

ACTION REPORT

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.

9. By a decision of 16 September 2025, which became final on 10 December 2025, the Misdemeanour Court in Valjevo granted the request for the reopening of proceedings. Consequently, the court quashed the impugned judgment of the Misdemeanour Court in Valjevo of 13 January 2017 and the judgment of the Misdemeanour Appellate Court of 9 February 2017. In the same decision, the court terminated the proceedings against the applicant due to the expiry of the statutory limitation period, given that more than two years had elapsed since the commission of the offence.

10. Regarding the costs of the proceedings, the Misdemeanour Appellate Court, ruling on an appeal against the aforementioned decision, issued a decision on 10 December 2025. By this decision, the Appellate Court modified the first-instance decision and awarded the applicant the costs for the defence counsel's work.

11. In contrast to Mr Lubarda, the applicant **Mr Sladjan Milanov** did not avail himself of this legal avenue before the competent Misdemeanour Court in Vranje within the statutory deadline of 60 days from the day he became aware of the European Court's judgment.

12. The authorities consider that the reopening of the proceedings in the case of Mr Lubarda has led to *restitutio in integrum*. The original conviction has been quashed and removed from the legal order, and the termination of proceedings due to the statute of limitations ensures that the applicant is no longer subject to any penalty or negative consequences.

13. Since Mr Milanov did not use the available and effective domestic remedy to request reopening, and considering the successful resolution of Mr Lubarda's case, the authorities consider that no further individual measures are necessary.

III GENERAL MEASURES

14. 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

15. 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.

16. 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.

17. 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

18. 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.¹

19. 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.

20. 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.

C. Training and awareness raising measures

21. In order to improve the application of Article 6 §§ 1 and 3 of the European Convention on Human Rights, particularly regarding the right of the defence to examine witnesses in criminal and minor-offence proceedings, the Judicial Academy of the Republic of Serbia has implemented several training programmes aimed at strengthening judicial awareness of the guarantees of a fair trial.

22. Between 2023 and 2025, the Academy organised live training sessions on the topics of "International Legal Assistance in Civil Matters and Cross-border Family Disputes" and "Acquisition of Special Knowledge in the Field of the Rights of the Child – Phases 1 and 2." Given that many family disputes involve urgent or particularly urgent

¹ 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.

procedures, the trainings included modules on the right to a fair trial and the right to a hearing within a reasonable time.

23. During the reporting period, nine in-person training sessions were held on the subject of international civil legal assistance and cross-border family law disputes. These were attended by 117 judges of basic courts, 25 judges of higher courts, 7 appellate judges, 10 initial training participants, and 51 judicial assistants from all four appellate areas in Serbia.

24. The specialised training “Acquisition of Special Knowledge in the Field of the Rights of the Child – Phases 1 and 2” was delivered in an online format. A total of 166 judges of basic courts and 41 judicial associates completed the training during the reporting period.

25. In 2025, a live training titled “Application of the Principles of Civil Procedure in Ensuring the Right to Trial within a Reasonable Time” was completed by 11 basic court judges, 48 judicial assistants, and 34 initial training participants.

26. In 2024, two specific trainings were held focusing on the application of Articles 3 and 6 of the European Convention on Human Rights. Ten initial training participants completed each of these courses. All the training programmes included modules on the practical application of the right to a fair trial under Article 6 of the Convention.

27. While these trainings did not specifically cover the minor-offence (misdemeanour) aspect of fair trial rights, the Judicial Academy emphasised the general relevance of Article 6 standards across different types of proceedings.

28. Additionally, in 2018 and 2019, the Judicial Academy conducted broad-based trainings for all judges of general and specialised jurisdiction, including court presidents, focusing on the practical application of the Law on the Protection of the Right to a Trial within a Reasonable Time and the standards of Article 6 of the Convention, along with the case-law of the European Court of Human Rights.

29. An online course on the Law on the Protection of the Right to a Trial within a Reasonable Time is permanently available on the Judicial Academy's e-learning platform to all registered users within the judiciary. Courts across the country have received guidance on how to access and benefit from this resource.

D. Publication and dissemination measures

30. 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.

31. 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.

32. 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

33. 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.

V CONCLUSIONS

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

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

36. 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 *Lubarda and Milanov*.