

**SECRETARIAT GENERAL**

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
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Meeting: 1230 meeting (9-11 June 2015) (DH)

Item reference: Action report (26/03/2015)

Communication from Bosnia and Herzegovina concerning the case of Avdic against Bosnia and Herzegovina (Application No. 28357/11)

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Réunion : 1230 réunion (9-11 juin 2015) (DH)

Référence du point : Bilan d'action

Communication de la Bosnie-Herzégovine concernant l'affaire Avdic contre Bosnie-Herzégovine (Requête n° 28357/11) (**anglais uniquement**)

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**BOSNA I HERCEGOVINA**

*Ministarstvo za ljudska prava i izbjeglice      Ured  
zastupnika/agenta Vijeća ministara BiH pred  
Europskim sudom za ljudska prava*

**SARAJEVO**

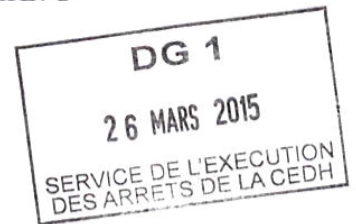


**BOSNIA AND HERZEGOVINA**

*Ministry for Human Rights and Refugees  
Office of the Agent of the Council of Ministers  
before the European Court of Human Rights*

**SARAJEVO**

No: 11-Ai-2/14- 139 /15  
Sarajevo, 26 March 2015



**Ms Geneviève Mayer  
Head of the Department  
Directorate General I Human Rights and Rule of Law  
Department for the Execution of Judgments of the European  
Court of Human Rights  
Council of Europe  
Strasbourg**

***Avdić et al. v. Bosnia and Herzegovina*, app. no. 28357/11 et al.  
judgment of 19 November 2013, final on 19 December 2014**

**Action Report**

**I Case Description**

The European Court of Human Rights ("the Court") found violations of the applicants' rights to court on account of the rejection of their constitutional appeals because the Constitutional Court of Bosnia and Herzegovina could not reach a required majority of five judges therefore effectively declined to decide on their cases (violation of Article 6§1).

The Court observed that the Rule 40(3) of the Rules of the Constitutional Court provided that, when fewer than nine judges participated in a plenary session, it was considered that the appeal is rejected unless a minimum of five judges voted identically on the proposal under discussion (§§18, 35).

**II Individual Measures**

The authorities ensured that individual measures have been taken to bring the continuing violations to an end and provide redress to the applicants for the damage sustained.

In this respect, on 24 and 25 September 2014, the Constitutional Court of BH granted leave for reopening of the impugned proceedings in this case. In particular, the Constitutional Court reopened the proceedings and examined the constitutional complaints at the merits in the cases AP-3197/07 *Avdić*, AP-2749/08 *Kovačević* and AP-3080/09 *Adamović*. Following the re-examination of these cases at the merits, the Constitutional Court adopted the respective decisions by a majority vote. These decisions are made available at the website of the Constitutional Court of BH ([www.ccbh.ba](http://www.ccbh.ba)). The authorities therefore ensured that the applicants' constitutional appeals were examined at the merits and that the violations found in this case were brought to an end in respect of all applicants.

The authorities would furthermore like to highlight that the Court awarded applicants just satisfaction in respect of non-pecuniary damage sustained. The applicants were therefore redressed for the damage sustained.

The authorities therefore consider that the individual measures taken ensured that the violations have ceased with respect to all applicants and that they were redressed for the damage sustained.

### **III General Measures**

The Court indicated that the violations found resulted from the Rule 40(3) of the Rules of the Constitutional Court. It is recalled that this Rule provided that, when fewer than nine judges participated in a plenary session, it was considered that the appeal is rejected unless a minimum of five judges voted identically on the proposal under discussion (§§18, 35). The authorities therefore consider that the change of the Rule concerned combined with the publication and dissemination measures would be capable of preventing similar violations.

#### ***a) Adoption of the new Rules of the Constitutional Court of BH***

Following the Court's findings in the present case, in April 2014, the Constitutional Court of BH adopted its new Rules in order to prevent similar violations. These Rules were published in the Official Gazette of BiH No. 22/14 and are available at the website of the Constitutional Court ([www.ccbh.ba](http://www.ccbh.ba)). These Rules superseded the 2005 Rules, which were in force when the violations in the present case occurred.

Pursuant to the provision of Article 42 of the new Rules of the Constitutional Court of BH if judges cannot reach a majority, the vote of the President of the Constitutional Court of BH, or his or her substitute, shall carry a weight of two votes and will thus prevail. The provision of Article 42 of the Rules has therefore removed the source of the violations found in this case and ensured that similar violations will not recur.

For instance, in Mr Kovačević's case, the Constitutional Court, in a formation of seven judges, rejected his appeal as a majority of five judges could not agree on any of the proposals (§16). If the Constitutional Court would decide today in similar circumstances, the failure to reach a required majority could not occur. In this event, the President's vote would subsequently lead to the majority of five judges.

The Constitutional Court also took measures aimed at ensuring reopening of the proceedings before it should the European Court find a violation of the right to access to a court within the context of the proceedings before the Constitutional Court. In this respect, on 30 May 2014 the Constitutional Court of BiH amended its Rules, notably the provision of Article 68.<sup>2</sup> The amended provision of Article 68 provides that if the European Court finds a violation of the right to access to a court before in the proceedings before the Constitutional Court, the affected party will be entitled to request the Constitutional Court within three months but in any event at the latest within six months to reopen the proceedings and re-examine its decision. This amendment would facilitate reopening of the proceedings before the

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<sup>2</sup> Decision on amendments to the Rules of the Constitutional Court of BH, published in the „Official Gazette of BiH“ No. 57/14

Constitutional Court following the European Court's judgment finding a violation of the Convention.

***b) Publication and dissemination measures***

The authorities furthermore ensured that the Court's judgment in this case has been translated and published on the website of the Office of the Agent of BH Council of Ministers before the European Court.<sup>4</sup> The judgment has also been published in the Official Gazette of BH No. 29/2014.

In addition, the Government Agent forwarded the European Court's judgment to the Constitutional Court of BH, Constitutional Court of the Federation of BH, Constitutional Court of Republika Srpska, Supreme Courts of the Federation BH and of Republika Srpska, the High Judicial and Prosecutorial Council of BH, and the Court of BH. The authorities consider that wide publication and dissemination would raise awareness of the relevant stakeholders on the violations found by the European Court and would be capable of preventing similar violations.

**IV Just satisfaction**

The authorities ensured that on 5 May 2014 the just satisfaction awarded to the applicant in respect of non-pecuniary damage sustained in the amount of EUR 3,600 was paid in the domestic currency at the rate applicable at the date of settlement. The authorities therefore ensured that the just satisfaction was paid within the deadline imparted by the Court.

**V Conclusion**

The authorities of Bosnia and Herzegovina consider that the measures adopted have brought the violations of the Convention found by the European Court in this case to an end and fully remedied the consequences for the applicants as well as that these measures will prevent similar violations. The authorities therefore consider that Bosnia and Herzegovina has thus complied with its obligations under Article 46, paragraph 1, of the Convention and propose to the Committee of Ministers to adopt a final resolution and close further examination of this case.



**Deputy Agent of the Council of Ministers of Bosnia and Herzegovina before the European Court of Human Rights**

**Zikreta Ibrahimović**

<sup>4</sup> [http://www.mhrr.gov.ba/ured\\_zastupnika/odluke/default.aspx?id=170](http://www.mhrr.gov.ba/ured_zastupnika/odluke/default.aspx?id=170)