



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

## SECOND SECTION

### DECISION

Application no. 42860/18  
Zlatan VASIĆ  
against Serbia

The European Court of Human Rights (Second Section), sitting on 18 October 2022 as a Committee composed of:

Jovan Ilievski, *President*,

Branko Lubarda,

Diana Sârcu, *judges*,

and Dorothee von Arnim, *Deputy Section Registrar*,

Having regard to:

the application (no. 42860/18) 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 27 August 2018 by a Serbian national, Mr Zlatan Vasić, who was born in 1979 and lives in Bajina Bašta (“the applicant”) and who was represented by Mr N. Tadić, a lawyer practising in Novi Sad;

the decision to give notice of the application to the Serbian Government (“the Government”), represented by their Agent, Ms Z. Jadrijević Mladar;

the parties’ observations;

Having deliberated, decides as follows:

### SUBJECT MATTER OF THE CASE

1. The case concerns administrative and minor-offence proceedings instituted against the applicant for refusing to bring his daughter for mandatory vaccination against infectious diseases.

2. On 20 January 2015 a sanitary inspector issued a decision ordering the applicant to bring his minor child, M.V., for mandatory vaccination against contagious diseases in accordance with section 25 of the Protection of Population against Contagious Diseases Act and the applicable schedule of mandatory vaccinations.

3. The applicant appealed against that order, claiming that he had not been heard before its adoption, that he had not been given information about the vaccine's medical indications or its safety, and that his child had not been tested for tolerance of its various components. He also submitted that, according to diverse research, vaccines were unsafe and that under domestic and international law he had the right to decide whether or not his child should be vaccinated.

4. On 10 March 2015 the Ministry of Health dismissed the applicant's appeal, holding that the facts of the case had been established by consulting M.V.'s medical file, which stated that her parents had refused to have her vaccinated in accordance with the applicable law and vaccination schedule. The legal obligation to vaccinate children against certain diseases could not be challenged as such. On the other hand, there was a prescribed procedure to establish temporary or permanent contraindications for specific individuals to certain vaccines, which, however, the applicant had never initiated.

5. The Ministry's decision stated that the applicant could lodge an administrative action against it with the Administrative Court within 30 days; he failed to do so.

6. Subsequently, on 15 April 2015, the Ministry of Health requested the Užice Minor Offences Court to initiate minor-offence proceedings against the applicant for his failure to comply with the sanitary inspector's order of 20 January 2015 (see paragraph 2 above).

7. The applicant was summoned to appear before the Užice Minor Offences Court on 23 July 2015, but he informed the court that he was unable to attend the hearing and filed his observations in writing instead. He maintained that the compulsory vaccination of children was not in accordance with the Constitution or international treaties ratified by Serbia and expressed the opinion that receiving the vaccine in question might worsen his child's progressive myopia.

8. The court heard several witnesses, including the sanitary inspector who had issued the order and a doctor from the Sanitary Department of the Ministry of Health, who stated that there was no evidence that the applicant's child's state of health might prevent her from undergoing compulsory vaccination, which was a legal obligation necessary for collective immunity against certain diseases.

9. On 28 September 2016 the Užice Minor Offences Court found the applicant guilty of failing to comply with the final order of the sanitary inspector of 20 January 2015 to bring his child for compulsory vaccination, thereby committing a minor offence under section 53(1) of the Protection of Population against Contagious Diseases Act. The applicant was sentenced to a fine of 10,000 Serbian dinars (RSD; approximately 85 euros (EUR)).

10. In his appeal the applicant maintained, *inter alia*, that the sanitary inspector's order had been unlawful because he had not been heard before its adoption. He also submitted a judgment of the Novi Sad Administrative Court

of 5 February 2016, delivered in a case similar to his, in which that court had set aside an order issued by the sanitary inspector due to a failure to hear the person concerned.

11. On 17 October 2016 the Kragujevac Minor Offences Appeals Court upheld the first-instance judgment, holding that it had been lawful and based on relevant undisputed evidence such as the sanitary inspector's order and two witness testimonies. As regards the applicant's arguments concerning the alleged unlawfulness of the order which had been the basis of his conviction, the court noted that once the administrative order had become final and enforceable in his case, it was not within its competence to question the lawfulness of such an administrative act.

12. On 13 March 2018 the Constitutional Court declared the applicant's constitutional appeal inadmissible.

13. The applicant complained under Articles 6, 13 and 14 of the Convention that both the administrative and the minor-offence proceedings against him had been unfair and discriminatory. In particular, the sanitary inspector had failed to hear him before adopting the impugned administrative order, and his conviction in minor-offence proceedings had ultimately been based on that allegedly unlawful order, had lacked sufficient reasoning and had not afforded him an effective remedy in the circumstances.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

### A. Protection of Population against Contagious Diseases Act

14. Pursuant to section 25 of the Protection of Population against Contagious Diseases Act (*Zakon o zaštiti stanovništva od zaraznih bolesti*, Official Gazette nos. 125/04 and 36/15), immunisation is carried out by administering vaccines and specific immunoglobulin. Vaccination is mandatory against, *inter alia*, tuberculosis, diphtheria, tetanus, pertussis, poliomyelitis, measles, rubella, mumps, hepatitis B, influenza and yellow fever.

15. Pursuant to section 41 of the Act, in the framework of supervision of the application of the Act, sanitary inspectors are authorised and obliged to order measures and certain actions prescribed by law.

16. According to section 53(1)6 of the Act, a person who does not implement measures prescribed by the Act or does not comply with an order issued by a sanitary inspector for the purposes of protecting the population from contagious diseases shall be subject to a fine of between RSD 20,000 and 50,000 in minor-offence proceedings.

## **B. Minor Offences Act**

17. Section 93 of the Minor Offences Act (*Zakon o prekršajima*, Official Gazette no. 65/13) provides that the accused must be provided with an opportunity to challenge the facts and evidence against him or her. Section 200(1) of the Act provides that, as a rule, the accused shall be heard orally. According to section 203 of the Act, if the court finds that an oral hearing is not necessary (regard being had to the significance of the minor offence and the information available) it may advise the accused in the summons to provide his or her defence in writing.

18. According to section 254 of the Act, a judgment in minor-offence proceedings shall contain, *inter alia*, the established findings of fact with statements of the evidence based on which individual facts were proven, the reasons for which the court has or has not accepted them, the reasons for which it did not take into account certain evidence proposed by the parties, the legal provisions on which the judgment is based and the reasons for each point of the judgment.

## **C. Administrative Procedure Act**

19. Section 5 of the Administrative Procedure Act (*Zakon o opštem upravnom postupku*, Official Gazette of the Federal Republic of Yugoslavia nos. 33/97 and 31/2001 and Official Gazette of the Republic of Serbia no. 30/2010) provides that the authorities acting in administrative matters shall adopt decisions based on law and other regulations.

20. Section 9 of the Act provides that, prior to adopting a decision, the parties must be allowed to make a statement concerning the facts and circumstances of relevance to the decision-making in their case. A decision may be reached without hearing the parties in a summary procedure, *inter alia*, if the facts of the case may be established by direct assessment, that is on the basis of official data available to the authorities, without the need to hear a party separately (section 131(1)3 of the Act).

## **D. Administrative Disputes Act**

21. Section 3 of the Administrative Disputes Act (*Zakon o upravnim sporovima*, Official Gazette no. 111/09) provides that in administrative disputes the court decides on the lawfulness of final administrative acts, except those in respect of which a different avenue of judicial review is provided. Under section 33 of the Act, in administrative disputes the court decides on the basis of the facts as established at an oral hearing.

### **E. Rules on Immunisation and Chemoprophylaxis**

22. Sections 8 and 9 of the Rules on Immunisation and Chemoprophylaxis (*Pravilnik o imunizaciji i načinu zaštite lekovima*, Official Gazette nos. 11/06, 25/03, 63/13, 99/13, 118/13, 65/14 and 32/15) define situations which present general and specific contraindications, permanent or temporary, to vaccination.

23. Section 10 of the Rules provides that a permanent contraindication to a certain vaccine in respect of a specific person is to be determined in a procedure initiated by that person's own doctor and involving an expert team composed of a doctor specialised in epidemiology and a paediatrician, with the occasional possible participation of other medical specialists.

### **F. Relevant practice**

24. In its judgment no. U.2604/14 of 5 February 2016, the Novi Sad Administrative Court set aside a sanitary inspector's order to the appellant to bring his child for mandatory vaccination because the appellant had not been heard prior to the adoption of the said order and the Ministry of Health in its decision on his appeal had failed to provide a proper reply on that point.

## **THE COURT'S ASSESSMENT**

### **A. Administrative proceedings**

25. The applicant's main complaint before the domestic authorities and before the Court concerned the fact that he had not been heard in the administrative proceedings prior to the sanitary inspector's administrative order (see paragraphs 3, 10 and 13 above).

26. The Government maintained that the applicant had failed to exhaust effective domestic remedies, in that he never lodged an administrative action against the Ministry of Health's decision rejecting his appeal against the sanitary inspector's order. An administrative dispute was the proper avenue of judicial review in respect of the legality of final acts adopted by administrative bodies.

27. The Court reiterates in this connection that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring a case against a State before the Court to firstly use the remedies provided by the national legal system. Consequently, States are dispensed from answering for their acts before an international body before they have had an opportunity to put matters right domestically (see *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV, and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, 25 March 2014). The

obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (*Vučković and Others*, cited above, § 71).

28. In the present case, as rightly pointed out by the Government, the applicant never sought to challenge the sanitary inspector's order before the Administrative Court, which was the only authority competent to assess the legality of that decision (see paragraph 21 above; and compare *Veličković v. Serbia* (dec.), no. 36158/10, § 50, 10 September 2013). The existence of an Administrative Court judgment in another case, setting aside a similar administrative order, rendered shortly after the order in the applicant's case had become final further confirms the effectiveness of that remedy (see paragraph 24 above).

29. Accordingly, in so far as the applicant's Convention complaints relate to the administrative proceedings, they must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

## **B. Minor-offence proceedings**

30. The Court notes that the gist of the applicant's complaints in respect of the minor-offence proceedings against him is that the domestic court wrongly assessed the facts and misapplied the relevant domestic law, namely by finding him guilty of non-compliance with an administrative order which in his view had been unlawful. He also maintained that the domestic courts had failed to give sufficient reasons for their decision.

31. The Court considers that the applicant's complaints fall to be examined under Article 6 § 1 of the Convention alone. It reiterates that, in accordance with Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, *inter alia*, *Carmel Saliba v. Malta*, no. 24221/13, § 62, 29 November 2016). Therefore, the Court will not in principle intervene unless the decisions reached by the domestic courts appear arbitrary or manifestly unreasonable (*ibid.*), and provided that the proceedings as a whole were fair, as required by Article 6 § 1 (see *Khamidov v. Russia*, no. 72118/01, § 170, 15 November 2007, and *Anđelković v. Serbia*, no. 1401/08, § 24, 9 April 2013).

32. The Court notes that the competent courts gave detailed reasons for finding the applicant guilty (see paragraphs 9 and 11 above). In particular, they relied on the sanitary inspector's order against him, heard two witnesses and took into account the applicant's written defence. Moreover, the

Kragujevac Minor Offences Appeals Court explained that it was not within its competence to question the alleged unlawfulness of a final and enforceable administrative decision (see paragraphs 9 and 11 above), since the review of the lawfulness of such acts fell within the jurisdiction of the administrative courts (see paragraph 21 above). Taking due note of the applicant's arguments on the matter as well as his failure to exhaust the relevant domestic remedies in respect of the alleged unlawfulness of the administrative order (see paragraph 29 above), the Court considers that the minor-offence courts' conclusions cannot be seen as arbitrary or manifestly unreasonable.

33. Furthermore, there is nothing to suggest that the minor-offence proceedings against the applicant were otherwise unfair. In particular, he was able to adduce arguments and evidence he considered relevant to the case, and he had the opportunity of effectively challenging the arguments and evidence adduced by the Ministry of Health. All his arguments were duly heard and examined by the domestic courts and, as already noted above (see paragraph 32), the factual and legal reasons for the impugned judgment were set out in detail.

34. It follows that the complaints raised by the applicant in respect of the minor-offence proceedings are inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 thereof.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 24 November 2022.

Dorothee von Arnim  
Deputy Registrar

Jovan Ilievski  
President