

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

THIRD SECTION

CASE OF RADANOVIĆ v. SERBIA

(Application no. 27794/16)

JUDGMENT

STRASBOURG

4 March 2025

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



In the case of Radanović 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 application (no. 27794/16) 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 10 May 2016 by a Serbian national, Mr Boško Radanović ("the applicant"), who was born in 1964, lives in Woodstock, Canada, and was represented by Mr V. Juhas Đurić, a lawyer practising in Subotica;

the decision to give notice of the complaint concerning the right to adversarial proceedings before the Court of Appeal in Novi Sad 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 4 February 2025,

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

SUBJECT MATTER OF THE CASE

1. The applicant complained under Article 6 § 1 of the Convention about his inability to comment on the written observations of the Appellate Public Prosecutor submitted in reply to defence statements of appeal in the proceedings before the Court of Appeal in Novi Sad ("the Court of Appeal").

2. Following his conviction for causing a criminal damage to property (a judicial warning was issued), the applicant lodged an appeal against the first-instance court's judgment. The Court of Appeal transmitted his appeal to the Appellate Public Prosecutor's Office, which submitted its written observations seeking that the appeal be dismissed. The Court of Appeal did not provide the applicant with a copy of those observations. With a final judgment, the Court of Appeal upheld the applicant's conviction. The applicant learnt about the Appellate Public Prosecutor's reply to his appeal after having received the Court of Appeal's judgment.

3. On 10 December 2015 the Constitutional Court dismissed the applicant's complaint as manifestly ill-founded, without dealing with the issue of non-communicated observations although it had been raised by the applicant.

THE COURT'S ASSESSMENT

4. The applicant complained that his inability to comment on the observations filed by the Appellate Public Prosecutor violated his right to a fair trial guaranteed by Article 6 § 1 of the Convention.

5. 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.

6. In accordance with the Court's well-established case-law, the right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party (see *Murtazaliyeva v. Russia* [GC], no. 36658/05, § 91, 18 December 2018, and *Zahirović v. Croatia*, no. 58590/11, § 42, 25 April 2013).

7. The Government invited the Court to distinguish this case from *Zahirović* (cited above) because the Appellate Public Prosecutor's observations had dealt solely with the procedural requirements for admissibility of an appeal and had not been explicitly referred to in the Court of Appeal's decision. The Court notes that the non-communicated observations constituted the prosecutor's views on the applicant's appeal and thus, contrary to the Government's arguments, aimed to influence the decision of the Court of Appeal by calling for the appeal to be dismissed (see paragraph 2 above). The applicant therefore clearly had an interest in receiving a copy of the prosecution's written observations and, if appropriate, seeking to make comments on those observations (see *Hudáková and Others v. Slovakia*, no. 23083/05, § 28, 27 April 2010). Having regard to what was at stake for the applicant, the Court does not need to determine whether the failure to communicate the Appellate Public Prosecutor's observations caused the applicant any prejudice; the existence of a violation is conceivable even in the absence of prejudice (see *Zahirović*, cited above, § 48). As previously emphasised, it is for the applicant to judge whether or not a document calls for a comment on his part. The onus was therefore on the Court of Appeal to afford the applicant an opportunity to comment on the written observations of the Appellate Public Prosecutor prior to its decision.

8. Accordingly, the procedure followed did not enable the applicant to participate properly in the proceedings before the Court of Appeal and thus deprived him of a fair hearing within the meaning of Article 6 § 1 of the Convention.

9. The Court therefore concludes that there has been a violation of Article 6 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

10. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,922 in respect of costs and expenses incurred before the domestic courts and the Court.

11. The Government considered these claims unfounded and unsubstantiated.

12. Having regard to all the circumstances of the present case, the Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 900 in respect of non-pecuniary damage, plus any tax that may be chargeable.

13. Furthermore, regard being had to the documents in its possession, the Court considers it appropriate to award EUR 1,500 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 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 900 (nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand 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 4 March 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Peeter Roosma President