



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

**FOURTH SECTION**

**CASE OF STEFANOVIĆ AND BANKOVIĆ v. SERBIA**

*(Applications nos. 21784/16 and 21826/16)*

**JUDGMENT**

**STRASBOURG**

**5 November 2024**

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



**In the case of Stefanović and Banković 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 applications (nos. 21784/16 and 21826/16) 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”) by the applicants listed in the appended table (“the applicants”), on the dates indicated therein;

the decision to give notice to the Serbian Government (“the Government”) represented by their Agent, Ms Z. Jadrijević Mladar, of application no. 21826/16 and the complaint concerning the right to a fair hearing in application no. 21784/16, and to declare inadmissible the remainder of the latter application;

the parties’ observations;

Having deliberated in private on 15 October 2024,

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

## SUBJECT MATTER OF THE CASE

1. The applications concern the applicants’ inability, allegedly in breach of Article 6 § 1 of the Convention, to participate in the proceedings before the Constitutional Court in which final court judgments in their favour were quashed and their cases remitted for re-examination.

### I. APPLICATION No. 21784/16

2. In 2007 the applicant was shot by two men on the premises of a bank in Novi Sad. After the perpetrators had been convicted, the applicant brought civil proceedings against the bank seeking compensation for non-pecuniary damage.

3. After a remittal, on 29 March 2012 the Novi Sad Court of First Instance adopted a decision partially allowing the applicant’s claim. That decision was upheld by the Novi Sad Court of Appeal on 13 June 2012.

4. Following a constitutional appeal lodged by the bank, on 23 April 2015 the Constitutional Court found that the lower courts had arbitrarily applied domestic law, it quashed the decision of 13 June 2012 and remitted the case for re-examination by the Novi Sad Court of Appeal. The Constitutional Court did not inform the applicant of the bank’s constitutional appeal or that the judgment in his favour had been quashed.

5. On 1 October 2015 the Novi Sad Court of Appeal reversed the decision of the Novi Sad Court of First Instance of 29 March 2012 and dismissed the applicant's claim.

## II. APPLICATION No. 21826/16

6. In 1959 A.D. concluded a sale agreement ("the agreement") under which he transferred on the applicant's predecessors, S.B. and R.B., a right to use a plot of nationalised undeveloped construction land. Since S.B. and R.B. have never registered that entitlement with the Land Registry, A.D. remained the sole holder of that right, which subsequently passed to his successors, including Milan D.

7. In 2008 the applicant initiated civil proceedings against the Republic of Serbia and Milan D., seeking recognition of her right of use of the land. In the meantime, on the basis of 2009 Planning and Construction Act, Milan D. was registered as the owner of the land.

8. After a remittal, on 20 June 2012 the Belgrade Court of First Instance ruled against the applicant. On 29 November 2012 the Belgrade Court of Appeal reversed that decision and allowed the applicant's claim. On the basis of that decision, the applicant, recorded her title to the land with the Land Registry.

9. Following a constitutional appeal by Milan D., on 10 December 2015 the Constitutional Court found that the Court of Appeal had arbitrarily applied substantive and procedural law, it quashed the Court of Appeal's decision and remitted the case for re-examination. The Constitutional Court did not inform the applicant of Milan D.'s constitutional appeal or that the judgment in her favour had been quashed.

10. On 2 February 2017 the Belgrade Court of Appeal rendered a new decision dismissing the applicant's claim. On 30 November 2021 the Constitutional Court dismissed a constitutional appeal lodged by the applicant.

## THE COURT'S ASSESSMENT

### I. JOINDER OF THE APPLICATIONS

11. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE NON-COMMUNICATION OF THE CONSTITUTIONAL APPEALS TO THE APPLICANTS

12. The applicants complained under Article 6 § 1 of the Convention that the Constitutional Court had failed to inform them of the constitutional appeals lodged against the judgments in their favour and that, as a result, they had not had an opportunity to participate effectively in the proceedings before the Constitutional Court (see paragraphs 4 and 9 above).

13. The Government raised non-exhaustion plea in respect of application no. 21784/16 claiming that the applicant should have raised his complaints before the Constitutional Court after the resumed civil proceedings had been completed.

14. The Court cannot accept the Government's arguments. It reiterates that the quashing of a final judgment is an instantaneous act, which does not create a continuing situation, even if it entails a re-opening of the proceedings (see, *mutatis mutandis*, *Sardin v. Russia* (dec.), no. 69582/01, 12 February 2004, and the authorities cited therein). Furthermore, the domestic law does not provide for any appeal against a decision of the Constitutional Court (see, for the relevant domestic law, *Vinčić and Others v. Serbia*, nos. 44698/06 and 30 others, § 26, 1 December 2009). In any event, the outcome of the applicant's constitutional appeal in application no. 21826/16 after the resumed proceedings had been completed (see paragraph 10 above), militates against the effectiveness of that remedy in the given circumstances. The Government's objection must therefore be dismissed.

15. The Court notes that this complaint 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.

16. The Government further argued that the constitutional proceedings are regarded as single-party proceedings that cannot ensure the principle of the equality of arms. In contrast to *Gaspari v. Slovenia* (no. 21055/03, 21 July 2009) and *Milatová and Others v. the Czech Republic* (no. 61811/00, ECHR 2005-V), no domestic legal provision required that a constitutional appeal be communicated to any person concerned by the challenged decision, nor was it the Constitutional Court's practice to do so.

17. The relevant general principles pertaining to the principle of adversariness in court proceedings, including proceedings before the Constitutional Court, were summarised in *Gaspari v. Slovenia* (cited above, § 50).

18. In the present case, the Constitutional Court did not inform the applicants of the constitutional appeals that had been lodged against the judgments in their favour. The absence of a practice or provision requiring such communication does not render this failure compatible with the

Convention standards (see, *ibid.*, §§ 50-57; *Milatová and Others*, cited above, §§ 59-66).

19. In view of the foregoing, the Court finds that the applicants were not provided with an opportunity to participate effectively in the proceedings before the Constitutional Court. There has accordingly been a violation of Article 6 § 1 of the Convention on this account.

### III. REMAINING COMPLAINTS

20. In application no. 21826/16, the applicant also complained under Article 6 of the Convention and Article 1 of Protocol No. 1 that the Constitutional Court's decision quashing the final judgment in her favour had violated the principle of legal certainty and her right to peaceful enjoyment of her possessions.

21. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine these remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

### APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. The applicant in application no. 21784/16 claimed 1,000 euros (EUR) in respect of pecuniary damage and EUR 3,000 in respect of non-pecuniary damage. He did not submit any claim in respect of costs and expenses.

23. The applicant in application no. 21826/16 claimed (i) EUR 1,486,610 and 240,300 Serbian dinars (RSD) in respect of pecuniary damage, corresponding, respectively, to the current market value of the land (according to an expert report that she submitted to the Court) and the costs that she had been ordered to reimburse to Milan D. in the domestic proceedings; (ii) EUR 40,000 in respect of non-pecuniary damage; and (iii) RSD 225,000 in respect of costs and expenses incurred before the Court, without submitting any supporting documents.

24. The Government contested the applicants' claims as ill-founded and unsubstantiated.

25. The Court does not discern any causal link between the violation found and the pecuniary damage alleged by the applicants (see, for example, *Milatová and Others*, § 70, and *Gaspari*, § 80, both cited above); it therefore rejects their claims under this head.

26. The Court accepts that the applicants have suffered non-pecuniary damage which cannot be compensated solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards each of the applicants EUR 1,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

27. Finally, as the applicant in application no. 21784/16 did not submit any claim in respect of costs and expenses, the Court considers that there is no call to award him any sum on that account. The applicant in application no. 21826/16 failed to provide any supporting documents that she had actually incurred the costs and expenses claimed. The Court therefore dismisses her claim.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* application no. 21784/16 and the complaint concerning the non-communication of the constitutional appeal to the applicant in application no. 21826/16 admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of non-communication of the constitutional appeals to the applicants;
4. *Holds* that there is no need to examine the complaints in application no. 21826/16 under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning a violation of the principle of legal certainty and the right to the peaceful enjoyment of that applicant's possessions;
5. *Holds*
  - (a) that the respondent State is to pay each applicant, within three months, EUR 1,000 (one thousand 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

STEFANOVIĆ AND BANKOVIĆ v. SERBIA JUDGMENT

Done in English, and notified in writing on 5 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski  
Deputy Registrar

Tim Eicke  
President



## STEFANOVIĆ AND BANKOVIĆ v. SERBIA JUDGMENT

## APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	21784/16	Stefanović v. Serbia	07/04/2016	<b>Dejan STEFANOVIĆ</b> 1950 Novi Sad Serbian	Vladimir PANTIĆ
2.	21826/16	Banković v. Serbia	11/04/2016	<b>Milena BANKOVIĆ</b> 1948 Valjevo Serbian	Nikola UROŠEVIĆ