



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

**THIRD SECTION**

**CASE OF LAKATOŠ AND OTHERS v. SERBIA**

*(Application no. 43411/17)*

**JUDGMENT**

**STRASBOURG**

**14 January 2025**

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



**In the case of Lakatoš and Others v. Serbia,**

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

Peeter Roosma, *President*,

Diana Kovatcheva,

Mateja Đurović, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 43411/17) 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 29 May 2017 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 complaints concerning the alleged ill-treatment of the fourth applicant, as well as the complaints by all applicants about the alleged unfairness of the criminal proceedings and the excessive length of the constitutional proceedings to the Serbian Government (“the Government”), represented by their Agent, Ms Z. Jadrijević Mladar, and to declare the remainder of the application inadmissible;

the parties’ observations;

the decision to dismiss the Government’s objection to the examination of the application by a Committee;

Having deliberated in private on 3 December 2024,

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

## SUBJECT MATTER OF THE CASE

1. The case concerns the alleged ill-treatment of the fourth applicant by the police and the absence of any investigation into those allegations, the alleged unfairness of the criminal proceedings brought against all four applicants and the excessive length of the proceedings before the Constitutional Court.

2. After several robberies in northern Serbia, police arrested the fourth applicant on the night between 5 and 6 November 2007. The rest of the applicants were arrested the following morning.

3. The fourth applicant submitted that police officers had beaten him during his arrest and at the police station. As a result of having been pressured and beaten, on 6 November 2007 he had confessed that he had driven a car and had taken the other applicants to the houses where they had committed the robberies. On the same day, the first applicant also confessed that he had committed multiple robberies with the second, third and fourth applicants.

4. On 7 November 2007 the police officers involved in the above-mentioned events wrote internal reports stating that the fourth applicant had

resisted arrest and had tried to escape, requiring them to use force against him that had resulted in several minor injuries (“swelling on the right side of the forehead, back and right leg”). The reports also stated that the fourth applicant had not asked for medical assistance.

5. On the same day, the fourth applicant complained to the investigating judge that he had been beaten. He argued that he had confessed under duress and retracted his confession. The first applicant did the same the following day.

6. Following an order made by the investigating judge on 13 November 2007, the fourth applicant was examined by a doctor. He had bruises under both eyes, on his chest, thumb and leg, and scarring on his neck, nipple and knee.

7. A medical report of 22 September 2008 stated that the injuries recorded on 13 November 2007 had been inflicted by “the repeated use of mechanical force”.

8. On 31 July 2009 the fourth applicant lodged a criminal complaint alleging police abuse. After examining the police reports (paragraph 4 above), the public prosecutor rejected the complaint on 6 December 2010 for lack of evidence. There is no proof that the fourth applicant was notified of that decision.

9. In the meantime, criminal proceedings were brought against the applicants. With a final judgment of 4 June 2012 all applicants were found guilty of multiple robberies and attempted robberies and sentenced accordingly. The second applicant was also found guilty of having caused serious bodily harm to a police officer while resisting arrest. The domestic courts based their decision on, *inter alia*, the confession statements made by the first and fourth applicants to the police on 6 November 2007.

10. The applicants lodged a constitutional appeal on 9 August 2012. In its decision of 9 May 2017 the Constitutional Court found that there had been no violation of the applicants’ right to a fair trial in relation to the admission of the first and fourth applicants’ confession statements that had been allegedly given under duress, nor had there been a violation of the fourth applicant’s right to an effective investigation into his alleged ill-treatment. The court dismissed the fourth applicant’s complaint about the alleged police ill-treatment as out of time, which according to that court, ought to have been submitted within thirty days from the alleged ill-treatment. The remaining complaints under Article 6 of the Convention were dismissed as manifestly ill-founded.

## THE COURT’S ASSESSMENT

### I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

11. The fourth applicant complained under Article 3 of police ill-treatment and of the lack of an effective investigation.

12. The Court dismisses the Government's objection that the fourth applicant's complaint concerning the alleged ill-treatment should be declared inadmissible on account of his failure to lodge the constitutional appeal in good time (see paragraph 10 above). The Court has previously held in *Zličić v. Serbia* (nos. 73313/17 and 20143/19, § 77, 26 January 2021) that such requirement might have the effect of diminishing the importance of criminal redress, despite it being the only avenue capable of leading to the identification and punishment of the alleged abusers.

13. It further notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

14. The relevant principles concerning the prohibition of ill-treatment and the obligation to carry out an effective investigation have been summarised in *Lakatoš and Others v. Serbia* (no. 3363/08, §§ 72-76 and 79-81, 7 January 2014).

15. The Government did not substantiate their allegation that some of the injuries noted in paragraphs 4 and 6 above, which clearly reached the severity threshold under Article 3, were sustained prior to the events of 5 and 6 November 2007, the date when the fourth applicant was taken into police custody. They have also not provided anything to demonstrate that the injuries sustained were the result of physical force by the police which has been made strictly necessary by the fourth applicant's conduct (see paragraph 4 above). Even assuming that the fourth applicant had resisted arrest or tried to escape, the Government have offered no plausible explanation for the discrepancy between the injuries acknowledged by the police on 7 November 2007 and those documented in the medical reports of 13 December 2007 and 22 September 2008. Moreover, in the absence of any explanation by the Government, the Court cannot but conclude that the use of force was aimed at debasing the fourth applicant and making him confess to the impugned criminal offence.

16. Accordingly, there has been a violation of Article 3 of the Convention on account of the inhuman and degrading treatment inflicted on the fourth applicant (see, *mutatis mutandis*, *Lakatoš and Others*, cited above, §§ 77-78).

17. As regards the effectiveness of the investigation, the Court reiterates its earlier findings that criminal proceedings brought against an applicant, in the course of which he or she raises complaints of abuse in order to have some of the evidence excluded, are not capable in themselves of leading to the identification and punishment of those responsible for the abuse. An allegation of this sort should be examined *ex officio* by the competent authorities (see *ibid.*, § 82, and *Hajnal v. Serbia*, no. 36937/06, § 99, 19 June 2012). The fourth applicant complained of police brutality to the investigating judge, in the presence of the public prosecutor and during the trial, both at first-instance and on appeal (see paragraphs 5 and 9 above). However, no separate abuse-related investigation aimed at the identification and

punishment of those responsible was instituted by the competent authorities of their own motion. Even when the fourth applicant lodged a criminal complaint in 2009, the public prosecutor rejected it without notifying him of the decision and without questioning the police officers or the applicant, even though it was clear at the time that the applicant had sustained physical injuries.

18. In the light of the above, the Court considers that there was no effective investigation into the fourth applicant's alleged ill-treatment. Accordingly, there has been a violation of Article 3 of the Convention on this account.

## II. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

### **A. Alleged unfairness of the criminal proceedings on account of the admission of confession statements and alleged excessive length of the constitutional proceedings**

19. The applicants complained under Article 6 § 1 of the Convention that the criminal proceedings had been unfair as their convictions had been based on the first and fourth applicants' confessions, which had been obtained as a result of police brutality. In addition, they complained about the length of the constitutional proceedings, which had lasted from 9 August 2012 to 9 May 2017.

20. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

#### *1. Fairness of the criminal proceedings*

21. The relevant principles concerning the admission of confession statements obtained as a result of police brutality have been summarised in *Hajnal* (cited above, § 113).

22. The Court has already found that the first and fourth applicants were subjected to ill-treatment during their arrests and while in police custody, that is, when they were questioned and made statements implicating themselves and the other applicants in the commission of the criminal offence with which they were subsequently charged (see, in respect of the first applicant, *Lakatoš and Others*, cited above, §§ 77-78, and, in respect of the fourth applicant, paragraph 16 above). The Court is unable to accept the Government's contention that the criminal proceedings against the applicants were fair in that the first and fourth applicants' confession statements were neither sole nor key evidence used by domestic courts to convict the applicants. That would contravene the Court's well-established case-law (see *Hajnal*, cited above, §§ 112-15, and *Stanimirović v. Serbia*, no. 26088/06, §§ 48-52,

18 October 2011). In these circumstances, the Court finds that there has been a violation of Article 6 § 1 of the Convention.

2. *Length of the constitutional proceedings*

23. The Court accepts that the case involved a certain degree of complexity. However, the applicants did not contribute to the overall length of the proceedings which lasted four years and nine months. The Court has previously found a violation of a right to a trial within a reasonable time in similar cases and finds no reason to hold otherwise in the present case (see, *mutatis mutandis*, *Milovanović v. Serbia*, no. 56065/10, §§ 87-90, 8 October 2019, and also *Grubić v. Croatia* [Committee], no. 33602/17, §§ 34-41, 18 March 2021).

**B. Remaining complaints**

24. The first and fourth applicants also complained under this head that they had not been informed by the police of all the charges and the evidence against them and that they had been coerced into accepting police-appointed lawyers who had not acted in their best interests. The first applicant further complained that he had not been given sufficient time to prepare his defence prior to the police questioning.

25. Having regard to its finding that the entire proceedings brought against the applicants were unfair (see paragraph 22 above), the Court considers that it is not necessary to examine separately the admissibility or merits of the remaining complaints by the first and fourth applicants (see, *mutatis mutandis*, *Hajnal*, cited above, § 137).

**APPLICATION OF ARTICLE 41 OF THE CONVENTION**

26. The fourth applicant claimed 23,500 euros (EUR) in respect of non-pecuniary damage sustained as a result of the violation of his rights under Article 3 of the Convention. In addition, each applicant claimed EUR 7,000 in respect of non-pecuniary damage sustained as a consequence of the violation of their rights guaranteed by Article 6 § 1 of the Convention. They also requested that the criminal proceedings brought against them be reopened. In respect of costs and expenses incurred domestically and before the Court, the first and second applicants claimed EUR 7,705 each, the third applicant EUR 14,853 and the fourth applicant EUR 13,468.

27. The Government contested those claims.

28. It is clear that the applicants sustained some non-pecuniary damage as a result of the breaches of their rights under Article 3 and/or Article 6 § 1 of the Convention, for which they should be compensated. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court therefore awards EUR 8,500 to the fourth applicant and EUR 3,500

each to the first, second and third applicants, plus any tax that may be chargeable.

29. In view of the relevant principles concerning the reimbursement of costs and expenses (see *Đurić v. Serbia*, no. 24989/17, § 95, 6 February 2024) and regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the first and second applicants the sum of EUR 4,665 each, the third applicant EUR 10,505 and the fourth applicant EUR 6,985 covering costs under all heads, plus any tax that may be chargeable to the applicants.

30. The Court further observes that Article 485 § 1(3) and Article 492 of the Serbian Code of Criminal Procedure, as currently in force, provide for, *inter alia*, a defendant's right to request a retrial domestically if the Court finds a violation of his or her rights as guaranteed by the Convention, as in the present case (see, *mutatis mutandis*, *Kolompar v. Serbia* [Committee], no. 34167/15, § 20, 26 September 2023).

#### FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the fourth applicant's complaints under Article 3 and the applicants' complaints under Article 6 § 1 of the Convention concerning the fairness of the criminal proceedings and the length of the constitutional proceedings admissible;
2. *Holds* that there has been a violation of the substantive and procedural aspects of Article 3 of the Convention in respect of the fourth applicant;
3. *Holds* that there has been a violation of the Article 6 § 1 of the Convention concerning the fairness of the criminal proceedings and the length of the constitutional proceedings in respect of all the applicants;
4. *Holds* that there is no need to examine the admissibility and merits of the remaining complaints of the first and fourth applicants under Article 6 of the Convention;
5. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months, the following amounts:
    - (i) EUR 3,500 (three thousand five hundred euros) each to the first, second and third applicants and EUR 8,500 (eight thousand five hundred euros) to the fourth applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 4,665 (four thousand six hundred and sixty-five euros) each to the first and second applicants, EUR 10,505 (ten thousand five hundred and five euros) to the third applicant and EUR 6,985 (six



thousand nine hundred and eighty-five euros) to the fourth applicant, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

- (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' claim for just satisfaction.

Done in English, and notified in writing on 14 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova  
Deputy Registrar

Peeter Roosma  
President

## APPENDIX

List of applicants:

Application no. 43411/17

No.	Applicant's name	Year of birth	Nationality	Place of residence
1.	Slavko LAKATOŠ ("the first applicant")	1974	Serbian	Novi Sad
2.	Lajči DIMOVIĆ ("the second applicant")	1980		Novi Sad
3.	Ivica DIMOVIĆ ("the third applicant")	1980		Subotica
4.	Petar NOVAKOVIĆ ("the fourth applicant")	1978		Lalic