

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

THIRD SECTION

CASE OF NIKOLIĆ v. SERBIA

(Application no. 21155/22)

JUDGMENT

STRASBOURG

3 June 2025

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



In the case of Nikolić v. Serbia,

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

Darian Pavli, President,
Úna Ní Raifeartaigh,
Mateja Đurović, *judges*,
and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 21155/22) 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 1 April 2022 by a Serbian national, Mr Matija Nikolić ("the applicant"), who was born in 1995, lives in Selenča, and was represented by the European Roma Rights Centre (ERRC), a public interest law organisation based in Brussels, Belgium, represented by Mr. Đ. Jovanović, its President;

the decision to give notice of the complaints concerning the substantive and procedural aspects of Article 3 of the Convention 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 in private on 13 May 2025,

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

SUBJECT MATTER OF THE CASE

1. The application concerns, under Article 3 of the Convention, the alleged ill-treatment of the applicant by the police, and the effectiveness of the investigation in response to his complaints about ill-treatment.

2. On 7 February 2013 the applicant, a minor at the relevant time, lodged a criminal complaint with the Novi Sad Prosecutor's Office (hereinafter "the Prosecutor"). He alleged that on 16 November 2012, while being questioned at the Bački Petrovac Police Station about alleged thefts, officer G.V. had kicked him in the stomach, and officers B.J. and B.M. had hit him in the head, because of which he had lost consciousness and fallen to the ground. As a result of the kick in the stomach, he had been taken from the police station to the children's hospital where he had been operated for incarcerated hernia.

3. The investigation into the applicant's allegations was delegated to the Bački Petrovac Police Station whose officers took statements of the policemen concerned and submitted their report to the Prosecutor on 19 April 2013. On 30 October 2015 the applicant's criminal complaint was rejected by the Prosecutor for lack of any criminal offence.

4. Following the applicant's appeal, on 1 December 2015 the Novi Sad High Public Prosecutor's Office ordered further investigation, noting that a

forensic expert examination as to the cause of the applicant's complications with hernia had not been commissioned; the investigation was not independent as it was delegated to the police station where the alleged perpetrators worked; and the physician who had attended to the applicant at the police station had not been questioned.

5. The investigation was resumed, and on 22 July 2016 the Prosecutor took statements from the police officers concerned. They denied inflicting any form of ill-treatment on the applicant. The applicant's representative was not invited to attend the taking of these statements.

6. On 28 November 2016 the Prosecutor also took statements from the applicant and on 16 October 2018 from other witnesses.

7. On 25 December 2018 the Prosecutor commissioned a forensic medical expert report which was completed on 5 February 2019. According to the report, there was no record of visible injuries on the applicant's body at the time of the disputed event. He had been admitted to hospital due to a pre-existing medical condition. The expert concluded that incarcerated hernia was a health condition which was not caused by an injury.

8. On 19 June 2019 the Prosecutor once again dismissed the applicant's complaint, relying on the above-mentioned medical report, and concluding that the applicant's medical documentation had not noted any injuries the applicant could have suffered because of the alleged ill-treatment by the police. This decision was upheld by the Novi Sad High Public Prosecutor's Office on 24 October 2019. The applicant's constitutional complaint was dismissed by the Constitutional Court on 17 June 2021 and served on the applicant on 4 October 2021.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

A. Admissibility

1. Substantive aspect of Article 3 of the Convention

9. Allegations of ill-treatment contrary to Article 3 must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among other authorities, *Gäfgen v. Germany* [GC], no. 22978/05, § 92, ECHR 2010; and *Bouyid v. Belgium* [GC], no. 23380/09, § 82, ECHR 2015).

10. The Court observes that there is no dispute as to the fact that the applicant was taken to a hospital from the police station where he had been questioned. However, the medical evidence drawn upon the applicant's hospital treatment indicates that the applicant had no visible injuries and that

incarcerated hernia for which he was treated was a health condition which was not caused by an injury.

11. The Court therefore concludes that the evidence presented by the applicant does not show that the applicant's medical problems were caused by the police or that the alleged ill-treatment by the police took place. In view of the foregoing, the Court, applying the standard of proof of "beyond reasonable doubt", considers that the applicant has not demonstrated that he was subjected to ill-treatment by the police.

12. Accordingly, the complaint under the substantive aspect of Article 3 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Procedural aspect of Article 3

13. The Court notes that it is not disputed that on 16 November 2012 the applicant, at that time a minor, was questioned by the police at the Bački Petrovac Police Station, and that he had entered the police station in good health and left it in an ambulance for immediate surgery. That fact, together with medical evidence and the applicant's complaint submitted to the relevant domestic authorities in which he provided a detailed account of the events, claiming that he had been kicked in the stomach and hit at the head by police officers, raises at least a reasonable suspicion that his injuries could have been caused by the use of force by the police. Moreover, the Serbian authorities themselves considered the applicant's allegations serious enough to justify the opening of an investigation into his alleged ill-treatment. That being so, his complaint constituted an arguable claim, and the Serbian authorities were thus under the obligation to conduct an effective investigation (compare *M.B. and Others v. Slovakia*, no. 45322/17, § 63, 1 April 2021, and *Panayotopoulos and Others v. Greece*, no. 44758/20, § 106, 21 January 2025).

14. 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 grounds. It must therefore be declared admissible.

B. Merits

15. The Court has summarised the general principles concerning the effectiveness of an investigation called for under Article 3 of the Convention in *Bouyid* cited above, §§ 114-23.

16. More specifically, the Court reiterates that compliance with the procedural requirements of Article 3 is assessed on the basis of several essential parameters: the adequacy of the investigative measures, the promptness of the investigation, the involvement of the victim and the independence of the investigation. These elements are inter-related and each of them, taken separately, does not amount to an end in itself. These criteria,

taken jointly, enable the degree of effectiveness of the investigation to be assessed. It is in relation to the purpose of an effective investigation that any partial issues must be assessed (see *R.R. and R.D. v. Slovakia*, no. 20649/18, § 178, 1 September 2020).

17. Accordingly, with a view to assessing the overall effectiveness of the investigation in question, on the facts of the present case the Court considers as crucial the following.

18. Following the lodging of a complaint by the applicant, a case file was opened. However, there were significant delays in the investigation. Thus, between 7 February 2013 and 30 October 2015 the only step taken was to take statements from the officers concerned. After the investigation was resumed on 16 December 2015, the next step was taken after about seven months (see paragraph 5 above). Further delay occurred between 28 November 2016 and 16 October 2018. Overall, the investigation and the proceedings upon the remedies the applicant used lasted over eight years and four months, even though the nature of the investigation does not justify such length. Therefore, it cannot be said that the domestic authorities reacted to the applicant's allegations of ill-treatment by the police with the required promptness.

19. As regards the independence of the investigation, the Court notes that the initial investigation was conducted by the Bački Petrovac Police Station, the officers of which were alleged to have ill-treated the applicant. Even though later on the investigation was taken over by the Prosecutor, the initial investigation cannot be regarded as independent, as it was also recognised by the domestic authorities (see paragraph 4 above).

20. As regards the applicant's involvement in the investigation, the Court notes that the applicant was only interviewed in November 2016, i.e. more than three years and eight months after the events in question. Moreover, he had no procedural standing in the investigation, depriving him of the opportunity to participate in the investigative actions to the extent necessary to safeguard his legitimate interests (see *Panayotopoulos and Others*, cited above, § 117).

21. Given the above considerations in their entirety, the Court concludes that there has accordingly been a violation of the procedural aspect of Article 3 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,100 in respect of costs and expenses incurred before the Court.

23. The Government objected that the applicant's claims were unfounded and excessive.

24. The Court awards the applicant EUR 1,800 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

25. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 2,100 for costs and expenses for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under the procedural aspect of Article 3 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of the procedural aspect of Article 3 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, 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 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage;
      (ii) EUR 2,100 (two thousand one hundred 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;

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

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

Olga Chernishova	Darian Pavli
Deputy Registrar	President