

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

SECOND SECTION

CASE OF KOVAČ v. SERBIA

(Application no. 6673/12)

JUDGMENT

STRASBOURG

18 January 2022

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Kovač v. Serbia,

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

Pauliine Koskelo, *President,*
Branko Lubarda,
Marko Bošnjak, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to:

the application (no. 6673/12) 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 15 November 2011 by two Serbian nationals, Mr Miklоš Kovač and Mr Imre Kovač, born in 1967 and 1986, respectively, and living in Ada ("the applicants"), who were represented by Mr V. Juhas Đurić, a lawyer practising in Subotica;

the decision to give notice of the complaint concerning Article 5 § 4 of the Convention 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;

Having deliberated in private on 14 December 2021,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the applicants' complaints, under Article 5 § 4 of the Convention, that the domestic courts did not give them the possibility of replying to the investigating judge's request to extend their pre-trial detention and did not hear them or their representative in person when considering that extension. On 14 January 2010 the applicants were arrested on suspicion of robbery. On the same day the investigating judge of the Subotica High Court opened an investigation in respect of them and ordered their detention for a period of up to one month owing to the risk of their obstructing the course of justice by influencing witnesses who had not yet been examined and the risk of their reoffending since they had already been convicted in the past. Following a request by the investigating judge, on 11 February and 13 April 2010, the Subotica High Court and the Novi Sad Court of Appeal extended the applicants' pre-trial detention for periods of two and three months respectively. In addition to the grounds for detention referred to in the initial detention order, the courts stated that there was also a reasonable suspicion that the applicants had committed a violent crime punishable by more than ten years' imprisonment. The decisions regarding the extensions of the detention were upheld at second instance. On 26 June 2010 the applicants were indicted. The Constitutional Court dismissed their

subsequent appeal based on their complaints under Article 5 § 4 of the Convention on 13 October 2011.

THE COURT'S ASSESSMENT

2. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other ground. It must therefore be declared admissible.

3. The Court finds it unnecessary to consider whether the applicants had an opportunity to comment on the investigating judge's request to extend their pre-trial detention since the proceedings for the judicial review of that detention did not in any event satisfy the requirements of Article 5 § 4 of the Convention for the following reasons.

4. In *Stevan Petrović v. Serbia* (nos. 6097/16 and 28999/19, §§ 153-57, 20 April 2021) the Court found a violation in respect of issues similar to those in the present case.

5. The Court notes that the competent domestic courts at first or second instance did not hear the applicants personally when considering the extension of their pre-trial detention, which lasted throughout the entire period of the judicial investigation for more than five months. Having regard to the relevant general principles summarised in *Stevan Petrović* (ibid., §§ 153-54 and 156), the Court finds that this cannot be considered to have been in compliance with the "reasonable interval" requirement referred to in its own case-law (ibid., with references therein).

6. There has accordingly been a violation of Article 5 § 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

7. The first applicant claimed 3,000 euros (EUR) and the second applicant claimed EUR 4,000 in respect of non-pecuniary damage. They further claimed EUR 1,722 in respect of costs and expenses incurred domestically and EUR 2,870 for those incurred before the Court.

8. The Government contested these claims.

9. The Court considers that the applicants have certainly suffered some non-pecuniary damage. Having regard to 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 applicants EUR 1,000 each for non-pecuniary damage, plus any tax that may be chargeable on that amount.

10. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,000, covering costs and expenses.

11. The Court further considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicants, within three months, the following amounts**,** to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 1,000 (one thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), 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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 18 January 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Pauliine Koskelo
Deputy Registrar	President