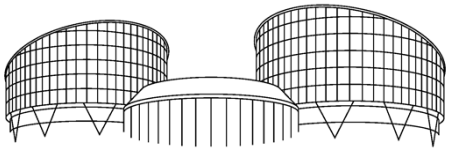

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF STAMENKOVIĆ v. SERBIA

(Application no. 30009/15)

JUDGMENT

STRASBOURG

1 March 2022

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Stamenković v. Serbia,

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

Jovan Ilievski, *President,*
Branko Lubarda,
Diana Sârcu, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to:

the application (no. 30009/15) 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") on 13 June 2015 by a Serbian national, Mr Marko Stamenković, born in 1989 and living in Čačak ("the applicant") who was represented by Mr I. Ćalović, a lawyer practising in Čačak;

the decision to give notice of the complaint concerning Article 4 § 1 of Protocol No. 7 to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 1 February 2022,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant's complaint that he was tried and convicted twice for the same offence related to an incident of 24 May 2008, when he had physically attacked M.V. in front of the Kadinjača Memorial Complex.

2. On 14 December 2009 the Minor Offences Court judge in Užice fined the applicant for breach of public order and peace on account of, *inter alia*, his punching M.V. in the head which made him fall to the ground. That decision became final on 2 January 2010. On 3 August 2010 the Užice Public Prosecutor's Office charged the applicant with the criminal offence of inflicting grievous bodily harm on M.V. in connection with the above-mentioned incident. On 23 December 2011 the applicant was convicted and sentenced to one year and six months' imprisonment. On 17 October 2012 the Kragujevac Court of Appeal upheld that judgment, but reduced the sentence to one year's imprisonment. The applicant appealed against his two convictions to the Constitutional Court, but the court rejected his case on 16 December 2014.

3. The applicant relied on Article 4 § 1 of Protocol No. 7 to the Convention.

THE COURT'S ASSESSMENT

4. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

5. The relevant criteria for the applicability of the *ne bis in idem* principle are set out in *Sergey Zolotukhin v. Russia* ([GC], no. 14939/03, §§ 78-84, ECHR 2009) and *A and B v. Norway* ([GC] nos. 24130/11 and 29758/11, §§ 117-34, 15 November 2016).

6. Under Article 4 of Protocol No. 7 to the Convention, the Court has to determine whether the two sets of proceedings were criminal in nature, whether they concerned the same facts (*idem*), and whether there was duplication of the proceedings (*bis*).

7. The Court finds – and it was not contested by the parties – that both sets of proceedings in the present case concerned a "criminal" offence within the autonomous meaning of Article 4 § 1 of Protocol No. 7 (see *Milenković v. Serbia*, no. 50124/13, §§ 31-37, 1 March 2016 as regards the minor offence at issue in Serbian law).

8. The Court further observes that both the minor offence and the criminal case dealt with the applicant's physical attack against M.V. (namely, punching him in the head which caused him to fall) of the same date, time and place. The fact that the minor offence charge contained an additional element, which originated from the same continuous violent conduct of the applicant, is not a sufficient reason to find that the facts held against the applicant in the two sets of proceedings were not "substantially the same" (see *Sergey Zolotukhin*, cited above, § 84, and compare *Bashin and Chekunov v. Russia*, no. 44015/07, § 61, 14 January 2020).

9. Lastly, the Court observes that the applicant was indicted on 3 August 2010, seven months after the decision taken by the Minor Offences Court became final. The proceedings were thus never conducted in parallel. Having regard to this lack of overlap in time and the largely independent collection and assessment of evidence and imposition of sanctions, the Court cannot find that there was a sufficiently close connection in substance and in time between the minor offence and the criminal proceedings in the case, for them to be compatible with the *bis* criterion in Article 4 § 1 of Protocol No. 7 (see *A and B v. Norway*, cited above, §§ 132-34).

10. There has accordingly been a violation of Article 4 § 1 of Protocol No. 7 to the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

11. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 4 § 1 of Protocol No. 7 to the Convention.

Done in English, and notified in writing on 1 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Deputy Registrar	Jovan Ilievski President