and Herzegovina* is available in the Court's database HUDOC ([link](#)).

### Referral accepted

#### [Kovačević v. Bosnia and Herzegovina \(application no. 43651/22\)](#)

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 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

<sup>1</sup> 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-member 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.

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.

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), he 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).

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

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 (see [press release](#)).

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

## Request for referral rejected

In the case of **Osman and Altay v. Türkiye** (applications nos. 23782/20 and 40731/20) the [judgment](#) of 18.07.2023 is now final<sup>2</sup>.

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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.

<sup>2</sup> Under Article 44 § 2 (c) of the European Convention on Human Rights, the judgment of a Chamber becomes final when the panel of the Grand Chamber rejects the request to refer under Article 43.