

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

THIRD SECTION

CASE OF SARIĆ v. SERBIA

(Application no. 38151/16)

JUDGMENT

STRASBOURG

9 December 2025

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



In the case of Sarić 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. 38151/16) 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 16 June 2016 by a Serbian national, Mr Damir Sarić ("the applicant"), who was born in 1980, lives in Subotica and was represented by Mr V. Juhas Đurić, a lawyer practising in Subotica;

the decision to give notice of the complaint concerning the alleged unfairness of the criminal proceedings in question 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 18 November 2025,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the fairness of criminal proceedings against the applicant.

2. On 19 May 2009 the investigating judge of the Subotica Court of First Instance issued a decision ordering an investigation into the applicant for the criminal offence of robbery.

3. On 27 October 2009 the investigating judge heard the applicant, who denied committing the criminal offence with which he had been charged. On the same day, after hearing the applicant, the investigating judge heard the victim, L.V.Š., as a witness. She stated that while she had been waiting for the hearing to begin she had seen the accused outside the courtroom, handcuffed and escorted by police officers. She subsequently provided a description of his physical appearance and identified him as the perpetrator of the criminal offence in question.

4. On 12 February 2010 an identification parade was conducted, during which L.V.Š. identified the applicant with 99.99% certainty as the person who had been in the shop in question on the relevant day and had demanded that she hand over money while threatening her with a gun.

5. On 19 August 2013, following the main trial and the evidential hearing, the Subotica Court of First Instance found the applicant guilty of robbery and sentenced him to two years and six months' imprisonment. The court stated

that it had established the decisive facts concerning the time, place and manner in which the offence had been committed on the basis of the statement given by L.V.Š., a video-recording, and images taken from that recording. Following a forensic analysis of the video-recording, the relevant expert determined that the perpetrator of the offence was "a male dressed in black clothing", and that owing to the poor quality of the recording, the identity of the person could not be ascertained with greater precision. Upon reviewing the recording, the Subotica Court of First Instance did not identify the applicant as the perpetrator. Nonetheless, it emphasised that the events captured on video corresponded to those described by the witness in her testimony. The court therefore accorded full probative value to her statement and based its decision on that statement, dismissing the applicant's version of events on the basis that it contradicted L.V.Š.'s statement and constituted an attempt to avoid criminal liability. Furthermore, there was no forensic or physical evidence related to the crime.

6. On 6 May 2014 the Novi Sad Court of Appeal rejected an appeal by the applicant, noting that his identification had not been carried out in accordance with the provisions of the Code of Criminal Procedure. However, it found that that irregularity constituted a relatively minor procedural violation, as the factual circumstances would have been established in the same manner even if the identification evidence had not been obtained.

7. On 18 June 2014 the Supreme Court of Cassation rejected an appeal on points of law as unfounded.

8. On 12 November 2015 the Constitutional Court dismissed a constitutional appeal by the applicant.

9. The applicant complained under Article 6 of the Convention of the fairness of the criminal proceedings in which he had been found guilty of robbery and sentenced to two years and six months' imprisonment. He argued that he had been convicted solely on the basis of a witness statement which had been taken in breach of the legal requirements of the Code of Criminal Procedure and evidence obtained through an identification procedure that had also been conducted in breach of those requirements.

RELEVANT DOMESTIC LAW

10. In accordance with Article 104 of the Code of Criminal Procedure, in force at the relevant time, when it was necessary to establish whether a witness could identify a certain person whom he or she had already described, the witness would be shown that person along with other individuals unknown to him or her. All of those individuals had to have "basic characteristics" similar to the "basic characteristics" originally described by the witness, and the witness would then be asked to declare whether he or she could identify the person concerned with certainty or a certain degree of probability, and if the answer was in the affirmative, to point out that person.

In the course of preliminary criminal proceedings and the pre-trial phase of a case, an identification procedure was to be carried out in such a way as to ensure that the person being identified could not see the witness and the witness could not see that person before the start of the formal identification procedure.

11. An identification parade comprising the relevant procedural safeguards should normally be conducted shortly after a criminal offence has taken place, so that an eyewitness who does not know the accused can identify the person concerned and have his or her own credibility tested.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

12. 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.

13. The general principles concerning the fairness of proceedings, including the admissibility of evidence, have been summarised, inter alia, in *Bykov v. Russia* ([GC], no. 4378/02, §§ 88- 90, 10 March 2009), and *Laska and Lika v. Albania* (nos. 12315/04 and 17605/04, § 57, 20 April 2010).

14. Turning to the present case, the Court notes that the key evidence supporting the applicant's conviction was the victim's statement and her identification of him as the perpetrator, after she had already seen him in court as the defendant (see paragraph 3 above). While the domestic courts acknowledged that the identification parade had not been conducted in accordance with domestic legal provisions, they nonetheless maintained that the judgment was based on other credible written evidence from the case file. However, the fact remains that the applicant was identified before the trial court in the absence of the essential procedural guarantees contained in Article 104 of the Code of Criminal Procedure (see paragraphs 5, 6 and 10 above, and the Novi Sad Court of Appeal's own admission to this effect).

15. The Court further notes that the video evidence referred to by the Subotica Court of First Instance did not identify the applicant as the perpetrator. That material – video-recordings and images – merely depicted the crime scene without providing any information that could establish the perpetrator's identity. No other evidence was capable of proving who committed the offence (see paragraph 5 above). In these circumstances, not even the adversarial nature of the ensuing proceedings could remedy the procedural defects in question (see *Laska and Lika*, cited above, § 68).

16. In addition to the above, the Court finds that in the present case, the identified irregularities in the procedure for hearing the witness and subsequently the identification parade (see paragraph 6 above) were not adequately addressed by the national courts in their reasoning. The courts

essentially limited themselves to reiterating that the victim's statement constituted credible evidence and decided to accept the victim's account, despite the fact that it had not been corroborated by any other probative evidence (see, *mutatis mutandis*, *Laska and Lika*, cited above, § 64). The national courts thus failed to observe two basic requirements of criminal justice: (i) that it is the prosecution that has to prove a defendant's guilt beyond reasonable doubt; and (ii) the principle of *in dubio pro reo*, which requires that the benefit of any doubt about the reliability of evidence should be given to the defendant (see, for example and *mutatis mutandis*, *Barberà, Messegué and Jabardo v. Spain*, 6 December 1988, §§ 77 and 89, Series A no. 146; *Melich and Beck v. the Czech Republic*, no. 35450/04, §§ 49 and 55, 24 July 2008; *Ilgar Mammadov v. Azerbaijan (no. 2),* no. 919/15, § 232, 16 November 2017; and *Fatullayev v. Azerbaijan (no. 2)*, no. 32734/11, § 99, 7 April 2022).

17. In view of the foregoing, the Court concludes that the criminal proceedings against the applicant did not satisfy the requirements of a fair trial. There has accordingly been a violation of Article 6 § 1 of the Convention in the present case.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. The applicant requested the reopening of the criminal proceedings. He also claimed 6,700 euros (EUR) in respect of the non-pecuniary damage he had suffered. Lastly, he sought a total of 723,000 Serbian dinars for the costs and expenses incurred domestically and before the Court.

19. The Government contested the applicant's claim regarding the non-pecuniary damage in question. They also considered that his claim for costs and expenses was unsubstantiated.

20. The Court refers to its settled case-law to the effect that when an applicant has suffered an infringement of rights guaranteed by Article 6 of the Convention, he or she should, in so far as possible, be put in the position in which he or she would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be the reopening of the proceedings if requested (see, *mutatis mutandis*, *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, § 406, 26 September 2023; Öcalan *v. Turkey* [GC], no. 46221/99, § 210 *in fine*, ECHR 2005-IV; and *Popov v. Russia*, no. 26853/04, § 263, 13 July 2006). The Court notes in this connection that Article 485 § 1 (3) and Article 492 of the Serbian Code of Criminal Procedure provide for, *inter alia*, a defendant's right to request a retrial domestically if the Court finds a violation of his or her rights as guaranteed by the Convention. The Court therefore considers that, in the specific circumstances of the present case, the finding of a violation of the Convention constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant (see, for example and

mutatis mutandis, *Yüksel Yalçınkaya*, cited above, § 425, and *Matijašević v. Serbia*, no. 23037/04, §§ 55-57, ECHR 2006-X).

21. As to the applicant's claim for costs and expenses, the Court reiterates that 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 reasonable as to quantum. 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 5,800, covering costs and expenses 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* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 5,800 (five thousand eight hundred euros), plus any tax that may be chargeable to him, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 9 December 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Darian Pavli President