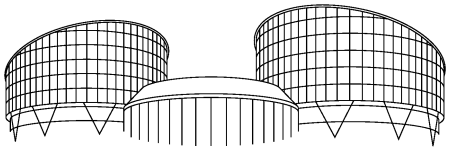

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF DIMOVIĆ AND OTHERS v. SERBIA

(Application no. 40238/16)

JUDGMENT

STRASBOURG

19 November 2024

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

In the case of Dimović and Others v. Serbia,

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

Tim Eicke, President,
Ana Maria Guerra Martins,
Mateja Đurović, *judges*,
and Simeon Petrovski, Deputy Section Registrar,

Having regard to:

the application (no. 40238/16) 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 June 2016 by four Serbian nationals ("the applicants"), whose relevant details are listed in the appended table and who were represented by Mr V. Juhas Đurić, a lawyer practising in Subotica;

the decision to give notice of the application to the Serbian Government ("the Government"), represented by their Agent, Ms Zorana Jadrijević Mladar,

the parties' observations;

Having deliberated in private on 22 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The applicants complained under Article 6 § 1 of the Convention about their inability to comment on the written observations of the Higher Public Prosecutor submitted in reply to defence statements of appeal in the proceedings before the Court of Appeal.

2. Following the applicants' conviction of an attempted aggravated theft (sentenced to imprisonment), both the applicants and the Subotica Basic Public Prosecutor's Office lodged appeals against the first-instance court's judgment. The parties' appeals were transmitted to the Novi Sad Court of Appeal. The Higher Public Prosecutor's Office also submitted written observations seeking that the appeal lodged by the applicants be dismissed, that the appeal of the Subotica Basic Public Prosecutor's Office be granted and that higher prison sentences be imposed. The Court of Appeal did not provide the applicants with a copy of the written observations submitted by the Higher Public Prosecutor. With a final judgment, the Court of Appeal upheld the applicants' conviction and reduced the prison sentences in respect of all applicants. The applicants learnt about the Higher Public Prosecutor's reply to their appeal after having received the Court of Appeal's judgment.

3. On 26 November 2015 the Constitutional Court dismissed the applicants' complaint about the non-communicated observations of the Higher Prosecutor as manifestly ill-founded, noting that the Code of Criminal

Procedure did not require the second-instance courts to provide the accused with a copy of the prosecutor's observations in reply to their appeal.

THE COURT'S ASSESSMENT

4. The Government objected to the admissibility of the application on the ground that the applicants had not suffered any significant disadvantage as a result of the non-communication of the public prosecutor's observations. It was so because those observations had not contained any issues of fact and law on which the impugned judgment of the Court of Appeal had relied.

5. The Court considers that the question of whether the applicants suffered a "significant disadvantage" within the meaning of Article 35 § 3 (b) of the Convention should be joined to the merits, since it is closely linked to the substance of the applicants' complaint that the principle of adversariness was breached in their case.

6. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

7. In accordance with the Court's well-established case-law, the right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party (see *Murtazaliyeva v. Russia* [GC], no. 36658/05, § 91, 18 December 2018, and *Zahirović v. Croatia*, no. 58590/11, § 42, 25 April 2013).

8. The present case must be distinguished from *Holub v. the Czech Republic* ((dec.) no. 24880/05, 14 December 2010), referred to by the Government, given that it concerns criminal proceedings in which the applicants were found guilty and sentenced to imprisonment. Furthermore, although the Court of Appeal did not explicitly refer in its decision to the prosecutor's observations, they nevertheless constituted the prosecutor's views on the applicants' appeal and thus manifestly aimed to influence the decision of the Court of Appeal by calling for the applicants' appeal to be dismissed. The applicants clearly had an interest in receiving a copy of the prosecution's written observations and, if appropriate, to make comments on those observations (see *Hudáková and Others v. Slovakia*, no. 23083/05, §§ 28-29, 27 April 2010). Having regard to what was at stake for the applicants, the Court does not need to determine whether the failure to communicate the Higher Prosecutor's observations caused the applicants any prejudice; the existence of a violation is conceivable even in the absence of prejudice (see *Zahirović*, cited above, § 43). As emphasised several times already, it is for the applicant to judge whether or not a document calls for a comment on his part. The absence of an express provision in domestic law requiring that the defence must be given the opportunity to reply to the prosecutor's submissions in appeal proceedings (see paragraph 3 above)

cannot justify the failure of the Court of Appeal to afford the applicants an opportunity to take cognisance of the written observations of the Higher Prosecutor prior to its decision (see *Bajić v. North Macedonia*, no. 2833/13, §§ 57-59, 10 June 2021).

9. Accordingly, the procedure followed did not enable the applicants to participate properly in the proceedings before the Court of Appeal and thus deprived them of a fair hearing within the meaning of Article 6 § 1 of the Convention.

10. The Court therefore dismisses the Government's inadmissibility objection previously joined to the merits (see paragraph 5 above) and concludes that there has been a violation of Article 6 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

11. The applicants claimed 4,000 euros (EUR) each in respect of non-pecuniary damage. They also claimed jointly EUR 3,838 in respect of costs and expenses incurred before the domestic courts and EUR 2,878 for those incurred before the Court.

12. The Government considered the applicants' claims unfounded and unsubstantiated.

13. Having regard to all the circumstances of the present case, the Court accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicants EUR 900 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

14. In the absence of any supporting documents showing that the applicants paid or were 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 applicants have actually been incurred by them. It follows that the claim must be rejected (see *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 370-73, 28 November 2017).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's objection concerning the alleged lack of a "significant disadvantage" and dismisses it;

2. *Declares* the application admissible;

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 applicants, within three months, EUR 900 (nine hundred euros) each, 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;

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

Done in English, and notified in writing on 19 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski	Tim Eicke
Deputy Registrar	President

APPENDIX

List of applicants:

No.	Applicant's name	Year of birth	Nationality
1.	Erika DIMOVIĆ	1975	Serbian
2.	Roža DIMOVIĆ	1971	Serbian
3.	Magdalena KOLOMPAR	1987	Serbian
4.	Đenđi KOVAČ	1983	Serbian