

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

THIRD SECTION

CASE OF VASILEV v. SERBIA

(Application no. 48150/18)

JUDGMENT

STRASBOURG

14 January 2025

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



In the case of Vasilev 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. 48150/18) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 29 September 2018 by a Serbian national, Mr Saša Vasilev ("the applicant"), who was born in 1979, lives in Bosilegrad and was represented by Mr N. Novković, a lawyer practising in Vranje;

the decision to give notice of the complaint concerning the applicant's right to a fair hearing 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 3 December 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the alleged breach of the principles of an adversarial trial and the equality of arms under Article 6 § 1 of the Convention in the context of an administrative dispute, where the applicant's firearm licence was revoked by the police based on undisclosed confidential information.

2. On 1 July 2015 the Bosilegrad Police Station revoked the applicant's licence for a hunting rifle, citing the necessity to protect the "personal and material security of other persons." This decision was based on a background check conducted by the police.

3. On 5 October 2015 the Ministry of Internal Affairs dismissed the applicant's appeal against that decision, deeming it unfounded. The Ministry further asserted that it was not required to disclose the operational reports and sources of information upon which the decision relied.

4. On 28 November 2015 the applicant sought judicial review before the Administrative Court, arguing that the decision to revoke his licence lacked adequate reasoning. He contended that he was prevented from effectively participating in the proceedings, as he was unable to challenge the facts underlying the decision or submit evidence to refute the stated reasons.

5. In response to the appeal, the Ministry of Internal Affairs submitted a statement to the court, accompanied by a confidential file containing

information regarding the background check. The court reviewed this file without the presence of the parties, and did not disclose its contents to the applicant.

6. On 8 September 2016 the Administrative Court dismissed the applicant's claim without having held a public hearing. It opined that the "nature of the dispute did not necessitate an in-person hearing or the special determination of facts". The court also dismissed the applicant's claims of being unable to participate effectively in the proceedings, citing legal restrictions that barred it from disclosing or discussing confidential information in its judgment.

7. On 1 March 2018 the Constitutional Court rejected the applicant's constitutional appeal.

THE COURT'S ASSESSMENT

8. The Government maintained that the applicant had not suffered a significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention, as he could have sold the rifle in question, which, in any event, had low market value, or alternatively, have disabled it and kept it as a trophy weapon. Furthermore, the applicant's licence would have been revoked anyway upon the entry into force of new relevant legislation. Lastly, the Government asserted that the confiscation of the rifle only impacted the applicant's ability to hunt, and therefore did not have a serious effect on his professional or family life.

9. The applicant contested this objection and emphasised that hunting was a significant part of his life. The inability to hunt deprived him not only of his favourite pastime but also of the friendships he had cultivated through hunting. Furthermore, the applicant noted that, being from a small town, news of his hunting licence being revoked by the police – due to allegations that he posed a danger to others and their property – spread quickly. This led to a shift in the community's attitude towards him, ultimately forcing him to relocate to another town.

10. The relevant principles as regards the criterion of no significant disadvantage, within the meaning of Article 35 § 3 (b) of the Convention, have been recently summarised, *inter alia*, in *X and others v. Ireland* (nos. 23851/20 and 24360/20, §§ 63-65, 22 June 2023).

11. Turning to the present case and quite apart from the pecuniary and lifestyle-related aspects of the limitation imposed on the applicant, the Government's objection cannot be accepted since the right to an adversarial trial and the principle of equality of arms, are by their very nature, of particular significance for the proper functioning and fairness of a given justice system. There is hence an issue of general interest which cannot be considered trivial, or, consequently, something that does not deserve an

examination on the merits (see, *mutatis mutandis*, *Juhas Đurić v. Serbia*, no. 48155/06, § 56, 7 June 2011).

12. Having regard to the foregoing, the Court considers that the requirement of Article 35 § 3 (b) of the Convention, namely the lack of any significant disadvantage for the applicant, has not been satisfied and that the Government's objection should therefore be dismissed.

13. The Court 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.

14. The general principles emerging from the Court's case-law concerning the right to the disclosure of relevant evidence in the context of a right to a fair trial, in circumstances comparable to the present case, have been summarised in *Regner v. the Czech Republic* [GC], no. 35289/11, §§ 146-49, 19 September 2017) and *T.G. v. Croatia* (no. 39701/14, §§ 48-54, 11 July 2017).

15. Turning to the present case, the statement of reasons for which the police considered that the applicant's hunting licence should be revoked was set out only in the vaguest of terms, that is without any specifics relating to the applicant's personal situation having been offered (see paragraph 2 above). It cannot therefore be said that the applicant was appraised, let alone sufficiently appraised, of the allegations against him which would have allowed him to effectively challenge them – factually or legally (see, *mutatis mutandis*, *Užukauskas v. Lithuania*, no. 16965/04, § 50, 6 July 2010).

16. Moreover, in these circumstances, the Administrative Court should have taken particular care and attention in the course of its own review of the matter so as to ensure that its decision-making was, as far as possible, in compliance with the requirement of adversarial proceedings and the principle of equality of arms (see *T.G. v. Croatia*, cited above, § 52). However, the said court upheld the Ministry's decision, and there is nothing to indicate that in doing so, it conducted its own independent assessment of the confidential information that was withheld from the applicant (contrast with *Regner*, cited above, § 20, *in fine*). Nor did the Administrative Court provide any justification as to why it did not, if only summarily, indicate the accusations against the applicant (see *Regner*, cited above, § 160). Furthermore, neither the police nor the domestic courts have claimed that the withholding of relevant information was justified by considerations such as national security, the protection of witnesses at risk of reprisal, or the need to safeguard confidential police investigation methods (contrast with *Regner*, cited above, §§ 20 and 148). No effort was made to mitigate the restrictions on the applicant's right to equality of arms, such as by offering an opportunity to refute specific allegations arising from the background check or by holding a public hearing (contrast with *Regner*, cited above, § 18).

17. In view of the above, the Court finds that the procedure before the Administrative Court did not incorporate adequate safeguards to protect the

interests of the applicant and ensure the that he received a fair trial as guaranteed under Article 6 § 1 of the Convention.

18. There has accordingly been a violation of this provision.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,628 euros in respect of the costs and expenses incurred domestically and those incurred before the Court itself.

20. The Government contested these claims.

21. The Court refers to its settled case-law to the effect that when an applicant has suffered an infringement of the rights guaranteed by Article 6 of the Convention, he or she should, as 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, for example and most recently, *Đurić v. Serbia*, no. 24989/17, § 91, 6 February 2024).

22. As regards the present case, however, the Court would note that Article 56 of the 2009 Administrative Disputes Act provides, *inter alia*, that a judicial review "procedure finished by means of a final judgment or court decision will be reopened" upon the party's request if the view expressed in the subsequently adopted judgment of the European Court of Human Rights, concerning the same matter, "may have an impact" on the lawfulness of the proceedings in question. Article 57 of the same piece of legislation furthermore states, *inter alia*, that the reopening may be requested within six months from the date of publication of the decision of the European Court of Human Rights in the Official Gazette of the Republic of Serbia, but that after five years have passed since "the finality of the court's decision" a reopening of the proceedings can no longer be requested (ibid., § 92).

23. Having regard to the above and in particular the temporal aspect of whether the said reopening could still be granted if requested by the applicant, the Court considers that, in the specific circumstances of the present case, the finding of a violation of the Convention cannot constitute in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant (ibid., § 93).

24. The Court is also of the opinion that, in any event, the applicant has certainly suffered some non-pecuniary damage. Given 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 the amount of EUR 3,600 in this connection, plus any tax that may be chargeable.

25. 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*, cited above, § 95). 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 2,000, 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*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, which are to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand 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 14 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Peeter Roosma President