

Belgrade, 15 October 2024

## **ACTION REPORT**

**Aleksandar BOŠNJAČKI v. Serbia**

Application no. 37630/19, Judgment of 30 April 2024, final on 30 April 2024

### **I CASE DESCRIPTION**

1. This case concerns a violation of the applicant's right of access to a court, in 2018-2019, in the context of misdemeanor proceedings related to a traffic offence, due to domestic courts' refusal of the applicant's request for judicial review because he had not signed the penalty notice issued by the police, which amounted to excessive formalism (violation of Article 6).

2. The Court found that despite the lack of a signature on the penalty notice, the applicant's intention to request judicial review was unquestionable, which remained undisputed by the Government (§28). Thus, the Court found that the domestic courts' refusal of the applicant's request could not be considered proportionate to the aim the relevant rule sought to achieve (§30).

### **II INDIVIDUAL MEASURES**

3. The authorities have taken steps to ensure that the violation at hand ceased and that the applicant was redressed for the negative consequences of the violation found by the European Court.

4. The European Court awarded the applicant just satisfaction in respect of non-pecuniary damage in the amount of EUR 2,000 and EUR 1,800 in respect of costs and expenses. The payments have been made on 10 October 2024.

5. In view of the above, the authorities consider that the applicant has been fully redressed for the damage sustained and that no further individual measures are possible in the present case regarding the fact that the applicant could not request reopening of the proceeding in question since it became time-barred.

### **III GENERAL MEASURES**

6. In response to the European Court's findings, the authorities have taken measures aimed at preventing similar violations as set out below.

#### **A. Convention-compliant case law of the Constitutional Court**

7. The authorities would like to highlight that the Constitutional Court aligned its case law with the Convention, as expressly also noted by the European Court (§ 29).

8. On 6 April 2023 the Constitutional Court found a violation of the right to a fair trial based in two cases with facts similar to the applicants (Už. 7921/2019<sup>1</sup> and Už. 12922/20<sup>2</sup>). It pointed out its previous practice of denying constitutional complaints of the same or significantly similar nature, concerning the unsigned misdemeanor notice and the right of access to a court. It went on to refer to the present case, which was at the time yet to be ruled on by the Court, and explicitly stated its decision to reconsider previous practice, ultimately ruling in favor of a certain I. N. (Už. 7921/2019), that is, D.Z. (Už. 12922/20). This is now a well-established case law of the Constitutional Court.

9. The application of the newly established case law of the Constitutional Court was continued in the later cases of the same or significantly similar nature. Thus, the

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<sup>1</sup> <https://ustavni.sud.rs/sudska-praksa/baza-sudske-prakse/pregled-dokumenta?PredmetId=19845>

<sup>2</sup> <https://www.ustavni.sud.rs/sudska-praksa/baza-sudske-prakse/pregled-dokumenta?PredmetId=19827>

Constitutional Court ruled in accordance with the Convention in decisions nos. UŽ. 12960/2020<sup>3</sup>, UŽ. 6674/2020<sup>4</sup>, UŽ. 11470/2020<sup>5</sup>, UŽ. 8560/2019<sup>6</sup>, UŽ. 11813/2019<sup>7</sup>, UŽ. 10245/2019<sup>8</sup>, UŽ. 2373/2019<sup>9</sup>, UŽ. 13076/2019<sup>10</sup>, UŽ. 13829/2021<sup>11</sup>, UŽ. 5723/2019<sup>12</sup>, UŽ. 7768/2019<sup>13</sup>, UŽ. 7204/2020<sup>14</sup>, UŽ. 4545/2019<sup>15</sup>, UŽ. 11749/2019<sup>16</sup>, UŽ. 13830/2021<sup>17</sup> and UŽ. 7387/2021<sup>18</sup> (delivered on 9 and 30 November and 21 December 2023 and on 7 and 28 March and 11 and 25 April 2024).

10. It follows from the above that the Constitutional Court truly reconsidered its previous practice and has been consistently applying the newly established Convention-compliant case law ever since.

## **B. Publication and dissemination measures**

11. In 2024, the authorities ensured that publication and dissemination of the present judgment were taken to draw the attention of the relevant domestic authorities on the European Court's findings in this case. To this end, the European Court's judgment was translated into Serbian and published in the Official Gazette and on the Government Agent's official web page. The European Court's findings have therefore been made easily accessible to judges and the legal community nationwide.

12. The Government Agent furthermore prepared [an analysis of the European Court's findings in this judgment and ensured its dissemination together with the translated judgment](#) to all relevant domestic authorities.

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<sup>3</sup> <https://ustavni.sud.rs/sudska-praksa/baza-sudske-prakse/pregled-dokumenta?PredmetId=20307>

<sup>4</sup> <https://ustavni.sud.rs/sudska-praksa/baza-sudske-prakse/pregled-dokumenta?PredmetId=20308>

<sup>5</sup> <https://ustavni.sud.rs/sudska-praksa/baza-sudske-prakse/pregled-dokumenta?PredmetId=20337>

<sup>6</sup> <https://ustavni.sud.rs/sudska-praksa/baza-sudske-prakse/pregled-dokumenta?PredmetId=20323>

<sup>7</sup> <https://ustavni.sud.rs/sudska-praksa/baza-sudske-prakse/pregled-dokumenta?PredmetId=20331>

<sup>8</sup> <https://ustavni.sud.rs/sudska-praksa/baza-sudske-prakse/pregled-dokumenta?PredmetId=20359>

<sup>9</sup> <https://ustavni.sud.rs/sudska-praksa/baza-sudske-prakse/pregled-dokumenta?PredmetId=20371>

<sup>10</sup> <https://ustavni.sud.rs/sudska-praksa/baza-sudske-prakse/pregled-dokumenta?PredmetId=20372>

<sup>11</sup> <https://ustavni.sud.rs/sudska-praksa/baza-sudske-prakse/pregled-dokumenta?PredmetId=20552>

<sup>12</sup> <https://ustavni.sud.rs/sudska-praksa/baza-sudske-prakse/pregled-dokumenta?PredmetId=20661>

<sup>13</sup> <https://ustavni.sud.rs/sudska-praksa/baza-sudske-prakse/pregled-dokumenta?PredmetId=20576>

<sup>14</sup> <https://ustavni.sud.rs/sudska-praksa/baza-sudske-prakse/pregled-dokumenta?PredmetId=20583>

<sup>15</sup> <https://ustavni.sud.rs/sudska-praksa/baza-sudske-prakse/pregled-dokumenta?PredmetId=20631>

<sup>16</sup> <https://ustavni.sud.rs/sudska-praksa/baza-sudske-prakse/pregled-dokumenta?PredmetId=20642>

<sup>17</sup> <https://ustavni.sud.rs/sudska-praksa/baza-sudske-prakse/pregled-dokumenta?PredmetId=20629>

<sup>18</sup> <https://ustavni.sud.rs/sudska-praksa/baza-sudske-prakse/pregled-dokumenta?PredmetId=20746>

13. The above-mentioned measures ensured that all domestic courts and relevant bodies are now aware of the Court's findings and the need to comply with the Convention requirements in similar cases.

#### **IV JUST SATISFACTION**

14. The authorities ensured that just satisfaction awarded by the European Court has been disbursed to the applicant on 10 October 2024.

#### **V CONCLUSIONS**

15. The authorities consider the individual measures taken ensured that the applicant was redressed for the damage sustained.

16. The authorities furthermore consider the general measures taken are capable of preventing similar violations.

17. The authorities therefore consider that the Republic of Serbia has complied with its obligations under Article 46 § 1 of the Convention and respectfully propose to the Committee of Ministers to close its examination of the case *Aleksandar Bošnjčki*.