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

THIRD SECTION

DECISION

Application no. 4283/16
Milan PEŠIĆ
against Serbia

The European Court of Human Rights (Third Section), sitting on 21 January 2025 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. 4283/16) 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 4 January 2016 by a Serbian national, Mr Milan Pešić ("the applicant"), who was born in 1955 and lives in Odžaci;

the decision to give notice of the complaint under Article 6 §§ 1 and 3 (d) of the Convention to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar, Representative of Serbia to the European Court of Human Rights, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicant was a lawyer at the relevant time. He had represented his client, M.M., before the Odžak Court of First Instance in a commercial dispute between two German transportation companies, one of which belonged to M.M.

2. On 4 February 2004 M.M. (who resided in Munich, Germany) lodged a criminal complaint against the applicant and a judge, M.V., accusing them of having received a bribe from her in exchange for a promise of a favourable

outcome in her case. She claimed that she had bribed them in the presence of a certain V.M.

3. On 9 February 2004 the investigating judge of the Sombor District Court questioned M.M. in the investigation proceedings. According to the record of the hearing, the applicant's lawyer was present during the witness questioning. The applicant was brought in later to confront M.M. During the confrontation they both maintained their account of events. It was explicitly noted during that hearing that neither the applicant nor his lawyer had any questions for M.M. as a witness.

4. On 4 May 2005 the Sombor district prosecutor's office indicted the applicant on charges of bribe-taking.

5. On 3 November 2006 the Subotica District Court (hereinafter "the District Court") opened the trial. It found that M.M. resided in Germany and that, despite two attempts, she could not be properly summoned at her Serbian address. The applicant provided the District Court with information regarding M.M.'s address in Germany, and subsequently she was sent a summons to appear at a hearing to be held on 26 December 2006. After service of that summons had failed, the police tried to establish her whereabouts through her husband, cousins and acquaintances. In subsequent attempts the District Court contacted the Ministry of Justice to facilitate the service of the summons through the diplomatic representative office in Munich. The requests were forwarded to the consular affairs directorate of the Ministry of Foreign Affairs; however, the summons could still not be served. Contact with M.M. was finally made *via* telephone. She explained that for personal reasons (being the mother to a small child), she could not be present at the trial. She reiterated those reasons in a letter addressed to the District Court. On 29 August 2007 the applicant's lawyer suggested that M.M.'s pre-trial witness statements should be read out at the trial.

6. On 19 December 2007 the applicant was found guilty as charged.

7. On 1 April 2010 the Novi Sad Court of Appeal quashed the judgment in the applicant's case and remitted the case for a new trial.

8. Following remittal, contact with M.M. was established *via* email but once again she refused to attend the hearing for health reasons (without specifying her health condition). On 30 April 2012 the Subotica Court of First Instance convicted the applicant of bribe-taking and sentenced him to a suspended term of six months' imprisonment. That judgment was based on the following evidence: statements by M.M. and V.M. (the latter testified in court as an eyewitness and confirmed M.M.'s version of events); documents concerning the commercial dispute in which M.M.'s company had been involved; and the relevant case file of the Odžak Court of First Instance. As to the handling of the case by Judge M.V., the trial court held that – for someone with such legal experience – it had been unlawful and illogical. It further stated that since M.M.'s statement had been given in the presence of the applicant's lawyer and that the applicant and M.M. had confronted each

other, it had been permissible for her statement to be read out at the trial. Lastly, it stated that the statements given by M.M. and V.M. were fully consistent, logical and corroborated by other evidence.

9. The applicant was represented by the same lawyer until the appeal proceedings in the Novi Sad Court of Appeal.

10. On 14 June 2012 the Novi Sad Court of Appeal upheld the applicant's conviction on appeal.

11. On 15 June 2015 the Constitutional Court found a violation of the applicant's rights under Article 6 on account of the excessive length of the criminal proceedings, rejecting his other complaints as manifestly ill-founded.

THE COURT'S ASSESSMENT

12. The applicant complained under Article 6 §§ 1 and 3 (d) of the Convention that his right to a fair trial had been violated on account of his inability to examine the witness M.M., whose pre-trial statement had been used as allegedly decisive evidence for his conviction.

13. In their submissions, the Government argued that there had been good reasons for M.M.'s non-attendance at the trial, that there had been enough procedural fair-trial safeguards that had justified the use of her statement, that her statement had not been either the sole or decisive evidence against the applicant, and that the domestic authorities had undertaken all necessary measures to locate and summon M.M.

14. The applicant contested the Government's submissions.

15. The general principles concerning the examination of absent witnesses and the use by the courts of evidence given by those witnesses, based on a three-step test, have been summarised in *Schatschaschwili v. Germany* ([GC], no. 9154/10, §§ 100-31, ECHR 2015) and *Al-Khawaja and Tahery v. the United Kingdom* ([GC], nos. 26766/05 and 22228/06, §§ 118-47, ECHR 2011).

A. Whether there was a good reason for the witness's non-attendance at the trial

16. As to whether the domestic authorities did everything reasonable to secure the presence of M.M. (see *Schatschaschwili*, cited above, § 119), the Court notes that during the trial the Subotica District Court attempted multiple times to summon M.M. as a witness. These attempts included the sending of summons to her Serbian and German addresses, the police's investigation into her whereabouts, and the seeking of assistance from the Ministry of Justice and the Ministry of Foreign Affairs to facilitate the summons through diplomatic and consular channels in Munich. Even when direct contact *via* telephone and email was finally established, M.M. stated

that she could not attend, citing personal and health reasons (see paragraphs 5 and 8 above).

17. The Court considers that the domestic authorities made every effort that could reasonably be expected of them to guarantee to the defence the opportunity to confront M.M. at the trial (compare *Tseber v. the Czech Republic*, no. 46203/08, §§ 50-51, 22 November 2012).

18. Accordingly, there was a good reason, from the trial court's perspective, for M.M.'s non-attendance at the trial and consequently for admitting as evidence the statement she had made to the investigating judge at the pre-trial stage.

B. Whether the evidence of the absent witness was "sole or decisive" evidence

19. The statement made by M.M. was not the sole evidence leading to the applicant's conviction. The Court notes that the first-instance court based its judgment on the witness statements of M.M. and V.M. (the latter of whom was heard at the trial as an eyewitness and confirmed the version of events as presented my M.M.), documentary evidence and the case file dealt with by Judge M.V. in the Odžak Court of First Instance, which was characterised as so illogical as to go beyond what could possibly be considered incompetence (see paragraph 8 above). Nevertheless, noting that M.M.'s statement was not of insignificant weight, the Court will now determine whether there were sufficient factors counterbalancing any handicaps that the admission of that evidence might have entailed for the defence.

C. Whether there were sufficient counterbalancing factors to compensate for the handicaps under which the defence laboured

20. With regard to the approach to the untested evidence, the presence of other incriminating evidence and procedural measures taken, the Court notes that the domestic courts assessed M.M.'s statement thoroughly and carefully. Regarding its credibility, the court noted that M.M.'s statement was coherent and was corroborated by other evidence. Her account of events was corroborated in full by V.M., who was heard at the trial.

21. The applicant was afforded the opportunity to give his own version of events, not only during the trial but also in his confrontation with M.M. During the investigation and trial phase, until the appeal proceedings in 2012, the applicant was represented by the same lawyer of his own choosing. His lawyer was present when M.M. was questioned by the investigating judge. The Court observes that the applicant, through his lawyer, did not avail himself of the opportunity to examine witness M.M. while she was questioned on 9 February 2004 (see paragraph 3 above). The Court also observes that it was the applicant's lawyer who suggested that M.M.'s pre-

trial witness statements should be read out as evidence in the trial (see paragraph 5 above).

22. In making an assessment of the overall fairness of the trial, having regard to the foregoing considerations – the weight of M.M.'s statement in the applicant's conviction, the District Court's approach to assessing that statement, the availability and strength of further incriminating evidence, and the fact that the applicant was given the opportunity to put forward his defence arguments – the Court finds that the counterbalancing factors were sufficient to compensate for the handicaps under which the defence laboured (compare *N.K. v. Germany*, no. 59549/12, § 62, 26 July 2018, and *Zegerius v. the Netherlands* (dec.) [Committee], no. 46836/18, § 21, 14 May 2024).

23. In these circumstances, the Court finds that it cannot be said that the criminal proceedings against the applicant, when considered as a whole, were rendered unfair by the admission in evidence of M.M.'s statement.

24. In the light of the foregoing, the Court concludes that the applicant's complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 February 2025.

Olga Chernishova
Deputy Registrar

Peeter Roosma
President