



## Exclusion of Bosniac politician residing in the Republika Srpska from election to the Presidency of Bosnia and Herzegovina was discriminatory

In today's **Chamber** judgment<sup>1</sup> in the case of [Pilav v. Bosnia and Herzegovina](#) (application no. 41939/07) 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 the complaint by a politician residing in the Republika Srpska (one of the two constituent entities of Bosnia and Herzegovina), who declares himself as Bosniac, of the fact that it was legally impossible for him to stand for election to the Presidency of the country.

The Court observed that while Mr Pilav, as being affiliated with one of the “constituent people”, had a constitutional right to participate in elections to the Presidency, he would be required to leave his home and move to the Federation of Bosnia and Herzegovina (the other constituent entity of Bosnia and Herzegovina) in order to effectively exercise this right. The Court considered that Mr Pilav's exclusion from election to the Presidency was based on a combination of ethnic origin and place of residence, amounting to a discriminatory treatment.

### Principal facts

The applicant, Ilijaz Pilav, is a citizen of Bosnia and Herzegovina who was born in 1964 and lives in Srebrenica, in the Republika Srpska (one of the two constituent entities of Bosnia and Herzegovina).

Mr Pilav declares himself as Bosniac, one of the country's “constituent peoples”. He is a member of the Party for Bosnia and Herzegovina and has held several elected and appointed political positions in the Republika Srpska.

In 2006 Mr Pilav submitted his candidacy for the elections to the Presidency of Bosnia and Herzegovina. The Central Election Commission rejected it on the grounds that he declared his affiliation with Bosniacs, whereas, pursuant to the Constitution and the Election Act, the presidential candidate from the Republika Srpska had to be a Serb. Mr Pilav's appeal against that decision was rejected and, in September 2006, the Constitutional Court of Bosnia and Herzegovina rejected his constitutional appeal. In 2010 Mr Pilav again submitted his candidacy, which was again rejected.

### Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 12 (general prohibition of discrimination), Mr Pilav complained that the constitutional ban preventing him from standing for election to the Presidency on the grounds of his ethnic origin amounted to racial discrimination. He also submitted that he was prevented from voting for a member of his own ethnic community to that office.

The application was lodged with the European Court of Human Rights on 24 September 2007.

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).

The following organisations were granted leave to intervene as third parties and submitted a joint submission: Minority Rights Group International, Human Rights Watch and Benjamin N. Cardozo School of Law (under Article 36 § 2 of the Convention).

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

Ganna **Yudkivska** (Ukraine), *President*,  
Nona **Tsotsoria** (Georgia),  
Erik **Møse** (Norway),  
André **Potocki** (France),  
Síofra **O’Leary** (Ireland),  
Carlo **Ranzoni** (Liechtenstein),  
Mārtiņš **Mits** (Latvia), *judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### Article 1 of Protocol No. 12

The Court observed that in accordance with the Constitution of Bosnia and Herzegovina only persons declaring affiliation with a “constituent people” were entitled to stand for election to the Presidency, which consisted of three members: one Bosniac and one Croat, each directly elected from the Federation of Bosnia and Herzegovina, and one Serb directly elected from the Republika Srpska. Mr Pilav, a Bosniac living in the Republika Srpska was as a result excluded.

The Court had already found a similar constitutional precondition to amount to a discriminatory difference in treatment, in breach of Article 1 of Protocol No. 12, in the case of *Sejdić and Finci*, which concerned the inability of the applicants, of Roma and Jewish origin respectively, to stand for election to the Presidency.<sup>2</sup> While Mr Pilav, as being affiliated with one of the “constituent people”, had a constitutional right – unlike the applicants in *Sejdić and Finci* – to participate in elections to the Presidency, he would be required to leave his home and move to the Federation of Bosnia and Herzegovina in order to effectively exercise this right.

In other cases, the Court had found that a residence requirement was not disproportionate or irreconcilable with the underlying purpose of the right to free elections under Article 3 of Protocol No. 1 to the Convention.<sup>3</sup> However, unlike the applicants in those cases, who did not have permanent residence in the State where they wished to stand for elections and therefore did not satisfy the residence requirement, Mr Pilav lived in Bosnia and Herzegovina. The Court noted that the Presidency of Bosnia and Herzegovina was a political body of the State and not of one of the two constituent entities. Its policy and decisions affected all citizens of Bosnia and Herzegovina, whether they lived in the Federation, the Republika Srpska or Brčko District. Therefore, although Mr Pilav was involved in political life in the Republika Srpska, he was also clearly concerned with the political activity of the collective Head of State.

The Court took account of an objection of the Government of Bosnia and Herzegovina to the effect that Mr Pilav could not claim to be a victim of discrimination since the residence requirement concerned in his case applied equally to all the “constituent peoples”. However, Mr Pilav complained that he was treated differently from Serbs living in the Republika Srpska. As regards the Government’s argument that that difference in treatment was justified by the need to maintain peace and to facilitate a dialogue between different ethnic groups, the Court recalled that it had

<sup>2</sup> *Sejdić and Finci v. Bosnia and Herzegovina* (application nos. 27996/06 and 34836/06), Grand Chamber judgment of 22 December 2009

<sup>3</sup> In particular, *Ali Erel and Mustafa Damdelen v. Cyprus* (no. 39973/07), Decision of 14 December 2010

already addressed that justification in the case of *Sejdić and Finci*. It had held in particular that, while it was not necessary to abandon the power-sharing mechanisms peculiar to Bosnia and Herzegovina, there existed power-sharing mechanisms which did not automatically lead to the total exclusion of representatives of the other communities.

Notwithstanding the differences with the case of *Sejdić and Finci*, the Court considered that Mr Pilav's exclusion from election to the Presidency as a result of the residence requirement in question was based on a combination of ethnic origin and place of residence, both grounds of distinction falling within the scope of Article 1 of Protocol No. 12. That exclusion as such amounted to a discriminatory treatment in breach of Article 1 of Protocol No. 12.

In view of that conclusion, the Court considered that it was not necessary to examine separately whether there had also been a violation of Article 1 of Protocol No. 12 as regards Mr Pilav's complaint that he was unable to vote for a member of his own ethnic community to the Presidency.

### Just satisfaction (Article 41)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by Mr Pilav. It further held that Bosnia and Herzegovina was to pay him 6,607 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.