

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

FOURTH SECTION

DECISION

Applications nos. 59134/16 and 10385/17
Tatjana PETRUŠIĆ against Serbia
and Ivica PETROVIĆ and Others against Serbia

The European Court of Human Rights (Fourth Section), sitting on 10 January 2023 as a Committee composed of:

Faris Vehabović*, President*,
Iulia Antoanella Motoc,
Branko Lubarda*, judges*,

and Branimir Pleše, *Acting Deputy Section Registrar,*

Having regard to:

the applications against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the applicants listed in the appended table ("the applicants") on 3 October 2016;

the decision to give notice of the applicants' complaints under Article 6 § 1 to the Serbian Government ("the Government"), represented by their Agent Ms Z. Jadrijević Mladar, and to declare inadmissible the applicants' complaints under Article 14 of the Convention;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicants complained that they could not, based on the rigid interpretation of the applicable legislation, be reimbursed for the costs of their legal representation incurred in the proceedings before the Constitutional Court wherein they had successfully pursued their constitutional appeals. According to the applicants, this amounted to a disproportionate limitation of their right to a fair trial in breach of Article 6 § 1 of the Convention.

PROCEDURE BEFORE THE COURT

2. After notice of the applications had been given to the respondent Government, in the applicants' observations of 27 October 2021 and 10 December 2021, respectively, submitted in reply to those of the Government, the applicants' representative stated, *inter alia*, that some of the Government's pleadings could only have been prepared by a person with no experience in practicing law or an "idiot". The pleadings in question referred to the Government's argument that the said reimbursement would, in any event, only have placed appellants with a legal representative in a more favourable position compared to appellants who were self-represented.

3. In their subsequent observations of 2 March 2022, the Government objected, *inter alia*, in respect of what they regarded as the use of disrespectful and insulting language on the part of the applicants' lawyer. The Government noted that the word "idiot" was both rude and offensive and as such clearly unacceptable. By using it, the applicants' lawyer had furthermore showed disrespect not only with regard to the respondent State but also towards the Court itself. The Government therefore asked the Court to declare both applications inadmissible on the basis that the impugned conduct had amounted to an abuse of the right of application within the meaning of Article 35 § 3 of the Convention.

4. By a letter dated 9 March 2022, the Court invited the applicants' representative to reply to the Government's objection.

5. In a letter received by the Court on 22 April 2022, the applicants' representative repeated his earlier pleadings on the merits of the case but did not provide any comments in respect of the objection.

THE COURT'S ASSESSMENT

6. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

7. The Court will next examine the Government's request to declare the two applications inadmissible on the basis of Article 35 §§ 3 and 4 which, in so far as relevant, provides as follows:

> "3. The Court shall declare inadmissible any individual application ... which it considers ... [to be] ... an abuse of the right of application.
>
> 4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings."

8. The Court reiterates that, according to its case-law, an application may be considered as an abuse of the right of individual petition where, *inter alia*, an applicant in his or her correspondence uses particularly vexatious, insulting, threatening or provocative language – whether this be directed against the respondent Government themselves or their Agent. Nevertheless,

it is not sufficient for the applicant's language to be merely cutting, polemical or sarcastic; it must exceed "the bounds of normal, civil and legitimate criticism" in order to be regarded as abusive. In that connection, legal professionals representing applicants before the Court must also ensure compliance with the procedural and ethical rules, including the use of appropriate language (see *X and Others v. Bulgaria* [GC], no. 22457/16, § 146, 2 February 2021, with further references). If, however, the applicant refrains, during the proceedings before the Court, from further using the provocative or offensive language in question and then expressly withdraws it and offers an apology, the application may not be rejected as abusive (see, for example, *Chernitsyn v. Russia*, no. 5964/02, §§ 26-28, 6 April 2006).

9. With this in mind, the Court takes note of the submissions of the applicants' representative as described in paragraph 2 above and concludes that the word "idiot", in particular, must be deemed insulting, as well as a gratuitous and personal attack on the respondent State's Agent in the course of the proceedings before it. The impugned language thus also exceeded "the bounds of normal, civil and legitimate criticism" without affecting the merits of the lawyer's own arguments (see paragraph 8 above; see also *Di Salvo v. Italy* (dec.), no. 16098/05, 11 January 2007).

10. In view of the foregoing and given the fact that the applicants' representative also failed to make use of a subsequent opportunity to withdraw the inappropriate language at issue or offer an apology (see paragraphs 4 and 8 above), the Court finds that such conduct was indeed contrary to the purpose of the right of individual petition.

11. It follows that the two applications in the present case must be rejected as an abuse of the right of application, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 2 February 2023.

Branimir Pleše Acting Deputy Registrar	Faris Vehabović President

Appendix

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	59134/16	Petrušić v. Serbia	03/10/2016	**Tatjana PETRUŠIĆ** 1966 Niš Serbian	Stanimir ĐURIĆ
2.	10385/17	Petrović and Others v. Serbia	03/10/2016	**Ivica PETROVIĆ** 1964 Aleksinac Serbian **Srđan COLARIĆ** 1967 Aleksinac Serbian **Dalibor KOSTOV** 1982 Aleksinački Rudnici Serbian **Goran PETROVIĆ** 1972 Žitkovac Serbian	Stanimir ĐURIĆ