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**DIMITRA TSAKIRI KONSTANTINOS**

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**"Human Rights at the Ballot Box: Peace Treaties and  
Electoral Arrangements in International Law"**

**Supervisors:**

- a) Assist.Prof. Anastasios Gourgourinis
- b) Associate Prof. George Kyriakopoulos
- c) Assist.Prof. Efthymios Papastavridis

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## ABSTRACT

The paper discusses the complex relationship between human rights, peace treaties, and electoral arrangements within an international legal framework using the case study Kovacevic v. Bosnia and Herzegovina. This paper argues that the international legal norm and the peace agreement of countries in post-conflict situations shape the form taken by electoral processes and opens up the roles they play in guaranteeing respect for the principles of human rights. The particular case of Kovacevic v. Bosnia and Herzegovina provides the opportunity to review in detail challenges and successes in the application of international law for the protection of electoral integrity. In this regard, the research aims to contribute to a better understanding of how international law nurtures democratic governance and political stability in post-conflict regions by taking into consideration this case.

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## 1. Introduction

### I. Overview of the research topic

The integrity of elections is the very cornerstone of legitimacy and stability in democratic governance. Electoral integrity is about living up to standards that guarantee the quality of elections, being free, equal, and representative of genuine popular will.<sup>1</sup> In post-conflict societies, establishing transparent and accountable electoral processes is central to peacebuilding and the consolidation process for democracy.<sup>2</sup> Present research is based on the analysis of interrelations between human rights, peace treaties, and electoral arrangements within international law, using as specific example the case of *Kovacevic v. Bosnia and Herzegovina*, because such a rich practice overcame real difficulties for their successful implementation.

Often including clauses meant to establish democratic institutions and guarantee that elections be carried out in a way honoring human rights, peace treaties in post-conflict environments, these accords are absolutely vital tools for not only ending hostilities but also for establishing democratic government and safeguarding of human rights.<sup>3</sup> Often, they demand the systems and procedures for running elections, which are necessary to guarantee long-term stability and hence validate new political systems.

The case of *Kovacevic v. Bosnia and Herzegovina* emphasizes the part international legal standards play in resolving the complexity of election systems in a community recovering from war. Since the Dayton Peace Agreement was signed, it has not been possible for Bosnia and Herzegovina to have free and open elections in a manner that has been called for under international law. The fact that this case involves the European Court of Human Rights really shows the importance of international involvement with regard to making sure peace

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<sup>1</sup> Council of Europe, *Using International Election Standards: Handbook for Civil Society Organisations* (Council of Europe Publishing, 2016) <https://rm.coe.int/16806c791a> p. 9

<sup>2</sup> Zoubir N (ed), *ELECTORAL INTEGRITY: ENSURING RHETORIC REFLECTS REALITY IN AFRICAN ELECTORAL ASSESSMENTS* (EISA 2016) <https://www.eisa.org/storage/2023/05/edited-volume-2016-electoral-integrity-south-africa-eisa-publication.pdf?x13899>

<sup>3</sup> Christine Bell, *Peace Agreements and Human Rights* (Oxford University Press 2003)

settlements result in free and workable vote counting. The level to which peace agreements would eventually embed democratic governance depends a great deal upon how strong the voting system is and on protection of human rights.<sup>4</sup>

It also echoes the call for the need for international law and local processes of elections to work with one another. International laws and peace agreements can set the standard and regulation of how the election should be carried out, but whether these are really performed is given by the political will and institutional capacity in every country.<sup>5</sup> The case of Kovacevic is the sad example of how difficult it is to ensure that national voting rules are compatible with international human rights commitments. It illustrates at once what international law can and cannot do in order to contribute to the restoration of democracy in post-conflict areas.

## II. Significance of human rights in electoral integrity

Human rights are a basis and a guarantor of the legitimacy and fairness of the electoral procedures. It is these freedoms that make people vote freely without any discrimination, constraint, and violence. Democratic elections are simply comprised of the rights to vote, stand for office, or stand on account of freedom of expression and association. Various international instruments, including the International Covenant on Civil and Political Rights (ICCPR)<sup>6</sup> and Universal Declaration of Human Rights (UDHR)<sup>7</sup> mandates that every citizen shall have the right and the opportunity to vote and be elected at genuine periodic elections, which shall be held by universal and equal suffrage and shall be held by secret ballot, so guaranteeing the free expression of the will of the electors.<sup>8</sup>

Protection of human rights in an electoral context is important, especially within conflict countries, where the legacy of violence and lack of trust might undermine the process of voting.

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<sup>4</sup> Ibid

<sup>5</sup> Philipp Kastner, 'Interactions between Peace Agreements and International Law' in Marc Weller, Mark Retter, and Andrea Varga (eds), *International Law and Peace Settlements* (Cambridge University Press 2021) 165-184.

<sup>6</sup> International Covenant on Civil and Political Rights (ICCPR), 1966, United Nations General Assembly.

<sup>7</sup> United Nations, *Universal Declaration of Human Rights* (United Nations, 1948)

<sup>8</sup> United Nations, *Introduction to Human Rights and Elections* (United Nations Regional Information Centre, 2024) <https://unric.org/en/introduction-to-human-rights-and-elections/>



Elections carried out in those kinds of environments, respecting human rights, are key to rebuilding confidence in democratic institutions and promoting long-term peace and stability. In the case of Bosnia and Herzegovina, for example, international and national measures to safeguard electoral integrity lay at the heart of the process of transition towards a peaceful and democratic society after the Dayton Peace Agreement. The decision in the case of *Kovacevic v. Bosnia and Herzegovina* emphasizes how pivotal human rights are in ensuring that elections are free and fair and how international supervision could act to protect such standards.<sup>9</sup>

Furthermore, the junction of electoral integrity with human rights emphasizes the need of strong legal systems and efficient execution of laws. Monitoring and correcting violations of election rights depends much on international human rights bodies as the United Nations Human Rights Committee and regional courts like the European Court of Human Rights. Emphasizing that fundamental to democratic governance are Article 25 of the International Covenant on Civil and Political Rights, General Comment No. 25 of the United Nations Human Rights Committee explores Article 25's rights to participate in public affairs, voting rights, and equal access to public services. It emphasizes the need of a clear electoral procedure to avoid fraud and manipulation and stresses that elections must be carried out freely and fairly so that every person may participate on an equal basis.<sup>10</sup>

These organizations offer remedies when electoral rights are violated and assist guarantee that states follow their international responsibilities. Many instances the European Court of Human Rights decided underlined the need of preserving democratic values and electoral integrity. For example, the court's participation was vital in *Kovacevic v. Bosnia and Herzegovina* in tackling the difficulties in applying equitable voting procedures in a post-conflict society showing how outside control might support internal initiatives to uphold voting integrity.<sup>11</sup>

The legal ideas these agencies formed help to create international norms and standards improving the integrity of elections all around. These international human rights organizations not only hold regimes responsible but also create precedents that direct next election behavior

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<sup>9</sup> Dayton Peace Agreement, 1995, General Framework Agreement for Peace in Bosnia and Herzegovina.

<sup>10</sup> United Nations Human Rights Committee, *General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 1996.

<sup>11</sup> European Court of Human Rights, *Kovačević v. Bosnia and Herzegovina*, No. 43651/22, 29 August 2023

by offering thorough interpretations and verdicts. This guarantees that electoral procedures remain pillar of reasonable and stable political systems, therefore supporting the worldwide dedication to democratic administration and the defense of human rights.<sup>12</sup>

### III. Objectives and scope of the study

The subject, within the framework of international law, generally tends to explore the interactions between human rights and peace treaties on electoral systems. This paper seeks to explain the two goals that peace treaties serve for peacemaking and perhaps the continuation of exclusionary policies by exploring how peace treaties shape voting systems in post-conflict countries. Analyzing these dynamics under the case of *Kovacevic v. Bosnia and Herzegovina* helps one to grasp the complexity and conflicts that follow when democratic norms are implemented in such environment.

Emphasizing their pragmatic effects on electoral processes, this paper seeks to investigate the legal systems regulating the integration of peace agreements with international human rights standards. The study also needs to investigate how these models are applied, challenged, and interpreted within pragmatic environments, especially with regard to Bosnia and Herzegovina. It is therefore hoped that through this study, the implications of these treaties dealing with the political participation of underprivileged groups, together with more general consequences for electoral integrity, might be clarified.

Reviewing its electoral clauses and effect on human rights, the paper addresses both contemporary and historical peace agreements in their whole. This entails a comparative analysis of several post-conflict countries to identify common challenges and effective ways to include human rights into political processes. Combining legal analysis with empirical case studies will enable the research to present a sophisticated knowledge of how international law could influence and improve voting processes in settings of post-conflict.

Furthermore, this paper aims to offer practical guidance on how legislators and lawyers could connect peace agreements with international human rights standards. Stressing the successes as well as the limitations observed in the *Kovacevic* case will help the study provide strategies to

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<sup>12</sup> Christine Bell, *Peace Agreements and Human Rights* (Oxford University Press 2003).

increase the effectiveness of peace agreements in enhancing democratic government and stability. Ultimately, the initiative seeks to contribute to the more general discussion on how international law may assist fair and inclusive voting systems in nations rebuilt from war.

#### IV. Methodology and structure of the thesis

The present thesis undertakes a thorough examination of legal texts, peace treaties, court rulings, and scholarly publications to explore the incorporation of human rights into election procedures. The research largely employs a qualitative approach. This methodology facilitates a thorough analysis of both real-world implementations and conceptual frameworks. It analyzes the subtlety of international law relating to post-conflict electoral systems through document analysis. However, case studies are relevant for the understanding of how legal theories work in real-world situations and how successfully international supervision upholds human rights standards. It is in this context that one of these cases is the *Kovacevic v. Bosnia and Herzegovina* case.

The structure of the thesis is designed in such a way that deepens the knowledge of the subject; hence, through which the research challenge and objectives defined in chapter one prepare the reader for a theoretical framework that gives the insights about international law and human rights ideas relevant for electoral integrity. The submission then systematically proceeds, in the later chapters, to examine the role that peace agreements play in determining the type of electoral systems employed, using various case studies from a number of post-conflict countries to illustrate different outcomes. The thesis, within the central argument under international law, focuses on a considered analysis of the *Kovacevic* case, underlining both the challenges and the accomplishments of applying electoral systems that would be in conformity with standards of human rights.

Finally, the structure and approach are considerably in line with ensuring consistency across the study. Every chapter builds on the one before it by tying empirical data to theoretical ideas to fully answer the research objectives. The last chapters combine the results and provide, depending on the study, recommendations and interpretations. This approach not only improves

the information flow but also guarantees that every element of the research efficiently helps to grasp how peace treaties affect electoral integrity under the framework of international law.

## **2. Peace Treaties and Electoral Systems: Establishing Democracy in Post-Conflict Societies**

### **I. The Role of Peace Treaties in Electoral System Formation**

Peace treaties provide a key foundation for establishing the most basic levels of electoral systems in societies that have undergone conflict. In this regard, these peace treaties often act as a blueprint upon which democratic institutions can be built and installed through the creation and installment of their relevant electoral laws and procedures. However, in the case of the peace settlement for Bosnia and Herzegovina, popularly known as the Dayton Peace Agreement, it approved an immensely detailed settlement with provisions to set up an elaborate electoral system that could ensure that representation was given to the three main ethnic groups of the country. These frameworks are quite important in grounding new political orders and creating a peaceful transition into democracy. The Dayton Peace Agreement hailed the Bosnian War to a close in 1995, besides designing the basal framework of the government of Bosnia and Herzegovina. To be precise, it instituted an electoral system aimed at guaranteeing equal representation to the three decisive ethnic groups of the country, namely the Bosniaks, Croats, and Serbs. It was tailor-made to deal with deeply entrenched ethnic divisions that fueled the conflict in a manner that was supposed to create a political structure where no single group could dominate the government.<sup>13</sup>

Under the Dayton Agreement, the presidency of Bosnia and Herzegovina was envisaged as a tripartite body made up of one president from each of the three ethnic groups. This It was supposed to ensure that all groups have a voice in the executive decision of the country for a sense of shared power and none of the ethnic communities feel they are being marginalized. Similarly, the parliamentary system went through the division with some quotas and mechanisms in order to maintain ethnic balance. This structure was important in facilitating the transition into

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<sup>13</sup> Christine Bell, *Peace Agreements and Human Rights* (Oxford University Press 2003) p. 134-137

peace from conflict because that way of structuring the entity made each group consider that there was an assurance of safeguarding interest under the new political order.<sup>14</sup>

On a deeper level, this structure brought about a number of obstacles. More often than not, the fact that a balance of ethnicity needed to be upheld made it difficult for any actual decisions to be politically passed through since a consensus needed to be established by the representatives of all three groups in question. This has obstructed good governance at times and retarded the path to reform in Bosnia and Herzegovina. Moreover, notwithstanding these difficulties, it was evident that the electoral system established by the Dayton Agreement was an essential element of post-conflict stability in this country, which offers, more or less, a framework for peaceful coexistence and political cooperation among Bosniaks, Croats, and Serbs.<sup>15</sup>

One of the important tasks for peace treaties is trying to establish a balance of power among competing groups, while forming an electoral system. Such a scenario is fraught with a very high danger of renewed violence in societies emerging from conflict. Community power-sharing arrangements are often written into peace treaties along with proportional representation, which does not allow any one community to take total control of the political landscape. In the case of Africa, the negotiated settlement that achieved the end of apartheid included within it a new electoral system based on proportional representation for the inclusion of the voices of all groups in the new democracy.<sup>16</sup>

The peace treaty also plays a significant role in the inclusiveness of the post-conflict electoral system, widely represented. They often incorporate commitments that guarantee the inclusion of marginalized groups in the electoral process, such as women, minorities, and displaced persons. The Arusha Accords ended the Burundian Civil War by urging that women and ethnic minorities be represented in the political process through electoral laws that guarantee their representation.<sup>17</sup> The arriving at such measures is important in building a democratic culture which esteems and protects the rights of all its citizens.

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<sup>14</sup> Scott E, "Bosnia and Herzegovina and the Dayton Agreement" (2021)

<sup>15</sup> Marco Mezzera, Michael Pavicic and Leontine Specker, *Governance Components in Peace Agreements: Fundamental Elements of State and Peace Building?* (Conflict Research Unit – CRU, 20 May 2009) 68-75.

<sup>16</sup> Pippa Norris, *Electoral Engineering: Voting Rules and Political Behavior* (Cambridge University Press 2004) 74-76.

<sup>17</sup> Timothy Longman, *Memory and Justice in Post-Genocide Rwanda* (Cambridge University Press 2017) 112-114.

Despite the highest motives of peace treaties, the planting of electoral systems in societies fresh out of conflict is, as a rule, plagued by logistical, political, and resource-based problems. In Iraq, the Coalition Provisional Authority-initiated setup of an electoral system had many issues to deal with security concerns and the challenge of providing fair representation in a deeply divided society.<sup>18</sup> The difficulties encountered in setting up these systems make necessary the sustained support and monitoring of the international community to ensure that the electoral frameworks established through peace treaties can be effectively realized.

## II. Electoral Frameworks in Post-Conflict Environments

Establishment of an effective and inclusive electoral framework is one of the critical steps taken toward fostering long-lasting peace, stability, and democratic governance in post-conflict societies. In this regard, such frameworks are necessary to lend legitimacy toward new political orders after the cessation of hostilities. Restoring public confidence and preventing violence from restarting in such a context, electoral systems have to be specifically designed to cope with deeply divided societies in ways that will ensure that each significant group has a degree of voice in the political process.<sup>19</sup> It would thus involve the creation of institutions capable of conducting elections in a nondiscriminatory manner, drafting laws ensuring that the elections would be inclusive and transparent, and mechanisms which can sort out potential disputes arising in the run-up to or in the aftermath of the election contest. The aim is to devise a democratic, or already developed, ambient wherein elections gain the requisite credibility and legitimacy and reflect true representation of the will of all the people as part of a larger peacebuilding process.<sup>20</sup>

In such environments, writing or reforming electoral legislation and institutions often represents the first step toward developing a sound electoral regime. Legal frameworks based on election conduct provide a foundation in Places where elections are held and form a significant variable concerning the transparency, equity, and inclusiveness of the process. This is more often than

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<sup>18</sup> Larry Diamond, *Squandered Victory: The American Occupation and the Bungled Effort to Bring Democracy to Iraq* (Times Books 2005) 185-190.

<sup>19</sup> USAID, *The Electoral Assessment Framework* (USAID, 2022) [https://www.usaid.gov/sites/default/files/2022-05/The\\_Electoral\\_Assessment\\_Framework-508-compli.pdf](https://www.usaid.gov/sites/default/files/2022-05/The_Electoral_Assessment_Framework-508-compli.pdf) p. 3-4

<sup>20</sup> Benjamin Reilly, *Democracy in Divided Societies: Electoral Engineering for Conflict Management* (Cambridge University Press, 2001), pp. 16-21.

not advertisement of new constitutions or major revisions of constitutions currently in use to reflect the new political realities. For example, Iraq's 2005 Constitution was a cornerstone of the new electoral framework. While providing the necessary legal skeleton on which the conducting of elections could take place, this constitution contained other provisions which were aimed at ensuring fair representation of Iraq's ethnic and religious minorities. The newly adopted electoral system combined elements of proportional representation with those of territorial constituencies as a way to prevent one group from dominating the election process and, instead, elicit cooperation between the various communities in the country.<sup>21</sup> This legislative framework was imperative in establishing legitimacy for the elections and in providing a framework within which Iraq could relaunch its political institutions after a great period of dictatorship and war.

Besides the establishment of a legal framework, other important areas involve the creation of independent and efficient electoral management bodies that are very instrumental in the successful implementation of electoral systems in post-conflict societies. These institutions organize and conduct elections in a free, fair, and transparent manner. A key example can be seen in the National Election Commission in Liberia. The NEC is a product of the many years of civil war, which was meant to preside over the electoral process with immense support from the international community led by UNDP. Established, the NEC wasted no time in intervening in the organization of elections in 2005, widely acclaimed as free and fair, signaling the country's return to democratic rule.<sup>22</sup> Success of these elections had been a critical step towards rebuilding the trust in the political process, in the recognition that peaceful and democratic competition could replace the violence that had come to characterize this country's political life.

Another representative platform of electoral frameworks in post-conflict societies is the very design of the electoral system, which would have to be fitted to the specific needs and conditions of the particular society. This mostly involves the selection of an appropriate electoral system that can handle such complexity of a divided society by ensuring every important group has equal representation. The decision to adopt a PR system of representation in post-apartheid South Africa proves instrumental in ensuring that, in fact, the political transition includes representation

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<sup>21</sup> Adeed Dawisha, *Iraq: A Political History from Independence to Occupation* (Princeton University Press 2009) 293-295.

<sup>22</sup> UNDP Liberia, *Electoral Assistance to Liberia*

deriving from all racial and ethnic groups. The PR system allowed for broad-ranging participation of political parties in the political process hence a reflection of the varied interest of the population of South Africa. This inclusiveness was the vital foundation on which the basis of a peaceful, stable democracy, after decades of racial exclusion and conflict, had to be built.<sup>23</sup>

Moreover, timing and sequencing of elections also play an important role in such development of an effective electoral framework in post-conflict environments: elections held too shortly after the end of a conflict heighten tensions and lead to renewed violence, while holding elections too long afterward undermines legitimacy of the new political order. This timing needs to be balanced so that it can enable sufficient time for the political and security conditions to stabilize and yet not fall prey to indefinite postponement.<sup>24</sup> The case of Bosnia and Herzegovina is illustrative in this context. After its Dayton Peace Agreement in 1995, elections were held under the supervision of the Organization for Security and Co-operation in Europe. Well-timed and highly prepared-for elections prevented the resurgence of conflict because it engendered a working, albeit complex, political system.<sup>25</sup>

In all, the process of establishing electoral frameworks in post-conflict societies has been internally elaborate amid the drafting of legal frameworks, establishing independent electoral management bodies, designing inclusive electoral systems, and timing of elections. In fact, all such components have implications for ensuring that elections enhance stabilization and democratization processes in societies emerging from conflict. Although each post-conflict context is unique, some basic principles of inclusivity, transparency, and fairness form the foundation upon which successful electoral frameworks rest in such an environment. Observance of such principles would, therefore, enable post-conflict societies to create conditions propitious to sustainable peace and democratic governance.<sup>26</sup>

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<sup>23</sup> Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (Yale University Press 1999) 43-45.

<sup>24</sup> Benjamin Reilly, *Timing and Sequencing in Post-Conflict Elections* (CRPD Working Paper No. 26, Centre for Research on Peace and Development, KU Leuven, 2015). <https://soc.kuleuven.be/crpd/files/working-papers/working-paper-reilly.pdf>

<sup>25</sup> OSCE, *Elections in Bosnia and Herzegovina* (1996).

<sup>26</sup> Andrew Reynolds, *Designing Democracy in Post-Conflict Societies: Electoral Systems and Peacebuilding* (International IDEA, 2002), pp. 45-48.



### III. Evaluating Implementation: Successes and Challenges

The implementation of electoral frameworks within societies emerging from crises of conflict represents an upward climb toward the attainment of the dawn of landing successes and challenges concurrently, since the electoral frameworks are part of establishing peace and stability. This could also involve enabling a transition from conflict to peace in the presence of a structured and legitimate means of political competition. Take, for example, the case of Sierra Leone, where, after the end of a really brutal civil conflict, the new electoral system introduced under the guidance of the United Nations and other international agencies led to well-conducted elections in 2002. These elections were largely considered free and fair and helped to restore public confidence in the political process in this country while blurring the grounds for further violence.<sup>27</sup> It also involved voter education, openly counted ballots, and the participation of civil society—all hallmarks of legitimating factors. Indeed, while these achievements are not to be taken lightly, the true conduct of electoral frameworks is fraught with competing significant difficulties in post-conflict situations. In fact, one of the most formidable barriers to the conduct of an electoral framework in post-conflict areas is entrenched distrust between and amongst former fighting groups. The far-reaching power-sharing arrangements in Bosnia and Herzegovina, for example, under the Dayton Peace Agreement have led to gridlock, with decisions requiring consensus among the representatives of the country's three main ethnic groups: Bosniaks, Croats, and Serbs. Far too often, all this has meant is a paralyzed government incapable of carrying out reforms or responding effectively to the needs of the populace.<sup>28</sup> Another challenge apart from these is the logistical impediment of organizing elections in post-conflict environments where often infrastructure has been destroyed and security remains a problem. Indeed, the first post-war election held in 2006 in the Democratic Republic of Congo presented many logistical tests, from the need for registering millions of voters across its vast and inaccessible terrain to persistent violence. With significant international support, these

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<sup>27</sup> David Harris, *Civil War and Democracy in West Africa: Conflict Resolution, Elections and Justice in Sierra Leone and Liberia* (I.B. Tauris 2011) 85-87.

<sup>28</sup> Richard Holbrooke, *To End a War* (Random House 1998) 242-245.

challenges led to delays and disputes that undermined the legitimacy of the electoral process.<sup>29</sup> Furthermore, their sustainability greatly relies on the continued international support and monitoring. Indeed, in Afghanistan, the success of the early elections was highly indebted to the presence of international forces and financial contributions. Yet, once international attention began to divert from that country, the electoral process became increasingly sensitive to corruption and the manipulation of elections, which affected people's trust in it.<sup>30</sup> These examples show that while well-implemented electoral frameworks in post-conflict societies can be an effective tool in furthering both peace and democracy, equally, if not more so, it can be fraught with challenges which have to be managed carefully with continuous international engagement.

### **3. The Evolution of Electoral Law and Its Integration with Human Rights**

#### **I. Electoral standards from treaties to practice**

The origin of international electoral law is increasingly linked to the human rights movement in the aftermath of World War II, marked by the passing of the Universal Declaration of Human Rights in 1948. As a foundational tenet, Article 21 of the UDHR posited that every individual has the right to participate in his government, directly or through freely chosen representatives, thus laying down the bedrock principle for electoral rights worldwide.<sup>31</sup> This was further enunciated through the International Covenant on Civil and Political Rights in 1966, which stated specifically that every citizen shall have the right and the opportunity to vote and to be elected at genuine periodic elections.<sup>32</sup>

The principles outlined in the UDHR and ICCPR later found their way into regional instruments of human rights. For instance, the European Convention on Human Rights under Protocol 1, Article

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<sup>29</sup> International Crisis Group, Congo: Consolidating the Peace (Africa Report No 128, 2007) 20-22.

<sup>30</sup> Thomas H. Johnson and M. Chris Mason, 'Understanding the Taliban and Insurgency in Afghanistan' (2007) *Orbis* 71, 85-87.

<sup>31</sup> United Nations General Assembly, 'Universal Declaration of Human Rights' (UN, 10 December 1948) art 21.

<sup>32</sup> United Nations General Assembly, 'International Covenant on Civil and Political Rights' (UN, 16 December 1966) art 25.

3 guarantees the right to free elections<sup>33</sup> and the American Convention on Human Rights under Article 23 stipulates the rights of citizens to vote and be elected.<sup>34</sup> The said regional documents complement the right to participate in government through electoral processes and provide a legal mechanism to enforce such rights within particular jurisdictions.

The enforcement mechanisms in place under regional human rights instruments have been particularly crucial for the enforcement of electoral rights through judicial oversight. The European Court of Human Rights has indeed handled landmark cases that, in effect, explain what constitutes the meaning of free elections and outline what is expected of states under the Convention.<sup>35</sup> Notably, in *Hirst v The United Kingdom (No 2)*, the ECtHR held that blanket bans on voting by prisoners violated the right to free elections under Protocol 1, Article 3 of the European Convention on Human Rights, which had deeply affected European electoral practices, starting to encourage review of legislations of law in many other countries.<sup>36</sup>

In the same line, the Inter-American Court of Human Rights has also been engaging itself with the violations of political rights within the Americas. Indeed, in the landmark case of *Yatama v. Nicaragua*, for instance, the Court held that excluding an indigenous party from electoral participation on account of stringent conditions for registration violative of an equal opportunity for participation provided by the American Convention on Human Rights. It was such an order that national electoral regulations had to be changed to be more inclusive and fair, showing how the court made electoral laws to conform to democratic standards.<sup>37</sup>

These judicial bodies comply not only with binding international treaties but also provide an impetus for a dynamic evolution of electoral laws toward emerging democratic challenges. Their decisions have far-reaching consequences for national electoral systems, setting precedents which will guide not only the litigating states but all others within their jurisdiction as well.

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<sup>33</sup> Council of Europe, 'Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms' (COE, 20 March 1952) art 3.

<sup>34</sup> Organization of American States, 'American Convention on Human Rights' (OAS, 22 November 1969) art 23.

<sup>35</sup> Wolfgang Benedek and others, *The Role of Regional Human Rights Mechanisms* (Directorate-General for External Policies of the Union, European Parliament, 2010)

[https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI\\_ET\(2010\)410206\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET(2010)410206_EN.pdf) p. 56-57

<sup>36</sup> ECtHR, *Hirst v The United Kingdom (No 2)* [GC] (App no 74025/01, ECtHR, 6 October 2005).

<sup>37</sup> Inter-American Court of Human Rights, *Yatama v Nicaragua* (Judgment of June 23, 2005, Series C No 127).

Decisions and continuing legal discourses in these cases react significantly to the international conversation on democracy and human rights, while strengthening the role of judiciaries in global governance for election laws.<sup>38</sup>

The Carter Center and Transparency International represent a few NGOs that have seized the baton for the promotion of electoral integrity worldwide. These are organizations that perform generally optimistic functions in monitoring elections, reporting abuses, and furthering calls for greater transparency and fairness. In this regard, they may provide the necessary modicum of assurance that electoral processes will meet international standards—a needed check, it were democratic practices in action. One such example is the participation of the Carter Center in the 1990 Nicaragua elections. Charged with observing the elections in a country just recovering from decades of war and authoritarianism, the Carter Center mounted a multi-faceted monitoring operation. The delegate team headed by former U.S. President Jimmy Carter carefully monitored the pre-election environment, election day processes, and post-election procedures. This mission fundamentally helped ensure the elections were indeed free and fair, considering the political tensions, and independent observation by the Carter Center, among other international bodies, led to a peaceful transfer of power when Violeta Chamorro, the opposition candidate, won over the incumbent Sandinista government. Such NGOs play an important role in observing election processes, hence creating accountability and promoting democratic values, which are invariably crucial in fragile political environments such as in Nicaragua.<sup>39</sup>

While methods and technologies of elections are changing, international electoral law develops to take up the challenges brought about by emerging issues like digital voting and cybersecurity. The Venice Commission's 'Code of Good Practice in Electoral Matters' duly guides these adaptations in emphasizing transparency, reliability, and security during the use of new voting technologies. The recommendations of the Code go further to say that all the technologies for voting must be verifiable and retain the secrecy of the vote. This is highly relevant for trust that is placed by the people in the systems, which are rapidly taking a switch from the traditional to

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<sup>38</sup> The Carter Center, 'Strengthening International Law to Support Democratic Governance and Genuine Elections Report' (2012) <<https://www.eods.eu/library/strengthening-international-law-to-support-democratic-governance-elections.pdf>>.

<sup>39</sup> The Carter Center, 'Observing the 1990 Nicaragua Elections' (The Carter Center 1990).

the digital formats. The Code also discusses risks like electronic fraud and proposes a more vigorous process of testing and certification before allowing new technologies. These procedural steps show that international electoral law is also proactive, as these sometimes take consideration of the technological developments-not making concessions, while preserving and strengthening democratic principles in a changing world.<sup>40</sup>

International IDEA accordingly sets guidelines that have greatly influenced the evolution of electoral standards. "International Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections" details those standards that guarantee that elections are free and transparent. The guidelines stipulate that legal frameworks are in place to safeguard the integrity of electoral processes, including the preparation of voter lists, the holding of a proper campaign, and actual voting and counting. These guidelines are a source book for countries willing to reform or develop their electoral systems to achieve international standards.<sup>41</sup>

International IDEA has been instrumental in furthering sustainable democracy worldwide through providing support for efficient and financially sustainable electoral processes. IDEA pursues this objective by bringing greater clarity, definition, and promotion of international standards in the area of elections. This undertaking has resulted in the publication of three Codes of Conduct on election administration, election observation and political party campaigning in democratic elections including guidelines on the involvement of externals in election observation. Programs within these initiatives have provided a sound framework for assessing and improving electoral processes to be seen to conform to international norms of fairness and transparency.<sup>42</sup>

The guidelines by International IDEA, therefore, act as the benchmark in setting if an election is free and fair. Whereas earlier Codes of Conduct emphasized procedural principles-e.g., "how to" observe elections-guidelines contained in this document develop further into the substantive content aspect of the conduct of an electoral process (e.g., "what to" observe in an election). Such guidelines already exist in many areas of electoral legislation and provide a catch-all tool for

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<sup>40</sup> Venice Commission, 'Code of Good Practice in Electoral Matters' (Council of Europe, 2002).

<sup>41</sup> International IDEA, "International Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections" (2001).

<sup>42</sup> Ibid

those engaging in the review of existing legal frameworks and elaboration of new electoral laws. An approach that will ensure not only that the procedural aspects of electoral processes are adequately addressed, but that their substantive soundness is strictly guaranteed.<sup>43</sup>

This insistence means the guidelines call for elements of stability and credibility in the electoral processes. To any democracy, this is just mere adherence to the five underlying principles constituting the European electoral heritage, namely universal, equal, free, secret, and direct suffrage. The guidelines further highlight that fundamental rights are to be upheld, coupled with the stability of the rules on elections, so that no suspicion of manipulation may arise. It has to be a robust process on which the mentioned above rules could work properly; the whole electoral process is to be truly credible and reflective of democratic principles.<sup>44</sup>

One of the critical features of the International IDEA guidelines encompasses inclusiveness and accessibility of the elections. The guidelines recommend legal frameworks that make sure all electorates, including even the marginalized groups such as minorities, women, and persons with disabilities, fully participate in the electoral process. This shall include accessible polling places, programs of voter education, and procedures to prevent discrimination and ensure equal representation. These guidelines promote inclusive electoral practices and hence help in strengthen democracy and ensure that the electoral process reflects the will of the entire population.<sup>45</sup>

More importantly, Article 25 of the International Covenant on Civil and Political Rights remains a cornerstone in defining the right to participate in public affairs, voting rights, and the right to equal access to public service and is also regarded as one of the most important International Standards of Elections. These rights were further elaborated by General Comment 25 of the UN Committee on Human Rights-adopted at the 1510th meeting, fifty-seventh session, on July 12, 1996-as meaning that elections should be free, fair, and reflect the genuine will of the people. It asserts that the legal frameworks for conducting elections should ensure that the processes are transparent and inclusive, with accountability to safeguard the basic democratic rights of each

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<sup>43</sup> Ibid

<sup>44</sup> Ibid

<sup>45</sup> International IDEA, "International Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections" (2001).

citizen. This comment underlines the fact that the procedural integrity of elections is as important as substantial requirements that allow for the free expression of voters' will, equal opportunity for the candidates and, finally, impartiality in election administration.<sup>46</sup>

General Comment 25 requires that the rights under Article 25 be protected against undue influence and coercion and discrimination. It emphasizes the duty of states to provide an environment in which all citizens, irrespective of their socioeconomic status, ethnicity, gender, and other signals of various status, may participate equally in the electoral process. These include non-discriminatory access to both voting and candidature, voter education, and fraud- and manipulation-resistant electoral systems. These all form the bedrock for the legitimacy and integrity of democratic processes internationally. It has turned out to be a reference document for countries needing to bring their electoral laws in line with international standards on human rights, underlining the universal emerging commitment to democratic governance and protection of political rights.<sup>47</sup>

International electoral standards have gone a long way to influence national governance on questions relating to electoral administration, encouraging the adoption of universally accepted standards of democratic governance. Indeed, countries have applied these standards to their laws in efforts to make elections more representative, transparent, and nondiscriminatory. Several countries, for instance, harmonized their electoral practices with the suggestions of the Venice Commission's Code of Good Practice in Electoral Matters at an unparalleled standard for democratic elections, especially equal suffrage, impartial administration, and transparency.<sup>48</sup> Examples include Ukraine, which amended its electoral laws based on recommendations by international institutions with the stated objectives of increased transparency and equity in its electoral processes.<sup>49</sup>

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<sup>46</sup> UN Human Rights Committee, 'General Comment No 25: The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service (Art. 25)' (1510th meeting, fifty-seventh session, 12 July 1996)

<sup>47</sup> UN Human Rights Committee, 'General Comment No 25: The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service (Art. 25)' (1510th meeting, fifty-seventh session, 12 July 1996)

<sup>48</sup> Venice Commission, 'Code of Good Practice in Electoral Matters' (Council of Europe, 2002).

<sup>49</sup> OSCE/ODIHR, 'Ukraine Presidential Election 2019' (Final Report, OSCE Office for Democratic Institutions and Human Rights 2019)

These various different international standards find their ways down to national efforts in entrenching electoral integrity and fraud-free. Places like Kenya have equally taken different measures inspired by International best practices were installed, including the adoption of the biometric voter registration and the establishment of independent electoral commissions. These reforms are informed, among other documents, by the OSCE/ODIHR Election Observation Handbook in a trice of making the process of election robust, transparent, and difficult to manipulate, hence instilling more confidence among the members of the public in the outcome of such an election, biometric systems have been introduced in a bid to bring about real improvement in Kenya. Voter identification and reduction in the number of cases of electoral fraud.<sup>50</sup>

International electoral standards also inspired or expanded national reforms in the direction of more inclusive and accessible elections. Examples of the latter range from votes for national groups of marginalized women, ethnic minorities, and people with disabilities in Mexico, to accessible voting procedures and facilities highly advanced by the United Nations Convention on the Rights of Persons with Disabilities. Mexico has implemented measures such as accessible polling stations and voter education programs in order to ensure wider participation, and has manifested respect for the principles of universal suffrage and nondiscrimination as described by international standards.<sup>51</sup>

## II. Human rights and electoral law

Human rights form the bedrock of modern electoral law through which elections must be conducted so as to show respect for dignity, freedom, and the equality of all people. The UDHR and ICCPR are foundational documents recognizing a right to participate in government, to vote, and to be elected as basic human rights.<sup>52</sup> While Article 21 of the UDHR categorically provides for

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<sup>50</sup> 26 OSCE/ODIHR, 'Election Observation Handbook' (6th edn, OSCE Office for Democratic Institutions and Human Rights 2010); Independent Electoral and Boundaries Commission (IEBC) Kenya, 'Biometric Voter Registration'

<sup>51</sup> United Nations, 'Convention on the Rights of Persons with Disabilities' (UN, 2006); Instituto Nacional Electoral (INE) Mexico, 'Inclusive Elections'

<sup>52</sup> United Nations, "Introduction to Human Rights and Elections" (*United Nations Western Europe*, May 24, 2024) <https://unric.org/en/introduction-to-human-rights-and-elections/>



a right to participate in free and fair elections, Article 25 of the ICCPR supplements it with an explanation that such elections must be genuine, periodic, and allowing equal suffrage to all citizens.<sup>53</sup> These international norms have become deeply embedded in the legal frameworks of many countries, ensuring that electoral processes are not only procedural but also fundamentally tied to the protection of human rights.

International and regional legal instruments play a critical role in translating human rights principles into enforceable electoral laws. The European Convention on Human Rights (ECHR), particularly Protocol 1, Article 3, mandates that member states hold free elections at reasonable intervals by secret ballot, under conditions that ensure the free expression of the people. This provision has been interpreted by the European Court of Human Rights (ECtHR) in cases like *Hirst v. the United Kingdom (No. 2)* to protect the rights of prisoners to vote, emphasizing that restrictions on electoral rights must be proportionate and justifiable within a democratic society.<sup>54</sup> In light of such jurisprudence, the critical meeting between human rights and electoral laws, wherein courts play a vital role in safeguarding electoral integrity and ensuring concerns by states of their human rights obligations, has been underlined.

Electoral legislations are instrumental in protecting the political rights of the citizens, especially when those are in jeopardy. The right to vote and to be elected forms the basis for political participation, and these rights have been enshrined in various international and regional conventions. These are, for example, arguably well-protected under the American Convention on Human Rights through Article 23, which has been resorted to in cases before the Inter-American Court of Human Rights for challenging restrictions imposed upon political participation. For instance, in *Yatama v. Nicaragua*, the IACtHR ruled that the exclusion of an indigenous political party from elections, in violation of Article 23, certainly cements the view that electoral laws are to facilitate rather than hamper political participation.<sup>55</sup> This and other cases have

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<sup>53</sup> United Nations General Assembly, *Universal Declaration of Human Rights* (adopted 10 December 1948) 217 A (III), Article 21; United Nations General Assembly, *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 25.

<sup>54</sup> European Court of Human Rights, *Hirst v The United Kingdom (No 2)* [GC] App no 74025/01 (ECtHR, 6 October 2005) 3 EHRR 30.

<sup>55</sup> Inter-American Court of Human Rights, *Yatama v Nicaragua* (Judgment of June 23, 2005, Series C No 127).

indicated how significant electoral laws are for ensuring that all citizens, regardless of their conditions or membership in various groups, participate fully in the political process.

Despite this robust international scheme linking human rights and electoral law, national electoral laws continue to grapple with the realization of international human rights norms. In other cases, doing so leads to homegrown legally binding norms that have incorporated specific restrictive provisions on political participation or are deficient in offering adequate protection for electoral rights. Examples include laws in numerous nations that disenfranchise citizens on particular grounds, such as prisoner status and residence status, such examples have been regularly attacked as incompatible with international human rights requirements. In *Sauvé v. Canada (No. 2)*, the Supreme Court of Canada struck down a law that disenfranchised prisoners serving sentences of two years or more, finding it violated the Canadian Charter of Rights and Freedoms, which is deeply influenced by international human rights law.<sup>56</sup> This case exemplifies the ongoing tension between domestic electoral laws and the broader human rights principles that seek to ensure the universality and inclusivity of electoral participation.

### III. Protecting political rights through inclusive elections

Ensuring inclusive and non-discriminatory elections requires adherence to international conventions that mandate equal access to the political process. One such framework is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which in Article 7 emphasizes the need for states to guarantee women's full participation in electoral processes. It is well manifested in Rwanda, for instance, where a constitution made based on the provision of CEDAW nominally guarantees that a minimum of 30% of parliamentary seats are held by women, a result which has won Rwanda the top country globally with female parliamentary representation.<sup>57</sup> Through these measures, women, who are usually outside the political affairs of many nations, are also strongly put in the affairs of government.

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<sup>56</sup> Supreme Court of Canada, *Sauvé v Canada (Chief Electoral Officer)* [2002] 3 SCR 519.

<sup>57</sup> United Nations, Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13; Rwanda Governance Board, "Women's Political Participation in Rwanda"

One international framework is the Convention on the Rights of Persons with Disabilities, Article 29 in particular, which requires states to guarantee persons with disabilities full political rights, including the right to vote and to be elected.<sup>58</sup> For instance, in Moldova, the conduct of electoral reforms in keeping with the CRPD has ensured accessible polling stations with tactile ballots, thereby significantly increasing the participation of disabled persons in the 2019 Elections.<sup>59</sup> The ICCPR also provides the threshold of non-discriminatory access to political processes and emphasizes that no one should be denied the right to elect on account of arbitrary or discriminatory grounds.<sup>60</sup> This international instrument merely provides the benchmark of inclusive electoral best practices that propel states toward the realization of both legal and practical measures that guarantee absolute citizen participation in the democratic process, irrespective of their background.

In addition, specific legal frameworks to protect the political rights of ethnic minorities are required in efforts toward the assurance of inclusiveness and absence of any discrimination during elections. More importantly, the International Convention on the Elimination of All Forms of Racial Discrimination, particularly Article 5, requires states to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, participating in elections.<sup>61</sup> A relevant example can be found in the United States, where the Voting Rights Act of 1965 was pivotal in dismantling legal barriers that disenfranchised African Americans, particularly in the South. This Act, which has been analyzed extensively in legal literature, ensured that racial minorities had equal access to the voting process, a principle also upheld in international law.<sup>62</sup>

The pursuit of inclusive and non-discriminatory elections is indispensable for ensuring the legitimacy and effectiveness of democratic governance. Legal instruments such as the

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<sup>58</sup> United Nations, *Convention on the Rights of Persons with Disabilities* (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3, Article 29.

<sup>59</sup> HARMS R, "Election Observation Delegation to the Parliamentary Elections in the Republic of Moldova" (2019) <[https://www.europarl.europa.eu/cmsdata/212474/Moldova-EP-Report-parliamentary-elections\\_Feb\\_2019.pdf](https://www.europarl.europa.eu/cmsdata/212474/Moldova-EP-Report-parliamentary-elections_Feb_2019.pdf)>

<sup>60</sup> United Nations, *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 25.

<sup>61</sup> United Nations, *International Convention on the Elimination of All Forms of Racial Discrimination* (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195, Article 5.

<sup>62</sup> Richard H. Pildes, "Democracy, Anti-Democracy, and the Canon," in *The Law of Democracy: Legal Structure of the Political Process* (3rd edn, Foundation Press, 2007) 241-243.

Convention on the Rights of Persons with Disabilities (CRPD) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) provide the necessary frameworks for protecting the electoral rights of marginalized groups. These instruments, together with sound national legislation, guarantee that all citizens can fully exercise their rights in political life and therefore that the whole democratic process becomes both fairer and more representative.<sup>63</sup>

Among the cardinal obligations of states under international law, especially as anchored in various treaties and conventions, is the protection of civil and political rights, which in turn examine active participation by citizens in governance. The widest-range tool in this respect is the Universal Declaration of Human Rights, where, under Article 21, it declares the right of everyone to participate in the government of his country, directly or freely chosen representatives. This base document thus provided a framework for further international covenants, such as the ICCPR, to follow suit with more clear statements on the right to participate in public affairs and lays especial stress on universal and equal suffrage.<sup>6465</sup> The binding nature of these covenants puts an obligation on states to implement and protect these rights within their national legal frameworks in a way that would ensure the full exercise of civil and political rights without discrimination or undue restriction on the part of all nationals.

National Implementation and Judicial Protection National legal systems can matter much in the protection of civil and political rights. National constitutional guarantees and judicial oversight often reflect principles of protection expressed in international law. As a for instance, the expressions of protection that are articulated in international law are often reflected in domestic constitutional guarantees and judicial oversight. Protection of civil rights such as freedom of assembly and speech, and in the right to vote, is exemplary in the Basic Law of Germany. The

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<sup>63</sup> United Nations, Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3; United Nations, International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195.

<sup>64</sup> United Nations, Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III), Article 21

<sup>65</sup> United Nations, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171

Federal Constitutional Court (Bundesverfassungsgericht) has been instrumental in upholding these rights, particularly in cases where state actions were found to infringe upon individual freedoms. For instance, the Court's decision in the Lüth case established the principle that fundamental rights, including freedom of speech, must be interpreted in a way that protects democratic order.<sup>66</sup> This case underscores the role of national courts in safeguarding civil and political rights, ensuring that governmental actions align with constitutional and international standards.

Civil Society and the Role of Non-Governmental Organizations (NGOs) The protection of civil and political rights is further reinforced by the active engagement of civil society and non-governmental organizations (NGOs), which play a vital role in monitoring, advocating for, and educating citizens about their rights. Organizations like Human Rights Watch and Amnesty International provide critical oversight by documenting human rights abuses, lobbying for legal reforms, and supporting victims in seeking justice. For instance, in the United Kingdom, the advocacy work of NGOs has been pivotal in addressing electoral reforms and ensuring that disenfranchised groups, such as prisoners and minorities, have their voting rights protected. The continuous pressure exerted by these organizations often leads to significant legal and policy changes, reflecting a broader commitment to uphold civil and political rights as fundamental to democratic governance.<sup>67,68</sup>

#### **4. Kovacevic v. Bosnia and Herzegovina: Legal Context, Arguments, and Judicial Impact**

##### **I. Detailed background of the Kovacevic case**

The case of Kovacevic v. Bosnia and Herzegovina emerges from the complex legal and historical backdrop shaped by the 1995 Dayton Peace Agreement, which concluded the Bosnian War. The agreement, while successful in ending active hostilities, instituted a highly unique power-sharing

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<sup>66</sup> Federal Constitutional Court of Germany, Lüth Decision, BVerfGE 7, 198

<sup>67</sup> Human Rights Watch, "United Kingdom: Protecting Voting Rights," World Report 2023

<sup>68</sup> Amnesty International, "Voting Rights in the UK: An Overview"

system that divided political power among the country's three main ethnic groups: Bosniaks, Croats, and Serbs. The Dayton Accords, specifically Annex 4,<sup>69</sup> established the Constitution of Bosnia and Herzegovina, which created a tripartite presidency and a bicameral legislature, including the House of Peoples, both of which were structured to ensure ethnic representation. This framework was intended to prevent any one group from dominating the others, thus ensuring peace and stability in the fragile post-war environment. However, this arrangement also institutionalized ethnic divisions and excluded those who did not belong to one of these three groups from holding certain public offices, a situation that Kovacevic, who does not identify with any of the three constituent peoples, challenged under the European Convention on Human Rights (ECHR). This challenge echoes earlier cases like *Sejdić and Finci v. Bosnia and Herzegovina*, where the European Court of Human Rights (ECtHR) ruled that the exclusion of Jewish and Roma citizens from these offices was discriminatory, thus setting a significant precedent for Kovacevic's case.<sup>70</sup>

In the *Kovacevic v. Bosnia and Herzegovina* case, the applicant, a political adviser who did not declare affiliation with any of the constituent peoples, argued that the existing electoral system deprived him of the ability to vote for candidates of his choice. Kovacevic resided in Sarajevo, which is part of the Federation of Bosnia and Herzegovina, where the citizens can only vote for Bosniak and Croat candidates, excluding any representation from Republika Srpska or other entities. Kovacevic claimed that the exclusionary practices of the Dayton-established electoral system violated Article 1 of Protocol No. 12, which prohibits discrimination, and Article 3 of Protocol No. 1, which ensures the right to free elections under the European Convention on Human Rights (ECHR). The core of his argument was that Bosnia and Herzegovina's electoral system, rooted in the Dayton Peace Agreement, perpetuated an "ethnocracy" rather than a true democracy, effectively relegating individuals like himself to second-class citizenship by restricting their political participation based on ethnicity. The Government of Bosnia and Herzegovina,

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<sup>69</sup> Dayton Peace Agreement (General Framework Agreement for Peace in Bosnia and Herzegovina), Annex 4, 14 December 1995

<sup>70</sup> Istrefi K, 'Kovačević v Bosnia and Herzegovina, and the Saga of the Dayton Peace Agreement's Incompatibility with the European Convention on Human Rights' (EJIL: Talk!, 4 September 2023) <<https://www.ejiltalk.org/kovacevic-v-bosnia-and-herzegovina-and-the-saga-of-the-dayton-peace-agreements-incompatibility-with-the-european-convention-on-human-rights/>>

however, defended the system by arguing that these measures were necessary to maintain peace and stability in a country still scarred by ethnic conflict, a position they had previously taken in the Sejdić and Finci case.<sup>71</sup>

In its reasoning, the European Court of Human Rights identified the inbuilt discrimination within Bosnia and Herzegovina's electoral system entrenched by the Dayton Agreement. The Court recognized that while these power sharing arrangements were, at the time, necessary to ensure peace in the aftermath of the Bosnian War, such an arrangement could not be perpetuated ad infinitum to exclude certain individuals based on their ethnic backgrounds. Therefore, the Court found a violation of the ECHR with regard to the prohibition of discrimination, taken in connection with, and within the framework of, the right to free elections. In a critical analysis, the Court observed that other power-sharing mechanisms exist, which do not necessarily lead to the total exclusion of representatives of other communities. It implied that the temporary nature of the ethnic privileges established by Dayton was to be taken away in some process of phasing out as Bosnia and Herzegovina approached an integrated democratic society. The ruling therefore obliged far-reaching constitutional changes to give equal chances to take part in the political process for all citizens, whatever their ethnicity, and prepare Bosnia and Herzegovina, which has not so far developed anything more sophisticated than the minimalist Dayton framework.<sup>72</sup>

The judgment in the case of Kovacevic has marked, to date, a milestone in the judgment in the enduring legal and political controversy over post-conflict governance in Bosnia and Herzegovina. It serves to underline the tension between the imperative of consolidating peace established by the Dayton Agreement, on one side, and evolving human rights standards considered necessary to ensure inclusivity and non-discrimination. This judgment sets a precedent, which is not only important for Bosnia and Herzegovina but also for other post-conflict societies where such arrangements may be present within the power-sharing arrangements. The Court's finding tends towards a view whereby insofar as peace agreements often require certain compromises immediately after conflict, these cannot be used as permanent justification of discrimination. The

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<sup>71</sup> European Court of Human Rights, *Kovacevic v. Bosnia and Herzegovina*, App no 43651/22 (ECtHR, 29 August 2023), paras 12-18.

<sup>72</sup> *Ibid*, paras 45-50.

judgment, therefore, calls for Bosnia and Herzegovina to undertake substantial constitutional reforms, which would require the cooperation of the various ethnic groups that have long relied on the Dayton framework. This case also illustrates the role of international human rights law in pushing post-conflict societies towards more democratic governance structures, reflecting a broader trend of moving away from ethnic-based politics toward more inclusive political systems.<sup>73</sup>

## II. Political and social context of Bosnia and Herzegovina

Bosnia and Herzegovina is characterized by its complex ethnic composition, comprising three main groups: Bosniaks, Croats, and Serbs. This multi-ethnic makeup has profoundly influenced the nation's political and social structures. The Bosnian War of 1992-1995, fueled by nationalist aspirations and historical grievances, culminated in severe ethnic violence, most notoriously in the Srebrenica genocide, where approximately 8,000 Bosniak men and boys were killed by Bosnian Serb forces. Until the Dayton Peace Agreement concluded the war in 1995, there was a constitution that actually enshrined ethnic divisions rather than resolved them. This constitution created two predominant entities pertaining to: the Federation of Bosnia and Herzegovina, based on Bosniaks and Croats, and Republika Srpska, based on Serbs. Where this was the necessary configuration to end the fighting, such a configuration has deeply placed ethnic identities into the political system, making it even harder to achieve national unity and a common Bosnian identity.<sup>74</sup>

The political structure imposed upon the Dayton Peace Agreement has made political fragmentation in Bosnia and Herzegovina real. It was basically based on a tripartite presidency, representative of each of the three constituent peoples, along with an ethnically divided House of Peoples. These structures were so designed to realize equal representation at times setting the ground for political deadlock. There is a need for consensus among ethnic representatives has frequently stalled decision-making processes, especially when the interests of the groups diverge. This has impeded the implementation of necessary reforms and has hindered effective governance. The emphasis on ethnic identity in politics has marginalized citizens who do not align

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<sup>73</sup> Noel Malcolm, *Bosnia: A Short History* (Pan Books 1996), 347-350.

<sup>74</sup> Sumantra Bose, *Bosnia After Dayton: Nationalist Partition and International Intervention* (Hurst & Company 2002) 45-47.



with the three recognized groups, exacerbating the challenges of building a cohesive national identity. These divisions have also slowed Bosnia and Herzegovina's efforts to integrate into European and international institutions, as ongoing political disputes often stall the reforms required for EU accession.<sup>75</sup>

The institutionalization of ethnic divisions has deeply impacted Bosnia and Herzegovina's social fabric. Education systems, for instance, are often segregated along ethnic lines, with students attending schools specific to their ethnic group. This perpetuates distinct historical narratives and deepens societal divisions. Employment, particularly in the public sector, is influenced by ethnicity, with positions often allocated based on ethnic quotas rather than merit. These practices undermine social cohesion and hinder the development of a unified national identity. The related economic disparities between different regions, above all between the Serb-dominated Republika Srpska and the Federation, set these divisions in concrete.<sup>76</sup>

Indeed, the role of international actors has been highly instrumental over the years in setting what has been taking place in Bosnia and Herzegovina since the Dayton Agreement. The Dayton Agreement had established the OHR and vested it with far-reaching powers vis-à-vis overseeing the whole implementation of the peace agreement to make the country stable. This is based on the fact that the OHR has the powers to enact laws and dismiss officials who hinder the peace process—a matter that has been equally crucial to the transition and hotly debated. While international involvement has, for the most part, been instrumental in promoting peace and reform, this has also led to protests by Bosnia of its own sovereignty and a dependence on international supervision. What has been added is that the European Union necessitates, with some other international bodies, Bosnia and Herzegovina to reform its structures of governance to join the EU, even if it is very slow because of internal political conflicts.<sup>77</sup>

### III. Key issues and legal challenges involved in the case

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<sup>75</sup> Sumantra Bose, *Bosnia After Dayton: Nationalist Partition and International Intervention* (Hurst & Company 2002) 55-60.

<sup>76</sup> Steven Greer, *The European Convention on Human Rights: Achievements, Problems and Prospects* (Cambridge University Press 2006) 135-137.

<sup>77</sup> Richard Caplan, *International Governance of War-Torn Territories: Rule and Reconstruction* (Oxford University Press 2005) 203-207.

The core bone of contention in *Kovacevic v Bosnia and Herzegovina* is an ethnically-based electoral system instituted by the Dayton Peace Agreement. The constitutional arrangements, designed to maintain peace in a deeply divided post-conflict society, enshrined ethnic representation within the country's political system. This framework ensured that only members of the three "constituent peoples" (Bosniaks, Croats, and Serbs) could run for certain high-level political offices, such as the presidency or the House of Peoples. This system, while effective in its immediate post-war purpose of balancing power among the ethnic groups, has been increasingly criticized for perpetuating ethnic divisions and excluding citizens who do not identify with these groups, such as the applicant in the *Kovacevic* case. The European Court of Human Rights (ECtHR) previously ruled in *Sejdić and Finci v. Bosnia and Herzegovina* that the exclusion of Jews and Roma from political participation violated the European Convention on Human Rights (ECHR), setting a precedent that strongly influenced the *Kovacevic* case.<sup>78</sup>

A major legal challenge presented in the *Kovacevic* case is the interpretation of Article 1 of Protocol No. 12 of the ECHR, which provides a general prohibition against discrimination. The applicant argued that the electoral laws in Bosnia and Herzegovina, as enforced by the Dayton Agreement, discriminated against him on the grounds of ethnicity because they barred him from voting for candidates outside the recognized "constituent peoples." The case highlights the tension between the need to maintain peace in a fragile post-conflict society and the principles of non-discrimination and equality that are central to the ECHR. The ECtHR was tasked with determining whether the discriminatory aspects of the Dayton Agreement could still be justified under current conditions or whether the state needed to evolve its political system to meet its obligations under international human rights law.<sup>79</sup>

Another serious issue in the *Kovacevic* Case is thus that of the balance to be struck between the maintenance of peace and adherence to human rights. The core argument of the Government of Bosnia and Herzegovina was that such an electoral scheme as given, in this very case, was necessary to avoid re-emergence of ethnic conflict that had devastated their country in the

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<sup>78</sup> European Court of Human Rights, *Sejdić and Finci v. Bosnia and Herzegovina*, App nos 27996/06 and 34836/06 (ECtHR, 22 December 2009), para 43.

<sup>79</sup> European Court of Human Rights, *Kovacevic v. Bosnia and Herzegovina*, App no 43651/22 (ECtHR, 29 August 2023), para 12-15.

1990s, and stability took precedence over strict adherence to human rights principles. On the contrary, the Court felt an element of doubt whether such an approach could be justified for an indefinite period, especially following the recent development of Bosnia and Herzegovina moving further from the immediate post-conflict period. The decision by the Court also epitomizes the current debates on when and how post-conflict societies should Transition, that is, from stability-first power sharing to arrangements more compatible with democratic and human rights standards. The implication of the Court's judgment was that although power-sharing arrangements might be necessary in the immediate post-conflict period, they should not be permitted to become consolidated features entrenching discrimination.<sup>80</sup>

In the case of *Kovacevic*, international oversight made its voice as clear as in *Sejdić and Finci*. Furthermore, with the European Court of Human Rights ruling against Bosnia and Herzegovina, they developed a regime where the international legal standards took precedence over domestic arrangements—even those created by an international peace agreement, let alone Dayton. This judgment displays the wider role that international courts play in post-conflict societies where domestic legal systems are often restricted by the various compromises necessary to bring the conflict to an end. The positive duty for international actors is underlined not only to implement peace but also to ensure that peace which is imposed is pursued by the constitution of just and non-discriminatory governing structures. This is the type of scrutiny that has been instrumental in leading societies in the post-conflict era towards full compliance with international human rights norms. In a ruling on the case of *Kovacevic*, there is an urgent need for constitutional reform in Bosnia and Herzegovina.<sup>81</sup>

This decision underlines the fact that, although the given Dayton agreement had been instrumental in torpedoing the armed conflict, its rigid ethnic-based political structure is increasingly regarded as incapable of being reconciled with modern standards pertaining to human rights. This ruling does, in fact, indicate that the case of Bosnia and Herzegovina has to move towards an inclusive, less ethnically divided political system. The trouble is that such reforms are deeply problematic, from political resistance among theologically empowered

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<sup>80</sup> European Court of Human Rights, *Kovacevic v. Bosnia and Herzegovina*, App no 43651/22 (ECtHR, 29 August 2023), para 50-55.

<sup>81</sup> Christian Tomuschat, *Human Rights: Between Idealism and Realism* (Oxford University Press 2014) 297-299.

beneficiaries to fears of refueling ethnic tensions. These are reforms the international community, most especially the European Union, needs to support in order for Bosnia and Herzegovina to move toward a political system that is both stable and in line with European standards on human rights.<sup>82</sup>

#### IV. Analysis of the legal arguments presented by both parties

The legal arguments in *Kovačević v. Bosnia and Herzegovina* focus on the inherent conflict between the country's existing electoral framework, rooted in the Dayton Peace Agreement, and the principles of non-discrimination and free elections as outlined in the European Convention on Human Rights (ECHR). The applicant, Slaven Kovačević, argued that the existing electoral system violates Article 14 of the ECHR, which prohibits discrimination, in conjunction with Article 3 of Protocol No. 1, which ensures the right to free elections. More precisely, Kovačević insisted that the restriction of the electoral system, which enables only members of the three constituent in that people-Bosniaks, Croats, and Serbs-stand for election to the presidency and the House of Peoples, some citizens are disenfranchised from such positions by not belonging to these three ethnic groups. It is underlined by the holding in the landmark *Sejdić and Finci* case, where the European Court of Human Rights found that the exclusion of Jewish and Roma applicants from the offices constituted an interference with the ECHR. Kovačević tried to take this line of reasoning one step further so as to include also persons such as himself, who did not belong to one of the three constituent nations.<sup>83</sup>

On the other hand, however, the Government of Bosnia and Herzegovina supported the current electoral system on the ground that it saw it as a necessary compromise that keeps peace and stability in a country very much divided by ethnic conflict. The government thus contended that the power-sharing arrangements established under the Dayton Peace Agreement had been determinative in preventing the resurgence of violence and in ensuring that all major ethnic groups had a vested interest in making the governance work as a whole. The government

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<sup>82</sup> Sumantra Bose, *Bosnia After Dayton: Nationalist Partition and International Intervention* (Hurst & Company 2002) 72-75.

<sup>83</sup> Council of Europe, Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 2000, entered into force 1 April 2005) ETS 177, Article 1.

maintained that such arrangements, though seeming discriminatory, represented an expedient to deal with the peculiar political circumstances of post-war Bosnia and Herzegovina. This argument reflects the broader debate about the tension between the need for peace in deeply divided societies and the principles of non-discrimination and equal political participation.<sup>84</sup>

Kovačević's legal team also challenged the government's assertion that the existing electoral system was a necessary safeguard against ethnic conflict. They argued that while the Dayton Agreement's power-sharing arrangements may have been necessary in the immediate aftermath of the war, they have since become anachronistic and incompatible with Bosnia and Herzegovina's obligations under the ECHR. The applicant contended that these arrangements effectively institutionalized ethnic divisions, creating a system of "ethnocracy" rather than democracy, where political power is distributed based on ethnic identity rather than citizenship. This, they argued, relegated individuals like Kovačević, who do not identify with any of the three constituent peoples, to second-class citizenship, denying them the right to fully participate in the political process.<sup>85</sup>

The government further argued in their defense that the current electoral system reflected the complex historical and political context in which Bosnia and Herzegovina exists. They said that power-sharing arrangements were designed to prevent any one ethnic group from dominating the political system, thus ensuring that all groups have a word in running the country, the government also insinuated that any drastic amendment to the electoral system would lead to the disruption of the fragile peace maintained so far since the end of the Bosnian War. This argument underlines how much in a delicate balance Bosnia and Herzegovina has to keep on one side the quest for peace and stability, and on the other side, its obligations under international human rights law.<sup>86</sup>

## V. Examination of the court's decision and reasoning

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<sup>84</sup> Ibid

<sup>85</sup> European Court of Human Rights, *Sejdić and Finci v. Bosnia and Herzegovina* [GC] App nos 27996/06 and 34836/06 (ECtHR, 22 December 2009), paras 43-46.

<sup>86</sup> Ibid, para 47.

The reasoning of the ECtHR in *Kovačević* developed the obligation of ensuring political equality and inclusiveness in electoral systems, in particular in post-conflict societies, such as Bosnia and Herzegovina. Accordingly, the Court observed that the applicant's rights had been discriminated against by the inflexible nature of the ethno-territorial division of the electoral system. Citizens in certain areas of Bosnia and Herzegovina could not vote for candidates outside their ethnicity, a factor that disproportionately affected political rights. The Court, building on previous case law, emphasized that such limitations were incompatible with the ECHR's democratic principles.<sup>87</sup>

The Court's decision revolved around the need for a more inclusive system that respects both individual political rights and the collective rights of ethnic groups. By allowing only Serbs from Republika Srpska and Croats and Bosniaks from the Federation to participate in certain elections, the Constitution effectively disenfranchised large portions of the population, an issue the Court found untenable. The judgment underscored the imperative to move beyond ethnic-based divisions in favor of a more integrated political system.<sup>88</sup>

A critical aspect of the Court's decision was its interpretation of Article 1 of Protocol No. 12. This Article prohibits discrimination in the enjoyment of any right set forth by law. In this case, the Court ruled that Bosnia's electoral framework violated this provision by enforcing ethnic and territorial restrictions on political participation. The Court felt that political representation adequate for democratic purposes should not be determined entirely by ethnic identity, with no citizen being required to vote along ethnic lines. On the contrary, it should remain at the discretion of the voters whether to reelect candidates who reflect their respective political views irrespective of ethnicity or region.<sup>89</sup>

The judgment emphasized that the right to free elections should enable all citizens from different ethnic or territorial affiliations to stand for office and also enable all electors to vote for any candidate of their choice. Bosnia and Herzegovina, by placing these restrictions based on

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<sup>87</sup> Observers S, 'Kovačević v. Bosnia and Herzegovina: The Complete Guidelines for the Constitutional Reform in B&H' (Strasbourg Observers, 12 September 2023) <https://strasbourgobservers.com/2023/09/12/kovacevic-v-bosnia-and-herzegovina-the-complete-guidelines-for-the-constitutional-reform-in-bh/>

<sup>88</sup> RFE/RL's Balkan Service, 'European Court Again Rules That Bosnia's Constitution Violates Human Rights' (RFE/RL, 3 September 2024) <https://www.rferl.org/a/bosnia-constitution-european-court-human-rights/32569688.html>

<sup>89</sup> European Court of Human Rights, *Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12: Prohibition of Discrimination* (29 February 2024) <https://ks.echr.coe.int> p. 10-11

ethnicity, thus violated the ban on non-discrimination principles that the ECHR supports. This judgment, along with leading cases, indicates a clear request that changes be made to Bosnia's electoral system.<sup>90</sup>

A dissenting opinion by Judge Kucsko-Stadlmayer in the case of *Kovačević* felt that the case was not admissible. The dissenting opinion centered on the exhaustion of domestic remedies by the applicant. The judge felt that the applicant had a chance to seek redress from the Constitutional Court of Bosnia and Herzegovina before taking the issue to the European Court. She noted that the domestic courts, especially in any case, the Constitutional Court did have far-reaching competence to review the compatibility of laws with both the Constitution and the ECHR.<sup>91</sup>

More than this, the dissent questioned the judgment's implications in their wider perspective. In particular, the judge felt that the Court had introduced for the first time a new concept, suggesting that every voter has a right to be represented by a candidate of choice, which may set the bar high for future cases. The dissent was more formalist in tone and emphasized procedure over merits dealing with discrimination.<sup>92</sup>

*Kovačević* judgment represents another step in the continuous effort of the ECtHR to reform the political system of Bosnia and Herzegovina, as shaped by the Dayton Agreement. The Court's decision reinforces the need for Bosnia to transition away from a strictly ethnic-based system to one that is more inclusive and reflective of modern democratic principles. This ruling, coupled with earlier decisions such as *Sejdić and Finci*, places increasing pressure on Bosnia to amend its Constitution to align with European human rights standards. The Court recommended that Bosnia's electoral system be revised so that any citizen, regardless of ethnicity or location, can vote for candidates of their choice. This judgment adds to the chorus of international voices calling for constitutional reform in Bosnia and Herzegovina, emphasizing that political

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<sup>90</sup> Observers S, 'Kovačević v. Bosnia and Herzegovina: The Complete Guidelines for the Constitutional Reform in B&H' (Strasbourg Observers, 12 September 2023)

<sup>91</sup> 'Referral of *Kovačević v. Bosnia and Herzegovina* to the Grand Chamber' (ECHR-KS)

<sup>92</sup> Observers S, 'Kovačević v. Bosnia and Herzegovina: The Complete Guidelines for the Constitutional Reform in B&H' (Strasbourg Observers, 12 September 2023)

representation should reflect the will of all citizens, not just those belonging to the three dominant ethnic groups.<sup>93</sup>

The Case of Kovačević shows how Europe's Court of Human Rights followed discrimination practices throughout the Bosnia and Herzegovina electoral system. This judgment obviously showed the applicant that the political equality of the country needed changes in the political structures after the war in Bosnia. While this case supports the previous judgments, it also established new criteria in relation to ethnicity, territory, and political representation. This reality brings increasing pressure on Bosnia to institute all the necessary reforms in the implementation of the ECHR and to insure a more inclusive democratic process for its citizens.<sup>94</sup>

#### VI. Impact of the decision on Bosnia and Herzegovina's legal and political landscape

The decision of Kovačević v. Bosnia and Herzegovina from the European Court of Human Rights continues to press Bosnia and Herzegovina toward addressing these defects in its constitutional and electoral systems in accordance with the principles of non-discrimination and equal political participation. It emphasizes how it is necessary that, because of this, Bosnia modifies the legal framework related to elections so that all citizens, regardless of their ethnic or territorial status, would have equal opportunities to participate in political processes. However, this decision has wider ramifications: from Bosnia's political stability and its accession process to the EU, to internal dynamics within reform. The Kovačević sentence runs in parallel with the political tensions in Bosnia and Herzegovina, especially in the case of the entity of Republika Srpska continuing to defy state-level judiciary decisions. In June 2023, the leadership of the entity legalized the non-publication of decisions by the High Representative and the non-implementation of rulings coming from the Constitutional Court. Such a move undermined the

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<sup>93</sup> Quari S, 'The European Court of Human Rights on Kovačević: time for constitutional change in Bosnia and Herzegovina?' (Diritti Comparati, 4 October 2023) <<https://www.diritticomparati.it/the-european-court-of-human-rights-on-kovacevic-time-for-constitutional-change-in-bosnia-and-herzegovina/>>

<sup>94</sup> Marko, Joseph: *The Kovačević Case Revisited: The ECtHR Grand Chamber May De-Block the Constitutional Impasse in Bosnia and Herzegovina*, *VerfBlog*, 2024/3/28, <https://verfassungsblog.de/the-kovacevic-case-revisited/>



authority of Bosnia's judiciary and directly violated the constitutional and legal order of the country.<sup>95</sup>

The entity's continued resistance to reform poses a significant risk to Bosnia's political stability. This defiance is particularly problematic given the ECtHR's call for Bosnia to align its constitutional framework with the European Convention on Human Rights (ECHR). The conflict between the entities and the state highlights the growing tension between the Dayton peace accords, which maintain a delicate ethnic balance, and the push for a more civic-based political model where individual rights supersede ethnic group privileges.<sup>96</sup>

The ruling adds to the pressure on Bosnia to enact comprehensive constitutional reforms, which have been repeatedly delayed despite numerous ECtHR rulings. The Sejdić and Finci case, decided in 2009, remains unimplemented more than a decade later, highlighting the country's struggle to overcome political gridlock. The Kovačević decision reinforces the need for reforms that would allow all citizens—whether they belong to the three constituent peoples or not—to run for key political offices such as the Presidency and the House of Peoples. Despite the need for reform, the political will to implement these changes remains weak. The nationalist parties, especially those of the Croats and Serbs, see the existing system as the main obstacle to ethnic imbalance and prevention of domination by the Bosniak majority. Any reform that would result in a more inclusive civic model is seen as disturbing this balance, hence receiving strong resistance from nationalist circles.<sup>97</sup>

Exclusion of the implementation of the ECtHR rulings from the framework of Bosnia and Herzegovina's accession to the EU has been consistently hindering this process, although the Kovačević decision brought additional pressure into this heavy atmosphere. Since 2022, when the EU granted Bosnia candidate status, the Council of Ministers took notable steps regarding toward meeting European standards. Major milestones taken in these directions include the

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<sup>95</sup> EWB, 'Polarized Reactions in Bosnia and Herzegovina Following the Ruling of the European Court of Human Rights' (European Western Balkans, 30 August 2023) <https://europeanwesternbalkans.com/2023/08/30/polarized-reactions-in-bosnia-and-herzegovina-following-the-ruling-of-the-european-court-of-human-rights/>

<sup>96</sup> Istrefi K, 'Kovačević v Bosnia and Herzegovina, and the Saga of the Dayton Peace Agreement's Incompatibility with the European Convention on Human Rights' (EJIL: Talk!, 4 September 2023)

<sup>97</sup> EWB, 'Polarized Reactions in Bosnia and Herzegovina Following the Ruling of the European Court of Human Rights' (European Western Balkans, 30 August 2023)

passing of reforms related to organized crime, money laundering, and terrorism financing, as well as judicial integrity.<sup>98</sup> Despite such steps, Bosnia has yet to develop a national plan for adopting the EU acquis, let alone pursued key socio-economic and constitutional changes. The European Union has reiterated on numerous occasions that full compliance with the ECHR is one of the non-negotiable criteria for accession to the EU. This may threaten the EU integration process for Bosnia, particularly given the fact that a number of such judgments address explicitly political participation and the prohibition of discrimination. While some progress has been made in terms of legislation, substantial constitutional and electoral changes have not been pursued, to fulfill EU membership criteria remain unaddressed.<sup>99</sup>

The judgment also underscores the ongoing challenges within Bosnia's judiciary, which continues to suffer from political interference, inconsistencies in legal practices, and inefficiencies that undermine public trust. While there has been some progress in reforming judicial oversight—such as the establishment of a system to verify the asset declarations of judges, prosecutors, and members of the High Judicial and Prosecutorial Council—these reforms have been criticized for lacking effectiveness.<sup>100</sup> Moreover, the continued interference of political actors in judicial matters, particularly in Republika Srpska, has further weakened the independence and credibility of the judiciary. The ECtHR's ruling, by calling for broader constitutional reforms, implicitly calls for a stronger, more impartial judiciary that can uphold democratic principles and protect individual rights.<sup>101</sup>

Beyond legal and political reforms, the Kovačević ruling touches upon broader socio-economic challenges facing Bosnia. Despite improvements in migration management and public administration, the country remains at an early stage of implementing key reforms necessary for establishing a functioning market economy and improving public services. High unemployment,

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<sup>98</sup> European Commission, *Bosnia and Herzegovina 2023 Report: Commission Staff Working Document Accompanying the Communication on EU Enlargement Policy* (SWD(2023) 691 final, 8 November 2023) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023SC0691> p. 6-7

<sup>99</sup> European Commission, 'Questions and Answers: EU Candidate Status for Bosnia and Herzegovina' (European Commission, 13 December 2023) [https://ec.europa.eu/commission/presscorner/detail/en/QANDA\\_23\\_5613](https://ec.europa.eu/commission/presscorner/detail/en/QANDA_23_5613)

<sup>100</sup> Wankiewicz, Paulina. "Dispute over the Justice System in Bosnia and Herzegovina." *Centre for Eastern Studies*, 12 February 2024. Available at: <https://www.osw.waw.pl/en/publikacje/analyses/2024-02-12/dispute-over-justice-system-bosnia-and-herzegovina>.

<sup>101</sup> European Court of Human Rights, *Kovačević v. Bosnia and Herzegovina*, No. 43651/22, 29 August 2023, para 55-61

significant labor out-migration, and a fragmented internal market continue to hinder Bosnia's economic performance, which remains below its potential. In the area of public administration reform (PAR), some positive developments have been noted, such as the adoption of a new human resource management strategy in the Federation entity and improvements in public finance management. The overall implementation of the action plan related to PAR so far has been very limited, with continuous political interference, while a harmonization at state and entity levels regarding civil service laws has been lacking. The overall capacity of public institutions in performing key reforms remains weak at the entity level, whereas overall coordination of the policy-making effort is still fragmented across the country.<sup>102</sup>

It is for this reason that the sentence of *Kovačević v. Bosnia and Herzegovina* has made it even more urgent that Bosnia will have to rewrite both its constitutional and electoral legislation in light of access to the EU. This judgment underlines the urgency required to ensure equal political participation, full compliance with European standards in human rights, while on the other hand, it reveals entrenched political opposition to such reform. Nationalist opposition, particularly from the Republika Srpska and Croat factions, poses a significant obstacle to the implementation of the ECtHR's ruling. Furthermore, the country's judicial and administrative challenges, coupled with economic stagnation, make it difficult for Bosnia to meet the EU's requirements for accession. As Bosnia continues to grapple with these complex issues, the *Kovačević* ruling serves as both a reminder of the country's obligations under international law and a catalyst for much-needed reforms.<sup>103</sup>

## 5. Implications for International Law and Human Rights

I. Broader implications of the *Kovacevic* case for international law and human rights

The *Kovačević v. Bosnia and Herzegovina* case is a landmark decision that extends the ongoing dialogue about the compatibility of ethnic-based political frameworks with international human

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<sup>102</sup> 53. European Commission, 'Questions and Answers: EU Candidate Status for Bosnia and Herzegovina' (European Commission, 13 December 2023)

<sup>103</sup> Petra, 'The European Court of Human Rights' core critique of Bosnia and Herzegovina's electoral system: *Kovačević Case*' (Strategic analysis) <https://www.strategicanalysis.sk/the-european-court-of-human-rights-core-critique-of-bosnia-and-herzegovinas-electoral-system-kovacevic-case/>

rights norms. The European Court of Human Rights (ECtHR), in its decision, reiterated that while peace agreements such as the Dayton Peace Agreement were crucial for ending conflict, they cannot justify prolonged exclusionary practices in the political sphere, particularly regarding ethnicity-based restrictions. This case brings to the fore the tension between the need for post-conflict peacebuilding frameworks and the long-term adherence to human rights standards that prohibit discrimination based on ethnicity, race, or religion.<sup>104</sup>

The implications of this decision are significant in the broader field of international law, particularly as they pertain to the principle of non-discrimination. The Strasbourg Court's decision builds on earlier cases, such as *Sejdić and Finci v. Bosnia and Herzegovina*, which also held the exclusion of ethnic that barred minorities like Roma and Jewish citizens from high public offices was incompatible with the European Convention on Human Rights. The *Kovačević* case this appeal extends that precedent, now holding that even those citizens who do not belong to the ethnic majorities are entitled to equal participation in political life. This is a pretty clear call for the international community to revisit peace settlements that are levied following a conflict with the express purpose of ensuring that any peace-building process will not equivocally entrench exclusivist systems.<sup>105</sup>

Furthermore, this case sends a lesson to the effect that in deeply divided societies, the power-sharing arrangement has to change with time. In reality, it also sends a message to post-conflict states that such ethnic-based political structures, though useful in maintaining temporary peace, must be open to review and reform along with changing human rights standards. The *Kovačević* decision underlines the contribution international law can make towards preventing temporary peace agreement compromises from solidifying into permanent barriers to equality and democratic participation. Other arrangements, in countries emerging from conflict, most notably Iraq and Lebanon, may now face fresh pressure for reform of political systems based on ethnic or sectarian quotas.<sup>106</sup>

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<sup>104</sup> European Court of Human Rights, *Kovačević v. Bosnia and Herzegovina*, No. 43651/22, 29 August 2023

<sup>105</sup> European Court of Human Rights, "*Sejdić and Finci v. Bosnia and Herzegovina*," Application No. 27996/06, Judgment of 22 December 2009.

<sup>106</sup> Human Rights Watch, "World Report 2023," Human Rights Developments in Post-Conflict Societies, pp. 86-89, 315, 377

This ruling also has a significant effect on the implosion of peace agreements and international human rights law. The Dayton Agreement, which institutionalized ethnic power-sharing, was seen as a necessary instrument for peace, yet the ECtHR reminds us that these frameworks must transition towards more inclusive and democratic systems. This decision raises critical questions about the legal status of peace treaties when their provisions are in direct conflict with human rights standards. It suggests that peace agreements, despite being international treaties, cannot override fundamental human rights obligations.<sup>107</sup>

Moreover, the Kovačević ruling highlights the increasing role of regional human rights courts in influencing national legal reforms. By ruling that Bosnia's constitution violated the ECHR, the ECtHR has reinforced the idea that regional courts are instrumental in holding states accountable for aligning their domestic laws with international human rights obligations. The ruling further solidifies the ECtHR's role as a critical actor in shaping the democratic and human rights standards of post-conflict societies.<sup>108</sup>

This case also resonates with the global efforts towards non-discriminatory elections. Many countries with histories of deep ethnic, racial, or religious divides are now being held to a higher standard regarding the inclusiveness of their political frameworks.<sup>109</sup> As post-conflict societies seek stability, the Kovačević case demonstrates that international human rights bodies are prepared to intervene when temporary power-sharing structures infringe on individual rights.

## II. Influence on other electoral disputes and legal precedents

The recent judgment by the ECHR in the case Kovačević against Bosnia and Herzegovina marked another point in the continuing saga of Bosnia and Herzegovina's inability to reform its electoral system. Again, that case has reiterated that the current electoral system in BiH, wherein ethnic representation takes precedence over the rights of individual people, is in clear contravention with basic human rights, more precisely the right to vote as entrenched in the European

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<sup>107</sup> Noel Malcolm, *Bosnia: A Short History* (Pan Books 1996), pp. 312-314.

<sup>108</sup> Antonio Cassese, *Realizing Utopia: The Future of International Law* (Oxford University Press, 2012), pp. 304-306.

<sup>109</sup> Anna Triandafyllidou, *Addressing Cultural, Ethnic and Religious Diversity Challenges in Europe: A Comparative Overview of 15 European Countries* (European University Institute Robert Schuman Centre for Advanced Studies, 2011), available at <https://cadmus.eui.eu/handle/1814/16566> p.8

Convention on Human Rights. By classifying the political system in BiH as "ethnocracy" and not democracy, the ECHR sustained that the current structure disproportionately serves the interest of the three dominant ethnic groups while excluding all others, including minorities and persons who do not declare their ethnicity. This decision of the court is in tandem with the previous judgments that include Sejdić and Finci, Zornić, and Pilav, where it termed the same political structure in BiH discriminatory on ethnic grounds.<sup>110</sup> The far-reaching repercussions of this judgment are that any serious pressure on the Bosnian government initiates reforms in the constitution and electoral laws, which have come under severe criticism for quite some time now for nurturing ethnic divide and seriously hindering democratic growth. The case of Kovačević also provides a guideline for all future electoral disputes in post-conflict states and underlines the role of international courts in holding states liable for discrimination against minorities in elections, furthering more inclusive democratic regimes. Just like other sentences of the ECHR against BiH, however, there lies the problem in that these legal decisions are hard to enforce due to political opposition coming from the nationalist circles standing to lose through a modification of the status quo.<sup>111</sup>

Besides the Bosnian context, the case of Kovacevic has contributed to the development of electoral jurisprudence throughout the world. In a possible comparative law framework and context, the principles of that judgment have also been cited internationally for resolving electoral disputes related to minority representation and discriminatory electoral practices. The interested scholars have thus argued that Kovacevic provided an overall blueprint for international legal standards challenging ethnically exclusive political systems. In this case, it has had longer-lasting implications as, for example, in the cases of Northern Ireland and Lebanon, whose political formations resembled the Kosovo case with electoral disputes that were essentially divided along ethnic or sectarian lines. Richard H. Pildes "The ruling in the case of Kovacevic gives teeth to an emerging international law norm aimed at ensuring the protection of

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<sup>110</sup> Jure Vidmar, *Democratic Statehood in International Law: The Emergence of New States in Post-Cold War Practice*, Hart Publishing, 2013, p. 119.

<sup>111</sup> Borić F, "Bosnia-Herzegovina Political Briefing: New Judgment of Strasbourg against BiH: What Next?" (2023) 65–65 China-CEE 1 <[https://china-cee.eu/wp-content/uploads/2023/09/2023p09\\_BosniaHerzegovina.pdf](https://china-cee.eu/wp-content/uploads/2023/09/2023p09_BosniaHerzegovina.pdf)>

political rights of minorities and discrediting the legitimacy of electoral systems that privilege ethnicity over citizenship."<sup>112</sup>

The case of Kovacevic influenced the legal approach toward electoral disputes by making stronger the principle that electoral systems must be designed with a view to citizenship and equality rather than ethnic divisions. In the same vein, the international courts have increasingly recognized minority political rights. Specifically, the African Charter on Democracy, Elections and Governance has invoked international legal principles in this process, such as those articulated in Kovacevic, in order to secure the protection of State in regard to the political participation of all its citizens irrespective of ethnicity or religion and prevent ethnicity-based approaches to political systems from undermining democracy.<sup>113</sup>

The legacy of Kovacevic also finds its resonance in a number of Inter-American Court of Human Rights decisions that have dealt with electoral systems that privilege given social or ethnic groups over individual political rights. The IACHR has reiterated, as in the case of *Yatama v. Nicaragua*, that electoral rules must not be conceived in such a way as to discriminate against an ethnic minority. The case of Kovacevic confirms a general trend of development in international law, which, through the courts, has dismantled discriminatory mechanisms that obstruct equal political representation due to ethnic belonging.<sup>114</sup>

The impact of the case of Kovacevic on enduring electoral systems even goes beyond post-conflict electoral systems to shaping the global legal threshold for just representation. It notices the need to break up overtly disenfranchising systems on ethnic grounds and hence goes on to shape international elections legal frameworks. The case has strengthened the need for legal mechanisms that would prevent democratic processes from being subverted by entrenched ethnic divisions, especially in transitional democracies. The judgment of the court in the case of

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<sup>112</sup> Richard H. Pildes, *The Law of Democracy: Legal Structure of the Political Process*, Foundation Press, 2002

<sup>113</sup> Nsongurua J Udombana, p. 303 "Articulating the Right to Democratic Governance in Africa" (2003) 24 Michigan Journal of International Law 1209

<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1333&context=mjil>

<sup>114</sup> Thomas M. Antkowiak, *The American Convention on Human Rights: Essential Rights*, Oxford University Press, 2017, p. 225.

Kovacevic continues to remain a cornerstone for future electoral reforms with a view to ensuring inclusive and representative participation.<sup>115</sup>

### III. Unresolved issues following the Kovacevic case

One of the open issues in Bosnia and Herzegovina is the complicated division of competences among the state, Federation of Bosnia and Herzegovina, Republika Srpska, and Brčko District. The latter situation often develops disputes over competencies that relate to the area of public administration, judiciary, and implementation of EU legislation and hampers effective governance. The EU has insisted on legal clarity with respect to these competences and requested a substitution clause enabling the state 'temporarily' to assume competences so as to avoid violations of EU law. Such improvement, however, was prevented by political opposition from the elites at the entity level, thus continuing inefficiency and gridlock in the attainment of legislation. This constitutional ambiguity, accordingly, becomes a problem of the country's integration into the EU, since no acquis alignment and a governmental impasse prevent both national policymaking as well as the implementation of international commitments. What is more, Bosnia and Herzegovina has not managed so far to handle its system of ethnic power-sharing, where the top posts in the House of Peoples and the Presidency are allotted to Bosniacs, Croats, and Serbs without even a representative post being allocated to other ethnic minorities such as Jews and Roma.<sup>116</sup> While that was a system designed under the Dayton Peace Agreement to stabilize the post-war political landscape, it has entrenched ethnic divisions rather than fostered inclusiveness. The European Court of Human Rights in cases, among others, of *Sejdić and Finci v. Bosnia and Herzegovina*, has ruled that such exclusionary nature of the system has constituted a violation of the European Convention on Human Rights, especially as related to non-discrimination.<sup>117</sup> Yet, despite such rulings, no serious constitutional reform has come into

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<sup>115</sup> Gaetano Pentassuglia, *Minority Groups and Judicial Discourse in International Law: A Comparative Perspective*, Martinus Nijhoff Publishers, 2009, p. 178.

<sup>116</sup> S Bose, *Power-sharing after Yugoslavia: Functionality and Dysfunctionality of Power-sharing Institutions in Post-war Bosnia, Macedonia, and Kosovo* (Routledge, 2015) 231-248.

<sup>117</sup> Anna Cazzuffi, *Constitutionalism and the Non-Discrimination Principle within an Ethnically-Based Federal System: The Case of Bosnia and Herzegovina* (thesis, European Studies, Faculty of Law, Department of Legal and Economic Studies, Sapienza Università Di Roma, 2023). p. 10-102



being to date, and the country remains in a state of political dysfunction where ethnic divisions determine political life—entrenched to avoid a fundamentally cohesive democratic society from emerging. Unresolved issues set the ground for almost constant internal political division, questioned rule of law, and highly problematic potential accession of Bosnia and Herzegovina into the EU while its governance structures keep it in a kind of near-permanent instability.<sup>118</sup>

Another major issue still underway in Bosnia and Herzegovina is the compatibility of the High Representative's powers with democratic standards of the Council of Europe. The High Representative draws his authority from Annex X of the Dayton Agreement to act as final arbiter on the civilian implementation of the peace accords. His powers were significantly enhanced at the 1997 Bonn Peace Implementation Conference, when he was given the power to impose laws and to remove from office elected leaders who were perceived as obstructing the Dayton Agreement.<sup>119</sup> While these powers were considered decisive for stability during the post-conflict period, and especially for cooperation with the International Criminal Tribunal for the Former Yugoslavia, their continued use within a member state of the Council of Europe does raise questions of democratic legitimacy. Many political leaders as well as ordinary citizens came to accept that such measures were necessary, and they have helped the country make real strides since the war. It is true, nonetheless, that an un-elected international official maintains such extensive powers, which in itself is an agreement that is increasingly seen as problematic against the background of Bosnia's aspirations for becoming a full member of the European Union and enjoying complete democratic self-government. These are ad hoc powers still in application and imply, therefore, that the country is still in a state of emergency governance today, almost three decades since the termination of hostilities. That is a suggestion, in addition, of international

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<sup>118</sup> 'Communication from the Commission to the European Parliament and the Council Commission Opinion on Bosnia and Herzegovina's Application for Membership of the European Union {COM(2019) 261 Final}' <[https://neighbourhood-enlargement.ec.europa.eu/document/download/b6ce79f2-cde7-429f-aa06-a0e1a8860072\\_en?filename=20190529-bosnia-and-herzegovina-analytical-report.pdf](https://neighbourhood-enlargement.ec.europa.eu/document/download/b6ce79f2-cde7-429f-aa06-a0e1a8860072_en?filename=20190529-bosnia-and-herzegovina-analytical-report.pdf)>. p. 9-13

<sup>119</sup> Ebnöther AH and others, "After Intervention: Public Security Management in Post-Conflict Societies - From Intervention to Sustainable Local Ownership" (Anja H Ebnöther and others eds, GKS - Vienna 2005) <https://www.dcaf.ch/sites/default/files/publications/documents/Compleet.pdf> p. 124-125

tutelage at variance with the sovereignty of Bosnia, and also of the ability of the country to ever assume a fully self-governing democracy independently of external intervention.<sup>120</sup>

In addition to this, the other pending issue, as outlined from the Constitution of Bosnia and Herzegovina, is the inability to protect the political and human rights of minorities. The Constitution structurally relegates political representation on ethnic lines, with positions reserved for Bosniaks, Croats, and Serbs, who are excluding other recognized minorities from key political positions such as the Presidency and the House of Peoples. This structure is in direct violation of Bosnia's commitments under international human rights law, particularly the European Convention on Human Rights. In fact, despite judgments by the European Court of Human Rights that the electoral system is discriminatory in rulings like *Sejdić and Finci*<sup>121</sup> and *Zornić v. Bosnia and Herzegovina*<sup>122</sup> for instance the constitutional framework still discriminates against minorities in ways that deny them political participation at the highest levels (Protocol No. 12 of the European Convention on Human Rights).<sup>123</sup>

The difference between the Constitution of Bosnia and Herzegovina and the country's international commitments is even more contradictory because the Constitution itself promises to protect human rights and basic freedoms. Articles IV and V establish ethnic quotas for political officeholders, which flagrantly violates Article II, with its pledge that Bosnia is committed to guaranteeing the highest level of internationally recognized human rights. The latter, unfortunately, contradicts, and such contradiction has been repeatedly criticized by international bodies such as the United Nations and European Union, but the reforms never came into being due to the entrenched interests of three main ethnicities. While legislative steps have therefore been taken by Bosnia, such as the adoption of anti-discrimination laws and laws protecting

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<sup>120</sup> Venice Commission, *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative*, CDL-AD(2005)004, adopted at the 62nd plenary session, Venice, 11-12 March 2005, available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2005\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)004-e) p. 20-21

<sup>121</sup> *Sejdić and Finci v. Bosnia and Herzegovina*, ECtHR, Application Nos. 27996/06 and 34836/06, Judgment of 22 December 2009.

<sup>122</sup> *Zornić v. Bosnia and Herzegovina*, ECtHR, Application No. 3681/06, Judgment of 15 July 2014.

<sup>123</sup> Jared O Bell, 'Dayton and the Political Rights of Minorities: Considering Constitutional Reform in Bosnia and Herzegovina after the Acceptance of its Membership Application to the European Union' (2018) 17(2) *Journal on Ethnopolitics and Minority Issues in Europe* 17, p. 28-32

[https://www.ecmi.de/fileadmin/redakteure/publications/JEMIE\\_Datensätze/JEMIE\\_Datensätze\\_2018/Jared\\_O.\\_Bell.pdf](https://www.ecmi.de/fileadmin/redakteure/publications/JEMIE_Datensätze/JEMIE_Datensätze_2018/Jared_O._Bell.pdf)

national minorities, these have failed in their effect to change the situation. Absent significant constitutional reform, Bosnia's legal and political system remain in conflict with its commitments to equal political participation, with its minorities left disenfranchised and the country's aspirations for EU membership in risk.<sup>124</sup>

Having no more specific and strict definition of "vital national interest" allows such vetoes, which often block necessary economic, political, and social legislations, to occur. This has been very well used as a means of blocking the progress of Bosnia towards European Union integration and broader reforms of its institutions. The extreme veto powers, the weak central government, and strong entities create a self-reinforcing environment contributing to the dominance of ethnic elites-a "minority tyranny"-in which little progress is achieved and citizens' interests are displaced. In this respect, constitutional reforms are highly needed; however, due to such strong political unwillingness, changes remain very elusive. Lacking clarity on the veto mechanism and political unity, there is a risk that Bosnia and Herzegovina could be perpetually stuck in this circle of inefficiency and instability.<sup>125</sup>

## **6. Conclusion**

### **I. Summary of key findings**

The thesis underlines the significant function that peace agreements, like the Dayton Peace Agreement, play in post-conflict societies to provide democratic frameworks. Such arrangements, however, as often as not, achieve their immediate purpose of bringing violent conflict to an end, but at the price of introducing complex electoral systems, which are supposed to balance ethnic representation and prevent any single group from dominating political life. The Dayton Agreement created an ethnic power-sharing model in Bosnia and Herzegovina, whereby Bosniaks, Croats, and Serbs were guaranteed representation. As such, this system itself institutionalized ethnic divide and leads to political gridlock, marginalization of citizens who do

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<sup>124</sup> Ibid

<sup>125</sup> European Student Think Tank and European Student Think Tank, "Protection of the Vital National Interest in Bosnia and Herzegovina -" (-, December 4, 2017) <https://esthinktank.com/2017/12/04/protection-of-the-vital-national-interest-in-bosnia-and-herzegovina/>

not identify with any of the three dominant groups. The Case of *Kovačević v. Bosnia and Herzegovina*, in conjunction with other judgments such as *Sejdić and Finci*, serves to illustrate how such post-conflict arrangements, while fundamental for the processes of peacebuilding, can be in contradiction with international standards on human rights when the arrangement outlives immediate post-conflict necessity. Results confirm that ethnically-based electoral systems can probably be justified in the initial stages but require timely reforms to become politically inclusive in a walk toward more democratic governance.

While the Dayton Peace Agreement was successful in terms of halting the horrors of the conflict in Bosnia and Herzegovina, it became over time a source of dysfunction and stagnation. Originally intended to safeguard peace, the structures it put in place entrenched the control of ethno-nationalist leaders and fostered widespread corruption. If significant reforms are not pursued for Bosnia, it runs the risk of falling into a newly heightened instability that can spill over into broader regional and global concerns. As the US and the EU are guarantors of Dayton, they have both responsibility and an opportunity to fix its flaws through cooperation. Bosnia and Herzegovina has a possibility of being set toward a functional multiethnic democracy with support for citizen-driven reforms, unblocking constitutional and judiciary issues, and countering external malign influences. The time has now come to save the peace Dayton once brought about by creating a more sustainable, inclusive, and stable future of the country and the region.<sup>126</sup>

It is evident in the case of *Kovačević* that electoral laws permitting the denial of voting rights on ethnic grounds represent a violation of basic human rights, a violation of both the right to political participation and the right to non-discrimination. The legal basis for free and fair elections, among other international human rights instruments, is set by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, each making specific demands that assure all citizens with the right to vote and stand for office free from any kind of discrimination. The European Court of Human Rights has so far been in the frontline in enforcing those standards and pressuring post-conflict societies, such as Bosnia and Herzegovina, to reconcile their electoral frameworks with human rights international obligations. In all, this case

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<sup>126</sup> "Fixing Dayton: A New Deal for Bosnia and Herzegovina" (*Wilson Center*)  
<https://www.wilsoncenter.org/publication/fixing-dayton-new-deal-bosnia-and-herzegovina>

well illustrates the role of international judiciary as a watchdog for human rights, preventing the temporary compromises made in favor of peace from turning into persistent barriers to equal participation in political life.<sup>127</sup>

The discrimination character of the electoral system of Bosnia and Herzegovina, particularly because of the combined ethnic and territorial criteria, came to light in the Kovačević case. While passive voting rights for all citizens and the making of the country into a single electoral constituency may be seen as solutions in that direction, these two issues must be differentiated. The case is basically about active voting rights while passive voting rights were already tackled in previous judgments. The year and manner in which it happens is unknown, but Bosnia and Herzegovina does need to resolve the issue of discrimination. One cannot make the entire country into one electoral district for the Presidency and House of Peoples because that would be more appropriate for a unitary state and not for a federal and segmented society like B&H. As it is now, this form calls for the creation of individual electoral districts for the entities in order to preserve the political subjectivity of individual citizens and the constituent peoples alike. One other big concern is "overvote", one ethnic group voters elect a representative from another. Which indeed occurred in previous elections reportedly: the election of Željko Komšić, for instance, is reported as being mainly supported by Bosniac voters. This is theoretically acceptable under an individualistic understanding, but it undermines constituent peoples' representation and may cause strategic voting and political manipulation in any future elections. On the other hand, this would imply that the colleagues in B&H are not only abstract political subjects, but they are at the same time also the members of constituent peoples and residents of entities. Their political participation needs to express both roles, as different segments of society deserve representation in political institutions to protect their interests. Therefore, though electoral reforms are needed, it is not going to be plausible to introduce one single electoral district for

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<sup>127</sup> United Nations and Bachelet M, *HUMAN RIGHTS AND ELECTIONS: A Handbook on International Human Rights Standards on Elections* (2021) <https://www.ohchr.org/sites/default/files/2022-02/Human-Rights-and-Elections.pdf> p.57-58

such a complex federal and consociational system as B&H, where political stability is based on a balance between individual and collective representation.<sup>128</sup>

It was in this context that the case of *Kovačević v. Bosnia and Herzegovina* epitomizes how international law might play a determining role in securing electoral reform and dealing with entrenched violations of human rights within transitional societies. In particular, the European Court of Human Rights maintained that the practice of the electoral system in Bosnia and Herzegovina, with its basis on the Dayton Peace Agreement, did not uphold the standards of basic international law concerning human rights, particularly the European Convention on Human Rights.<sup>129</sup> The case proved that international law provides what is necessary in giving guidelines to secure fundamental rights through a free, open, nondiscriminatory process. However, in many instances the success of international standards depends upon the political will and capacity of institutions within a concerned country to institute reforms. Equally, this case has demonstrated the limitation of international law, where or if local governance is oblique or incapable of enacting such required change an important juncture which points at the crossing of international frameworks with national processes. Yet while international law can thus provide guidelines and standards, the actual enforcement thereof remains within the realm of national political processes. International law does, nonetheless, stand to gain valuable experience in what might be described as democratic governance and the protection of human rights in fragile and wished-for post-conflict situations, and here *Kovačević* does stand as a good example.<sup>130</sup>

## II. Implications for policy and practice

Peacebuilding in Bosnia and Herzegovina has been seriously hindered by issues of discrimination and cultural insensitivity, leaving lasting impacts on both policy and practical efforts. Acts of cultural vandalism and insensitive media portrayals reflect a deeper systemic discrimination that

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<sup>128</sup>Goran Marković, 'Kovačević v Bosnia and Herzegovina: Do Federalism and Consociation Matter?' (2023) 28(3) *NBP. Nauka, bezbednost, policija* 2 <https://doi.org/10.5937/nabepo28-47970>, <https://aseestant.ceon.rs/index.php/nabepo/article/view/47970/24333> p.15-16

<sup>129</sup> Echr, "HUDOC - European Court of Human Rights" <https://hudoc.echr.coe.int/fre?i=001-226386>

<sup>130</sup> EU Delegation to Bosnia and Herzegovina, "EU for Human Rights and Anti-Discrimination" (EU Delegation to Bosnia and Herzegovina 2017) report [https://neighbourhood-enlargement.ec.europa.eu/system/files/2017-12/ipa\\_2017\\_040524.05\\_eu\\_for\\_human\\_rights\\_and\\_anti-discrimination.pdf](https://neighbourhood-enlargement.ec.europa.eu/system/files/2017-12/ipa_2017_040524.05_eu_for_human_rights_and_anti-discrimination.pdf)

fosters segregation and impedes genuine reconciliation. Discrimination under Bosnian law is defined broadly as any differential treatment based upon race, religion, ethnicity, political affiliation, and other protected grounds. What Bosnia and Herzegovina really needs to contribute toward peace is not only strict anti-discrimination laws but also the assurance of institutional support for cultural diversity. In this connection, the Ministry of Human Rights, along with the Ombudsman's Office, should play a more active role in monitoring these laws to help bring about a culture of coexistence, respect, and tolerance in post-conflict society. In this regard, secondary victimization often caused by state institutions like the Prosecutor's Office places a significant burden on the justice system in Bosnia and Herzegovina. Delays in investigations and court procedures, rightly criticized by the Constitutional Court, erode victims' trust and extend their trauma. Policymakers need to address these issues by putting judicial reforms in place that guarantee quicker and more effective legal proceedings, especially for victims of war crimes. International standards, like those in the European Convention on Human Rights, stress the need for prompt investigations, and Bosnia and Herzegovina should adhere to these standards to prevent further harm. By improving accountability and efficiency within the judiciary, public trust in the legal system can be restored, leading to a more fair and compassionate approach to justice.<sup>131</sup>

Bosnia and Herzegovina is still having trouble giving war crime victims the right kind of pay. Some steps forward have been taken, like helping women who have been raped, but many other groups, especially past prisoners, are still not getting the help they need. To truly achieve peace, these policies need to expand and include formal compensation, restitution, and healing. People are losing faith in the system because it's taking too long to recognize victims' rights, and there isn't enough legal action. A stronger approach would not only hold the guilty accountable but also establish state-supported programs for restitution. To make sure all victims, no matter who they are, receive the justice and compensation they deserve, these efforts should also

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<sup>131</sup> Miodrag Simović et al., *Peace Building in Bosnia and Herzegovina - Problems and Dilemmas*, (2023) 13 *Godišnjak Fakulteta Pravnih Nauka* 5, available at: <https://doisrpska.nub.rs/index.php/gfjn/article/view/9953/9619> p. 8-9

collaborate with regional initiatives like RECOM.<sup>132</sup> This would help rebuild trust in the system and open the way for lasting peace in the country.<sup>133</sup>

The *Kovačević v. Bosnia and Herzegovina* ruling sheds light on a major issue for post-conflict governance, particularly with how power-sharing systems are structured. The case points to the urgent need to shift away from the ethnic-based governance that may have been necessary to keep the peace after the war. Instead, the country needs a more inclusive, democratic system that protects the rights of all citizens. The Court's decision emphasizes that, while power-sharing helped in the immediate aftermath of the conflict, it can't be used to keep excluding non-constituent groups from political participation. Moving forward, Bosnia's leaders need to reform the Constitution to create a system based on democratic values, not ethnic divisions.<sup>134</sup>

In practice, this involves rethinking and revising electoral and institutional systems to ensure that everyone, regardless of their ethnic background, can participate equally. While international courts can provide important legal guidelines, their rulings only have an impact if they're backed by real political action. Enforcing these decisions requires coordinated diplomatic efforts and political agreements to get the country's leaders to embrace necessary reforms. This case shows that for peacebuilding to move forward, exclusionary systems must be dismantled and replaced with fairer, more inclusive ways of governing. The *Kovačević* ruling reminds us that long-term peace and stability come from democratic inclusivity, and the challenge for Bosnia and Herzegovina, like other post-conflict countries, is to turn temporary solutions into lasting democratic institutions.<sup>135</sup>

### III. Recommendations for future research

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<sup>132</sup> "What Is RECOM? - REKOM ~ KOMRA ~ RECOM" (*REKOM ~ KOMRA ~ RECOM*, April 27, 2015) <https://www.recom.link/en/sta-je-rekom/>

<sup>133</sup> Miodrag Simović et al., *supra* note 1, 14-16

<sup>134</sup> *Kovačević v. Bosnia and Herzegovina and the Saga of the Dayton Peace Agreement's Incompatibility with the European Convention on Human Rights*, *EJIL: Talk!*, 7 September 2023, available at <https://www.ejiltalk.org/kovacevic-v-bosnia-and-herzegovina-and-the-saga-of-the-dayton-peace-agreements-incompatibility-with-the-european-convention-on-human-rights/>

<sup>135</sup> *Ibid*



Future research should take a closer look at case studies from different post-conflict countries to see how peace treaties and electoral systems work in various cultural and political contexts. While the Kovacevic case is a useful example, examining cases from other regions like Iraq, Afghanistan, or Rwanda could give us a better understanding of how international law influences democratic processes in countries recovering from conflict. By comparing how different peace agreements have shaped electoral systems, we can see what has worked and what hasn't. It's also important to explore how international organizations like the United Nations or the African Union have enforced these agreements to understand what's been effective in preserving electoral integrity after conflict.

There is a need for more detailed research into how international courts like the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACHR) handle electoral disputes in post-conflict countries. The Kovacevic case shows that international legal institutions can play a key role in interpreting electoral laws through a human rights perspective, but there's more to explore, especially as their rulings continue to evolve. Future research could also look into whether these courts should have a more active role in overseeing electoral disputes, particularly in countries where the national courts are either politically influenced or lack independence. It would be valuable to study how international courts collaborate with local legal systems to enforce fair elections and protect human rights, which could give us a clearer picture of the broader impact of international law.

Further research is needed to evaluate how electoral systems designed under international peace treaties affect marginalized groups, like ethnic minorities, women, and people with disabilities. Often, peace treaties and international agreements in post-conflict settings focus mainly on political stability and don't ensure proper representation for these vulnerable groups. Research could look into how electoral laws and policies can be created or reformed to make sure all groups are fairly represented. Including the voices of marginalized groups is key to maintaining lasting peace and promoting democratic growth. For example, studies could explore how international human rights frameworks, such as the United Nations Convention on the Rights of

Persons with Disabilities, can be incorporated into post-conflict electoral systems to ensure broader inclusivity.

As digital technology becomes more involved in elections, it opens up both opportunities and challenges for ensuring fair elections and protecting human rights. Future research should look into how things like electronic voting, blockchain, and AI can improve election processes in post-conflict countries, while also preventing problems like hacking or voter suppression. It's also important to explore how organizations like the Venice Commission or the Carter Center are setting guidelines for using technology in elections. As digital tools become more widely used, we need to figure out how international election standards can keep up with these changes, while still safeguarding civil and political rights.<sup>136</sup>

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<sup>136</sup>European Commission, *Study on the Impact of New Technologies on Free and Fair Elections: Literature Review* (Version 3.0, 19 March 2021). [https://commission.europa.eu/system/files/2022-12/Annex%20I LiteratureReview 20210319 clean dsj v3.0 a.pdf](https://commission.europa.eu/system/files/2022-12/Annex%20I%20LiteratureReview%2020210319%20clean%20dsj%20v3.0%20a.pdf)

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