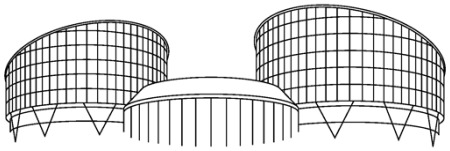

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF PAUN JOVANOVIĆ v. SERBIA

(Application no. 41394/15)

JUDGMENT

Art 1 P12 • Prohibition of discrimination • Unjustified conduct by judge preventing lawyer from using the Ijekavian variant of the Serbian language and allowing the use of the Ekavian, despite equal official status of both variants Art 6 § 1 (constitutional) • Fair hearing • Lack of adequate reasoning provided by Constitutional Court in refusing to deal with applicant's appeal

STRASBOURG

7 February 2023

FINAL

07/05/2023

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of Paun Jovanović v. Serbia,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Gabriele Kucsko-Stadlmayer*, President*,
Tim Eicke,
Faris Vehabović,
Branko Lubarda,
Armen Harutyunyan,
Anja Seibert-Fohr,
Ana Maria Guerra Martins*, judges*,
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 41394/15) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Serbian national, Mr Paun Jovanović ("the applicant"), on 4 August 2015;

the decision to give notice to the Serbian Government ("the Government") of that application;

the parties' observations;

Having deliberated in private on 17 January 2023,

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

INTRODUCTION

1. The application concerns the official use of two standard variants of the Serbian language, Ekavian and Ijekavian, in judicial proceedings (see paragraph 16 below). In particular, the applicant, a practising lawyer and a speaker of the latter variant, complained that he had been discriminated against and been denied the opportunity to speak it by an investigating judge while acting on behalf of his client, a defendant, in the course of criminal proceedings. At the same time, the lawyer representing the victim in the same proceedings was permitted to use Ekavian without any hindrance.

2. The application, furthermore, concerns the applicant's complaint that a decision delivered by the Constitutional Court in the case was not properly reasoned.

3. The applicant invoked Articles 6 and 14 of the Convention, and Article 1 of Protocol No. 12.

THE FACTS

4. The applicant was born in 1957 and lives in Bor, Serbia. He was granted leave to represent himself in the proceedings before the Court (Rule 36 § 2 *in fine* of the Rules of Court).

5. The Government were represented by their Agent, Ms Z. Jadrijević Mladar.

6. The facts of the case may be summarised as follows.

I. THE CRIMINAL PROCEEDINGS

7. On 18 February 2013 the applicant was acting as defence counsel on behalf of his client at a hearing in a criminal case before the investigating judge of the Bor Court of First Instance (*Osnovni sud u Boru*).

8. According to the transcript of that hearing, the applicant posed a number of questions directly to a witness. The transcript also noted: (i) that "at the beginning[, when the applicant] had been given the floor", he had been "warned to ask questions in the court's official language"; (ii) that the applicant had subsequently requested that "this warning be entered" into the record; and (iii) that the applicant had acknowledged being an Ijekavian speaker of the Serbian language.

9. The transcript of the above hearing was signed by the participants, including the applicant, without objections.

II. THE PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT

10. On 7 March 2013 the applicant lodged an appeal with the Constitutional Court (*Ustavni sud*). In the appeal he alleged, *inter alia*, that in the course of the above-mentioned hearing he had been deprived by the investigating judge of his right to freely use the Ijekavian variant of the Serbian language despite its having the same official status as the other, Ekavian, variant. In particular, the applicant maintained that immediately after his first question, which had been addressed to the witness, the investigating judge had warned him to ask the question in Serbian notwithstanding the fact that he had clearly already done so, albeit using the Ijekavian variant. Ultimately, and in response to the applicant's request, the investigating judge had agreed to include her warning in the transcript (see paragraph 8 above). This, however, had amounted to a "watered down" and "not fully accurate" version of what had actually happened. The applicant maintained that he had raised this shortcoming with the investigating judge verbally but that she had left the transcript unchanged. Throughout the hearing, the other lawyer in the proceedings, who was acting on behalf of the victim and was herself an Ekavian speaker, had not been given any warnings. In view of the foregoing, the applicant concluded that he had been discriminated against as an Ijekavian speaker of the Serbian language of Montenegrin origin, contrary to the existing constitutional guarantees in this regard (see paragraphs 18 and 19 below). The applicant likewise referred to Article 14 of the Convention and Article 1 of Protocol No. 12 thereto.

11. On 15 November 2013 the applicant lodged an additional written submission with the Constitutional Court, thus supplementing his earlier appeal.

12. On 10 February 2015 the Constitutional Court rejected by means of a decision (*odlukom odbacio*) the applicant's appeal pursuant to Article 36 § 1 (7) of the Constitutional Court Act (see paragraph 20 below). In doing so, the Constitutional Court held that, taking into account the "reasoning of the constitutional appeal" and the "legal nature and substance" of the impugned conduct of the investigating judge, as evidenced by the transcript of the hearing of 18 February 2013 (see paragraph 8 above), there had been no "individual action" within the meaning of Article 170 of the Constitution which could have been challenged before it (see paragraph 19 below).

III. THE APPLICANT'S SEPARATE COMPLAINT

13. On 24 May 2013 the High Judicial Council (*Visoki savet sudstva*) forwarded to the Bor Court of First Instance the applicant's complaint about what had transpired on 18 February 2013.

14. By means of a letter dated 31 October 2013, the Acting President of the Bor Court of First Instance informed the High Judicial Council that the applicant's complaint was unfounded.

15. As an attachment to this letter, the Acting President provided the High Judicial Council with a copy of her written response, of the same date, addressed to the applicant with respect to the hearing at issue. The letter referred to the investigating judge's own description of what had taken place on 18 February 2013. Specifically, the investigating judge had stated that she had asked the applicant to reformulate just one question because it had been obvious that the witness had not been able to understand it. The applicant had then done so, noting that he was an Ijekavian speaker of the Serbian language. Once the applicant had finished examining the witness, he had asked that the judge's instruction be entered into the transcript of the hearing; the judge had allowed the request and the insertion had been "worded" in accordance with the applicant's own proposal. The applicant had thereafter signed the transcript personally. According to the investigating judge, the applicant had thus not been deprived of the possibility to use the Ijekavian variant of Serbian but had merely been "required to use the court's official language" in order to clarify a question posed to the witness. Accepting the above explanation and having regard to the information contained in the transcript, which had been "signed without objection", the Acting President concluded that there had indeed been no element of unlawfulness or discrimination in the investigating judge's conduct. In any event, the investigating judge had had no intention of offending the applicant and the latter's feelings to the contrary had been no more than his "subjective understanding" of the

situation. Lastly, the Acting President noted that the applicant himself had, in his complaint, described the investigating judge's conduct as "fascist", which was in and of itself an inappropriate characterisation of particular gravity.

IV. OTHER RELEVANT FACTS

16. The standard Serbian language is the principal language in official use in Serbia. This language "has two equal variants: Ekavian and Ijekavian", as defined by Matica srpska, which is the oldest literary, cultural and scientific institution in Serbia and whose pronouncements have particular authority regarding the standardisation of the Serbian language (see https://www.maticasrpska.org.rs/en/matica-srpska/, accessed on 8 August 2022, and *Pravopis srpskoga jezika*, *Matica srpska*, M. Pešikan, J. Jerković, and M. Pižurica, Novi Sad, 2010, p. 22). Generally speaking, the Ekiavian variant is characterised by reflecting the Common Slavic *jat* phoneme (Latin transcription /ě/) as /e/, while the Ijekavian variant is distinguished by reflecting the same phoneme as /ije/ or /je/ respectively (see the above-cited *Pravopis srpskoga jezika*, pp. 22-29).

17. The Serbian spoken outside of Serbia, in the territory of the former Socialist Federal Republic of Yugoslavia including Montenegro, is predominantly Ijekavian, while in Serbia itself, including the town of Bor, which is where the criminal proceedings at issue took place, it is the Ekavian variant which is used by the population in general and by the respondent State's judicial and other authorities.

RELEVANT LEGAL FRAMEWORK

I. THE CONSTITUTION OF THE REPUBLIC OF SERBIA *(USTAV REPUBLIKE SRBIJE*, PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA – OG RS – NO. 98⁄06)

18. Article 10 of the Constitution provides, *inter alia*, that Serbian shall be the official language in Serbia. The official use of other languages shall be "regulated by law, based on the Constitution".

19. Article 170 provides that "a constitutional appeal may be lodged against individual decisions or actions of State bodies or organisations exercising delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been exhausted or have not been prescribed".

II. THE CONSTITUTIONAL COURT ACT (*ZAKON O USTAVNOM SUDU*; PUBLISHED IN OG RS NOS. 109/07, 99/11 AND 18/13)

20. Article 36 § 1 (7) of the Constitutional Court Act provides that the Constitutional Court shall reject a written submission aimed at the institution of proceedings before it whenever "other preconditions", required by law, for the conduct of those proceedings or the adjudication of the compliant in question have not been satisfied.

21. Article 48 § 2 provides, *inter alia*, that a decision by the Constitutional Court to reject (*odbaci*) a constitutional appeal may be reasoned with mere reference to the relevant "legal basis".

III. OFFICIAL USE OF LANGUAGES AND SCRIPTS ACT (*ZAKON O SLUŽBENOJ UPOTREBI JEZIKA I PISAMA*, PUBLISHED IN OG RS NOS. 45/91, 53/93, 67/93, 48/94, 101/95 AND 30/10)

22. Article 1 § 1 of the Official Use of Languages and Scripts Act provides that the language in official use in Serbia shall be the Serbian language.

23. Articles 2 and 3, read in conjunction, provide that the official use of a language shall be understood to mean, *inter alia*, its use by a State body in the course of proceedings aimed at securing "the rights, duties and responsibilities of the citizens".

IV. THE COURTS ORGANISATION ACT (*ZAKON O UREĐENJU SUDOVA*, PUBLISHED IN OG RS NOS. 116/08, 104/09, 101/10, 31/11, 78/11 AND 101/11)

24. Article 8 of the Courts Organisation Act provides, *inter alia*, that all participants in court proceedings shall have the right to complain about any and all irregularities that may have occurred in the course of such proceedings.

25. Article 10 §§ 4 and 5 provides, *inter alia*, that the courts of law in Serbia shall use Serbian as the official language, but that other languages may also be used officially under the conditions set forth by law.

26. Article 55 provides, *inter alia*, that any complaints lodged in the context of court proceedings shall be forwarded to the judge concerned who shall be given an opportunity to respond and that the president of the court in question shall then examine the complaint and the response and reach a decision which will be communicated to the complainant personally and the president of the court of higher instance, all within a period of 15 days. Abusive and insulting complaints shall be rejected. Should a complaint be lodged through the High Judicial Council, rather than the president of court concerned, the former shall also be informed of the decision adopted by the latter.

V. THE CODE OF CRIMINAL PROCEDURE (*ZAKONIK O KRIVIČNOM POSTUPKU*, PUBLISHED IN THE OFFICIAL GAZETTE OF THE FEDERAL REPUBLIC OF YUGOSLAVIA NOS. 70/01 AND 68/02, AS WELL AS IN OG RS NOS. 58/04, 85/05, 85/05, 115/05, 49/07, 122/08, 20/09, 72/09 AND 76/10)

27. Article 7 § 1 of the former Code of Criminal Procedure provides, *inter alia*, that the language in official use in criminal proceedings shall be the Serbian language, while other languages may also be used officially under the conditions set forth by law.

28. Article 173 § 2 provides, *inter alia*, that a court of law shall fine a lawyer acting on behalf of a defendant should he or she, by means of a written submission, address it in an insulting manner.

29. This former Code, as regards criminal proceedings such as the one in the present case, was repealed and replaced by a new Code of Criminal Procedure as of 1 October 2013.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION REGARDING THE ALLEGED ABUSE OF THE RIGHT OF PETITION

A. The Government's submissions

30. The Government submitted that the applicant had failed to inform the Court of the proceedings which had taken place via the High Judicial Council (see paragraphs 13-15 above) and had thus tried to conceal the true facts as to what had happened both in the course of the hearing before the Bor Court of First Instance and thereafter.

31. In particular, according to the Government, the investigating judge's intervention during that hearing related to only one of the many questions posed by the applicant and had been made merely to ensure that the witness could understand the question and with the aim of maintaining the overall fairness of the proceedings. The impugned incident therefore had nothing to do with discrimination or the use of the Ijekavian variant as such.

32. Moreover, the Government submitted that, in his subsequent complaint, the applicant had, most inappropriately, described the investigating judge's conduct as "fascist", for which he had not been sanctioned (see paragraph 15 *in fine* above; see also Article 173 § 2 of the former Code of Criminal Procedure, summarised in paragraph 28 above).

33. Lastly, the Government argued that while the applicant should have properly lodged his complaint with the Acting President of the Bor Court of First Instance, instead of the High Judicial Council as he had done, his

complaint had ultimately been forwarded to the Acting President, who had examined and rejected it based on sound reasoning (see paragraph 15 above).

34. In view of the above, the Government maintained that the applicant had abused his right of individual application, within the meaning of Article 35 § 3 (a) of the Convention.

B. The applicant's submissions

35. The applicant submitted that the complaint which he had lodged with the High Judicial Council had not been "a regular legal remedy", since he could not have pursued any objections or appeals in that connection, and that it had thus been irrelevant.

36. According to the applicant, the said complaint had also turned out to be completely ineffective, as the High Judicial Council had simply forwarded it to the Acting President of the Bor Court of First Instance and the applicant had not been provided with an opportunity to take part in any of those proceedings (see paragraphs 13-15 above).

37. The applicant also noted that the decision of the Acting President of the Bor Court of First Instance had been rendered almost eight months after he had lodged his constitutional appeal (see paragraphs 12 and 14 above), and argued that the decision could not have been challenged before the Constitutional Court.

38. As regards his use of the word "fascist" to describe the conduct of the investigating judge (see paragraph 15 *in fine* above), the applicant maintained that this had been his "personal feeling" at the time given that her intervention had clearly been unlawful.

39. In any event, the applicant claimed that the Government's objection to the effect that he had abused the right of petition was, essentially, aimed at obfuscating the violation of the Convention which had in fact taken place.

40. Furthermore, there had been no evidence in the transcript of the impugned hearing (see paragraph 8 above) that the investigating judge, as alleged by the Government, had asked the applicant to reformulate any of his questions in order for the witness to be able to understand them. Instead, the applicant maintained that he had been subjected to discrimination as a practising lawyer and an Ijekavian speaker of the Serbian language.

C. The Court's assessment

1. Relevant principles

41. The Court reiterates that an application may be rejected as abusive under Article 35 § 3 (a) of the Convention if, *inter alia*, it was knowingly based on untrue facts and false declarations (see, for example, *Miroļubovs and Others v. Latvia*, no. 798/05, § 63, 15 September 2009; *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 97, ECHR 2012; *Gross*

v. Switzerland [GC], no. 67810/10, § 28, ECHR 2014; and *Zličić v. Serbia*, nos. 73313/17 and 20143/19, § 55, 26 January 2021).

42. The submission of incomplete and thus misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information (see *Hüttner v. Germany* (dec.), no. 23130/04, 19 June 2006; *Kowal v. Poland* (dec.), no. 2912/11, § 32, 18 September 2012; *Gross*, cited above, § 28; and *Zličić*, also cited above, § 55). However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Al-Nashif v. Bugaria*, no. 50963/99, § 89, 20 June 2002; *Nold v. Germany*, no. 27250/02, § 87, 29 June 2006; and *Zličić*, cited above, § 55).

43. In addition to that, an application may be rejected as abusive in cases where an applicant has used particularly vexatious, contemptuous, threatening or provocative language in his or her communication with the Court – whether this was directed against the respondent Government, their Agent, the authorities of the respondent State, the Court itself, its judges, its Registry or members thereof. However, it does not suffice that the applicant's language was sharp, polemical or sarcastic; to be considered an abuse, it must exceed the limits of normal, civic and legitimate criticism (see, for example, *Miroļubovs and Others,* cited above, § 64, with further references).

2. Application of these principles to the present case

44. The Court notes that, from the outset of the proceedings before it, it has had, *inter alia*, a copy of the transcript of the hearing of 18 February 2013, which contained the investigating judge's warning in respect of the applicant's use of the court's official language in the course of the proceedings. This document, in the Court's opinion, is of particular significance for the present case (see paragraph 8 above).

45. Furthermore, the Court has also had, from the beginning of the proceedings before it, a copy of the applicant's detailed constitutional appeal which corresponded in substance to the complaint lodged with the High Judicial Council (see paragraphs 10 and 13-15 above).

46. It has also been the Court's long-standing view, which the Government have not called into question, that a constitutional appeal has, in principle and in respect of all applications introduced as of 7 August 2008, been an effective domestic remedy within the meaning of Article 35 § 1 of the Convention (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 61, 25 March 2014). The applicant in the present case made use of this remedy and duly provided the Court with a copy (attached to the application form) of the Constitutional Court's decision adopted in this connection (see paragraph 12 above). Moreover, while on 10 February 2015 the Constitutional Court rejected the applicant's appeal, it did not do so with reference to any other avenue of redress, including a

complaint based on the Courts Organisation Act, whether lodged directly with the court concerned or via the High Judicial Council as in the present case (see Article 55 of the Courts Organisation Act, quoted in paragraph 26 above). It would hence be inappropriate for the Court to now speculate and attribute to this particular submission any added significance (see, for example and *mutatis mutandis*, *Dragan Petrović v. Serbia*, no. 75229/10, §§ 55-57, 14 April 2020).

47. At the same time, however, the Court cannot but note that the applicant did not obtain any redress as a consequence of having lodged the complaint with the High Judicial Council, which is also why he would have had no reasonable incentive to deliberately avoid mentioning those proceedings in his application in order to mislead the Court (see the case-law quoted in paragraph 42 above).

48. As for the interpretation of what exactly transpired during the hearing of 18 February 2013 (compare and contrast the parties' allegations in this respect, summarised in paragraphs 31 and 40 above), this is, in the Court's view and by the nature of things, a matter to be properly examined outside of the context of the Government's preliminary objection.

49. In view of the foregoing, the Court concludes that while it is true that the applicant should have informed it of the relevant facts regarding the complaint which he had lodged with the High Judicial Council from the very beginning of the proceedings before it, there is no evidence that he had intended to "mislead the Court" in respect of any of the issues at the very core of the present case or that his application had knowingly been based on untrue facts or false declarations (see the case-law quoted in paragraphs 41 and 42 above).

50. Lastly, the applicant's description of the investigating judge's conduct as "fascist" (see paragraph 15 *in fine* above), whilst inappropriate, is something that occurred in the course of domestic proceedings, not in his communication with or with reference to this Court. It is therefore of no relevance in the context of the Government's abuse allegations raised under Article 35 § 3 (a) of the Convention (see the case-law quoted in paragraph 43 above).

51. It follows that the Government's preliminary objection must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 12

A. Scope of the case

52. The applicant complained, under Article 14 of the Convention and Article 1 of Protocol No. 12, that as a practising lawyer and an Ijekavian speaker of the Serbian language, he had suffered discrimination due to the way in which he had been treated compared to an Ekavian speaking lawyer

of the same language, while they were both acting on behalf of their respective clients and in the course of the same criminal case.

53. Notice of this complaint was given to the Government under Article 14 read in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 12.

54. Having regard to the substance of the applicant's complaint and the relevant context, however, the Court, which is the master of the characterisation to be given in law to the facts of any case before it (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), is of the opinion that this complaint should be examined from the standpoint of Article 1 of Protocol No. 12 only (see, *mutatis mutandis*, *Napotnik v. Romania*, no. 33139/13, §§ 50-52, 20 October 2020, and *Negovanović and Others v. Serbia*, nos. 29907/16 and 3 others, § 47, 25 January 2022).

55. Article 1 of Protocol No. 12 reads as follows:

> "1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
>
> 2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

B. Admissibility

1. The Court's jurisdiction ratione materiae

56. While the Government have not raised an objection as regards the applicability of Article 1 of Protocol No. 12, the Court considers that it has to address this issue of its own motion (see, for example and *mutatis mutandis*, *Studio Monitori and Others v. Georgia*, nos. 44920/09 and 8942/10, § 32, 30 January 2020).

57. At the outset, the Court reiterates that as the question of applicability is an issue of its jurisdiction *ratione materiae*, the general rule of dealing with applications should be respected and the relevant analysis should be carried out at the admissibility stage unless there is a particular reason to join this question to the merits (see *Denisov v. Ukraine* [GC], no. 76639/11, § 93, 25 September 2018). No such particular reason exists in the present case, and the issue of the applicability of Article 1 of Protocol No. 12 therefore falls to be examined at the admissibility stage (see *Negovanović and Others*, cited above, § 50).

58. The Court further reiterates that whereas Article 14 of the Convention prohibits discrimination in the enjoyment of "the rights and freedoms set forth in [the] Convention", Article 1 of Protocol No. 12 introduces a general prohibition of discrimination (see *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 53, ECHR 2009; *Baralija*

v. Bosnia and Herzegovina, no. 30100/18, § 45, 29 October 2019; and *Negovanović and Others*, cited above, § 51).

59. It is important to note that Article 1 of Protocol No. 12 extends the scope of protection to not only "any right set forth by law", as the text of paragraph 1 might suggest, but beyond that. This follows in particular from paragraph 2, which further provides that no one may be discriminated against by a public authority (see *Savez crkava "Riječ života" and Others v. Croatia*, no. 7798/08, § 104, 9 December 2010; *Napotnik*, cited above, § 55; and *Negovanović and Others*, cited above, § 52). According to the Explanatory Report on Article 1 of Protocol No. 12, the scope of protection of that provision concerns four categories of cases in particular where a person is discriminated against:

> "i. in the enjoyment of any right specifically granted to an individual under national law;
>
> ii. in the enjoyment of a right which may be inferred from a clear obligation of a public authority under national law, that is, where a public authority is under an obligation under national law to behave in a particular manner;
>
> iii. by a public authority in the exercise of discretionary power (for example, granting certain subsidies);
>
> iv. by any other act or omission by a public authority (for example, the behaviour of law enforcement officers when controlling a riot)."

The Explanatory Report further clarifies that:

> "... it was considered unnecessary to specify which of these four elements are covered by the first paragraph of Article 1 and which by the second. The two paragraphs are complementary and their combined effect is that all four elements are covered by Article 1. It should also be borne in mind that the distinctions between the respective categories i-iv are not clear-cut and that domestic legal systems may have different approaches as to which case comes under which category."

60. Therefore, in order to determine whether Article 1 of Protocol No. 12 is applicable, the Court must establish whether the applicant's complaint falls within one of the four categories mentioned in the Explanatory Report (see *Savez crkava "Riječ života" and Others*, cited above, § 105; *Napotnik*, cited above, § 56; and *Negovanović and Others*, cited above, § 53).

61. In this connection, the Court notes that the applicant had had the right, as interpreted by the Government's themselves, to use, in court proceedings, Ijekavian as one of the two variants of the Serbian language in equal official use domestically (see the Government's recognition to this effect in paragraph 68 below; see also paragraphs 16, 18, 22 and 27 above). Consequently, the Court cannot but conclude that the applicant's complaint falls under category (ii) of potential discrimination as envisaged by the Explanatory Report (see paragraph 59 above).

62. In view of the foregoing, Article 1 of Protocol No. 12 is applicable to the facts of the applicant's discrimination complaint as it has been raised in the present case.

2. Other grounds for inadmissibility

63. The Court further considers that this complaint is neither manifestly ill-founded nor inadmissible on any of the other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

C. Merits

1. Submissions by the parties

(a) The applicant

64. The applicant reiterated that the investigating judge had prevented him from asking questions in Ijekavian. This intervention, however, had been unlawful since this variant of the Serbian language was one of the two standard variants and as such had official status throughout the country.

65. The applicant furthermore argued that there was no evidence in the transcript (see paragraph 8 above) that the reason the investigating judge had asked him to reformulate his questions was so that the witness could understand them. In fact, it would not have made sense for the investigating judge to do so because the difference in pronunciation between the two variants of Serbian was not such as to create difficulties in comprehension between their respective speakers. Moreover, there was nothing in the transcript to indicate any cause for such concerns.

66. The applicant lastly submitted that the Government had offered no explanation as to why the investigating judge had warned only him to use the official language in the proceedings but had not issued the same warning to the other, Ekavian speaking, lawyer who had also been present and had been acting on behalf of the victim in the same proceedings.

(b) The Government

67. The Government maintained that there had been no discrimination in the present case.

68. According to the Government, there was no general policy in place which could have adversely effected Ijekavian speakers, such as the applicant, compared to Ekavian speakers. On the contrary, the relevant national legislation referred only to Serbian as the language in official use, without reference to its variants, meaning that both the Ekavian and the Ijekavian variants could be used officially.

69. However, the Government argued that in the present case the applicant had merely been asked to reformulate one of the questions which he had posed to a witness so that the latter could understand it, which had nothing to

do with the use of the applicant's Ijekavian as such. The question had also not been put to the witness through the investigating judge but had instead been addressed to the former directly, thus making the judge's intervention unavoidable.

70. The Government added that Bor was a town located in eastern Serbia where "the average inhabitant ... [did] ... not have a lot of opportunities to interact with people... using ... the Ijekavian" variant spoken elsewhere.

71. The Government also submitted that the other, Ekavian-speaking, lawyer in the criminal proceedings, acting on behalf of the victim, had not been invited to "use the official language" of the court since it had only been the applicant who had asked questions which required clarification.

72. In any event, the Government noted that despite his subsequent contestation of the accuracy of the transcript of 18 February 2013, the applicant had nevertheless signed it without objection (see paragraph 9 above).

73. In view of the above, the Government reiterated that the investigating judge's actions had been both necessary and proportionate. The applicant's allegations of discrimination had thus been based on his own subjective interpretation of the events in question rather than the "objective" facts of the case.

2. The Court's assessment

(a) Relevant principles

74. Notwithstanding the difference in scope between Article 14 of the Convention and Article 1 of Protocol No. 12, the meaning of the notion of "discrimination" in Article 1 of Protocol No. 12 was intended to be identical to that in Article 14 (see paragraphs 18 and 19 of the Explanatory Report to Protocol No. 12). In applying the same term under Article 1 of Protocol No. 12, the Court therefore sees no reason to depart from the established interpretation of "discrimination" (see *Sejdić and Finci*, cited above, § 55; *Napotnik*, cited above, § 69; and *Negovanović and Others*, cited above, § 74).

75. It can further be inferred that, in principle, the same standards developed by the Court in its case-law concerning the protection afforded by Article 14 are applicable to cases brought under Article 1 of Protocol No. 12 (see, for example, *Napotnik*, cited above, § 70, and *Negovanović and Others*, cited above, § 75).

76. In this vein, the enjoyment of the rights and freedoms guaranteed by the Convention, Article 14 affords protection against different treatment, without an objective and reasonable justification, of persons in relevantly similar situations. However, only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14. Furthermore, not every

difference in treatment will amount to a violation of Article 14. A difference of treatment based on a prohibited ground is discriminatory if it has no objective or reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Savickis and Others v. Latvia* [GC], no. 49270/11, § 181, 9 June 2022, with further references).

77. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify different treatment. The scope of the margin of appreciation will vary according to the circumstances, the subject matter and the background (ibid., § 183). Irrespective of this scope, however, the final decision as to the observance of the Convention's requirements rests with the Court itself (see, among many other authorities, *Konstantin Markin v. Russia* [GC], no. 30078/06, § 126, ECHR 2012 (extracts), and *Savickis and Others*, cited above, § 186).

78. As regards the burden of proof in relation to Article 14 of the Convention, the Court has held that once the applicant has shown a difference in treatment between persons in relevantly similar situations, it is for the Government to show that it was justified (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 177, ECHR 2007-IV; *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 389, ECHR 2012 (extracts); and *Savickis and Others*, cited above, § 187).

79. Lastly, the Convention organs have repeatedly found, quite apart from the use of official or co-official languages, that the Convention did not guarantee linguistic freedom as such, or, specifically, the right to use the language of one's choice in an individual's contacts with public institutions or to receive a reply in this language (see, for example, *Igors Dmitrijevs v. Latvia*, no. 61638/00, § 85, 30 November 2006, with further references).

(b) Application of these principles to the present case

(i) Whether there was a difference in treatment

80. The Court notes that the applicant complained that he, as a practising lawyer and an Ijekavian speaker of the Serbian language, had suffered discrimination compared to a lawyer who was a speaker of the Ekavian variant of the same language, while acting on behalf of his client and in the course of the same criminal proceedings (see paragraph 52 above).

81. The Court furthermore observes that the applicant and the Government fundamentally disagreed as to what had actually happened in the course of the impugned hearing before the Bor Court of First Instance, namely whether the applicant had been discriminated against, as alleged, or had merely been asked to reformulate a single question for the benefit of a witness

(see paragraphs 10, 65-66 and 69-72 above; see also, as regards the investigating judge's own account, paragraph 15 above).

82. Having taken note of this disagreement, the Court observes that the transcript of the hearing in question states: (i) that "at the beginning[, when the applicant] had been given the floor", he had been "warned to ask questions in the court's official language"; (ii) that the applicant had subsequently requested that "this warning be entered" into the record; and (iii) that the applicant had acknowledged being an Ijekavian speaker of the Serbian language (see paragraph 8 above).

83. In these circumstances and it being reasonable to give precedence to an official written document over the verbal accounts offered by the parties, the Court notes that the transcript contained no reasons as to why the applicant would have had to be warned of anything at all in this context. Nevertheless, there was a warning addressed to the applicant to use the official language in the proceedings, the clear implication being that Ijekavian was not accepted as such, while, at the same time, the other, Ekavian speaking, lawyer, who had acted on behalf of the victim, was given no such warning. Moreover, the Court cannot but find that there is indeed nothing in the transcript itself to indicate that the investigating judge had asked the applicant to reformulate any of his questions in order for the witness to be able to understand them.

84. Despite their submissions to the contrary, the Government have offered no evidence in support of their claim that the applicant had merely been asked to rephrase a single, incomprehensible question which he had posed to the witness except, arguably, for the investigating judge's own statement. However, even this statement, in the Court's view, disclosed a distinct lack of clarity given that the judge had first referred to the incomprehensible question posed by the applicant, but had then maintained that the applicant had thus been required to use the court's official language – implying that the Ijekavian variant of Serbian he had been speaking did not qualify as such (see paragraph 15 above).

85. The applicant was therefore treated differently from the Ekavian speaking lawyer, who had acted on behalf of the victim. This difference was based on a ground of distinction covered under Article 1 of Protocol No. 12, namely his use of Ijekavian as one of the two variants of the Serbian language in equal official use domestically. It is also clear, in this context, that while "language" has specifically been mentioned as a ground of distinction in Article 1 of Protocol No. 12, an officially recognised variant thereof (see paragraphs 16 and 61 above, with further references) is likewise and by implication covered by the same "status".

(ii) Whether there was a comparable situation

86. In view of the above, the applicant as defence counsel and an Ijekavian speaker of the Serbian language, on the one hand, and the lawyer acting on behalf of the victim as an Ekavian speaker of the same language, on the other,

must, in the Court's opinion, be seen as persons engaged in essentially the same activity, namely acting on behalf of their clients in the course of criminal proceedings, and, furthermore, as persons with particularly important parts to play in the criminal justice system.

87. It follows that the Ijekavian and Ekavian speaking lawyers in the criminal proceedings, in the context of the present case and within the meaning of the Court's case-law (see paragraph 76 above), have to be considered as persons in analogous or relevantly similar situations.

(iii) Whether there was an objective and reasonable justification

88. Since the Government have not admitted that the applicant had been a victim of any differential treatment, they also offered no explanation as to why such treatment would have been legitimate, reasonable or proportionate. They have therefore not discharged the burden of proof incumbent on them (see the case-law quoted in paragraph 78 above).

89. The Court nevertheless reiterates that it is clearly legitimate for a State Party to the Convention to regulate matters involving the official use of a language or languages in court proceedings and that the same should apply, *mutatis mutandis*, to different variants of the same language, such as in the present case. This must, however, be distinguished from "the right" to use an unofficial language of one's choice in communication with public authorities, which right, as such, has never been recognised by the Court in its case-law (see paragraph 79 above).

90. The Court, furthermore, notes that Matica srpska, as the oldest linguistic authority in Serbia, and the Government themselves have both acknowledged that the Serbian language "has two equal variants", that is Ekavian and Ijekavian, and that both can be used officially (see paragraphs 16 and 68 above; see also paragraphs 18, 22, 25 and 27 above).

91. In these circumstances and having already established that the applicant had been treated differently from another lawyer in an analogous or relevantly similar situation, based on his use of Ijekavian, the Court is of the opinion that there could not have been an objective and reasonable justification for such treatment.

92. Lastly, the margin of appreciation, mentioned in paragraph 77 above, could only have been of relevance in terms of possible linguistic policy choices, as regards how to legally regulate the use of an official language in court proceedings, but not in a situation where, such as in the present case, there was a failure on the part of a judge to implement the undisputed interpretation of the already existing legislation on this matter.

(iv) Conclusion

93. There has accordingly been a violation of Article 1 of Protocol No.12.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

94. The applicant, furthermore, complained that the decision rendered by the Constitutional Court on 10 February 2015 (see paragraph 12 above) had not been adequately reasoned, which had amounted to a breach of the fair hearing guarantee contained in Article 6 § 1 of the Convention. This provision, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

95. The Government made no objection as to the admissibility of the applicant's complaint and the Court itself notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

96. The applicant reaffirmed his complaint.

97. The Government maintained that, while the decision of the Constitutional Court had indeed been "brief", there was no violation of Article 6 of the Convention in this respect.

98. In particular, the Government argued that the Constitutional Court's reasoning "should be viewed in the context of the allegations [contained] in the constitutional appeal and the facts established by the Constitutional Court", as well as the applicant's additional written submission of 15 November 2013 (see paragraphs 10-12 above).

99. The Government lastly submitted that the Constitutional Court, in its reasoning, had referred to Article 170 of the Constitution, which defined the cases in which a constitutional appeal could be lodged (see paragraph 19 above). A warning issued by an investigating judge in connection with the use of the official language in court proceedings, according to the Government, clearly could not have been challenged before the Constitutional Court and this required no additional explanation, particularly since the applicant was a lawyer himself.

2. The Court's assessment

(a) Relevant principles

100. The Court reiterates that the guarantees enshrined in Article 6 § 1 include the obligation for courts to give sufficient reasons for their decisions (see *H. v. Belgium*, 30 November 1987, § 53, Series A no. 127-B). A reasoned

decision shows the parties that their case has truly been heard, and thus contributes to a greater acceptance of the adjudication (see *Magnin v. France* (dec.), no. 26219/08, § 29, 10 May 2012). Moreover, if the case before them relates to the rights and freedoms guaranteed by the Convention or its Protocols, the national courts are obliged to examine the main claims with particular care and rigour, this being a corollary of the fundamental principle of subsidiarity (*ibidem*).

101. Article 6 § 1, however, cannot be understood as requiring a detailed answer to every argument (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I, and *Perez v. France* [GC], no. 47287/99, § 81, ECHR 2004-I). The extent to which this duty to give reasons applies may vary according to the nature of the decision and can only be determined in the light of the circumstances of the case in question. It is necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules and legal opinion, as well as the presentation and drafting of judgments. That is why the question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 of the Convention, can only be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A, and *Hiro Balani v. Spain*, 9 December 1994, § 27, Series A no. 303-B).

(b) Application of these principles to the present case

102. The Court notes that on 10 February 2015 the Constitutional Court rejected the applicant's appeal based on Article 36 § 1 (7) of the Constitutional Court Act (see paragraph 20 above). The Constitutional Court furthermore opined that, taking into account the appeal's reasoning and the "legal nature and substance" of the investigating judge's impugned conduct, as evidenced by the transcript of the hearing in question, there was no "individual action" within the meaning of Article 170 of the Constitution which could have been challenged before it (see paragraph 12 above).

103. It is likewise noted that Article 170 of the Constitution, referred to by the Constitutional Court, provides that "a constitutional appeal may be lodged against individual decisions or actions of State bodies ... which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been exhausted or have not been prescribed" (see paragraph 19 above).

104. In addition to that, Article 36 § 1 (7) provides that the Constitutional Court shall reject a written submission aimed at the institution of proceedings before it whenever "other preconditions", required by law, for the conduct of those proceeding or the adjudication of a compliant have not been satisfied (see paragraph 20 above); and Article 48 § 2 provides that a decision by the

Constitutional Court to reject a constitutional appeal may be reasoned with mere reference to the relevant "legal basis" (see paragraph 21 above).

105. In view of the above, the Court observes that the Constitutional Court refused to deal with the applicant's appeal but did not clarify in any practical terms as to why exactly the legal preconditions for dealing with this appeal had not been fulfilled. In particular, it did not explain why the impugned conduct of the investigating judge was not considered to be an "individual action" within the meaning of Article 170 of the Constitution (see paragraphs 19 and 103 above), and thus not a matter that could be challenged before it.

106. The situation would, of course, have been different if the Constitutional Court made this clear either in the present case or in its publicly available jurisprudence on this issue. Moreover, the Constitutional Court did not indicate whether there were any prior legal remedies which the applicant should have exhausted, or even if there had been any such remedies at his disposal in the first place.

107. The decision of the Constitutional Court therefore remains unclear as to what the appropriate course of action for the applicant would have been, regardless of his being a lawyer by profession, in his attempts to obtain redress for the discrimination of which he complained. The Government themselves, in their observations (see paragraphs 97-99 above), also offered no suggestions to this effect.

108. The Constitutional Court's reference to Article 36 § 1 (7) of the Constitutional Court Act (see paragraphs 20 and 104 above) does not shed any additional light on the aforementioned issue either; it goes no further than to state vaguely that certain legal preconditions had to be met before any proceedings could be instituted before the Constitutional Court (see, *mutatis mutandis*, *Hansen v. Norway*, no. 15319/09, §§ 77-83, 2 October 2014). In the Court's view, however, this does not comply with the requirement that, when it comes to cases involving the rights and freedoms guaranteed by the Convention or its Protocols, the national courts are obliged to examine the main claims with particular care and rigour (see the case-law quoted in paragraph 100 above). In this respect, the Court emphasises that in his appeal to the Constitutional Court the applicant had explicitly alleged to have been discriminated against as an Ijekavian speaker of the Serbian language of Montenegrin origin and had referred to Article 14 of the Convention and Article 1 of Protocol No. 12 thereto (see paragraph 10 *in fine* above).

109. Lastly, even if it may be sufficient for a higher court to dismiss an appeal by referring only to the legal provisions providing for that procedure, assuming that there had been a prior detailed judgment on the issues and/or a hearing before a lower court (see, for example and in the context of the Appellate Committee of the House of Lords, *Sawoniuk v. the United Kingdom* (dec.), no. 63716/00, ECHR 2001-VI; see also *García Ruiz*, cited above; § 26, and *Hansen*, cited above, § 74), this, in the Court's opinion, was obviously

not the situation in the present case. On the contrary, the issues raised by the applicant in his constitutional appeal were significant, concerning as they did discrimination in the proceedings before a court of law. There had also been no prior judgment or a hearing on the complaint before the case was brought to the Constitutional Court, nor was there any prior jurisprudence of the Constitutional Court provided in respect of the meaning of the term "individual action" as contained in Article 170 of the Constitution and in the specific context of a complaint such as the one raised by the applicant in the present case. The brevity of the said court's reasoning also left a number of important procedural and remedial matters unanswered (see paragraphs 105-107 above).

110. In view of the foregoing considerations, the Court cannot but conclude that, in the admittedly very country-specific circumstances of the present case, there has been a violation of Article 6 § 1 of the Convention on account of the lack of adequate reasoning in the Constitutional Court's decision of 10 February 2015.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

111. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

112. The applicant claimed 2,000 euros (EUR) in respect of the non-pecuniary damage he had suffered due to the violation of his rights and freedoms enshrined in the Convention.

113. The Government contested this claim.

114. The Court considers that the applicant has certainly suffered some non-pecuniary damage. Having regard to the nature of the violations found in the present case and making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the amount of EUR 2,000 that has been claimed in this connection, plus any tax that may be chargeable on it.

B. Costs and expenses

115. The applicant also claimed a total of EUR 2,770 for the costs and expenses incurred domestically as well as those incurred before the Court.

116. The Government contested these claims.

117. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that

these were actually and necessarily incurred and were also reasonable as to their quantum. In the present case, regard being had to the above criteria, the information contained in the case file, the documents in its possession and the fact the applicant was granted leave to represent himself in the proceedings before the Court (see paragraph 4 *in fine* above), the Court rejects the claim for costs and expenses incurred in the course of proceedings before the domestic courts but considers it reasonable to award the sum of EUR 95 for the expenses incurred in the course of the proceedings before it, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 12;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 95 (ninety-five euros), plus any tax that may be chargeable to the applicant, in respect of expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 February 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Gabriele Kucsko-Stadlmayer President