



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

THIRD SECTION

DECISION

Application no. 34789/23
Jasmina PUNDA
against Serbia

The European Court of Human Rights (Third Section), sitting on 8 September 2026 as a Committee composed of:

Peeter Roosma, *President*,

Úna Ní Raifeartaigh,

Mateja Đurović, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 34789/23) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 12 September 2023 by a Serbian national, Ms Jasmina Punda (“the applicant”), who was born in 1969 and lives in Smederevo, and was represented by Ms T. Vasović, a lawyer practising in the same city;

the decision to give notice of the complaint concerning Article 4 of Protocol No. 7 to the Convention 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;

the decision to dismiss the Government’s objection to the examination of the application by a Committee;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. This application concerns an alleged violation of the *ne bis in idem* principle.

2. On 2 October 2012 the applicant and a certain N.P. were arrested by the police in Smederevo on the banks of the Danube. At the time of their arrest, they were found to be in possession of some 5,000 litres of diesel fuel,

for which they could not provide any documentation concerning its origin or how it had been acquired.

3. On 5 October 2012 the Smederevo police department lodged a criminal complaint with the Smederevo public prosecutor's office ("the public prosecutor") against the applicant and N.P., on suspicion of illegal trade, a criminal offence under Article 243 of the Serbian Criminal Code. According to the complaint, the applicant and N.P. had purchased the fuel from a vessel navigating the Danube River with the intention of reselling it at a higher price, all without the necessary authorisation. On the same day, the public prosecutor requested that the investigating judge (*istražni sudija*) of the Smederevo Court carry out certain investigative steps (*predlog za preduzimanje određenih istražnih radnji*), namely to question the applicant and commission an expert report regarding the seized fuel.

4. On 21 November 2012 the public prosecutor sought information from the Customs Administration (*Poreska uprava*) on whether it had initiated minor-offence proceedings against the applicant and, if so, to submit a copy of the request.

5. On 25 June 2013 the applicant was questioned by the investigating judge in the presence of her attorney and, on the same date, the expert submitted his report to the investigating judge.

6. On 18 July 2013 the public prosecutor dismissed the criminal complaint against the applicant and N.P. on account of an absence of reasonable suspicion that they had committed a criminal offence. Specifically, the public prosecutor stated that it could not be established beyond doubt that the diesel fuel had been purchased with the intention of reselling it and not for personal use to provide heating for the applicant's house.

7. On 10 February 2015 the Customs Administration sought information from the public prosecutor as to the status of the criminal proceedings against the applicant and N.P., in particular whether those proceedings were still pending.

8. On 20 April 2015 the Customs Administration requested that the Smederevo Minor Offences Court initiate proceedings for a customs offence against the applicant and N.P. for possessing diesel fuel on which customs duty had not been paid, in violation of the Article 297 of the Serbian Customs Law.

9. On 6 October 2015 the public prosecutor informed the Minor Offences Court that the criminal complaint against the applicant in respect of the events of 2 October 2012 had been dismissed (see paragraph 6 above).

10. On 7 May 2018 the Smederevo Minor Offences Court found the applicant and N.P. guilty of a minor offence and imposed on each of them a fine of 339,500 Serbian dinars (equivalent to about 2,875 euros at the material time). It also ordered the confiscation of the fuel.

11. On 30 August 2018 the Minor Offences Court of Appeals upheld the first-instance court's judgment.

12. On 7 October 2018 the applicant lodged a constitutional appeal, complaining, among other things, of the violation of her right not to be tried twice.

13. On 19 May 2023 the Constitutional Court dismissed the applicant's constitutional appeal.

14. The applicant subsequently complained before the Court that she had been tried and convicted in minor-offence proceedings after already being acquitted of the same offence in criminal proceedings, in violation of the *ne bis in idem* principle under Article 4 of Protocol No. 7 to the Convention.

THE COURT'S ASSESSMENT

15. The Government submitted that the application was manifestly ill-founded. They disputed the existence of the *idem* element, arguing that the criminal proceedings and minor-offence proceedings had concerned distinct offences, notwithstanding that they had arisen from the same factual background. They further argued that, as the public prosecutor had dismissed the criminal complaint, the criminal proceedings had not resulted in a determination of the applicant's guilt and that she had not been acquitted, convicted or punished. Lastly, they submitted that the Customs Administration and the public prosecutor had acted in a coordinated manner, each having verified, prior to instituting proceedings, whether proceedings had been pending against the applicant before the other authority and that, accordingly, there had been no duplication of proceedings (*bis*), but rather that the two sets of proceedings had been complementary (see paragraphs 4, 7 and 9 above).

16. The applicant contested the Government's objections and maintained her complaints. She argued that on receiving the criminal complaint from the police, the public prosecutor could have dismissed it immediately. Instead, during the first set of proceedings, she had been deprived of her liberty and questioned alongside her co-accused, while an expert report had been produced and a police report obtained. These investigative measures had been carried out by an investigating judge in accordance with the Serbian Code of Criminal Procedure as in force at the material time, which had entrusted such actions to the investigating judge in criminal cases, thereby conferring a judicial character to the proceedings. Following a thorough investigation by the investigating judge, the public prosecutor had dismissed the criminal complaint, a decision which, in substance, had had the effect of an acquittal. The applicant further submitted that, had the proceedings not been discontinued, an acquittal in the form of a judgment would inevitably have followed.

17. The Court does not find it necessary to examine all of the objections raised by the Government, as the application is, in any event, inadmissible for the reasons set out below.

18. The general principles concerning the right not to be tried and punished twice for the same offence have been summarised in *Mihalache v. Romania* ([GC], no. 54012/10, §§ 81-116, 8 July 2019).

19. The Court reiterates that Article 4 of Protocol No. 7 is intended to prohibit the repetition of criminal proceedings which have been concluded with final effect. In that connection, it has consistently held that the discontinuance of criminal proceedings by a prosecutor does not amount to a conviction or an acquittal, and that, accordingly, Article 4 of Protocol No. 7 does not apply in such circumstances (*ibid.*, § 96, and the cases cited therein; see also an overview of the Court's case-law on the subject in the *Decision on a request for an advisory opinion under Protocol No. 16 concerning the interpretation of Article 4 of Protocol No. 7 to the Convention*, request no. P16-2023-002, Supreme Court of Estonia, §§ 22-29, 19 February 2024). By contrast, only in specific and materially different circumstances, such as those in *Mihalache* (cited above), where the prosecutor had discontinued the proceedings while at the same time imposing a sanction of a punitive and deterrent nature, has the Court found that such decision amounted, in substance, to a "conviction" within the meaning of that provision. In that case the Court emphasised that such decision had not amounted to a mere discontinuance of proceedings, in which event Article 4 of Protocol No. 7 would not have been applicable (see *Mihalache*, cited above, §§ 99-101).

20. In the present case, the Court considers that, by dismissing the criminal complaint, the public prosecutor did not determine the applicant's criminal responsibility. It is true that, at the prosecutor's request, the applicant was questioned by an investigating judge and that further evidence was obtained. However, the mere fact that certain investigative measures were carried out by the investigating judge at the request of the public prosecutor does not, contrary to the applicant's submissions, imply that she was acquitted following a judicial determination of her criminal responsibility. The fact that those measures were undertaken by an investigating judge, rather than by the public prosecutor, reflects the domestic system of criminal procedure in force at the material time, under which the investigation fell within the competence of the investigating judge and not the prosecutor, a system which has since been reformed. In any event, it was not the investigating judge who concluded that there had been insufficient grounds to pursue criminal proceedings, but rather it was the public prosecutor who took that decision. Lastly, unlike the situation in *Mihalache*, the Court further notes that no penalty was imposed by the prosecutor in the present case.

21. In the light of the foregoing, the Court considers that the public prosecutor's decision amounted to a mere discontinuance of the proceedings. It follows that the present case falls within the scope of the Court's well-established case law to the effect that Article 4 of Protocol No. 7 to the Convention is inapplicable in such circumstances.

PUNDA v. SERBIA DECISION

22. Accordingly, the present application is incompatible *ratione materiae* with the provisions of the Convention and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 1 October 2026.

Olga Chernishova
Deputy Registrar

Peeter Roosma
President