

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

THIRD SECTION

CASE OF SIMIĆ v. SERBIA

(Application no. 9172/21)

JUDGMENT

STRASBOURG

14 January 2025

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



In the case of Simić 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. 9172/21) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 25 December 2020 by a Serbian national, Mr Zoran Simić ("the applicant"), who was born in 1970, lives in Lukićevo and was represented by Mr V. Darijević, a lawyer practising in Zrenjanin;

the decision to give notice of the application to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar;

the parties' observations;

Having deliberated in private on 3 December 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the allegedly inadequate reasoning in the decisions of the domestic courts authorising surveillance measures in respect of the applicant. It raises issues under Article 8 of the Convention.

2. On 12 March 2010 the investigating judge of the Zrenjanin High Court issued a secret surveillance order (telephone tapping) against nine persons suspected of having committed various criminal offences. This order was then extended on several subsequent occasions, mostly by including phone tapping in respect of newly added suspects ("extension orders"). The applicant was affected by three of those extension orders, issued between 29 July 2010 and 29 March 2011.

3. The phone tapping orders in question were issued at the request of the public prosecutor and within the legal framework provided in the Serbian Code of Criminal Procedure. Specifically, Article 504e of that Code, as applicable at the material time, provided that any phone tapping orders be issued by a judge and supported by reasoning.

4. On 18 July 2018, as part of the criminal proceedings in which evidence obtained by means of the secret surveillance orders was used, the Zrenjanin High Court found the applicant guilty of abuse of office, forgery and bribery and sentenced him to two years and six months' imprisonment. This sentence was thereafter upheld by the Novi Sad Court of Appeal and the Supreme Court of Cassation.

5. On 13 February 2019 the applicant lodged an appeal with the Constitutional Court, alleging, among other things, that the phone tapping orders in question had been illegal. Subsequently, he supplemented the appeal alleging that the phone tapping was also in breach of Article 41 of the Serbian Constitution, which guarantees the secrecy of one's correspondence and other means of communication.

6. On 26 May 2020 the Constitutional Court rejected the applicant's constitutional appeal.

7. The applicant complained under Article 8 of the Convention that there had been an unlawful interference with his right to privacy because the impugned secret surveillance orders had been issued contrary to the requirements of the relevant domestic law in that they had lacked adequate reasoning and had contained no explanation as to why the investigation could not have been conducted by other, less intrusive, means.

THE COURT'S ASSESSMENT

8. The Government submitted that the applicant had failed to exhaust domestic remedies as he did not rely on Article 8 of the Convention or an equivalent provision in the Serbian Constitution in his constitutional appeal. However, this objection must be rejected since the applicant clearly raised those issues in his constitutional appeal, as well as in the supplementary submission lodged thereafter (see paragraph 5 above).

9. The Court also notes that the applicant's 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.

10. The general principles emerging from the Court's case-law concerning the Article 8 guarantees in cases of secret surveillance of telephone conversations have been summarised in *Dragojević v. Croatia* (no. 68955/11, §§ 78-84, 15 January 2015).

11. Turning to the present case, the Court notes that the phone tapping extension orders clearly amounted to an interference with the applicant's right to "private life" and "correspondence". Furthermore, no issue arises with the requirement of lawfulness or the legitimate aim of that measure. The only remaining salient point is thus its proportionality.

12. In this regard, the Court observes that the extension orders issued by the Zrenjanin High Court (see paragraph 2 above) were primarily based on a mere reference to the public prosecutor's request for the use of such measures, alongside a finding that the investigation had already established the existence of the "applicant's communications with other suspects and involvement in a criminal conspiracy". The orders also included the statutory phrase that "the investigation could not be conducted by other means or would be difficult." However, no substantive analysis was offered as to why the investigation could not have been pursued through other means or why

relying on such means would be difficult in the particular circumstances of the applicant's case.

13. In view of the above, the Court concludes that the extension orders in question did not live up to the requirements of Article 8 in so far as they did not contain a meaningful and effective assessment of whether the use of secret surveillance was necessary and justified in the given circumstances (see *Dragojević*, cited above, § 95).

14. There has therefore been a violation of Article 8 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 21,110 in respect of costs and expenses incurred before the domestic courts and for those incurred before the Court.

16. The Government considered the applicant's claim excessive, unfounded and unsubstantiated.

17. The Court considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage that may have been sustained by the applicant (see, for example, *Dumitru Popescu v. Romania (no. 2)*, no. 71525/01, § 116, 26 April 2007)

18. 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 also reasonable as to their quantum (see *Đurić v. Serbia*, no. 24989/17, § 95, 6 February 2024). 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 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 8 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 800 (eight hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses 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 14 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova	Peeter Roosma
Deputy Registrar	President