



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

THIRD SECTION

CASE OF ZUVIĆ v. SERBIA

(Application no. 3592/17)

JUDGMENT

Art 6 § 1 (civil) • Applicant's inability to obtain a judicial determination of the dispute over his discharge from professional military service once the disciplinary proceedings against him commenced • Obstacles preventing the applicant's case from being heard arose within the judicial system itself and were beyond his control • Overly restrictive interpretation of the requirement to revoke the applicant's discharge order • Applicant's case transferred to the Montenegrin authorities despite the Respondent State still having jurisdiction over it after the dissolution of the State Union of Serbia and Montenegro • Very essence of right of access to court impaired

Prepared by the Registry. Does not bind the Court.

STRASBOURG

3 June 2025

FINAL

03/09/2025

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Zuvic v. Serbia,

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

Ioannis Ktistakis, *President*,

Peeter Roosma,

Lətif Hüseynov,

Oddný Mjöll Arnardóttir,

Diana Kovatcheva,

Mateja Đurović,

Canòlic Mingorance Cairat, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 3592/17) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Serbian national, Mr Boban Zuvic (“the applicant”), on 19 December 2016;

the decision to give notice to the Serbian Government (“the Government”) of the complaints under Article 6 § 1 of the Convention concerning the applicant’s access to a court and the length of the civil proceedings;

the parties’ observations;

Having deliberated in private on 13 May 2025,

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

INTRODUCTION

1. The application primarily concerns the applicant’s right of access to a court. Relying on Article 6 of the Convention, the applicant complained that the Serbian judicial authorities had refused to adjudicate his disciplinary case. He also complained of excessive length of the proceedings in question.

THE FACTS

2. The applicant was born in 1972 and lives in Jagodina. He was represented by Mr A. Katanić, a lawyer practising in Novi Sad.

3. The Government were represented by their Agent, Ms Z. Jadrijević Mladar.

4. The facts of the case may be summarised as follows.

5. In 2002 the applicant was serving as a lieutenant in the Army of the Federal Republic of Yugoslavia (*Vojaska Jugoslavije*), stationed in Podgorica, Montenegro.

6. On 8 April 2002 the Military Prosecutor (*Vojni tužilac*) brought criminal proceedings against the applicant for abuse of office.

7. On 9 July 2002 the Military Disciplinary Prosecutor (*Vojni disciplinski tužilac pri Generalštabu Vojske Jugoslavije*) brought disciplinary proceedings against the applicant in respect of the same offence.

8. On 26 December 2002 the Military Disciplinary Court (*Vojni disciplinski sud pri Generalštabu Vojske Jugoslavije*) sentenced the applicant to the disciplinary penalty of “loss of rank”.

9. On 4 February 2003 the Federal Republic of Yugoslavia was renamed the State Union of Serbia and Montenegro.

10. On 20 March 2003 the High Military Disciplinary Court (*Viši vojni disciplinski sud pri Generalštabu Vojske Srbije i Crne Gore*) quashed the judgment and ordered a retrial.

11. On 11 June 2003 the Military Disciplinary Court (*Vojni disciplinski sud pri Generalštabu Vojske Srbije i Crne Gore*) again sentenced the applicant to the same disciplinary penalty of “loss of rank”.

12. On 3 November 2003 the High Military Disciplinary Court upheld the judgment.

13. On 24 December 2003 the applicant lodged an appeal with the Supreme Military Court (*Vrhovni Vojni sud u Beogradu*), challenging the judgment of the High Military Disciplinary Court of 3 November 2003.

14. On 24 March 2004 the Chairperson of the Supreme Defence Council of the State Union of Serbia and Montenegro ordered the enforcement of the disciplinary penalty.

15. On 20 April 2004 pursuant to the above-mentioned order, the applicant was discharged from professional military service.

16. On 29 June 2004 the Supreme Military Court ruled in favour of the applicant. It annulled (*poništio*) the judgment of the High Military Disciplinary Court, quashed (*ukinuo*) the judgment of the Military Disciplinary Court and ordered a retrial before the Military Disciplinary Court.

17. As a result of organisational changes in the judiciary, which had taken place in the meantime, the Military Disciplinary Court ceased to exist. The applicant’s case was therefore assigned to the Military Disciplinary Court in Podgorica (*Vojni disciplinski sud pri Komandi Vojnog okruga Podgorica*). The competence of that court to deal with the case was determined on the basis of the location of the military unit where the accused had been serving at the time of the alleged disciplinary offence.

18. On 26 January 2006 the President of the Military Disciplinary Court in Podgorica informed the High Military Disciplinary Court that the judges of the Military Disciplinary Court in Podgorica had already been involved in the criminal proceedings which had been brought against the applicant regarding the same facts (see paragraph 6 above). Consequently, he requested that the applicant’s disciplinary case be transferred to another court.

19. On 9 March 2006 the High Military Disciplinary Court designated the Military Disciplinary Court in Belgrade (*Vojni disciplinski sud pri Komandi Vojnog okruga Beograd*) as the competent court of first instance.

20. The Military Disciplinary Court in Belgrade subsequently forwarded the applicant's case file to the Supreme Defence Council of Serbia and Montenegro. The court stated that it could not proceed with the disciplinary proceedings, as the applicant was no longer a member of the military. It further noted that conducting such proceedings required the revocation of the order discharging the applicant from military service – a decision that could only be made by the Chairperson of the Supreme Defence Council of the State Union of Serbia and Montenegro.

21. Following a referendum on 3 June 2006, Montenegro declared its independence from the State Union of Serbia and Montenegro, whereupon that entity ceased to exist, together with all of its public bodies including the Supreme Defence Council of the State Union of Serbia and Montenegro (see *Bijelić v. Montenegro and Serbia*, no. 11890/05, §§ 53-56, 28 April 2009).

22. On 5 June 2006 the President of Serbia informed the Secretary General of the Council of Europe that Serbia was the sole successor to the former State Union of Serbia and Montenegro.

23. On 17 July 2006 the Office of the President of Serbia, which was in possession of the applicant's case file at the time, forwarded it to the Office of the President of Montenegro for further consideration and decision.

24. On 25 May 2009 the applicant requested that the Military Disciplinary Court in Belgrade either resume or discontinue the disciplinary proceedings against him.

25. On 3 June 2009 the Military Disciplinary Court informed the applicant that it lacked jurisdiction over his case. It further stated that his case file had been forwarded to the Office of the President of Montenegro for further action.

26. On 26 October 2009 the applicant repeated his request to the Military Disciplinary Court.

27. On 12 November 2009 the High Military Disciplinary Court notified the Serbian Ministry of Defence that, in its view, the applicant's case fell under the jurisdiction of the Montenegrin military judiciary. It explained that the Serbian military judiciary had no authority over the matter on account of the ongoing parallel criminal proceedings against the applicant in Montenegro. Furthermore, it stated that to reopen the disciplinary proceedings would require the annulment of the decision to discharge the applicant from the armed forces, a matter it considered to be within the exclusive competence of the President of Montenegro.

28. On 24 September 2010 the High Court in Podgorica (*Viši sud u Podgorici*) acquitted the applicant of abuse of office in the criminal proceedings.

29. On 25 February 2012 the applicant requested that the Military Disciplinary Court discontinue the disciplinary proceedings against him on the grounds that the statutory limitation period had expired.

30. On 2 November 2012 the Military Disciplinary Court ruled that it lacked both subject-matter and territorial jurisdiction to adjudicate the case.

31. On 28 November 2012 the High Military Disciplinary Court upheld that decision.

32. On 11 April 2014 the Ministry of Defence of Montenegro returned the applicant's case file, which the Office of the President of Serbia had transferred to them on 17 July 2006 (see paragraph 23 above), to the Serbian authorities, stating that it could not conduct disciplinary proceedings against the applicant, as he was not a member of the Montenegrin military.

33. On 1 October 2015, when ruling on an appeal by the applicant challenging those decisions (see paragraphs 30-31 above), the Administrative Court (*Upravni sud*) found that the respondent authorities had acted appropriately and dismissed the applicant's claim as unfounded.

34. The applicant lodged two constitutional appeals to the Constitutional Court – on 27 March 2013 and 16 November 2015 – alleging, *inter alia*, violations of his right of access to a court and his right to a trial within a reasonable time. The Constitutional Court consolidated the proceedings and, on 21 April 2016, partly ruled in his favour. It awarded the applicant 900 euros in compensation for the non-pecuniary damage suffered as a consequence of a violation of his right to a trial within a reasonable time, while rejecting the remainder of his appeal. The decision of the Constitutional Court was delivered to the applicant on 27 June 2016.

RELEVANT LEGAL FRAMEWORK

35. Article 161 of the Yugoslav Army Act (*Zakon o Vojsci Jugoslavije*; published in the Official Gazette of the Federal Republic of Yugoslavia, nos. 43/94, 28/96, 44/99 and 74/99), as in force at the material time, defined a violation of military discipline as any off-duty conduct deemed incompatible with military duties. This included, in particular, the commission of a criminal offence carrying an unconditional prison sentence of at least six months, as well as any other act that might damage the Army's reputation.

36. Article 164 provided that the disciplinary sanction of "loss of rank" entailed dismissal from service as a professional soldier.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

37. Relying on Article 6 § 1 of the Convention, the applicant complained that the domestic courts' refusal to adjudicate his case had violated his right of access to a court, and that the overall length of the disciplinary proceedings had violated his right to hearing within a reasonable time. Article 6 § 1, in so far as relevant, reads as follows:

“1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by [a] tribunal ...”

A. As regards access to a court

1. Admissibility

(a) Compatibility *ratione materiae*

38. The Court observes that the Government did not raise any plea of inadmissibility before it regarding the complaint's compatibility *ratione materiae* with the Convention and the Protocols thereto. However, the Court considers that this question concerns a matter which goes to its jurisdiction and that, as such, it is not prevented from examining it of its own motion (see, for example, *Ramiz Jafarov v. Azerbaijan*, no. 40424/12, § 34, 16 June 2022). The Court has further established that the question of the applicability of a particular provision of the Convention or its Protocols is an issue of the Court's jurisdiction *ratione materiae*, and that the relevant analysis should therefore be carried out at the admissibility stage unless there is a particular reason to join this question to the merits (see *Denisov v. Ukraine* [GC], no. 76639/11, § 93, 25 September 2018). No such reason exists in the present case.

39. The Court, furthermore, reiterates that it has consistently held that disciplinary proceedings in which the right to continue with the exercise of one's profession is at stake, including in the context of the armed services, do in fact give rise to disputes over a civil right within the meaning of Article 6 § 1 of the Convention (see *Vasilchenko v. Russia*, no. 34784/02, §§ 34-36, 23 September 2010; see also *Grace Gatt v. Malta*, no. 46466/16, § 59, 8 October 2019, and the authorities cited therein).

40. In view of the foregoing, it is evident that the applicant's right to continue with his professional military career gave rise to a dispute within the meaning of Article 6 § 1 of the Convention. Moreover, the national law at the material time also provided the applicant with access to a court in order to challenge his discharge. It follows, in the Court's view, that the civil limb of Article 6 § 1 was applicable to the impugned disciplinary proceedings (see *Grace Gatt*, cited above, §§ 60-63).

(b) Compatibility *ratione personae*

41. The Government argued that the disciplinary proceedings had been largely conducted under the authority of the former State Union of Serbia and Montenegro, which had had exclusive jurisdiction over the matter. Given that the unit in which the applicant had been serving at the time of the alleged disciplinary offence had been based in Montenegro, the applicant's complaint against Serbia was incompatible *ratione personae* with the Convention and therefore had to be dismissed by the Court.

42. The applicant disagreed and maintained that Serbia had had exclusive jurisdiction to adjudicate his disciplinary case.

43. The Court considers that this objection goes to the very heart of the question whether the applicant had been denied the right of access to a court in the determination of his civil rights and obligations in breach of Article 6 § 1 of the Convention. It should thus be more appropriately examined at the merits stage.

(c) Conclusion

44. The Court notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other ground. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

45. The applicant submitted that the respondent State had violated his right of access to a court by permitting the domestic courts to persistently refuse to adjudicate his case. As the completion of disciplinary proceedings had been a prerequisite for his return to active military service, the refusal of the courts to hear his case had effectively precluded him from resuming his military career. This violation had been particularly egregious given that the Supreme Military Court had expressly ordered the Military Disciplinary Court to proceed with the matter. Instead of exercising its competence in adjudicating the case, that court had improperly transferred the matter to the Supreme Defence Council of Serbia and Montenegro, thereby evading its responsibility and deferring the issue to another State authority. The applicant emphasised that he was a national (*državljanin*) of Serbia, not Montenegro, and that his presence in Montenegro had solely been a consequence of his professional service as a military officer at a time when Serbia and Montenegro had been part of a single State. The dissolution of the State Union of Serbia and Montenegro had been a controlled process and not one that had produced a crisis regarding the delineation of competences between two new States. Lastly, the applicant noted that he had been dismissed from the Army

in 2004, two years before Montenegro's independence, and that he had not met the criteria to join the newly formed Montenegrin Army.

46. The Government maintained that there had been no violation of Article 6 § 1 of the Convention. At the relevant time, the dissolution of the State Union of Serbia and Montenegro had created a "large-scale crisis", necessitating a precise division of the formerly joint armed forces and their respective jurisdictions. In such exceptional circumstances, the State should be afforded a margin of appreciation. The Government further contended that it had primarily been for national authorities to determine jurisdictional matters. The applicant had been dismissed from military service in 2004 while stationed in Montenegro, which had still been part of the State Union of Serbia and Montenegro. Moreover, criminal proceedings against him for the same offence had been initiated and concluded in Montenegro. As a consequence of this, the President of Serbia had lacked the authority to annul the dismissal order and the case had been transferred to the President of Montenegro. From that point on, no Serbian State authority, including its military courts, had retained jurisdiction over the applicant's case.

(b) The Court's assessment

(i) General principles

47. The right of access to a court was established as an aspect of the right to a fair hearing guaranteed by Article 6 § 1 of the Convention in *Golder v. the United Kingdom* (21 February 1975, §§ 28-36, Series A no. 18). In that case, the Court found the right of access to a court to be an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of arbitrary exercise of power which underlay much of the Convention. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to his or her civil rights and obligations brought before a court (see *Grzęda v. Poland* [GC], no. 43572/18, § 342, 15 March 2022; see also *Zubac v. Croatia* [GC], no. 40160/12, § 76, 5 April 2018).

48. The right of access to a court must be "practical and effective", not "theoretical or illusory" (see, to that effect, *Bellet v. France*, 4 December 1995, § 36, Series A no. 333-B). This observation is particularly true in respect of the guarantees provided for by Article 6, in view of the prominent place held in a democratic society by the right to a fair trial (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 45, ECHR 2001-VIII, and *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 86, 29 November 2016).

49. In respect of matters that fall within the ambit of the Convention, the Court's case-law has tended to show that where there is no access to an independent and impartial court, the question of compliance with the rule of law will always arise (see *Grzęda*, cited above, § 343, with a further reference). However, the Court has itself acknowledged that the right of

access to a court is not absolute and may be subject to limitations that do not restrict or reduce the access left to the person concerned in such a way or to such an extent that the very essence of the right is impaired. A limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (*ibid.*, with further references).

50. Furthermore, it is well established in the Court's case-law that "excessive formalism" can run counter to the requirement of securing a practical and effective right of access to a court under Article 6 § 1 of the Convention. This usually occurs in cases of a particularly strict construction of a procedural rule, preventing an applicant's action being examined on the merits, with the attendant risk that his or her right to the effective protection of the courts would be infringed (see *Zubac*, cited above, §§ 96-99, with further references).

(ii) Application of those principles to the present case

51. Turning to the present case, the Court notes that, unlike in situations where an applicant's access to a court has been entirely denied on account of the domestic courts' refusal to hear their case, the applicant's case was initially adjudicated at two levels of jurisdiction, with the first round of proceedings concluding on 3 November 2003 (see paragraph 12 above). Consequently, the case had already undergone one full adjudication before the Supreme Military Court ordered a new round of proceedings (see paragraph 16 above). This sets the applicant's situation apart from cases in which domestic courts outright refused to hear a civil claim. In the Court's view, therefore, the present case concerns not the right to initiate proceedings but rather the right to obtain a judicial determination of the dispute once proceedings have commenced (see *Lupeni Greek Catholic Parish and Others*, cited above, § 86; see also *Kutić v. Croatia*, no. 48778/99, § 25, ECHR 2002-II.)

52. Moreover, the obstacles preventing the applicant's case from being heard were not due to any procedural requirements which the applicant himself had failed to meet. Rather, those hurdles arose within the judicial system itself, beyond the applicant's control or ability to remedy. Initially, when the jurisdictional issue arose, the High Military Disciplinary Court resolved it by designating the Military Disciplinary Court in Belgrade as the relevant first-instance court (see paragraph 19 above). Indeed, at that time, the Military Disciplinary Court in Belgrade did not itself disclaim jurisdiction over the applicant's case; rather, it refused to proceed on account of a procedural obstacle – namely, its view that the applicant's discharge from military service first needed to be revoked (see paragraph 20 above). In this connection, the Court observes that the applicant was effectively discharged from military service by a judgment of the High Military Disciplinary Court, which found him responsible for a disciplinary offence and imposed a loss of

rank (see paragraphs 11 and 12 above). The Court also observes that, under the legislation in force at the material time, such a sanction mandated discharge from professional service (see paragraph 36 above). Consequently, it was the second-instance judgment of the High Military Court that ultimately led to the applicant's discharge, while the subsequent discharge order merely formalised the decision of that court. However, once the judgment was annulled (see paragraph 16 above), the notion that the discharge order could still retain legal effect and thereby create a procedural obstacle to adjudication is at best dubious. Despite this, the Military Disciplinary Court in Belgrade chose to await its formal revocation, leaving the applicant's case unresolved. Viewed in this light, the approach of the Military Disciplinary Court in Belgrade appears excessively formalistic (see *Zubac*, cited above, §§ 96-99). Furthermore, it directly contradicted the explicit order of the High Military Disciplinary Court, which had instructed it to adjudicate the applicant's case (see paragraph 19 above).

53. Lastly, while acknowledging the Government's argument that the dissolution of the State Union of Serbia and Montenegro had created logistical challenges in delineating jurisdiction between the judiciaries of the two newly independent countries, the Court observes that, at the time of dissolution, the applicant's case file was in the possession of the Office of the President of Serbia and therefore clearly within the jurisdiction of the respondent State (see paragraph 23 above). It was only after the dissolution of the State Union that the Office of the President of Serbia transferred the case to the Office of the President of Montenegro, by which time Montenegro had already become an independent state (see paragraph 23 above). This transfer appears to have been initiated solely by the respondent State, without any indication of Montenegro's request or consent. On the contrary, Montenegrin authorities later returned the case file to the Serbian authorities without ever initiating proceedings (see paragraph 32 above). It is, therefore, evident that the applicant's case remained under the jurisdiction of the respondent State after the dissolution of the State Union. However, instead of addressing the applicant's repeated requests for a hearing, the respondent State transferred the case to a country where the applicant did not seek adjudication and where the authorities declined to deal with his case.

54. In the light of the considerations above, the Court concludes that the Military Disciplinary Court in Belgrade's overly restrictive interpretation of the requirement to revoke the applicant's discharge order, along with the subsequent transfer of his case to Montenegro, impaired the very essence of the applicant's right of access to a court for the purpose of the determination of his civil rights and obligations.

55. There has, accordingly, been a violation of Article 6 § 1 of the Convention. The Government's objection *ratione personae* must therefore also be dismissed.

B. As regards the length of proceedings

56. Having regard to the facts of the case, the submissions of the parties and its findings above, the Court considers that it has examined the main legal question raised in the present application and that there is no need to give a separate ruling on the admissibility and merits of the complaint regarding the length the disciplinary proceedings raised under Article 6 § 1 (see, among many other authorities, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

58. The applicant claimed 60,388 euros (EUR) in respect of pecuniary damage for lost earnings as of 23 April 2004, and EUR 5,000 in respect of non-pecuniary damage.

59. The Government contested these claims.

60. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court is of the opinion that the applicant has undoubtedly suffered some non-pecuniary damage. Given the nature of the violation found in the present case and making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the amount of EUR 3,600 under this head, plus any tax that may be chargeable.

B. Costs and expenses

61. The applicant also claimed EUR 1,170 for the costs and expenses incurred domestically and before the Court.

62. The Government contested this claim.

63. According to the Court’s case-law, 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. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress (see, for example, *Stevan Petrović v. Serbia*, nos. 6097/16 and 28999/19, § 186, 20 April 2021). In the present case, regard being had to the documents in its

possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,170 covering costs and expenses under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the Government's objection as to incompatibility *ratione personae* of the applicant's complaint regarding his right of access to a court under Article 6 § 1 of the Convention and *dismisses* it;
2. *Declares* the applicant's complaint concerning his right of access to a court under Article 6 § 1 of the Convention admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the applicant's complaint regarding his right of access to a court;
4. *Holds* that there is no need to examine the admissibility and the merits of the applicant's remaining complaint regarding the length of proceedings under Article 6 § 1 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,170 (one thousand one hundred and seventy euros), plus any tax that may be chargeable to the applicant, 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 applicant's claim for just satisfaction.

ZUVIĆ v. SERBIA JUDGMENT

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

Milan Blaško
Registrar

Ioannis Ktistakis
President