

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



Contact: Clare OVEY
Tel: 03 88 41 36 45

Date: 31/03/2017

DH-DD(2017)380

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1288th meeting (June 2017) (DH)

Item reference: Action plan (14/03/2017)

Communication from Bosnia and Herzegovina concerning the case of SEJDIC AND FINCI v. Bosnia and Herzegovina (Application No. 27996/06)

* * * * *

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1288^e réunion (juin 2017) (DH)

Référence du point : Plan d'action

Communication de la Bosnie-Herzégovine concernant l'affaire SEJDIC ET FINCI c. Bosnie-Herzégovine (Requête n° 27996/06) (**anglais uniquement**)

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- 1/10 - *111* /17
Sarajevo, 13 March 2017

DGI

14 MARS 2017

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

**Mrs 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
F-67075 STRASBOURG CEDEX**

Subject: *Sejdić and Finci v. Bosnia and Herzegovina*, app. nos. 2799/06 and 34836/06, [GC] judgment of 22 December 2009

Zornić v. Bosnia and Herzegovina, app. no. 3681/06, judgment of 15 July 2014, final on 15 December 2014

Šlaku v. Bosnia and Herzegovina, app.no. 56666/12, [Committee] judgment of 26 May 2016

Pilav v. Bosnia and Herzegovina, app.no. 41939/07, judgment of 9 June 2016

Updated Action Plan

I Case Description

These cases concern violations of the right to free elections and discrimination against the applicants (citizens of Bosnia and Herzegovina of Roma, Jewish or undeclared origin) who were ineligible to stand for election to the House of Peoples of Bosnia and Herzegovina due to their lack of affiliation with a constituent people (Bosniacs, Croats or Serbs) (violations of Article 14 taken in conjunction with Article 3 of Protocol No. 1). These cases also concern general discrimination against the applicants on account of their ineligibility to stand for election to the Presidency of Bosnia and Herzegovina due to their lack of affiliation with a constituent people (violations of Article 1 of Protocol No. 12).

In the *Zornic* judgment, the Court indicated, under Article 46 of the Convention, that “the finding of a violation in the present case was the direct result of the failure of the authorities of the respondent State to introduce measures to ensure compliance with the judgment in *Sejdic and Finci*”. The Court furthermore indicated that “the failure of the respondent State to introduce constitutional and legislative proposals to put an end to the current incompatibility of the Constitution and the electoral law with [the Convention] is not only an

aggravating factor as regards the State's responsibility under the Convention for an existing or past state of affairs but also represented a threat to the future effectiveness of the Convention machinery" (§40 of the judgment).

In the *Pilav* judgment, the Court found that, although the applicant belongs to one of the "constituent peoples", he is excluded from election to the Presidency as a result of the impugned residence requirement. Notwithstanding the differences with *Sejdić and Finci*, the Court considered that this exclusion was based on a combination of ethnic origin and place of residence, both serving grounds of distinction falling within the scope of Article 1 of Protocol No. 12 and amounting to a discriminatory treatment in breach of Article 1 of Protocol No. 12.

II Individual Measures

The individual measures relating to the necessity to amend the Constitution of BiH and its electoral legislation in order to redress human rights violations found by the judgments in question, are directly related to the implementation of the general measures.

The applicants Sejdić and Finci made no claim in respect of pecuniary damage, but have made claims in respect of non-pecuniary damage. The Court considered that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicants.

The applicant Zornić did not submit a claim for just satisfaction and the Court accordingly considered there were no call to award her any sum on that account.

The applicant Šlaku claimed pecuniary and non-pecuniary damage. The Court had not discern any causal link between the violation found and the pecuniary damage alleged, it therefore rejected the claim. With regard to non-pecuniary damage, the Court considered, in the light of all the circumstances of the case, that the finding of a violation was sufficient to remedy any harm that the applicant's inability to stand for elections to the House of Peoples and to the Presidency of Bosnia and Herzegovina may have caused him.

The Court ordered the respondent State to pay the applicant Pilav, EUR 6,607 to be converted into the currency of the respondent, in respect of costs and expenses. On 5 December 2016 the Ministry of Finance and Treasury of BiH paid to the applicant the amount awarded.

III General Measures

Considering the human rights violation found by the Court, the Committee of Ministers has always considered that a number of amendments to the Constitution of Bosnia and Herzegovina and its electoral legislation should be adopted for the execution of the *Sejdić and Finci* judgment. In relation to that, the Committee of Ministers adopted three interim resolutions and numerous decisions calling on the authorities and political leaders of BiH to ensure that the constitutional and legislative framework be brought in line with the Convention requirements. The Committee of Ministers stressed that the execution of this judgment constitutes a legal obligation of Bosnia and Herzegovina.

a) Activities on the constitutional and legislation reform

Ever since the adoption of the Sejdić and Finci judgment, the relevant authorities of BiH have been putting efforts in trying to secure implementation of their legal obligations. However, many attempts to achieve the constitutional reform have failed (the authorities of BiH regularly informed the Committee of Ministers about all of the activities).

In its latest decision adopted at the December 2014 meeting (DH), the Committee of Ministers noted with profound concern and disappointment that the elections which took place in Bosnia and Herzegovina on 12 October 2014 were held under the same regulatory framework which the Court had found to be discriminatory. The Committee encouraged therefore the authorities and political leaders of Bosnia and Herzegovina to give a fresh impetus to their endeavours and in particular to intensify their efforts to reach rapidly a consensus on the content of the constitutional and legislative amendments required to execute this judgment and to ensure that the necessary amendments are adopted as a matter of priority.

In lights of the conclusions adopted by the latest Committee's decision of December 2014, the authorities of BiH reiterated their strong commitment to abide fully by the Court's judgments. In order to achieve full implementation, the following activities have been undertaken.

At its 117th meeting held on 12 January 2015, the Council of Ministers of BiH adopted the Information on the finality of the *Zornić v. BiH* judgment and in relation to this tasked the Ministry of Justice of BiH to make an Action Plan for the execution of the judgments *Sejdić and Finci v. BiH* and *Zornić v. BiH* and submit it to the Council of Ministers for adoption within 30 days.

The BiH Ministry of Justice developed the Action Plan which, among others, envisaged the forming of a Task Force for drafting amendments to the Constitution and electoral legislation, and prescribed measures, activities, bodies responsible for each activity and timeframes for the execution of the judgments. The Action plan prescribes two set of activities.

The first set of activities relates to the forming of the Task Force that would be composed of three ministers of the Council of Ministers of BiH, one member from each caucus of the House of Representatives of the Parliamentary Assembly of BiH, and one delegate from each ethnic caucus of the House of Peoples of the Parliamentary Assembly of BiH, as well as a representative of the Central Election Commission of BiH. According to the Action plan, the Task Force is charged to prepare the constitutional amendments that would be discussed at the Council of Ministers of BiH, and then forwarded to the legislative procedure.

The other set of activities relates to the adoption of the amendments to the electoral legislation of BiH. The timeframe for the preparation of the constitutional and legislative amendment was envisaged till the end of 2015.

The Council of Ministers of BiH, at its 22nd meeting held on 8 September 2015, adopted the Action Plan and appointed its members for the Task Force for the execution of the judgments *Sejdić and Finci v. BiH* and *Zornić v. BiH*. Members of the Task Force on behalf of the Council of Ministers of BiH are as follows: Minister of Human Rights and Refugees of BiH, Minister of Justice and Minister of Foreign Trade and Economic Relations of BiH.

Caucuses of the House of Representatives and one caucus of the House of Peoples have submitted names of their representatives. However, two other caucuses of the House of Peoples have not appointed their representatives to date, despite numerous calls by the Ministry of Justice of BiH.

Considering that the appointment of representatives of the two remaining caucuses of the House of Peoples of the Parliamentary Assembly of BiH is a prerequisite for the draft decision to be submitted to the President of the Council of Ministers of BiH for his signature, the decision on the formation of the Task Force has not been adopted to date.

Under these circumstances, at the proposal of the Ministry of Justice of BiH, the Council of Ministers of BiH, at their 62nd meeting held on 29 June 2016, tasked this Ministry to submit a revised Action Plan for the execution of the judgments *Sejdić and Finci v. BiH* and *Zorić v. BiH* and *Pilav v. BiH* with realistic timeframes and composition of the Task Force.

The Council of Ministers of BiH, at their 86th meeting held on 20 December 2016, was informed about the Initiative of Mr. D. Bečirović, member of the House of Representative, that had been adopted at the 38th of this House. According to the Initiative, the Council of Ministers of BiH was obliged, within 90 days, to prepare and forward to the parliamentary procedure the amendments to the Constitution of BiH with an aim of implementing the *Sejdić and Finci* judgment. Accordingly, the Council of Ministers of BiH obliged the Ministry of Justice of BiH and the Ministry of Human Rights and Refugees of BiH to implement the Initiative in question.

On 30 November 2016, the Ministry of Justice of BiH forwarded Draft Action Plan for the implementation of the *Sejdić and Finci v. BiH* and *Zorić v. BiH* and *Pilav v. BiH* judgments to the Council of Ministers of BiH. It is expected that the Council of Ministers of BiH will adopt the revised Action Plan in the coming period.

b) Publication and dissemination

The judgments have been translated and published on the web site of the Office of the Government Agent (see http://www.mhrr.gov.ba/ured_zastupnika/odluke/?id=170). The judgments *Sejdić i Finci v. BiH*, *Zorić v. BiH* and *Šlaku v. BiH* have also been published in all three official languages in the "Official Gazette of BiH", No. 17/10, No. 17/15 and 75/16 respectively.

The judgments have been disseminated to all relevant authorities in BiH.

IV Just satisfaction

The Court awarded EUR 1,000 to Mr Dervo Sejdić and EUR 20,000 to Mr Jakob Finci in respect of costs and expenses incurred before the Court. The Ministry of Finance and Treasury of BiH paid in due time the amounts awarded under this head.

V Conclusion

We shall continue to regularly inform the Committee of Ministers of the Council of Europe on all further activities of the relevant authorities in Bosnia and Herzegovina on the implementation of the Courts' judgments making the *Sejdić and Finci* group of cases.

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

