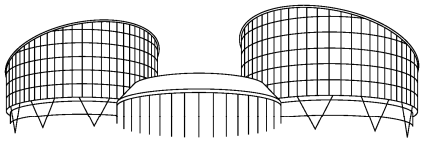

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF GRBIĆ v. SERBIA

(Application no. 5409/12)

JUDGMENT

STRASBOURG

23 October 2018

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

In the case of Grbić v. Serbia,

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

Pere Pastor Vilanova, *President,*
Branko Lubarda,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 2 October 2018,

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

PROCEDURE

1. The case originated in an application (no. 5409/12) 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 Rajko Grbić ("the applicant"), on 3 October 2011.

2. The applicant was represented by Mr N. Kosanović, a lawyer practising in Bečej. The Serbian Government ("the Government") were represented by their Agent, Ms. N. Plavšić.

3. On 1 December 2016 the complaint under Article 6 § 1 was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

4. The Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Bečej, where he was employed as a police officer.

6. On 24 January 2003 the Bečej Municipal Court ("the Municipal Court") started judicial investigation proceedings against the applicant for the alleged commission of a number of criminal offences concerning the performance of his duties.

7. On 26 May 2003 the competent directorate of the Ministry of Interior dismissed the applicant from the police force (effective as of 30 May 2003). The decision noted that the criminal proceedings had been instituted against the applicant and that Article 45, in conjunction with Article 34 (1)(2), of the

Ministry of Interior Act 1991, which was in force at the time of the dismissal, should be applied. According to this provision a police officer could be dismissed, at the discretion of the Ministry of Interior, if he no longer met the requirements for being a police officer, which included the requirement that criminal proceedings of a particular type should not be pending against him. The applicant lodged an appeal against this decision, but on 30 June 2003 his appeal was rejected and the dismissal thus confirmed.

8. On 23 July 2003 the applicant lodged a claim with the Municipal Court seeking his reinstatement.

9. On 31 October 2003 the Municipal Court partly discontinued the criminal proceedings against the applicant based on the applicable procedural prescription period.

10. On 12 November 2003 the remainder of the criminal proceedings were discontinued because the public prosecutor had withdrawn the charges.

11. On 30 December 2003 the Municipal Court annulled the decision on the applicant's dismissal of 26 May 2003 by partial judgment, establishing that everyone charged with a criminal offence should be presumed innocent until proven guilty by a court of law, and that a broad interpretation of Article 45 of the Ministry of Interior Act 1991 in regards to the persons who were not found guilty could be only to their detriment.

12. On 17 June 2004 the Novi Sad District Court ("the District Court") upheld this judgment. The applicant's former employer thereafter submitted an appeal on points of law.

13. In the meantime, the applicant was reinstated to his previous post by decision of the Ministry of Interior of 13 January 2005. The decisions of 26 May and 30 June 2003 were also repealed.

14. On 9 March 2005, however, the Supreme Court upheld the appeal on points of law, reversed the judgments of 30 December 2003 and 17 June 2004 and rejected the applicant's claim for reinstatement. It found that the dismissal of 26 May 2006 had been in accordance with the Article 45, read in conjunction with Article 34 (1)(2) of the Ministry of Interior Act 1991, and that the mere fact that the criminal proceedings had been pending against the applicant was sufficient reason for the applicant's dismissal.

15. On 4 July 2005 the applicant was thus again dismissed from his job, which decision was upheld on 11 August 2005 by the Minister of Interior.

16. On 4 August 2005, the applicant brought another set of the proceedings for the annulment of his second dismissal. However, the Municipal Court, the District Court and the Supreme Court, by their judgments of 27 October 2005, 10 May 2007 and 18 December 2007, respectively, all ruled against him and upheld his dismissal on the basis of Article 45, read in conjunction with Article 34 (1)(2), of the Ministry of Interior Act 1991.

17. On 14 March 2008 the applicant lodged an appeal with the Constitutional Court concerning the outcome, fairness and the length of the

civil proceedings concerning his dismissal, the right to be presumed innocent until proven guilty and the "right to work".

18. On 17 February 2011 the Constitutional Court rejected the applicant's appeal. In regards to the court judgments of 31 October 2003, 17 June 2004 and 9 March 2005 the Constitutional Court established that the his complaints were inadmissible *ratione temporis* given that the Serbian Constitution had come into force on 8 November 2006, i.e. after the first set of the proceedings concerning the applicant's dismissal. On the other hand, with respect to the judgments of 27 October 2005, 10 May and 18 December 2007, the Constitutional Court found that they were not arbitrary, and upheld the legality of the applicant's second dismissal on the basis of Article 45, read in conjunction with Article 34 (1)(2), of the Ministry of Interior Act 1991. In the Constitutional Court's view, the fact that the applicant was ultimately dismissed on 4 July 2005, instead of on 26 May 2003, was only in the applicant's favour, and that fact alone could not affect the legality of his "dismissal as such".

19. Before this on 19 January 2011, the Constitutional Court rendered a decision in the case of *Stefanović v. Serbia* (UŽ 753/2008), concerning the same legal issue in which it ruled in favour of the appelant in that case (see *Milojević and Others v. Serbia*, nos. 43519/07 and 2 others, §§ 36-37, 12 January 2016).

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. The relevant domestic law and practice is set out in the *Milojević* case (see *Milojević*, cited above, §§ 31-37).

THE LAW

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

21. The applicant complained that the decisions of the domestic authorities in civil proceedings regarding his dismissal were arbitrary and lacked sufficient reasons. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly..."

A. Admissibility

1. *As regards the compatibility of the applicant's complaint* ratione materiae

22. The Government stated that the decision of 4 July 2005 and the courts' decisions adopted thereafter were only of a declaratory character, as they only confirmed the legality of the original dismissal of 26 May 2003. As a consequence, the said decisions were not directly decisive for the civil rights and obligations of the applicant, and Article 6 § 1 could not be therefore applied in the present case.

23. The applicant maintained that Article 6 § 1 was applicable.

24. The Court observes that the applicant was dismissed from the police force only by decision of 4 July 2005, which outcome was thus decisive for the exercise of his civil rights and triggered the subsequent court proceeding, wherein the courts themselves never questioned this decisiveness even though they ultimately ruled against the applicant. The Court, therefore, dismisses the Government's objection in this regard.

2. *As regards the exhaustion of domestic remedies*

25. The Government submitted that neither the applicant's second claim (see paragraphs 15-16) nor the ensuing constitutional appeal constituted effective remedies in the present case. In the Government's view, the applicant should have submitted his application following the judgment of the Supreme Court of 9 March 2005, as the applicants did in the *Milojević* case (cited above), and that the applicant's failure to do so amounted to the application being submitted out of time.

26. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system, thus dispensing States from answering before the Court for their acts before they have had an opportunity to put matters right through their own legal system. The burden of proof is on the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and in practice at the relevant time; that is to say, that the remedy was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see, *inter alia*, *T. v. the United Kingdom* [GC], no. 24724/94, § 55, 16 December 1999; and *Vinčić and Others v. Serbia*, nos. 44698/06 and 30 others, § 49, 1 December 2009).

27. As regards legal systems which provide constitutional protection for fundamental human rights and freedoms, such as the one in Serbia, the Court recalls that it is incumbent on the aggrieved individual to test the extent of that protection (see, *inter alia*, *Mirazović v. Bosnia and Hercegovina* (dec.), no. 13628/03, 16 May 2006; and *Vinčić*, cited above, § 51). With this in mind, given the power of the Serbian Constitutional Court as evidenced through its case-law, the Court established that a constitutional appeal should, in principle, be considered as an effective domestic remedy within the meaning of Article 35 § 1 of the Convention in respect of all applications introduced as of 7 August 2008, that being the date when the Constitutional Court's first decisions on the merits of the said appeals had been published in the respondent State's Official Gazette (see *Vinčić*, cited above, § 51).

28. In any case, the Court reiterates, an individual is not required to try more than one avenue of redress when there are several available. It is for the applicant to choose the legal remedy that is most appropriate in the circumstances of the case (see, among other authorities, *Airey v. Ireland*, 9 October 1979, § 23, Series A no. 32, *Boicenco v. Moldova*, no. 41088/05, § 80, 11 July 2006, and *Borzhonov v. Russia*, no. 18274/04, § 54, 22 January 2009).

29. Turning to the facts of the present case, the Court firstly notes that the decision of 4 July 2005 contained an instruction on a legal remedy to be pursued (pouka o pravnom leku). According to this instruction the applicant could submit an objection against the decision within eight day from service, and he had in fact done so. Had the applicant not made use of this opportunity, this omission would have amounted to the non-exhaustion of domestic remedies.

30. Secondly, the Court notes that the applicant lodged his application with the Court on 3 October 2011. This was after 7 August 2008, and because the issue of whether domestic remedies have been exhausted is normally determined by reference to the date when the application was lodged (see *Vinčić*, cited above, § 51), the Court considers that the applicant had indeed had an obligation to exhaust this particular avenue of redress before turning to Strasbourg and that he had effectively done so.

In these circumstances, as well as given the Court's finding in paragraph 24 above, the Government's objection concerning the exhaustion of domestic remedies must be dismissed.

3. Other admissibility issues

31. The Court otherwise considers that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

32. The applicant submitted that his former employer had misapplied the relevant domestic law, that the decision of 4 July 2005 had been unfounded, that the subsequent court judgments in the civil proceedings had been arbitrary and had lacked sufficient reasoning, and that the Constitutional Court had arbitrarily upheld such reasoning. The applicant pointed out that his case had been almost identical, both factually and legally, as certain other cases considered by the Constitutional Court (see paragraph 18 above; also see *Milojević*, cited above, §§ 36-37) and that the same principles should have been applied in his case, as well.

33. The Government disagreed. They claimed that the applicant's dismissal was lawful and based on the Ministry of Interior Act 1991, and that the impugned court judgments were clearly and sufficiently reasoned in regards to the applicant's dismissal. Further, the Government stated that the case-law referred to in the *Milojević* case could not be applied in the instant case, in view of different circumstances of this case and the different temporal context.

34. The Court reiterates that according to its established case-law, reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain* and *Hiro Balani v. Spain*, 9 December 1994, §§ 27, 29, Series A nos. 303-A and 303-B; *Higgins and Others v. France*, 19 February 1998, § 42, Reports 1998-I; and *Milojević*, cited above, § 83). Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument of the parties involved (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288; *Milojević*, cited above). When applying legal rules lacking in precision, however, the domestic courts must show particular diligence in giving sufficient reasons as to why such a rule was applied in a particular manner, given the circumstances of each specific case. Merely citing the language of the imprecise provision cannot be regarded as sufficient reasoning (see *H. v. Belgium*, 30 November 1987, § 53, Series A no. 127-B; and *Milojević*, cited above).

35. The Court has already dealt with the quality of the legal provision on the ground of which the applicant was dismissed and the conduct of the domestic courts in applying this provision (see *Milojević*, cited above, §§ 32-33, 65-68, 84). Also, the Court established that the Constitutional Court had already had an opportunity to deal with cases raising substantially identical issues to those brought by the applicant before this Court wherein it concluded that both the law, on the basis of which the applicants had been dismissed, and the judicial decisions, which were identical to those rendered

in the applicant's case, had been arbitrary and in violation of the right to a fair trial (see *Milojević*, cited above, § 84). In regards to the Government's objection as to the different temporal context, the Court notes that the only difference between this case and *Milojević* is that the applicants in *Milojević* referred to the Court immediately after being dismissed, whereas the applicant in present case tried and exhausted all domestic remedies he had at his disposal (see paragraph 29). The legal grounds on which the applicant got dismissed from the police force remain the same as in *Milojević* case. Therefore, in light of almost identical factual and legal circumstances of the cases, the Court sees no reason to depart from its findings adopted in the *Milojević*.

There has accordingly been a violation of Article 6 § 1 of the Convention of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 36,465 euros (EUR) in respect of pecuniary damage, comprised of salary arrears and pensions which he "would have earned" had he continued working as a police officer, and EUR 5,000 in respect of non-pecuniary damage.

38. The Government maintained that the amounts claimed in respect of pecuniary and non-pecuniary damages were excessive. Also, the Government deemed that there was no causal link between a potential violation of Article 6 § 1 and the pecuniary damage.

39. With regard to pecuniary damage, the Court finds that the applicant's just satisfaction claim is unsubstantiated. Specifically, the applicant failed to provide the Court with an adequate explanation as to why he was unable to find other employment or could not secure another source of labor-related income, which would have been of particular significance for the proper calculation of the pecuniary damage sought. The Court therefore rejects the applicant's claim for pecuniary damage.

40. With regard to non-pecuniary damage, the Court considers that the applicant must have suffered distress and anxiety on account of the violation found. Ruling on an equitable basis, it awards the applicant EUR 2,400 in respect of non-pecuniary damage.

B. Costs and expenses

41. The applicant also claimed EUR 9,275 for the costs and expenses incurred before the domestic courts and the Court itself. In support of these claims the applicant submitted a calculation sheet and requested that the award should be paid directly to his lawyer, Mr N. Kosanović, whom he authorised to receive this sum.

42. The Government contested this claim as unsubstantiated and insufficiently specified.

43. 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 have been actually and necessarily incurred and are reasonable as to quantum (*Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI; *Milojević*, cited above, § 98). That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,700 covering costs under all heads, to be paid directly to the applicant's legal representative Mr N. Kosanović (see *Hajnal v. Serbia*, no. 36937/06, § 154, 19 June 2012).

C. Default interest

44. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay, within three months, the following amounts:
      (i) to the applicant EUR 2,400 (two thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, and

(ii) directly to the applicant's representative EUR 1,700 (one thousand seven hundred euros), plus any tax that may be chargeable on this amount, in respect of costs and expenses;

(b) that the amounts specified above shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(c) 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;

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

Done in English, and notified in writing on 23 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Pere Pastor Vilanova
President