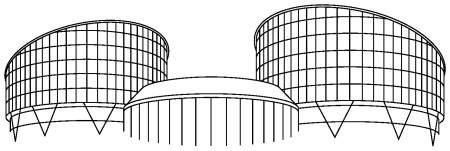

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ANTIĆ v. SERBIA

(Application no. 41655/16)

JUDGMENT

STRASBOURG

20 June 2024

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

In the case of Antić v. Serbia,

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

Stéphanie Mourou-Vikström, *President*,
Lado Chanturia,
Kateřina Šimáčková, *judges*,
and Sophie Piquet, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 41655/16) 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 21 July 2016 by a national of Bosnia and Herzegovina and of Canada, Mr Miloš Antić ("the applicant"), who was born in 1984, was previously detained in Belgrade and was represented by Mr S. Aleksić, a lawyer practising in Valjevo;

the decision to give notice of the complaints under Articles 3 and 34 of the Convention concerning the applicant's extradition to the United States to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar, and to declare the remainder of the application inadmissible;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the decision by the Government of Bosnia and Herzegovina not to exercise their right to intervene in the proceedings (Article 36 § 1 of the Convention);

the parties' observations;

the Government not having objected to the examination of the application by a Committee;

Having deliberated in private on 30 May 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's extradition to the United States of America ("the United States"/"US") and the respondent State's failure to comply with Rule 39 of the Rules of the Court.

I. ARREST AND EXTRADITION

2. On 28 May 2015 the applicant was indicted in the United States of America on drug trafficking charges, after the Federal Bureau of Investigations seized approximately 270 kg of cocaine, allegedly transported by the applicant to Canada via the United States.

3. On the basis of an arrest warrant issued by Interpol, on 31 July 2015 the applicant was arrested in Serbia and was remanded in custody pending extradition. The applicant received the extradition order on 12 July 2016.

4. On 21 July 2016 the applicant asked the Court to stop his extradition to the United States in view of the risk of life imprisonment, should he be found guilty as charged.

5. On 25 July 2016 the applicant was extradited to the United States, despite the Court's indication to the Government on 22 July 2016, under Rule 39 of the Rules of Court, that the applicant should not be extradited to the United States for the duration of the proceedings before it.

II. CONVICTION AND IMPRISONMENT IN THE UNITED STATES

6. It appears that the applicant accepted a plea-bargain agreement in the United States to serve eighty-four months in prison. According to the applicant's representative, on an unspecified date in January 2022 the applicant was released and deported to Canada.

III. THE APPLICANT'S CONTACT WITH HIS REPRESENTATIVE AFTER COMMUNICATION OF THE APPLICATION

7. In the observations, the applicant's representative submitted that he had not had any contact with the applicant and that the information requested by the Court had been provided by the applicant's mother.

8. With a letter of 25 September 2023 sent in response to a further enquiry from the Court, the applicant's representative explained that the applicant had not been in touch with him since 2019. With a subsequent letter, the applicant's representative claimed that the applicant had resumed contact with him via email. No copy of any such email messages or any other documents have been submitted.

THE COURT'S ASSESSMENT

I. PRELIMINARY REMARKS

9. The Government requested that the Court strike the application out of its list of cases for lack of contact between the applicant and his representative and absence of any special circumstances regarding respect for human rights requiring the Court to proceed with its examination.

10. The Court reiterates that contact between an applicant and his or her representative throughout the proceedings is essential both in order to learn more about the applicant's particular situation and to confirm the applicant's continuing interest in pursuing the examination of his or her application. It also notes that a situation where an applicant's representative has lost touch

with his or her client might warrant striking the application out of the list under Article 37 § 1 of the Convention (see, among other authorities, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, §§ 72-73, 13 February 2020).

11. The applicant's representative admitted to having had no contact with the applicant since 2019 (see paragraphs 7 and 8 above).

12. The Court is mindful of the precariousness of the applicant's situation at the time when he was serving a prison sentence in the United States. It also accepts that the global pandemic and widespread lockdown measures might have constituted a certain temporary impediment to the maintenance of contact and communication for the applicant. However, these circumstances cannot, in themselves, justify the lack of contact between the applicant and his lawyer from 2018 to date. Furthermore, the applicant's representative failed to support his assertion that subsequently he had re-established contact with the applicant (see paragraph above 8 *in fine*). Accordingly, the Court is unable to conclude that the applicant has maintained contact with his lawyer or has otherwise demonstrated his wish to pursue the application (compare *Sharifi and Others v. Italy and Greece*, no. 16643/09, §§ 131-34, 21 October 2014).

13. In view of the foregoing, the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c) of the Convention). Whether respect for human rights as defined in the Convention and the Protocols thereto requires it to continue the examination of the application (Article 37 § 1 *in fine*), it notes that, insofar it concerns Article 3 complaint, the facts complained of by the applicant no longer stand. The applicant accepted a plea-bargain agreement with the US prosecution authorities to serve a prison sentence of eighty-four months and was subsequently released (see paragraph 6 above). It follows that this part of the application should be struck out of the list.

14. By contrast, as regards the complaint under Article 34 of the Convention concerning the respondent State's failure to comply with the interim measure indicated by the Court under Rule 39 of the Rules of Court, the Court considers that the issue goes beyond the applicant's particular situation and requires it to continue the examination of the complaint. The Government's request in this regard must be rejected.

II. ALLEGED VIOLATION ARTICLE 34 OF THE CONVENTION

15. The applicant complained, under Article 34 of the Convention, about the respondent State's failure to comply with the interim measure indicated by the Court under Rule 39.

16. The Court reiterates that, by virtue of Article 34, Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of the right of individual application. A respondent State's failure to

comply with an interim measure entails a violation of that right (see, among numerous other authorities, *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 128, ECHR 2005-I).

17. In the present case, the Court finds it established, and the Government have not argued otherwise, that, having been notified on 22 July 2016 of the interim measure indicated by the Court under Rule 39 staying the applicant's extradition, the Government had at least two days to make the necessary arrangements to prevent the applicant's extradition to the United States of 25 July 2016 (see paragraph 5 above). In the Court's view, this period by itself has been amply sufficient for the respondent State to ensure proper inter-agency communication and to fulfil its obligations under Article 34. The Court finds without merit the Government's argument that the applicant unjustifiably delayed (between 12 and 21 July 2016, see paragraphs 3 and 4 above) his request for an interim measure and discerns nothing in the Government's submissions for it to establish that the respondent State took all reasonable steps to comply with the interim measure indicated by the Court.

18. The above considerations are sufficient for the Court to conclude that there was no objective impediment to compliance with the measure indicated by the Court under Rule 39, and that by disregarding that measure the respondent State failed to comply with its obligations under Article 34 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. The applicant claimed 32,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,953 in respect of costs and expenses incurred before the domestic courts and those incurred before the Court.

20. The Government considered the applicant's claims excessive.

21. The Court awards the applicant EUR 1,200 in respect of non-pecuniary damage, plus any tax that may be chargeable.

22. In the absence of any supporting documents that the applicant had paid or was under a legal obligation to pay the fees claimed, the Court finds no basis on which to accept that the costs and expenses claimed by the applicant have actually been incurred by him. It follows that the claim must be rejected (compare *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 370-73, 28 November 2017).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to strike the application out of its list of cases in respect of the complaint under Article 3 of the Convention concerning the risks associated with the applicant's extradition to the United States (Article 37 § 1 (c) of the Convention) and rejects the Government's

request for the application to be struck out of the list of cases in the part concerning the respondent State's compliance with its obligations under Article 34 of the Convention;

2. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 20 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sophie Piquet Acting Deputy Registrar	Stéphanie Mourou-Vikström President