

## **ACTION PLAN**

### **LUBARDA AND MILANOV v. Serbia**

Application no. 6570/19, Judgment of 29 April 2025, final on 29 April 2025

## **I CASE DESCRIPTION**

1. This case concerns the unfairness of the applicants' minor-offence proceedings, in 2015 and 2017, in that they were unable to cross-examine witnesses, while insufficient counterbalancing factors were in place to compensate for the restriction of their defence rights (violation of Article 6 §§ 1 and 3).

2. The Court held that the applicants' convictions were based on the reports which they had signed on the spot but had later disputed in court, and on the police officers' witness evidence. It found that there was no indication in the casefile that the domestic authorities approached the police officers' evidence with any specific caution, or that the fact that the witnesses had been examined in the absence of the defence prompted the trial courts to attach less weight to this evidence. Furthermore, even though the applicants explicitly requested an opportunity to put questions to the police officers, neither they nor their lawyers were invited to the examinations, nor was there an indication that they were invited to put questions to the police officers in writing (§§ 16-17).

## **II INDIVIDUAL MEASURES**

3. The Serbian authorities have taken steps to ensure that the violation at hand ceased and that the applicants were redressed for the negative consequences of the violation found by the European Court. These measures are set out below.

### **A. The applicant's redress**

4. The applicants in this case claimed just satisfaction in respect of non-pecuniary damage before the European Court. The European Court awarded the applicants just satisfaction in respect of non-pecuniary damage in the amount of EUR 1.000 each. The payments have been made on 4 and 10 July 2025.

5. The applicants also claimed just satisfaction in respect of pecuniary damage before the European Court. Since the applicants have not shown the existence of a causal link between the procedural violation found and the pecuniary damage alleged, the Court rejected those claims in their entirety.

### **B. Measures aimed at the reopening of the misdemeanour proceedings**

6. According to Articles 280 § 1 (5) of the Misdemeanour Act (Official Gazette RS nos. 65/2013, 13/2016, 98/2016 - Constitutional Court's decision, 91/2019, 91/2019 - other law and 112/2022 - Constitutional Court's decision), a final court decision in misdemeanour proceedings may be reopened if the defendant acquires the possibility to invoke a judgment of the European Court of Human Rights establishing a violation of a human right, which could have had an influence on rendering a more favourable decision for the defendant.

7. In particular, a request for reopening must be submitted within 60 days from the day the party became aware of the European Court of Human Rights' judgment.

8. The authorities note that Mr Zoran Lubarda submitted a request for the reopening of misdemeanour proceedings before the Misdemeanour Court in Valjevo, following the European Court's judgment in the present case, relying on Articles 280 and 281 of the Misdemeanour Act. In contrast, Mr Sladjan Milanov did not avail himself of this legal avenue before the Misdemeanour Court in Vranje.

9. The authorities will keep the Committee of Ministers informed of the progress in the pending proceedings concerning Mr Lubarda's request for the reopening of misdemeanour proceedings before the Misdemeanour Court in Valjevo.

## I GENERAL MEASURES

10. Further to the facts of this case, the authorities have taken measures aimed at preventing similar violations as set out below.

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

11. The authorities would like to note that on 29 May 2025 the Constitutional Court adopted decision [Už-853/2024](#), in which it upheld a constitutional appeal and found a violation of the complainant's right to defence guaranteed by Article 33 § 5 of the Constitution. In its reasoning, the Constitutional Court explicitly relied on the principles established by the European Court in the case of *Lubarda and Milanov*, concerning the requirements of adversarial proceedings and the right to examine witnesses. The Constitutional Court held that the applicant and his counsel were deprived of the opportunity to be present and to participate in the examination of witnesses whose statements were decisive for the outcome of the case, thus infringing the essence of the right to defence.

12. Importantly, the Constitutional Court annulled the impugned judgment of the Misdemeanour Appellate Court and ordered a re-examination of the case. In doing so, it aligned its case law with the European Court's standards under Article 6 of the Convention, reinforcing the guarantees of oral hearings, adversarial proceedings and effective examination of witnesses.

13. This development demonstrates that the Constitutional Court has not only acknowledged but also applied the findings of the European Court in the case *Lubarda*

*and Milanov* to similar domestic cases, thereby ensuring Convention-compliant protection of the right to a fair trial in misdemeanour proceedings.

## **B. Convention-compliant case law of the Misdemeanour Appellate Court**

14. The Misdemeanour Appellate Court has developed and consistently applied case law aligned with the standards of the European Convention on Human Rights regarding the right to a fair and adversarial hearing. In a number of judgments, the court quashed or amended first-instance decisions where procedural guarantees under Article 6 of the Convention had not been respected, especially regarding adversarial hearing. By way of illustration, the authorities submit copies of the said Misdemeanour Appellate Court's case-law.<sup>1</sup>

15. The submitted examples of the Misdemeanour Appellate Court's case law clearly demonstrate that, over a long period (2017–2025), this court has consistently intervened in cases where the standards of a fair and adversarial trial were breached. These decisions span a broad timeframe and address various factual situations, which indicates that they are not isolated incidents but rather a well-established practice reflecting the standards of Article 6 of the Convention.

16. This case law demonstrates the Misdemeanour Appellate Court's readiness to ensure that domestic misdemeanour proceedings comply with the guarantees of equality of arms and the right to examine witnesses.

---

<sup>1</sup> Annexes 1-12: Prž. 8148/17 of 20 April 2017; Prž. 25672/24 of 12 November 2024; Prž. 13534/25 of 8 July 2025; Prž. 6647/24 of 26 April 2024; Prž. 23440/23 of 8 January 2025; Prž. 20390/23 of 2 November 2023; Prž. 30046/24 of 8 April 2025; Prž. 18919/24 of 20 August 2024; Prž. 25642/19 of 3 December 2019; Prž. 4324/18 of 5 March 2018; Prž. 15929/24 of 11 July 2024; Prž. 26143/22 of 15 December 2022.

### **C. Publication and dissemination measures**

17. In 2025, 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.

18. 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, including the Constitutional Court.

19. 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.

## **II JUST SATISFACTION**

20. The authorities ensured that just satisfaction awarded by the European Court has been disbursed to the applicants on 4 and 10 July 2025. The payments have thus been made within the deadline set out by the European Court.

## **III CONCLUSIONS**

21. The authorities consider the individual measures taken ensured that the applicants were redressed for the damage sustained.

22. The authorities will keep the Committee of Ministers informed of the progress in the pending proceedings concerning Mr Lubarda's request for the reopening of misdemeanour proceedings before the Misdemeanour Court in Valjevo.

23. The authorities furthermore consider that the general measures taken and envisaged are capable of preventing similar violations.

24. The Government takes this opportunity to reiterate to the Committee of Ministers its commitment to comply with its obligations under Article 46 (1) of the Convention in this case.