

Geachte heer Daae,

Dank voor Uw vriendelijke mail.

Mij komt geen enkel arrest van het EHRM voor de geest waarin de door U genoemde problematiek al eens door het Hof is behandeld. Bij artikel 14 speelt dat er altijd sprake moet zijn van een ander in het EVRM gegarandeerd recht dat mogelijk geschonden is; bij het 12de protocol speelt die beperking niet, maar er is, voor zover mij bekend, geen ander arrest over dat relatief nieuwe protocol bekend dan het arrest waarin min of meer werd aangenomen dat de criteria voor artikel 14 en protocol 12 dezelfde zouden zijn. Ik citeer wat betreft artikel 14: *The Court has repeatedly held that Article 14 is not autonomous but has effect only in relation to Convention rights. This provision complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see, among other authorities, Van Raalte v. Netherlands, 21 February 1997, § 33, Reports 1997-I, and Gaygusuz v. Austria, 16 September 1996, § 36, Reports 1996-IV).*

In het uit 2009 daterend arrest Sejdic and Fici v, Bosnia-Herzegovina the \Court ruled in respect of Protocol 12:

*55. The notion of discrimination has been interpreted consistently in the Court's jurisprudence concerning Article 14 of the Convention. In particular, this jurisprudence has made it clear that “discrimination” means treating differently, without an objective and reasonable justification, persons in similar situations (see paragraphs 42-44 above and the authorities cited therein). The authors used the same term, discrimination, in Article 1 of Protocol No. 12. Notwithstanding the difference in scope between those provisions, the meaning of this term in Article 1 of Protocol No. 12 was intended to be identical to that in Article 14 (see the Explanatory Report to Protocol No. 12, § 18). The Court does not therefore see any reason to depart from the settled interpretation of “discrimination”, noted above, in applying the same term under Article 1 of Protocol No. 12 (as regards the case-law of the UN Human Rights Committee on Article 26 of the International Covenant on Civil and Political Rights, a provision similar – although not identical – to Article 1 of Protocol No. 12 to the Convention, see Nowak, CCPR Commentary, N.P. Engel Publishers, 2005, pp. 597-634).*

*56. The lack of a declaration of affiliation by the present applicants with a “constituent people” also rendered them ineligible to stand for election to the Presidency. An identical constitutional pre-condition has already been found to amount to a discriminatory difference in treatment in breach of Article 14 as regards the House of Peoples (see paragraph 50 above) and, moreover, the notions of discrimination prohibited by Article 14 and by Article 1 of Protocol No. 12 are to be interpreted in the same manner (the preceding paragraph). It follows that the constitutional provisions which render the applicants ineligible for election to the Presidency must also be considered discriminatory and a breach of Article 1 of Protocol No. 12, the Court not considering that there is any pertinent distinction to be drawn in this regard between the House of Peoples and the Presidency of Bosnia and Herzegovina.*

*Accordingly, and for the detailed reasons outlined in paragraphs 47-49 above in the context of Article 14, the Court finds that the impugned pre-condition for eligibility for election to the Presidency constitutes a violation of Article 1 of Protocol No. 12.*

-Met vriendelijke groet,  
Egbert Myjer