

**IN THE EUROPEAN COURT OF HUMAN RIGHTS**

Application No. 41939/07

**BETWEEN:**

Ilijaz Pilav

**Applicant**

- and -

Bosnia and Herzegovina

**Respondent**

- and -

Human Rights Watch

Minority Rights Group International

Benjamin N. Cardozo School of Law

**Interveners**

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**SUBMISSIONS ON BEHALF OF THE INTERVENERS**

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## I. Introduction

1. These Submissions are made by Minority Rights Group International, Human Rights Watch, and the Benjamin N. Cardozo School of Law (jointly, the “**Interveners**”) in relation to *Pilav v. Bosnia and Herzegovina* (Application no. 41939/07), pursuant to leave granted by the President of the Court on 18 December 2013, in accordance with Rule 44 § 3 of the Rules of Court.
2. Minority Rights Group International (“**MRG**”) is a non-governmental organisation based in London working to secure the rights of ethnic, religious and linguistic minorities, and indigenous peoples worldwide. For over 40 years, MRG has developed extensive experience in the fields of minority rights, anti-discrimination and human rights law. MRG has been involved in human rights litigation in countries ranging from Kenya to Bosnia, including representing Mr. Jakob Finci in the case of *Sejdić and Finci v. Bosnia and Herzegovina* (Application nos. 27996/06 and 34836/06) and has submitted *amicus curiae* briefs before a range of international bodies, including in the European Court of Human Rights cases of *Yumak and Sadak v. Turkey* (Application no. 10226/03), *D.H. and Others v. the Czech Republic* (Application no. 57325/00), and *Chagos Islanders v. the United Kingdom* (Application no. 35622/04). MRG has extensive knowledge of relevant international legal standards and jurisprudence.
3. Human Rights Watch (“**HRW**”) is one of the world’s leading independent organisations dedicated to defending and protecting human rights worldwide, with the goal of securing the respect of these rights for all persons, giving voice to the oppressed, and holding oppressors accountable for their crimes. HRW challenges governments and those who hold power to end abusive practices and to respect international human rights law. HRW has extensive experience of working for the effective protection of human rights and has contributed to the elaboration of international law and standards related to the application of human rights law, the rights of minorities, including the right to free elections and to be freely elected, and human rights issues which arise in situations of discrimination and lack of equality between people living in the same territory. HRW’s report on Bosnia and Herzegovina “Second Class Citizens: Discrimination Against Roma, Jews and Other National Minorities in Bosnia and Herzegovina,” published in April 2012, addressed electoral rights violations.
4. The Benjamin N. Cardozo School of Law was founded in 1976 by Yeshiva University, a leading academic and research institution. The Human Rights and Genocide Clinic at Cardozo, under Professor Sheri Rosenberg’s supervision, assisted in the representation of Mr. Finci, and Professor Rosenberg has written numerous publications on issues relevant to this case.
5. *Pilav v. Bosnia and Herzegovina* raises several critical issues in relation to permissible restrictions of rights protected under the European Convention on Human Rights (the “**Convention**”), especially when minority groups are involved. Specifically, this case concerns what to consider when evaluating whether there has been a violation of Article 1 of Protocol No. 12 of the Convention with regard to the right to stand for election and the right to vote when these rights are restricted on the grounds of ethnicity.
6. This Intervention will provide the European Court of Human Rights (the “**Court**”) with relevant comparative and international law material to assist the Court in discharging its function in accordance with “the interests of the proper administration of justice” (Rule 44 § 3(a)).

## II. Prohibition of Discrimination under Article 1 of Protocol No. 12

7. Under Article 1 of Protocol No. 12 of the Convention, any discrimination based on race, national or social origin, or association with a national minority by any public authority is prohibited. Article 1 states:

The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.<sup>1</sup>

## III. International Standards on the Right to Stand for Election

### A. International Law Prohibits Differential Treatment on the Right to Stand for Election Based on Ethnicity.

8. Under international law, *any* exclusion, or indeed differential treatment, in the right of citizens to stand for election that is based on ethnicity, race or religion is prohibited. Article 25(a) & (b) of the International Covenant on Civil and Political Rights (“**ICCPR**”) states:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors[.]<sup>2</sup>

9. Article 2(1) of the ICCPR states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>3</sup>

10. A clear reading of the two articles together shows that the Covenant strictly prohibits any distinction in the right to be elected (*i.e.* stand for election) that is based on race, national or social origin or other status. This is a separate prohibition from the prohibition on “unreasonable restrictions” on the right to stand for office. Therefore, the prohibition on ethnicity-based restrictions in standing for office is strict, and not open to any “reasonableness” justification.

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<sup>1</sup> Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 1, 4 Nov. 2000, C.E.T.S. No.: 177 [hereinafter Protocol No. 12].

<sup>2</sup> International Covenant on Civil and Political Rights, art. 25, 16 Dec. 1966, 999 U.N.T. S. 171 [hereinafter ICCPR].

<sup>3</sup> *Id.* at art. 2.

11. Similarly, Article 5(c) of the International Convention on the Elimination of All Forms of Racial Discrimination (“**ICERD**”) states:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(c) Political rights, in particular the right to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service[.]<sup>4</sup>

12. The language in ICERD is very similar to the ICCPR, stating that there shall be no “distinction” as to “race” or “ethnic origin,” in particular with respect to the right to stand for election. Therefore, as with the ICCPR, under ICERD there can be no justification for ethnicity-based restrictions on the right to stand for election.

13. In December 2009, the Court in *Sejdić and Finci v. Bosnia and Herzegovina* held that the inability of the two applicants to stand for election to the Presidency of Bosnia and Herzegovina based on the fact that they did not identify with one of the three “Constituent Peoples” violated Article 1 of Protocol No. 12.<sup>5</sup> The Court adopted similar standards in finding violations of Article 14, taken in conjunction with Article 3 of Protocol No. 1 and of Article 1 of Protocol No. 12, in terms of restrictions to stand for election to the Presidency and House of Peoples of Bosnia and Herzegovina. It ruled that the standard of discrimination is the same under Article 1 of Protocol No. 12 as under Article 14 and found that the ethnic-based differential treatment in the electoral restrictions could not be justified:<sup>6</sup>

[T]his [Court’s] jurisprudence has made it clear that “discrimination” means treating differently, without an objective and reasonable justification, persons in similar situations . . . . It follows that the constitutional provisions which render the applicants ineligible for election to the Presidency must also be considered discriminatory and a breach of Article 1 of Protocol No. 12 . . . . Accordingly . . . the Court finds that the impugned precondition for eligibility for election to the Presidency constitutes a violation of Article 1 of Protocol No. 12.<sup>7</sup>

14. The Court has also held that a contemporary democratic society built on the principles of pluralism and respect for different cultures cannot objectively justify any difference in treatment based exclusively, or to a decisive extent, on a person’s ethnic origin.<sup>8</sup>

15. In *Aziz v. Cyprus*, this Court, in finding a violation of Article 14 and Article 3 of Protocol No. 1, emphasised that the differential treatment complained of was due to the applicant’s ethnicity as a minority (a Turkish Cypriot):

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<sup>4</sup> International Convention on the Elimination of all Forms of Racial Discrimination, art. 5(c), 4 Jan. 1969, 660 U.N.T.S. 195 [hereinafter ICERD].

<sup>5</sup> *Sejdić and Finci v. Bosnia and Herzegovina* [GC], App. Nos. 27996/06 & 34836/06, ECHR 2009, § 56.

<sup>6</sup> *Id.* at § 55.

<sup>7</sup> *Id.* at §§ 55-56.

<sup>8</sup> *See D.H. and Others v. Czech Republic*, App. No. 57325/00, ECHR 2007-IV, § 176.

The Court considers that, in the instant case, the complaint under Article 14 of the Convention is not a mere restatement of the applicant's complaint under Article 3 of Protocol No. 1. The Court notes that the applicant is a Cypriot national, resident in the government-controlled area of Cyprus. It observes that the difference in treatment in the present case resulted from the very fact that the applicant was a Turkish Cypriot. It emanated from the constitutional provisions regulating the voting rights between members of the Greek-Cypriot and Turkish-Cypriot communities that had become impossible to implement in practice.<sup>9</sup>

Although the Court takes note of the Government's arguments, it considers that they cannot justify this difference on reasonable and objective grounds, particularly in the light of the fact that Turkish Cypriots in the applicant's situation are prevented from voting at any parliamentary election.<sup>10</sup>

Thus, the Court concludes that there is a clear inequality of treatment in the enjoyment of the right in question, which must be considered a fundamental aspect of the case. There has accordingly been a violation of Article 14 of the Convention taken in conjunction with Article 3 of Protocol No. 1.<sup>11</sup>

B. The Ability to Change One's Official Ethnic Identity Does Not Excuse an Existing Violation of One's Human Rights Based on Ethnicity.

16. The fact that in a particular electoral system people can change their official ethnic "identity" does not amount to a justification for ethnicity-based restrictions on standing for office. Furthermore, international law stresses the right to declare, or not to declare oneself as a member of a minority or religion without suffering any detriment from so doing. A similar rule should apply to the state requiring a declaration of ethnicity in order to stand for office—that no detriment should occur whichever identity a citizen chooses.
17. The Council of Europe's Framework Convention for the Protection of National Minorities ("**Framework Convention**") states:

Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.<sup>12</sup>
18. The standards set out in the Framework Convention should be applicable wherever an ethnic group is locally a minority, be it nation-wide or within a specific regional governmental territory within which the ethnic group's rights are affected.
19. Similarly, this Court has made it clear that Article 9 of the Convention prohibits states from asking citizens to declare their religion, stating in *Sinan Işık v. Turkey* that: "the Court cannot see why it would be

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<sup>9</sup> *Azjiç v. Cyprus*, App. No. 69949/01, ECHR 2004, § 36.

<sup>10</sup> *Id.* at § 37.

<sup>11</sup> *Id.* at § 38.

<sup>12</sup> Framework Convention for the Protection of National Minorities, Council of Europe, art. 3(1), 1 Feb. 1995, C.E.T.S. No.: 157.

necessary to indicate religion in civil registers or on identity cards for demographic purposes, which would necessarily involve legislation making it mandatory to declare one's religious beliefs."<sup>13</sup>

C. Restrictions on Ethnicity Limited to a Geographic Area Are Also Prohibited.

20. Any ethnicity-based restriction on the right to stand for election cannot be justified. This must apply in all such restrictions, even where limited to a specific geographical area within a country.<sup>14</sup> This Court stated in *Andrejeva v. Latvia* that the personal situation of a person affected by discrimination should be taken into account "exactly as it stands":

The prohibition of discrimination enshrined in Article 14 of the Convention is meaningful only if, in each particular case, the applicant's personal situation in relation to the criteria listed in that provision is taken into account exactly as it stands. To proceed otherwise in dismissing the victim's claims on the ground that he or she could have avoided the discrimination by altering one of the factors in question—for example, by acquiring a nationality—would render Article 14 devoid of substance.<sup>15</sup>

**IV. International Standards on the Right to Vote**

21. It is a fundamental pillar of international law that individuals should be able to freely express their opinions and participate in the governance of the countries in which they live through a non-discriminatory electoral system. As discussed *infra*, this Court's jurisprudence and international treaties uniformly consider as discriminatory any electoral law that prohibits individuals from voting for a candidate of their choice solely on the basis of ethnic origin.

A. The Right to Vote Applies Equally to All Individuals, No Matter Their Ethnic Background.

22. The ability to freely exercise one's right to vote is a pillar of the modern concept of citizenship in a democratic society.<sup>16</sup> This right applies equally to all citizens of a given State no matter their ethnicity, race, religion, or any other identifying factor.<sup>17</sup> The importance of this right in conjunction with the prohibition against discrimination on the basis of ethnic background is recognised not only in the Convention but across a myriad of other international agreements and treaties, including, *inter alia*, the

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<sup>13</sup> *Sinan Işık v. Turkey*, App. No. 21924/05, ECHR 2010, § 44.

<sup>14</sup> See also *Vučković and Others v. Serbia*, App. Nos. 17153/11, *et seq.*, ECHR 2012, § 83 (finding that differential treatment on the grounds of registered residence within a country was a ground of distinction covered by Article 14 of the Convention).

<sup>15</sup> *Andrejeva v. Latvia* [GC], App. No. 55707/00, ECHR 2009, § 91.

<sup>16</sup> See N. Kofele-Kale, *The Global Community's Role in Promoting the Right to Democratic Government and Free Choice in the Third World*, 11 LAW & BUS. REV. AM. 205, 210 (2005) ("The right of a people to elect a government of their choice is a fundamental right recognized in numerous international and regional instruments.").

<sup>17</sup> See Protocol No. 12, *supra* note 1, at art. 1.

Universal Declaration of Human Rights,<sup>18</sup> the ICCPR,<sup>19</sup> the ICERD,<sup>20</sup> and the Charter of Fundamental Rights of the European Union.<sup>21</sup>

23. The right to vote is not a privilege. It is a well-established principle of international law that universal suffrage and fair and free elections are the cornerstone of democracy based upon the consent of the people.<sup>22</sup> In this respect, this Court has held that the principle of equality of treatment of all citizens in the exercise of their right to vote and to stand for election is of “prime importance” in the Convention system since it “enshrines a characteristic principle of democracy.”<sup>23</sup>
24. There are numerous ways of organising and running electoral systems, and no one particular way is required to guarantee the right to vote without discrimination for all adult citizens. Countries differ, *inter alia*, in historical development, cultural diversity, political and philosophical assumptions, and levels of political evolution. Nonetheless, whilst this Court has determined that as a consequence of such diversity, States have a wide “margin of appreciation” with respect to the application of the right to vote, this margin is not unlimited.<sup>24</sup> The Court has stated that any conditions imposed do not limit the right to vote or to stand for election to such an extent that they impair “the very essence of the rights protected.”<sup>25</sup> Moreover, any such condition must be imposed in pursuit of a legitimate aim, and the means employed must not be disproportionate to the aims. This Court has now ruled on a number of occasions that differential treatment based on ethnicity when applied to voting rights cannot be justified.
25. For example, this Court has already found that Bosnia and Herzegovina’s Constitution violates its obligations under the Convention. It ruled in *Sejdić and Finci v. Bosnia and Herzegovina* that: “the exclusion of minorities from active participation in the elections has no objective and logical justification and thus stands in contradiction with the European Convention on Human rights, which prohibits discrimination.”<sup>26</sup> Indeed, full and equal participation in voting for all citizens are linked to the legitimacy of political authority.<sup>27</sup>

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<sup>18</sup> Universal Declaration of Human Rights, art. 21(3), 10 Dec. 1948, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (“The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”).

<sup>19</sup> ICCPR, at art. 25.

<sup>20</sup> ICERD, at art. 5.

<sup>21</sup> Charter of Fundamental Rights of the European Union, art. 21(1), 18 Dec. 2000, O.J. C 364/01 (“Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.”).

<sup>22</sup> See Eur. Comm. Dem. Through Law (Venice Commission), *Opinion on the Electoral Law of Bosnia and Herzegovina*, CDL-INF (2001) 21, 48th plen. mtg, 19-20 Oct. 2001, para. 9 (“There can nevertheless be no doubt that the combined result of these provisions [the international treaties and conventions annexed to the BiH Constitution] is that all citizens, irrespective of ethnicity, must have an equal right to vote in and stand as candidates for elections.”).

<sup>23</sup> *Mathieu-Mohin and Clerfayt v. Belgium*, App. No. 9267/81, Series A no. 113, ECHR 1987, § 50.

<sup>24</sup> See *Hirst v. the United Kingdom*, App. No. 74025/01, ECHR 2005, § 61.

<sup>25</sup> *Zdanoka v. Latvia* [GC], App. No. 58278/00, ECHR 2006-IV, § 104.

<sup>26</sup> See S. Gavrić, *Constitutional Reform in Bosnia and Herzegovina. A Unicameral Parliamentary Political System as a Solution for the Implementation of the Ruling in the Case “Sejdić and Finci vs. Bosnia and Herzegovina”?*, 1 SOUTH EAST EUR. J. POL. SCI. 2 (2013).

<sup>27</sup> See G. Fox, *Election Monitoring: The International Legal Setting*, 19 WIS. INT’L L. J. 295, 309 (2001) (“The value of participatory rights is . . . inseparable from the legitimation of political authority achieved by their exercise. Participatory rights have little value in isolation where this link to political authority is severed . . . Those who participate in elections do so in order to imprint their views on national policy, and not simply to vote or stand as a candidate for its own sake.”).

B. A State is Obligated to Ensure That its Citizens Enjoy an Unrestricted Right to Vote.

26. The European Commission for Democracy Through Law (“**Venice Commission**”) has issued a number of Opinions that relate to the obligation of Member States to make sure their electoral laws comport with the standards of the Council of Europe.<sup>28</sup>
27. In 2005, the Venice Commission opined that an electoral system that limits the ability of members of an ethnic group from voting for members of their own group to the Presidency based on where they reside:
- . . . seems clearly incompatible with the equal right to vote and to stand for election under Article 25 of the ICCPR or with the equality under the law guaranteed to members of minorities under Article 4 of the Framework Convention for the Protection of National Minorities to formally exclude members of minorities from a public office.<sup>29</sup>
28. The Venice Commission continued, recognising the fact that such restrictive measures may have once been “necessary to achieve peace and stability and to avoid further loss of human lives” they still “run counter to the general [aim of] preventing discrimination.”<sup>30</sup> The Commission went on to note that peace and stability could:
- . . . be achieved without entering into conflict with international standards. It is not the system of consensual democracy as such which raises problems but the mixing of territorial and ethnic criteria and the apparent exclusion from certain political rights of those who appear particularly vulnerable. It seems possible to redesign the rules on the Presidency to make them compatible with international standards while maintaining the political balance in the country.”<sup>31</sup>
29. A constitutional structure that prohibits a large segment of the population from voting for members of their own ethnic communities violates the Convention. Such measures are discriminatory and “run counter to the OSCE Copenhagen Commitments and other international standards.”<sup>32</sup> These restrictions based on ethnicity are recognised as “limiting[s] factor for full respect of political rights, especially of the passive right to vote[.]”<sup>33</sup>
30. Article 15 of the Framework Convention recognises that the effective participation of individual members of national minorities in various areas of public life is essential to ensure social cohesion and the development of a truly democratic society. The Article calls upon State Parties to “create the conditions necessary for the effective participation of persons belonging to national minorities in

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<sup>28</sup> See, e.g., Eur. Comm. Dem. Through Law (Venice Commission), *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative*, Mar. 11, 2005, CDL-AD 004, § 70.

<sup>29</sup> *Id.* at § 70.

<sup>30</sup> *Id.* at § 74.

<sup>31</sup> *Id.* at § 76.

<sup>32</sup> ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE (OSCE) OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (ODIHR), ELECTION OBSERVATION MISSION FINAL REPORT, GENERAL ELECTIONS 4 (2006).

<sup>33</sup> United Nations Human Rights Committee (HRC), *Consideration of reports submitted by States parties under article 40 of the Covenant: International Covenant on Civil and Political Rights, Initial Report: Bosnia and Herzegovina*, CCPR/C/BIH/1, 24 Nov. 2005, § 14.



cultural, social and economic life and in public affairs, in particular those affecting them.”<sup>34</sup> Minorities include members of an ethnic group that is numerically in a minority in a particular part of the country.<sup>35</sup>

31. The importance of broad participation in all areas of life by individual members of national minorities has been recognised by the Organization for Security and Co-operation in Europe (“OSCE”), which has recommended that State Parties view such participation as creating the necessary conditions for effective participation of individual members of national minorities not only in social life, but in governance as well, and thus, as forming an integral part of the implementation of the principles of good governance in a pluralistic society. The OSCE High Commissioner on National Minorities has stated that one of the indicators of the level of pluralism and democracy of a society resides in the degree of participation of persons belonging to national minorities in various spheres of life.<sup>36</sup>
32. Effective participation of persons belonging to national minorities is also crucial for enhancing social cohesion, as keeping national minorities on the periphery of society can lead to social exclusion and tensions among groups. Marginalising persons belonging to national minorities in socio-economic life also has implications for the country as a whole, with the risk of losing their contribution and additional input to society.<sup>37</sup> When territorial limitations are added to ethnic requirements for voting purposes, the “principle of equality”<sup>38</sup> falls apart. This equality is central to both the tenets of the Council of Europe and the European Union.<sup>39</sup>
33. A voting structure in which inequalities exist based on ethnic background run contrary to the need to protect the rights of ethnic groups, which is paramount. Without the freedom to vote for members of one’s own ethnicity, voters are effectively forced to vote only according to prescribed ethnic lines. While there may be valid reasons to structure a government taking into consideration representation of various ethnicities in order to prevent ethnicity-driven violence and wholesale uprooting of communities based on ethnicity, voting laws that incentivise members of ethnic groups to move from their communities in order to vote is treating their vote as worth less than that of other groups.
34. In effect, such laws operate as a form of ethnic cleansing and run contrary to the ideals of ethnic equality espoused by the Convention. If large displaced populations within States will not be able to effectively vote upon their return to their rightful homes because of voting inequalities based on ethnicity and location, they will be discouraged from returning home. The discriminatory effect of unequal voting laws is further amplified because in choosing not to return home, a minority community’s members are relegated to second-class status in the territory where they remain if they are prohibited from voting for the candidate of their choosing.

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<sup>34</sup> Council Of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs, 27 Feb. 2008, ACFC/31DOC(2008)001, § 5.

<sup>35</sup> Council Of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Bosnia and Herzegovina, 9 Oct. 2008, § 41 (“The Advisory Committee invites Bosnia and Herzegovina to consider further applying the Framework Convention to persons belonging to constituent peoples in a minority situation, on a case-by-case basis and in close consultation with those concerned.”)

<sup>36</sup> ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE (OSCE) HIGH COMM’R ON NAT’L MINORITIES, THE LUND RECOMMENDATIONS ON THE EFFECTIVE PARTICIPATION OF NATIONAL MINORITIES IN PUBLIC LIFE, 11, 22 (1999).

<sup>37</sup> *Id.* at 11.

<sup>38</sup> *Stranka za Bosnu I Hercegovinu and Mr. Ilijaž Pilav*, No. 2678/08, Constitutional Court of Bosnia and Herzegovina, 29 Sept. 2006, at 14 (Constance Grew, J., dissenting).

<sup>39</sup> EUROPEAN COMMISSION, COMMISSION STAFF WORKING DOCUMENT, BOSNIA AND HERZEGOVINA 2013 PROGRESS REPORT, No. SWD(2013) 415 final § 1.2 (2013) (“Bosnia and Herzegovina is a potential candidate for EU membership.”).

35. In the context of this Court’s jurisprudence, it has repeatedly affirmed the importance of universal suffrage as the only way to identify the will of the people.<sup>40</sup> Preventing large segments of the population from even having the choice to vote for members of their own communities impairs the “very essence [of the right to vote] and depriving [that right] of [its] effectiveness.”<sup>41</sup> Inclusion is the “very essence” of the right to universal suffrage and universal suffrage bespeaks the essence of the rights protected. “[I]n the twenty-first century, the presumption in a democratic State must be in favour of inclusion.”<sup>42</sup> That is to say, the “essence” of the right is the free expression of the people in the choice of who represents them in government. It is not a matter of who the people ultimately elect, but rather that the political system itself provides a pool of possible candidates in a manner that is free of discrimination. This Court has made clear that the will of the people can only be heard through inclusive, universal suffrage.<sup>43</sup>
36. The exclusion of a voter’s right to vote for and to be represented by a member of his community in the highest political offices in the country is a major interference in his or her right as a voter. Effectively, this means that his or her own community has second-class status in that country’s political life, at least in that part of the country where this right is restricted.

**18 February 2014**

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<sup>40</sup> *Zdanoka v. Latvia*, *supra* note 25, at § 104; *see also Hirst v. the United Kingdom*, *supra* note 24, at § 62.

<sup>41</sup> *Zdanoka v. Latvia*, *supra* note 25, at § 104.

<sup>42</sup> *Hirst v. the United Kingdom*, *supra* note 24, at § 59.

<sup>43</sup> *See Zdanoka v. Latvia*, *supra* note 25, at § 115(c).