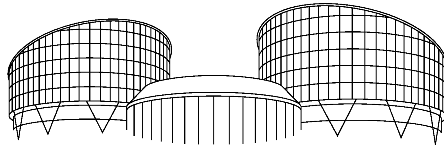

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 59268/16
Milenko MIŠIĆ and AD TERETNI TRANSPORT BOR
against Serbia

The European Court of Human Rights (Third Section), sitting on 3 December 2024 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. 59268/16) 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 13 June 2016 by a Serbian national, Mr Milenko Mišić ("the first applicant"), who was born in 1958 and lives in Bor, and AD Teretni Transport Bor, a legal entity incorporated in the Republic of Serbia ("the applicant company"). The first applicant and the applicant company ("the applicants") were represented by Mr Jovanović, a lawyer practising in Bor;

the decision to give notice of the complaints concerning the allegedly divergent case-law to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the refusal of domestic courts to reimburse the applicants' legal fees and expenses allegedly in contravention of the domestic case-law on the matter.

2. On 22 January 2010 the police, following an inspection of the applicant company's vehicle, submitted a request to initiate minor-offence proceedings

against the first applicant (the head of the transport department of the applicant company), the applicant company and L.M. (the driver of the vehicle) before the Kragujevac Minor Offences Court (Knic department) (the "Minor Offences Court").

3. On 10 September 2010 the applicants and L.M. appointed a lawyer to represent them in the minor-offence proceedings. The defendants filed submissions and, through their lawyer, subsequently asked the court to discontinue the proceedings on the grounds that the limitation period had expired.

4. On 26 November 2012 the Minor Offences Court discontinued the proceedings because of the expiry of the limitation period and advised the applicants and L.M. of the right to reimbursement of their costs and expenses.

5. On 18 December 2012 the applicants and L.M. applied for reimbursement of their costs and expenses in the amount of 43,400 Serbian dinars (RSD). On 21 January and 9 December 2013 they increased their claims to RSD 101,850 and RSD 166,350 respectively. The defendants sought reimbursement of their legal fees and the administrative and postal expenses incurred in connection with the submissions and the requests to discontinue the proceedings.

6. On 12 February 2014 the Minor Offences Court rejected their claim as having been lodged by an unauthorised person. The applicants and L.M. appealed.

7. On 14 March 2014 the Minor Offences Appeals Court reversed the first-instance court's judgment and dismissed the claims as unsubstantiated. In particular, the court refused to award any reimbursement in respect of the submissions, finding that the lawyer had not been involved in their preparation. It further held that it had been for the first-instance court to discontinue the proceedings upon the expiry of the limitation period and that the expenses incurred in preparing the requests to discontinue the proceedings had been unnecessary.

8. On 22 April 2014 the applicants lodged a constitutional appeal alleging a violation of their rights under Article 6 § 1 of the Convention. In particular, they complained that there was divergent case-law on the reimbursement of costs and expenses following the discontinuance of minor-offence proceedings.

9. On 9 November 2015 the applicants amended their constitutional appeal and submitted two judgments of the Minor Offences Court in support of their complaint that the case-law on the matter was divergent.

10. On 15 December 2015 the Constitutional Court rejected the applicants' complaint, considering it to be an appeal in disguise seeking a review of the lower courts' decisions.

11. The applicants complained under Article 6 § 1 of the Convention that, unlike in similar cases, their costs and expenses had not been reimbursed.

THE COURT'S ASSESSMENT

12. The Government submitted that the applicants' complaints should be dismissed for their failure to exhaust effective domestic remedies. They also considered that the applicant company did not have a standing before the Court within the meaning of Article 34 of the Convention alleging that 75 % of its capital was owned by the State.

13. The Court does not consider it necessary to address the objections raised by the Government because the application is in any event inadmissible for the following reasons.

14. The Court will examine, of its own motion, whether the applicants have suffered a significant disadvantage. It reiterates that this criterion applies where, notwithstanding a potential violation of a right from a purely legal point of view, the level of severity attained does not warrant consideration by an international court (see, among many authorities, *Adrian Mihai Ionescu v. Romania* (dec.), no. 36659/04, 1 June 2010, and *Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010). The absence of any disadvantage may be based on criteria such as the financial impact of the matter in dispute or the importance of the case for the applicant (see *Burov v. Moldova* (dec.), no. 38875/03, § 25, 14 June 2011).

15. In the present case, the Court observes that the costs and expenses that the two applicants and L.M. jointly sought on 9 December 2013 (see paragraph 5 above) to recover in the domestic proceedings amounted to approximately 1,420 euros (EUR) (compare *Kiousi v. Greece* (dec.), no. 52036/09, 20 September 2011, in which the amount of pecuniary damage at issue was EUR 504, and *Bazelyuk v. Ukraine* (dec.), no. 49275/08, 27 March 2012, which concerned non-pecuniary damage of EUR 445). The Court notes, in this regard, that the applicants did not argue that the domestic courts' refusal to award them the amount claimed had imposed a significant financial burden on them. Nor did they provide any evidence that their financial situation was such that the outcome of the case would have had a significant impact on them. The Court also takes into account the fact that, as pointed out by the Government, there is nothing in the applicants' submissions and the evidence submitted to show that they actually incurred those costs and expenses or that, regard being had to the time that has passed since the discontinuation of the misdemeanour proceedings, they remain under an obligation to pay them.

16. While it is true that pecuniary loss cannot be measured in abstract terms and that even modest pecuniary damage may be significant in the light of the applicant's specific circumstances and the economic situation of the country or region in which he or she lives, the Court finds that, in the circumstances of the present case, the applicants did not suffer any significant disadvantage as a result of the alleged pecuniary loss.

17. The Court also sees no reason to examine the merits of the case. It has already had an opportunity to deal with issues of conflicting domestic case-law (see *Beian v. Romania (no. 1)*, no. 30658/05, §§ 34-38, ECHR 2007-V (extracts); *Iordan Iordanov and Others v. Bulgaria*, no. 23530/02, 2 July 2009; and *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, 20 October 2011). Accordingly, it accepts that respect for human rights does not require an examination of the present complaint on the merits.

18. It follows that the complaint must be rejected in accordance with Article 35 §§ 3 (b) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 16 January 2025.

Olga Chernishova	Peeter Roosma
Deputy Registrar	President