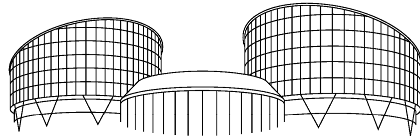

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF PURIĆ AND R.B. v. SERBIA

(Applications nos. 27929/10 and 52120/13)

JUDGMENT

STRASBOURG

15 October 2019

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Purić and R.B. v. Serbia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Georgios A. Serghides, *President,*
Branko Lubarda,
Erik Wennerström, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 24 September 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in two applications (nos. 27929/10 and 52120/13) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Serbian nationals, Mr Sveto Purić (“the first applicant”) and R.B. (“the second applicant”), on 6 May 2010 and 17 June 2013 respectively. The Court decided of its own motion to grant the second applicant anonymity pursuant to Rule 47 § 4 of the Rules of Court.

2. The first applicant was represented by Mr R. Stepanović, a lawyer practising in Belgrade, while the second applicant was represented by Mr V. Juhas Đurić, a lawyer practising in Subotica. The Serbian Government (“the Government”) were represented by their former Agent, Ms N. Plavšić.

3. On 13 October 2016 notice of the complaints concerning Article 5 § 3 was given to the Government and the remainder of the applications was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

4. The Government objected to the examination of the application by a Committee. Having considered the Government’s objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Specific circumstances of case no. 27929/10

5. The facts of the case may be summarised as follows.

6. The applicant was born in 1954.

7. On 22 February 2007 the Smederevo District Court (*Okružni sud u Smederevu*) ordered the applicant's detention on suspicion of bribery and the illegal possession of weapons and explosive materials. He was initially detained on the following grounds: (a) the risk he would obstruct the course of justice by exerting pressure on witnesses and/or his co-accused; and (b) the severity of the potential sentence and the nature of the alleged crime.

8. As from 11 September 2007 the applicant was detained on the sole grounds of the severity of the potential sentence and the nature of the alleged crime. In its reasoning the court relied on, *inter alia*, the fact that the criminal conduct had allegedly taken place over a prolonged period of time and that the applicant had been the dean of the Kragujevac Faculty of Law at the relevant time. The applicant repeatedly challenged his detention, but his appeals were dismissed by the Supreme Court on 18 September, 26 September, 25 October and 28 November 2007.

9. On 14 December 2007 the applicant was released from custody.

10. On 5 January 2008 the applicant lodged a constitutional appeal complaining that his detention in the period from 11 September to 14 December 2007 had not been justified.

11. On 22 December 2009 the Constitutional Court found no violation of the applicant's right to liberty and security.

12. It appears that the criminal proceedings are still ongoing.

B. Specific circumstances of case no. 52120/13

13. The facts of the case may be summarised as follows.

14. On 3 November 2011 the competent court ordered the applicant's detention on suspicion of sexually abusing a child. He was initially detained on the following grounds: (a) the risk he would obstruct the course of justice by exerting pressure on witnesses and/or his co-accused; (b) the risk of reoffending; and (c) the severity of the potential sentence and the nature of the alleged crime.

15. The competent court extended the applicant's detention on several occasions. Notably, in the period from 18 June to 17 August 2012 the applicant was detained, in accordance with a decision of 15 June 2012, on the sole grounds of the severity of the potential sentence and the nature of the alleged crime. In its reasoning the court relied on, *inter alia*, the age of the victim, the fact that the criminal conduct had allegedly taken place over a prolonged period of time, that the applicant had lived in the same household as the alleged victim and had allegedly also made threats against the victim. On 22 June 2012 the competent court upheld that decision.

16. On 17 August 2012 the applicant was found guilty of sexually abusing a child and sentenced to nine years' imprisonment.

17. In the meantime, on 2 July 2012, the applicant lodged a constitutional appeal complaining that his detention in the period after 18 June 2012 had not been justified.

18. On 23 May 2013 the Constitutional Court found no violation of the applicant's right to liberty and security.

II. RELEVANT DOMESTIC LAW

19. The relevant domestic law is outlined in the case of *Lakatoš and Others v. Serbia* (no. 3363/08, § 38, 7 January 2014).

THE LAW

I. JOINDER OF THE APPLICATIONS

20. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment in accordance with Rule 42 § 1 of the Rules of the Court.

II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

21. The applicants complained that their detention from 11 September until 14 December 2007 (as regards the first applicant) and from 18 June until 17 August 2012 (as regards the second applicant) had not been justified. They relied on Article 5 § 3 of the Convention, which reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

22. The Government contended that both applications had been lodged out of time. As regards the first applicant, relying on the case of *Vinčić and Others v. Serbia* (nos. 44698/06 and 30 others, 1 December 2009), they argued that on 5 January 2008, when the first applicant had lodged his constitutional appeal, it had not been an effective legal remedy and that he should not therefore have awaited the outcome of those proceedings. With regard to the second applicant, the Government argued that, even after 7 August 2008, a constitutional appeal had not been effective in his case in view of the Constitutional Court's case-law on this matter. They added that the second applicant's application was also inadmissible on non-exhaustion

grounds, since he had only made his complaint to the Constitutional Court under the provision of the Constitution corresponding to Article 5 § 1 of the Convention, and not under the one corresponding to Article 5 § 3 of the Convention.

23. The applicants disagreed.

24. The Court notes that it has already held that a constitutional appeal should, in principle, be considered as an effective domestic remedy, within the meaning of Article 35 § 1 of the Convention, in respect of all applications lodged against Serbia as of 7 August 2008 (see *Vinčić and Others*, cited above, § 51). It is true that the first applicant's pre-trial detention ended on 14 December 2007. He was therefore not required to pursue the avenue of a constitutional appeal. Nevertheless, since the applicant lodged his constitutional appeal after the Constitutional Court had become operational (see *Cvetković v. Serbia*, no. 17271/04, § 42, 10 June 2008), and the Constitutional Court did examine his case on its merits, its decision must be taken into account (see, *mutatis mutandis*, *Predić-Joksić v. Serbia* (dec.), no. 19424/07, § 23, 20 March 2012, and *Vujović and Lipa D.O.O. v. Montenegro*, no. 18912/15, § 32, 20 February 2018). Both applicants lodged their applications within six months of the delivery of the Constitutional Court's decisions in their cases. The Court, therefore, rejects the Government's objections in this regard.

25. The Court also observes that the second applicant, in his constitutional appeal, complained, as he did before this Court, that his detention in the period after 18 June 2012 had not been justified (see paragraph 17 above). Moreover, he expressly relied on the Court's case-law concerning that matter, notably *Ilijkov v. Bulgaria* (no. 33977/96, §§ 80-81, 26 July 2001), and *Jėčius v. Lithuania* (no. 34578/97, § 94, ECHR 2000-IX). Having thus raised substantially the same issue at the domestic level, the second applicant did provide the national authorities with the opportunity which is, in principle, intended to be afforded to Contracting States under Article 35 § 1 of the Convention. The Government's objection in this regard must therefore also be dismissed.

26. Finally, the Court notes that the applications are neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

27. The applicants reiterated their complaints (see paragraph 21 above).

28. The Government submitted that the applicants' detention during the periods in question had been lawful within the meaning of the domestic law, that the domestic decisions had been well reasoned and that the duration of the applicants' detention had not been excessive.

29. The Court refers to its general principles under Article 5 § 3 of the Convention relating to the right to be released pending trial (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 92-102, 5 July 2016, and *Ara Harutyunyan v. Armenia*, no. 629/11, §§ 48-53, 20 October 2016). In particular, justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Tase v. Romania*, no. 29761/02, § 40, 10 June 2008). Furthermore, while it is true that by reason of their particular gravity and public reaction to them, certain offences may give rise to a social disturbance capable of justifying pre-trial detention, this ground can be regarded as relevant and sufficient only provided that it is based on facts capable of showing that the release of the accused would actually disturb public order (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207).

30. The Court notes that it has already found a violation of this provision in respect of Serbia in a similar situation (see *Lakatoš and Others v. Serbia*, no. 3363/08, §§ 91-98, 7 January 2014). It considers, having examined all the material submitted to it, that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The national courts assessed the need to continue the applicants' pre-trial detention from a rather abstract and formalistic perspective, relying solely on the severity of the potential sentence and the nature of the alleged crime (see paragraphs 8 and 15 above). The authorities thus extended the applicants' detention pending trial on grounds which cannot be regarded as "sufficient" to justify their duration.

31. There has accordingly been a violation of Article 5 § 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

33. The applicants claimed 60,000 and 4,000 euros (EUR) respectively in respect of non-pecuniary damage.

34. The Government contested those claims.

35. It is clear that the applicants sustained some non-pecuniary damage arising from the breaches of their rights under Article 5 § 3 of the Convention, for which they should be compensated. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court

therefore awards to the first applicant EUR 180 (in respect of the period from 11 September to 14 December 2007), and the second applicant EUR 120 (in respect of the period from 18 June to 17 August 2012).

B. Costs and expenses

36. The first applicant claimed approximately EUR 1,800 for the costs and expenses incurred before the domestic courts, but did not specify the amount of costs incurred before the Court. The second applicant claimed approximately EUR 725 for the costs and expenses incurred before the domestic courts and the same amount for those incurred before the Court.

37. The Government contested those claims.

38. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. That is to say, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the breaches found or to obtain redress. The Court requires itemised bills and invoices that are sufficiently detailed to enable it to determine to what extent the above requirements have been met. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award to the applicants the sums claimed.

C. Default interest

39. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

4. *Holds*

   (a) that the respondent State is to pay the applicants, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 180 (one hundred and eighty euros) to the first applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 120 (one hundred and twenty euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
(iii) EUR 1,800 (one thousand eight hundred euros) to the first applicant, plus any tax that may be chargeable to the applicant, in respect of costs and expenses.
(iv) EUR 1,450 (one thousand four hundred and fifty euros) to the second applicant, plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 15 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Georgios A. Serghides
President