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

SECOND SECTION

DECISION

Application no. 20854/15
Milan MILINKOVIĆ
against Serbia

The European Court of Human Rights (Second Section), sitting on 17 May 2022 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. 20854/15) 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 22 April 2015 by a Serbian national, Mr Milan Milinković ("the applicant"), who was born in 1961 and lives in Valjevo, and was represented before the Court by Mr M. Stojaković, a lawyer practising in Valjevo;

the decision to give notice of the complaint concerning Article 6 § 1 of the Convention to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar, and to declare the remainder of the application inadmissible; and

the parties' observations,

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the complaint under Article 6 § 1 concerning the lack of a public hearing before the Administrative Court which reviewed and upheld the applicant's dismissal.

2. The applicant was working as a guard at the Valjevo Juvenile Detention Centre. While he was on duty during a night shift, an inmate escaped. Following disciplinary proceedings, the detention centre's disciplinary commission dismissed the applicant in a decision of 29 July 2009 for a serious

breach of duty. The facts of the case were established after the applicant and several witnesses were heard and written evidence and security-camera footage were reviewed. The decision was upheld by the second-instance administrative body on 24 August 2009.

3. On 23 September 2011, in judicial-review proceedings, the Administrative Court upheld the applicant's dismissal without holding a public hearing, although he had expressly requested one.

4. The Administrative Court considered that the disciplinary commission had properly established the facts of the case, and cited the commission's findings of fact in its decision. This reasoning was upheld on 30 October 2014 by the Constitutional Court, which emphasised that holding a public hearing was not the rule in judicial-review proceedings and that the evidence obtained in the disciplinary proceedings had provided solid grounds on which the Administrative Court could base its decision in the case.

5. The applicant complained under Article 6 § 1 of the Convention about the lack of a public hearing before the Administrative Court.

THE COURT'S ASSESSMENT

A. Serbia's reservation in relation to Article 6 § 1 of the Convention

6. When ratifying the Convention, the State Union of Serbia and Montenegro made the following reservation:

> "3. The right to a public hearing enshrined in Article 6, paragraph 1, of the Convention shall be without prejudice to the application of the principle that courts in Serbia do not, as a rule, hold public hearings when deciding on administrative disputes. The said rule is contained in section 32 of the Law on Administrative Disputes ([Official Gazette of the Federal Republic of Yugoslavia], no. 46/96) of the Republic of Serbia."

7. The reservation was withdrawn by the Serbian Government on 10 May 2011, and the withdrawal was registered at the Secretariat General of the Council of Europe on 11 May 2011.

B. Compatibility of the reservation with Article 57 of the Convention

8. As established in the case-law of the Court (see, among other authorities, *Belilos v. Switzerland*, 29 April 1988, § 55, Series A no. 132), a "reservation of a general character", within the meaning of Article 57 § 1 of the Convention, is a reservation which does not refer to a specific provision of the Convention or is couched in terms that are too vague or broad for it to be possible to determine its exact meaning and scope.

9. The reservation quoted above could not be considered to be of a "general character", since it referred to a specific provision of the Convention and related to a specific domestic-law provision, making it

possible to determine that it concerned only the right to a public hearing in administrative disputes.

10. As regards the "brief statement of the law concerned" in Article 57 § 2 of the Convention, the Court notes that the legislation cited in the reservation – that is, the Law on Administrative Disputes – was followed by a reference to the issue of the Official Gazette in which it had been published, so that anyone could identify the precise provision in issue and obtain information about it. Moreover, the reservation itself outlined the subject matter regulated by the cited provision.

11. The Court therefore considers that Serbia's reservation in respect of Article 6 § 1 of the Convention was in compliance with Article 57 (see *Matić and Polonia doo v. Serbia* (dec.), no. 23001/08, §§ 35-42, 23 June 2015).

C. Applicability of the reservation to the proceedings in the present case

12. While the judicial-review proceedings in the applicant's case were pending before the Administrative Court, the above-mentioned reservation was withdrawn on 11 May 2011 because the new Law on Administrative Disputes 2009 (Official Gazette of the Republic of Serbia, no. 111/2009) had entered into force. The new Law envisaged the holding of a public hearing as the rule in administrative disputes, thus remedying the situation covered by the reservation. Pursuant to the Law's transitional provisions, the judicial-review proceedings in the applicant's case were initiated and completed under the provisions of the 1996 Law on Administrative Disputes (Official Gazette of Federal Republic of Yugoslavia, no. 46/96). Moreover, the Administrative Court and the Constitutional Court based their decisions on the relevant provisions of the 1996 Law, covered by the above-mentioned reservation.

13. It therefore follows that the applicant's complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 9 June 2022.

Hasan Bakırcı Registrar	Jovan Ilievski President