

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

SECOND SECTION

CASE OF NOVAKOVIĆ v. SERBIA

(Application no. 6682/12)

JUDGMENT

STRASBOURG

1 February 2022

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



In the case of Novaković v. Serbia,

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

Jovan Ilievski, *President,*
Branko Lubarda,
Diana Sârcu, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to:

the application (no. 6682/12) 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 a Serbian national, Mr Boro Novaković, born in 1990 and living in Subotica ("the applicant") who was 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 11 January 2022,

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

SUBJECT-MATTER OF THE CASE

1. The application concerns the applicant's complaints, under Article 5 § 4 of the Convention, that the domestic courts did not give him the possibility of replying to the investigating judge's request to extend his pre-trial detention and did not hear him or his representative in person when considering that extension. On 6 October 2009 the applicant was arrested on suspicion of attempted murder. On 8 October 2009 the investigating judge of the Subotica District Court opened an investigation in respect of him and ordered his detention for a period of up to one month owing to the risk of his obstructing the course of justice by influencing witnesses who had not yet been examined, and a reasonable suspicion that he had committed a violent crime punishable by more than ten years' imprisonment. Following a request by the investigating judge, on 6 November and 24 December 2009, the Subotica District Court and the Supreme Court each extended the applicant's pre-trial detention for periods of two months. The decisions regarding the extensions of the detention were upheld at second instance. On 5 March 2010 the applicant was indicted. The Constitutional Court dismissed his subsequent appeal based on his complaints under Article 5 § 4 of the Convention on 6 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 grounds. It must therefore be declared admissible.

3. The Court finds it unnecessary to consider whether the applicant had an opportunity to comment on the investigating judge's request to extend his 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 relevant domestic courts at first or second instance did not hear the applicant personally when considering the extension of his pre-trial detention, which lasted throughout the entire period of the judicial investigation for almost 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 applicant claimed 4,000 euros (EUR) in respect of non-pecuniary damage, and EUR 1,148 in respect of costs and expenses incurred before the domestic courts and EUR 1,530 for those incurred before the Court.

8. The Government contested these claims.

9. The Court considers that the applicant has 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 applicant EUR 1,000 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 500 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 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 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 500 (five 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 1 February 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Jovan Ilievski
Deputy Registrar	President