



## Bosnia and Herzegovina must amend legislation which would enable democratic elections to be held in Mostar

In today's **Chamber judgment**<sup>1</sup> in the case of **Baralija v. Bosnia and Herzegovina** (application no. 30100/18) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 1 of Protocol No. 12 (general prohibition of discrimination)** to the European Convention on Human Rights.

The case concerned a legal void which made it impossible for the applicant, a local politician living in Mostar, to vote or stand in elections.

The Court found that that legal void had been created by the authorities' failure to enforce a 2010 Constitutional Court ruling concerning arrangements for voting in local elections in Mostar and telling the authorities to harmonise the relevant legislation with the Constitution. That had in turn led to a situation where the last local elections in Mostar had been held in 2008 and the city had been governed since 2012 by a mayor who did not have the required democratic legitimacy.

Such a situation was incompatible with the rule of law. The Court could not therefore accept the Government's justification for the prolonged delay in enforcing the ruling, namely the difficulties in establishing a long-term and effective power-sharing mechanism for the city council so as to maintain peace and to facilitate dialogue between the different ethnic groups in Mostar.

The State had therefore failed to comply with its duty to take measures to protect Ms Baralija from discriminatory treatment on the grounds of her place of residence and to hold democratic elections in Mostar.

It also held, unanimously, under **Article 46 (binding force and implementation)** that the State had to amend the relevant legislation, at the latest within six months of this judgment becoming final.

### Principal facts

The applicant, Irma Baralija, is a national of Bosnia and Herzegovina who was born in 1984. She lives in Mostar, one of the largest cities in Bosnia and Herzegovina, and is president of the local branch of the political party *Naša stranka*.

In November 2010 the Constitutional Court of Bosnia and Herzegovina declared unconstitutional certain provisions of the Election Act 2001 regulating elections of city councillors. It found that the arrangements for voting based on those provisions failed to ensure equal suffrage for the voters of Mostar, in particular as concerned the boundaries of constituencies and the allocation of councillors to each constituency. It gave the relevant authorities six months to harmonise the provisions with the Constitution of Bosnia and Herzegovina.

The judgment has, however, still not been enforced. In 2012 the Constitutional Court adopted a ruling on the non-enforcement and, as a result, the relevant provisions of the Election Act lost their legal validity. Local elections for the city council could not therefore be held in Mostar in the last

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](http://www.coe.int/t/dghl/monitoring/execution).

cycles, meaning also that the current mayor of Mostar has only had a “technical mandate” since 2012.

## Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 12 (general prohibition of discrimination) to the European Convention on Human Rights, Ms Baralija alleged that the non-enforcement of the Constitutional Court’s judgment had prevented her from voting or standing in local elections, and that that had amounted to discrimination on the grounds of her place of residence.

The application was lodged with the European Court of Human Rights on 4 June 2018.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,  
 Faris **Vehabović** (Bosnia and Herzegovina),  
 Branko **Lubarda** (Serbia),  
 Carlo **Ranzoni** (Liechtenstein),  
 Stéphanie **Mourou-Vikström** (Monaco),  
 Georges **Ravarani** (Luxembourg),  
 Péter **Paczolay** (Hungary),

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

## Decision of the Court

The Court decided to apply the settled interpretation it had developed in its case-law on discrimination, namely that any difference in treatment of people in analogous or relevantly similar situations was discriminatory if it had no “objective and reasonable justification”.

It was not in dispute that Ms Baralija had the right to vote and stand in elections and that, as a person residing in Mostar, she had been in an analogous or relevantly similar situation to others residing elsewhere in Bosnia and Herzegovina. As the difference in treatment in this case was based on an aspect of personal status within the meaning of the Court’s case-law, in particular the same legislation was applied differently depending on a person’s residence, the Court found that Ms Baralija enjoyed the protection offered by Article 1 of Protocol No. 12.

The Court noted the Government’s justification for the delay in implementing the Constitutional Court’s decision, namely the need to establish a long-term and effective power-sharing mechanism for the city council, in order to maintain peace and to facilitate dialogue between the different ethnic groups in Mostar.

However, it could not accept that difficulties in reaching a political agreement to establish such a mechanism was a sufficient, objective and reasonable justification for a situation where the last local elections in Mostar had been held in 2008 and the city had been governed since 2012 by a mayor who only had a “technical mandate” and therefore did not have the required democratic legitimacy. Such a situation was incompatible with the concepts of “effective political democracy” and “the rule of law” to which the European Convention referred in its Preamble.

In sum, the Court considered that the State had failed to comply with its duty to take measures to protect Ms Baralija from discriminatory treatment and to hold democratic elections in Mostar. There had therefore been a violation of Article 1 of Protocol No. 12 to the Convention.

### Binding force and implementation (Article 46)

Bearing in mind the large number of potential applicants and the urgent need to put an end to such a situation, the Court considered that the State had to amend the Election Act 2001 at the latest within six months of this judgment becoming final, in order to enable the holding of local elections in Mostar. Should the State fail to do this, the Court noted that the Constitutional Court had the power to set up interim arrangements.

### Just satisfaction (Article 41)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant. It further held that Bosnia and Herzegovina was to pay the applicant 5,000 euros (EUR) in respect of costs and expenses.

*The judgment 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.