



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

THIRD SECTION

CASE OF LUBARDA AND MILANOV v. SERBIA

(Applications nos. 6570/19 and 43604/19)

JUDGMENT

STRASBOURG

29 April 2025

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

In the case of Lubarda and Milanov 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 applications 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 various dates indicated therein;

the decision to give notice of the applications to the Serbian Government (“the Government”) represented by their Agent, Ms Z. Jadrijević Mladar;

the parties’ observations;

the decision to reject the Government’s objection to the examination of the applications by a Committee;

Having deliberated in private on 25 March 2025,

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

SUBJECT MATTER OF THE CASE

1. The present case concerns the applicants’ complaints under Article 6 of the Convention that they had not been given an opportunity to cross-examine witnesses in minor-offence proceedings against them for road-traffic offences.

2. The first applicant was convicted in 2017 of failing to comply with a traffic light signal and the second applicant was convicted in 2015 of driving while intoxicated (“in a state of complete intoxication”). The first applicant was fined with 120 euros (EUR) and banned from driving for three months, and penalty points were added to his license. The second applicant was fined EUR 850 and banned from driving for eight months, and penalty points were added to his license. Both offences were potentially punishable with imprisonment as well. In accordance with the Minor Offences Act, if the fines given to the first and second applicants had not been paid, they could have been converted into effective prison sentences lasting up to 15 and 60 days, respectively.

3. The applicants both appealed against their convictions, but both convictions were upheld by the Appeals Court and, subsequently, the Constitutional Court. The final domestic decisions were notified to the applicants on 1 August 2018 in the first applicant’s case and 26 February 2019 in the second applicant’s case.

4. Both applicants had signed reports drawn up by police officers at the scene of the incidents, but later disputed the contents of those reports in court.

Their convictions were based on those reports and on evidence given by the police officers that was taken in court but not during the main hearings in the cases. Neither the applicants nor their lawyers were summoned to the examining of the witnesses, even though they had explicitly requested to be. The first applicant's request was refused on the grounds of efficiency and economy of proceedings. In the second applicant's case the court held that cross-examination would not have led to a different determination of facts because the witness's evidence was consistent with the report the second applicant had signed.

5. Relying on Article 6 of the Convention the applicants complained that the minor-offence proceedings against them had not been fair as they had not been given the opportunity to cross-examine the witnesses on whose statements their convictions had been based.

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

6. 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 AND 3 (d) OF THE CONVENTION

A. Admissibility

1. *Compatibility* *ratione materiae*

7. The Court notes that it is not in dispute between the parties that the criminal limb of Article 6 applies in the present case, and it sees no reason to disagree (see, for example, *Mesesnel v. Slovenia*, no. 22163/08, § 28, 28 February 2013).

2. *Whether the first applicant suffered a significant disadvantage*

8. The Government argued, based on the approach taken in the cases of *Rinck v. France* ((dec.), no. 18774/09, 19 October 2010) and *Fernandez v. France* ((dec.), no. 65421/10, 17 January 2012), that the first applicant's complaints should be declared inadmissible because he had not suffered a significant disadvantage. The Court considers that this case is clearly distinguishable from the decisions cited. Those cases concerned offences of minor gravity which were not punishable by imprisonment, and the issues at stake were of a rather technical nature, such that the criminal-head guarantees of Article 6 did not apply with their full stringency (see *Suhadolc v. Slovenia* ((dec.), no. 57655/08, 17 May 2011). The Court is

of the opinion that respect for human rights, as defined in the Convention, requires the examination of the first applicant's complaints on the merits. The Government's objection must therefore be rejected.

3. Conclusion

9. The Court notes that the applicants' 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.

B. Merits

10. Relying on Article 6 of the Convention the applicants complained of a violation of their right to a fair and adversarial trial on account of their inability to participate in the examination of the witnesses in their cases.

11. Two sets of principles are applicable to the present case: (1) those concerning the right to an oral hearing, especially in the context of the right to examine and cross-examine witnesses (see *Jussila v. Finland* [GC], no. 73053/01, §§ 40-44, ECHR 2006-XIV); and (2) those regarding the admission of untested incriminating witness evidence in criminal proceedings (see, for example, *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, §§ 119-47, ECHR 2011, and *Schatschaschwili v. Germany* [GC], no. 9154/10, §§ 111-31, ECHR 2015). In particular, the Court has previously held that before an accused can be convicted, all evidence against him or her must normally be produced in his or her presence at a public hearing with a view to adversarial argument. Exceptions to this principle are possible but must not infringe the rights of the defence, which, as a rule, require that the accused should be given an adequate and proper opportunity to challenge and cross-examine a witness against him or her, either when that witness makes his or her statement or at a later stage of proceedings.

12. The road-traffic offences for which the applicants were convicted were punishable by imprisonment and the relevant law envisaged the possibility of imprisonment for non-payment of fines (see paragraph 2 above). In view of this, and despite the fact that the criminal-head guarantees generally do not apply with their full stringency in cases concerning minor road-traffic offences, the threat of imprisonment calls for stronger guarantees to be applied in the present case (compare with *Marčan v. Croatia*, no. 40820/12, §§ 37-38, 10 July 2014).

13. The Minor Offences Act leaves the decision as to the need to hold an oral hearing or particular procedural actions with the possible participation of the parties to the judge's discretion (see paragraph 4 above). That is not incompatible with the Convention *per se*, having in mind the nature of the offences and the fact that they do not carry any significant degree of stigma

(see, *mutatis mutandis*, *Marčan*, cited above, § 41). In the present case, the domestic courts decided not to hear the witnesses during the main hearings. It has not been disputed that neither the applicants nor their counsel were informed of or invited to attend the witness examinations.

14. The Court notes that the applicants' convictions were based on the reports which they had signed on the spot but had later disputed in court, and on the police officers' witness evidence.

15. The trial courts, in both sets of proceedings, dismissed the applicants' defences as illogical and considered that they were aimed at evading responsibility, emphasising the fact the applicants had previously signed the reports incriminating them. However, the Court notes that the applicants subsequently took back their statements contained in the signed reports. In such circumstances, given that the police officers' evidence was the decisive factor in the applicants' convictions, giving them a chance to examine the witnesses was essential for the protection of their interests (see, *mutatis mutandis*, *Produkcija Plus Storitveno podjetje d.o.o. v. Slovenia*, no. 47072/15, § 54, 23 October 2018).

16. There is no indication in the case-file that the domestic authorities approached the police officers' evidence with any specific caution, or that the fact that the witnesses had been examined in the absence of the defence prompted the trial courts to attach less weight to this evidence (see *Paić v. Croatia*, no. 47082/12, § 43, 29 March 2016). On the contrary, the domestic courts vested full confidence in untested witness evidence because it was in conformity with the incident reports, even though the applicants withdrew their agreement with the contents of the reports.

17. Furthermore, despite the fact that the applicants explicitly requested an opportunity to put questions to the police officers, neither they nor their lawyers were invited to the examinations, with the domestic authorities in the first applicant's case referring to the economy and efficiency of the proceedings and in the second applicant's case holding that a cross-examination of the witness could not lead to a different determination of the facts (see paragraph 4 above). There is also no indication that the applicants or their lawyers were ever invited to put questions to the police officers in writing (see *Paić*, cited above, § 47, with further references therein).

18. While it is true that the applicants had the opportunity to give their own version of the events during the trials and that they availed themselves of that possibility, that fact alone cannot be regarded as a sufficient counterbalancing factor to compensate for the handicap under which the defence laboured (*ibid.*, § 51).

19. In assessing the overall fairness of the trials, the Court notes that the applicants' convictions were based on untested evidence which was decisive for their convictions and that insufficient counterbalancing factors were in place to compensate for the restriction of the applicants' defence rights. The

Court is of the opinion that the demands of efficiency and economy in the proceedings, in the circumstances, could not justify the interference with the applicants' right to cross-examine witnesses against them. It therefore finds that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention in respect of both the applicants.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. The first applicant claimed 150 euros (EUR) in respect of pecuniary damage relating to the fine which he had been obliged to pay and EUR 1,000 in respect of non-pecuniary damage. He also claimed EUR 1,550 in respect of costs and expenses incurred before the domestic courts and those incurred before the Court.

21. The second applicant claimed EUR 860 in respect of pecuniary damage relating to the fine which he had been obliged to pay and EUR 3,200 in respect of non-pecuniary damage. He also claimed EUR 3,440 in respect of costs and expenses incurred before the domestic courts and the Court.

22. The Government contested these claims.

23. The Court notes that the applicants have not shown the existence of a causal link between the procedural violation found and the pecuniary damage alleged (see *Milenović v. Slovenia*, no. 11411/11, § 46, 28 February 2013). It therefore rejects those claims in their entirety.

24. The applicants have certainly suffered some non-pecuniary damage. Having regard to the nature and gravity of the violations found in the present case and taking into account the applicants' claims, the Court awards the applicants the amount of EUR 1,000 each, plus any tax that may be chargeable in respect of non-pecuniary damage.

25. The Court rejects the first applicant's claim regarding costs and expenses because he did not support his claim that he had paid or was under a legal obligation to pay the fees claimed (compare *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 370-73, 28 November 2017). As for the second applicant, the Court reiterates that an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and were also reasonable as to their quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it appropriate to award the second applicant EUR 2,765, covering costs under all heads, plus any tax that may be chargeable to him.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, 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 amounts indicated in the appended table 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' claims for just satisfaction.

Done in English, and notified in writing on 29 April 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Peeter Roosma
President

LUBARDA AND MILANOV v. SERBIA JUDGMENT

APPENDIX

List of cases:

Application no.	Case name	Lodged on	Applicant Year of birth Place of residence Nationality	Represented by	Amount awarded for non-pecuniary damage (in euros) ¹	Amount awarded for costs and expenses (in euros) ²
6570/19	Lubarda v. Serbia	22/01/2019	Zoran LUBARDA 1954 Valjevo Serbian	Radomir SPASOJEVIĆ	1,000	
43604/19	Milanov v. Serbia	02/08/2019	Sladjan MILANOV 1984 Bosilegrad Serbian	Dragan DAVITKOV	1,000	2,765

¹ Plus any tax that may be chargeable.

² Plus any tax that may be chargeable to the applicant.