

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

THIRD SECTION

CASE OF ŠABANOVIĆ AND OTHERS v. SERBIA

(Applications nos. 39819/16 and 4 others –
see appended list)

JUDGMENT

Art 6 (civil) • Fair hearing • Dismissal of police officers' compensation claims for unpaid salary supplements for work on public holidays, night work and overtime • Domestic judicial system successfully dealt with inconsistencies existing at the time in relation to such claims • Case-law harmonised by the Supreme Court within a reasonably short period of time • Applicants benefitted from adversarial proceedings and their arguments were thoroughly examined • Domestic courts' conclusions and interpretation of the relevant law could not be regarded as arbitrary or manifestly unreasonable

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 October 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Šabanović and Others v. Serbia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Ioannis Ktistakis*, President*,
Peeter Roosma,
Darian Pavli,
Úna Ní Raifeartaigh,
Mateja Đurović,
Canòlic Mingorance Cairat,
Vasilka Sancin*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the five separate applications 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") by five Serbian nationals (see appended list);

the decision to give notice of the applications to the Serbian Government ("the Government");

the parties' observations;

Having deliberated in private on 9 September 2025,

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

INTRODUCTION

1. The applications concern the divergent domestic case-law in respect of claims for the payment of salary supplements for overtime, night work and work on public holidays performed by police officers employed by the Ministry of the Interior (*Ministarstvo unutrašnjih poslova*). Two applicants also complained that they had been deprived of their property because the courts had dismissed their claims.

THE FACTS

2. A list of the applicants is set out in the appended table, together with the applicants' personal details, those of their representatives and the dates their applications were lodged with the Court.

3. The Serbian Government ("the Government") were represented by their Agent, Ms Z. Jadrijević Mladar.

4. The facts of the case may be summarised as follows.

I. THE DISPUTED PROCEEDINGS

5. The applicants, employees of the Ministry of the Interior (hereinafter "the MoI"), are police officers with the status of authorised officers within the meaning of Article 4 § 2.1 of the Police Act (see paragraph 35 below).

6. Between 9 June 2010 and 26 September 2011 the applicants lodged claims against the Republic of Serbia by initiating proceedings against the MoI, seeking compensation for unpaid salary supplements in respect of overtime, work on public holidays and night work (hereinafter "work during unsociable hours") which they had performed between April 2007 and September 2011. The applicants claimed that as their employer, the MoI, had not increased their salaries for work during unsociable hours in accordance with Article 147 § 1 of the Police Act (see paragraph 36 below), it was obliged to pay them salary supplements for work during unsociable hours, pursuant to the general rules of labour law (see paragraphs 32 and 33 below).

A. The first applicant, Mr Šabanović (application no. 39819/16)

7. On 13 May 2013 the Belgrade Court of First Instance no. 1 dismissed the first applicant's claim as unfounded. That decision was upheld by the Belgrade Court of Appeal on 9 October 2013. The courts ruled that the first applicant had performed work during unsociable hours, but that he was not entitled to salary supplements under the general labour regulations because his additional salary coefficient had already been increased by more than 30% in respect of work during unsociable hours, pursuant to Article 147 § 1 of the Police Act, which excluded the application of the general labour regulations, pursuant to Article 147 § 3 of the same Act (see paragraph 36 below). The courts determined this increase on the basis of an expert's report comparing the applicant's additional salary coefficient (Article 4 of the Regulation on the Salaries of Employees of the Ministry of the Interior, see paragraph 40 below) with the additional salary coefficient of a civilian officer (see paragraph 35 below) performing administrative tasks in the MoI who had the applicant's level of education but no work during unsociable hours. The courts held that this "comparable worker" ("other civil servants" under Article 147 § 1 of the Police Act, see paragraph 36 below) was appropriate and referred to decision Už-4045/12 of the Constitutional Court of 20 June 2013 (see paragraph 65 below).

8. On 17 December 2013 the first applicant lodged a constitutional appeal, complaining, *inter alia*, that there was inconsistent case-law on the salary supplements of police officers who worked during unsociable hours. On 19 November 2015 the Constitutional Court dismissed the first applicant's constitutional appeal as unfounded. The Constitutional Court referred to decision Už-3827/12 of 12 December 2012 (see paragraphs 62-64 below), in which it had dismissed the constitutional appeal of another claimant as

unfounded, and found that the applicant was in an almost identical factual and legal situation.

B. The second applicant, Mr Boričić (application no. 39902/16)

9. On 22 February 2013 the Belgrade Court of First Instance no. 1 dismissed the second applicant's claim as unfounded. On 8 May 2013 that decision was upheld by the Belgrade Court of Appeal. On 8 July 2013 the second applicant lodged a constitutional appeal, complaining, *inter alia*, that the case-law was inconsistent. On 19 November 2015 the Constitutional Court dismissed his constitutional appeal as unfounded. His complaints were dismissed by the courts on the same grounds as those relied on in the first applicant's case (see paragraphs 7 and 8 above).

C. The third applicant, Mr Tešić (application no. 60773/16)

10. On 30 March 2012 the Šabac Court of First Instance dismissed the third applicant's claim as unfounded. On 23 October 2013 that decision was upheld by the Belgrade Court of Appeal. On 22 January 2014 the third applicant lodged a constitutional appeal, complaining, *inter alia*, that the case-law was inconsistent. On 23 October 2014 the Constitutional Court dismissed his constitutional appeal as unfounded. His complaints were dismissed by the courts on the same grounds as those relied on in the first applicant's case (see paragraphs 7 and 8 above).

D. The fourth applicant, Ms Majstorović (application no. 17816/17)

11. On 28 February 2014 the Sombor Court of First Instance allowed the fourth applicant's claim for compensation in part, but the Novi Sad Court of Appeal upheld an appeal by the defendant, quashed the part of the decision allowing the fourth applicant's claim and returned the case for a retrial. It appears that the fourth applicant did not appeal against the part of the decision of 28 February 2014 dismissing her claim.

12. On 15 July 2014, following the retrial, the Sombor Court of First Instance dismissed the fourth applicant's claim as unfounded. On 29 September 2014 that decision was upheld by the Novi Sad Court of Appeal. The courts dismissed the fourth applicant's claim on essentially the same grounds as those relied on in the first applicant's case (see paragraphs 7 and 8 above). The only difference was that the appellate court referred to decision Už-1530/08 of the Constitutional Court of 21 January 2010 in explaining that the appropriate "comparable worker" was a civilian officer who had the same level of education as the fourth applicant but did not work during unsociable hours (see paragraph 58 below).

13. The fourth applicant lodged a constitutional appeal on 8 November 2014. On 15 September 2016 the Constitutional Court dismissed the appeal as unfounded. As in the case of the first applicant, the Constitutional Court referred to decision Už-3827/12 of 12 December 2012 which it had previously issued. It also noted that the fourth applicant had submitted only one final decision as evidence of inconsistent case-law, which was not sufficient to establish the existence of "profound and long-standing" inconsistencies in the case-law of the lower courts.

E. The fifth applicant, Mr Pifar (application no. 31419/17)

14. On 9 July 2013 the Sombor Court of First Instance ruled in favour of the fifth applicant and upheld his compensation claim. On 26 May 2014 the Novi Sad Court of Appeal allowed an appeal by the defendant, quashed the decision, and returned the case for a retrial.

15. On 25 March 2015, following the retrial, the Sombor Court of First Instance dismissed the fifth applicant's claim as unfounded. On 10 September 2015 the Novi Sad Court of Appeal upheld the first-instance decision. The fifth applicant lodged a constitutional appeal on 12 November 2015. On 8 December 2016 the Constitutional Court dismissed his constitutional appeal as unfounded. His complaints were dismissed by the courts on the same grounds as those relied on in the first applicant's case (see paragraphs 7 and 8 above).

II. OTHER RELEVANT FACTS

16. On 12 December 2016 the Sombor Court of First Instance rejected a request to reopen proceedings lodged by the first applicant after he had learned that an identical claim by another claimant had been allowed by the lower courts because the Supreme Court had changed its position on the issue of a "comparable employee" (see paragraph 53 below). The second applicant also lodged a request to reopen proceedings on the same grounds, which was rejected by the Belgrade Court of First Instance no. 1 on 12 December 2016. On 31 March 2017 the Belgrade High Court confirmed the decision in the case of the first applicant, and on 16 June 2017 it did so in the case of the second applicant. On 6 June 2018 the Supreme Court dismissed an appeal on points of law lodged by the first applicant as unfounded, and on 25 April 2018 it did so in relation to an appeal on points of law lodged by the second applicant. It held that the Civil Procedure Act 2004 did not provide for the reopening of proceedings on the basis of a decision of the Supreme Court on a change in the interpretation of the law and judicial practice regarding a certain issue.

RELEVANT DOMESTIC LEGAL FRAMEWORK AND PRACTICE

I. LEGAL FRAMEWORK

A. The Constitution of the Republic of Serbia (*Ustav Republike* Srbije, published in Official Gazette of the Republic of Serbia – OG RS – no. 98/06)

17. The relevant provisions of the Constitution read as follows:

Article 32 § 1

"Everyone shall have the right to ... [a fair hearing before a] ... tribunal ... [in the determination] ... of his [or her] rights and obligations ..."

Article 36 § 1

"Equal protection of rights before the courts of law ... shall be guaranteed."

Article 60 § 4

"Everyone shall have the right to ... a fair wage for work done ... No person may waive these rights."

Article 170

"A constitutional appeal may be lodged against individual decisions or actions of State bodies or organisations exercising delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been exhausted or have not been prescribed."

B. The Constitutional Court Act (*Zakon o ustavnom sudu*, published in OG RS nos. 109/07, 99/11 and 103/15)

18. Article 83 § 1 provides that a constitutional appeal can be lodged within thirty days from either the date of notification of the individual act or the date of the action that violates or denies a human or minority right and freedom guaranteed by the Constitution.

C. The Court Organisation Act (*Zakon o uređenju sudova,* published in OG RS nos. 116/08, 104/09, 101/10, 101/11, 101/13, 106/15)

19. Article 31 provides, *inter alia*, that the Supreme Court ensures the uniform application of the law by the courts.

20. Article 43 § 2 provides, *inter alia*, that a division of the Supreme Court convenes when there are inconsistencies in the application of the law between the chambers of the court, or if a chamber departs from its legal opinion or a legal opinion accepted by all chambers. Article 43 § 3 provides that all legal

opinions adopted by a division of the Supreme Court are binding for all chambers of that division.

D. The Civil Procedure Act 2004 (*Zakon o parničnom postupku*, published in OG RS nos. 125/04 and 111/09)

21. Article 394 § 1, Article 396 and Article 398 provide that parties may lodge an appeal on points of law (*revizija*) with the Supreme Court. They may do so within thirty days of receiving a final decision rendered at second instance, and only if the relevant legislation, procedural or substantive, has been breached by the lower courts, under the conditions provided for by Article 394 §§ 2, 3 and 4.

22. Article 395 provides that exceptionally, a final second-instance decision can be appealed against on points of law if it cannot be challenged by means of an appeal on points of law under Article 394, if the second-instance court assesses that such an appeal is required in order to examine legal issues in the common interest or achieve consistency in the case-law, or when a new legal interpretation is required.

E. The Civil Procedure Act 2011 (*Zakon o parničnom postupku*)

1. The Civil Procedure Act before the 2014 amendments (published in OG RS no. 72/11)

23. The Civil Procedure Act 2011 came into force on 1 February 2012 and repealed the Civil Procedure Act 2004.

24. Article 403 § 1, Article 405 and Article 407 provide that parties may lodge an appeal on points of law (*revizija*) with the Supreme Court. They may do so within thirty days of receiving a final decision rendered at second instance, and only if the relevant legislation, procedural or substantive, has been breached by the lower courts, under the conditions provided for by Article 403 §§ 1 and 2.

25. Article 404 § 1 provides that exceptionally, an appeal on points of law against a second-instance judgment which could not be challenged by means of an appeal on points of law under Article 403 must be permitted in the event that the substantive law has been applied incorrectly. Such an appeal must be permitted if, according to the assessment of the second-instance court or the Supreme Court, it is necessary to consider legal issues of general interest or legal issues concerning the equal rights of citizens, for the purpose of harmonising the domestic case-law and, if necessary, providing a new interpretation of the law (a special appeal on points of law – *specijalna revizija*). In accordance with Article 404 § 2, the second-instance court decides whether the special appeal on points of law will be permitted, while Article 404 § 3 provides for the right to appeal to the Supreme Court against that decision.

26. Article 416 §§ 1 and 2 provide that should the Supreme Court find a breach of the substantive law, it must allow the appeal on points of law and either reverse the contested decision or quash the lower decisions or only the second-instance decision, and refer the case for a retrial.

27. Article 506 § 1 provides that proceedings initiated before the entry into force of the Civil Procedure Act 2011 must be conducted in accordance with the Civil Procedure Act 2004, except if following the entry into force of the 2011 Act, a decision concluding the proceedings has been quashed and the case has been returned for a retrial, in which case the Civil Procedure Act 2011 applies (Article 506 § 2).

2. The Civil Procedure Act 2011 with 2014 amendments (published in OG RS nos. 72/11 and 55/14)

28. Amendments to the Civil Procedure Act 2011 came into force on 31 May 2014.

29. Under the amended Article 404, the Supreme Court decides whether an appeal on points of law will be permitted, and the second-instance court is no longer involved in the decision-making.

30. The other provisions of the Act, in their relevant parts, remained unchanged.

F. The Obligations Act (*Zakon o obligacionim odnosima*, published in Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 29/78, 39/85, 45/89, 57/89 and Official Gazette of the Federal Republic of Yugoslavia no. 31/93)

31. Article 154 § 1 provides that whoever causes damage to another person is obliged to compensate for it, unless he or she proves that the damage occurred through no fault of his or her own. Article 172 § 1 provides that a legal entity is liable for damage it causes to a third party in the performance of its functions or in connection with the performance of its functions.

G. The Labour Act (*Zakon o radu*, published in OG RS nos. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014)

32. Article 108 provides, *inter alia*, that an employee is entitled to an increase in salary as determined by a general act and his or her employment contract, in particular: (1) for working on a public holiday; (2) for working at night, if such work has not been taken into account in determining the base salary; and (3) for working overtime.

H. The Salaries of Civil Servants and Employees Act (*Zakon o platama državnih službenika i nameštenika*, published in OG RS nos. 62/06, 101/07, 99/10, 108/13, 99/14, 95/18, 14/22, 19/25)

33. The relevant parts of Articles 24, 25 and 27 of the Salaries of Civil Servants and Employees Act provide that a civil servant is entitled to: (1) a supplement to his or her basic salary for each hour of night work; (2) a supplement to his or her basic salary for each hour of work performed on a public holiday; and (3) an hour and a half of leave (*pravo na sat i po slobodno*) for each hour of overtime, to be used the following month. Should the nature of the civil servant's work prevent him or her from taking such leave, he or she will be entitled to a salary supplement for each hour of overtime.

I. The Police Act 2005 (*Zakon o policiji*, published in OG RS nos. 101/05 and 63/09)

34. The Police Act 2005 came into force on 29 November 2005.

35. Article 4 § 2 provides that police officers in the MoI can be uniformed or non-uniformed employees who are authorised to exercise police powers (authorised police officers – *ovlašćena službena lica*), and other employees performing other duties which are closely related to police tasks who can be authorised to perform police tasks (civilian officers – *lica na posebnim dužnostima*).

36. Articles 146 and 147 read as follows:

Article 146

"Police officers and other employees of the [MoI] shall be entitled to a salary comprising a basic component determined by the Government and a basic and supplementary coefficient relating to grade, special working conditions, danger, responsibility, and complexity of work.

The salary referred to in paragraph 1 of this Article shall be increased by 0.4% for every completed year of service. The amount of the coefficient specified in this Article shall be determined by the Minister [of the Interior] by a decree on the salaries of employees of the [MoI], with the approval of the Government."

Article 147

"Owing to special working conditions, risks to life and health, responsibilities, complexity, the specific nature of duties, work on public holidays, work at night, shift work and overtime, duty work, being on call and other [ways in which such] work [may be] irregular, coefficients for calculating salaries may be determined for [MoI] employees that are nominally 30 to 50% higher than [those used] for other civil servants, within the [limits of the] total funds required for the payment of additional coefficients referred to in paragraph 1 of Article 146 of this Act.

With the Government's consent, coefficients [referred to in] paragraph 1 of this Article may be increased by more than 50% for particular categories of employees.

The provisions of general labour regulations on increased salaries shall not apply to the rights and duties arising from the above-mentioned special working conditions."

37. Article 194 of the Police Act 2005 provides, *inter alia*, that on the day the Act enters into force, employees of the MoI will continue to work in the same positions and will keep their salaries, in accordance with the current regulations and other secondary legislation, until secondary legislation regulating and systematising posts in the MoI in accordance with the Police Act 2005 has been adopted and a decision has been made on a person's assignment to a post in accordance with that new legislation, or until another decision has been adopted in accordance with the law.

38. On 8 December 2011, in accordance with the Act on Amendments to the Police Act (published in OG RS no. 92/11), Articles 146 and 147 were amended. The amended provisions provided, *inter alia*, that a salary included a basic component, basic and supplementary coefficients, and salary supplements. The amendments introduced Article 147a, which provided for, *inter alia*, salary supplements for work performed on public holidays, night work and overtime.

39. The Police Act 2005 was repealed in February 2016 when the new Police Act (*Zakon o policiji*, published in OG RS no. 6/16) came into force.

J. The Regulation on the Salaries of Employees of the Ministry of the Interior (refined text) (*Pravilnik o platama zaposlenih u Ministarstvu unutrašnjih poslova*, ST 01 p.pov. 4908/06-4 of 26 June 2006 and ST 01 p.pov. 3070/07-9 of 16 May 2007) – not publicly available

40. The applicants' salary coefficients were determined with reference to the Regulation on the Salaries of Employees of the Ministry of the Interior ("the Salaries Regulation"), which came into force on 26 June 2006 and was amended on 16 May 2007. It was adopted by reference to Articles 146 and 147 of the Police Act. In Article 1, the relevant parts prescribe that the Salaries Regulation will, in accordance with the law and a collective agreement, regulate the salaries of MoI employees by determining coefficients, as well as individual monthly increases or decreases in those coefficients. The basic coefficient will be determined for workplace tasks, and the additional coefficient will be determined for workplace tasks, special working conditions, a person's responsibility, and the complexity of tasks, as well as a person's job title, that is, his or her rank (Article 2 §§ 1, 2 and 3). Article 3 establishes the basic coefficients for thirty-three paygrades, while Article 4 provides that paygrades – the basic and additional coefficients for MoI jobs – will be specified in an annex representing an integral part of the Salaries Regulation. Article 7 specifies additional coefficients for job titles. The annex specifies that the additional salary coefficient for the post of police officer is 6.52.

II. PRACTICE

A. Appellate courts

1. Preliminary remarks

41. The domestic case-law presented in this part of the judgment concerns claims for compensation for unpaid salary supplements brought by other police officers who worked during unsociable hours.

42. In all of the cases in which the appellate courts allowed the claims after comparing salary coefficients, they did so after comparing claimants' salary coefficients to those of authorised police officers who had not worked during unsociable hours. The courts then decided that their salaries had not been increased in accordance with Article 147 § 1 of the Police Act, found that the MoI had caused damage to the claimants and ordered the Republic of Serbia to compensate them for the unpaid salary supplements under either Article 108 of the Labour Act (see paragraph 32 above) or Articles 24, 25 and 27 of the Salaries of Civil Servants and Employees Act (see paragraph 33 above), in conjunction with Article 154 § 1 and Article 172 § 1 of the Obligations Act (see paragraph 31 above).

43. In other cases in which the courts dismissed claims on the basis of the salary coefficient comparison method (like in the applicants' cases), the courts compared claimants' salary coefficients to those of civilian officers who had not worked during unsociable hours and found that their salaries had been increased in accordance with Article 147 § 1 of the Police Act.

44. The courts allowed some claims on other grounds (see paragraph 45 below).

2. The Kragujevac Court of Appeal

(a) Gž1 241/12 of 2 February 2012, Gž1 1291/12 of 29 May 2012, Gž1 1567/12 of 18 June 2012 and Gž1 391/12 of 2 July 2012

45. The Kragujevac Court of Appeal allowed the claims in question and held that the general labour regulations on salary supplements applied because the defendant had failed to prove that the MoI had, by way of decision, increased the claimants' salary coefficients on the basis of work performed during unsociable hours in the manner and by the amount prescribed by Article 147 § 1 of the Police Act (*rešenjem poslodavca nije utvrđen koeficijent za obračun plate koji je uvećan po osnovu navedenih posebnih uslova rada na način i u visini propisanoj odredbom člana 147. stav 1. Zakona o policiji*).

(b) Gž1 1966/13 of 11 July 2013, Gž 1943/13 of 22 July 2013, Gž1 3289/12 of 24 July 2013, Gž1 3506/12 of 24 July 2013, Gž1 2426/12 of 26 July 2013, Gž1 2643/13 of 2 October 2013, Gž1 3112/13 of 19 November 2013, Gž1 281/14 of 20 May 2014, Gž1 3797/13 of 16 December 2014, Gž1 2235/15 of 8 December 2015 and Gž1 2652/15 of 3 March 2016

46. The Kragujevac Court of Appeal allowed the claims in question after comparing the total salary coefficients of the claimants with the total salary coefficients of other authorised police officers who had the same level of education but did not work during unsociable hours.

3. The Niš Court of Appeal

47. The Niš Court of Appeal allowed the claims in Gž1 2186/15 of 30 September 2015 and Gž1 367/16 of 25 February 2016 after comparing salary coefficients. It found that the salary coefficients of the claimants had to be compared with the salary coefficients of an MoI employee with the same status, that is, the same level of education and a similar basic coefficient (the basic salary coefficient represents an employee's salary group).

4. The Novi Sad Court of Appeal

48. The Novi Sad Court of Appeal allowed the claims in Gž1 2073/12 of 26 June 2013, Gž1 1562/16 of 6 June 2016, Gž1 1377/16 of 8 June 2016, Gž1 2032/16 of 8 July 2016 and Gž1 2058/16 of 11 July 2016 after comparing the claimants' additional salary coefficients (Article 4 of the Salaries Regulation, see paragraph 40 above) with the additional salary coefficients of other authorised officers who had the same level of education but did little or no work during unsociable hours.

5. The Belgrade Court of Appeal

(a) Gž1 2937/15 of 12 November 2015

49. In that case, the Belgrade Court of Appeal adopted the same approach as that used in the applicants' cases. It dismissed the claimants' claims after comparing their additional salary coefficients (Article 4 of the Salaries Regulation, see paragraph 40 above) with the additional salary coefficients of other civilian officers who had the same level of education but did not work during unsociable hours. That decision was subsequently quashed by the Supreme Court on 14 April 2016.

(b) Gž1 2114/15 of 16 April 2015, Gž1 2119/16 of 15 July 2016, Gž1 2127/16 of 22 July 2016, Gž1 2181/16 of 22 July 2016, Gž1 3211/16 of 12 October 2016, 3265/15 of 23 December 2016, Gž1 165/17 of 18 January 2017, Gž1 776/16 of 2 February 2017 and Gž1 4251/21 of 28 October 2021

50. The Belgrade Court of Appeal allowed the claims in those cases after comparing the claimants' additional salary coefficients with the additional

salary coefficients of other authorised officers who had the same level of education but did not work during unsociable hours.

(c) Gž1 2160/16 of 16 December 2016

51. The Belgrade Court of Appeal allowed the claims in that case after comparing the claimants' total salary coefficients with the additional salary coefficients of other authorised officers who had the same level of education but did not work during unsociable hours.

B. The Supreme Court

1. Legal opinion of 23 September 2014, adopted by the Civil Division of the Supreme Court

52. According to the legal opinion of 23 September 2014, prior to 2010 all compensation claims lodged by police officers and other authorised officers for compensation in respect of unpaid salary supplements for work during unsociable hours had been dismissed as unfounded, which had been in accordance with the case-law of the Supreme Court. It appeared that during that period the courts had dismissed such claims on the basis of the principle of *lex specialis derogat legi generali* (contained in Article 147 § 3 of the Police Act, see paragraph 36 above), without determining on a case-by-case basis whether a claimant's salary coefficients had been increased in comparison with those of another civil servant. In 2010 the Constitutional Court had adopted a different approach and had ruled that in the case of claims based on the Police Act, a claimant was entitled to salary supplements if his or her salary had not been increased by 30-50%, which was a question of fact to be determined on a case-by-case basis (see paragraph 58 below). In order to harmonise the case-law of the lower courts, the Supreme Court held that claimants were not entitled to salary supplements if their basic salaries had previously been increased by 30-50%. The Supreme Court held that a claimant's salary should be compared with the salary of another police officer who was not an authorised officer and had the same level of education. If all police officers were authorised officers, then the salary should be compared with the salary of another civil servant with the same level of education. The Supreme Court further held that a "comparable worker" could not be "a typist, a driver [or] a delivery person" (a State employee – *nameštenik*). Lastly, the Supreme Court held that since the case-law of the lower courts was not uniform, the special appeal on points of law provided for in Article 404 of the Civil Procedure Act 2011 would always be admissible in cases where the courts had ruled in a manner contrary to its legal opinion of 23 September 2014, irrespective of the assessment of the relevant court of second instance (see paragraph 25 above).

2. Legal opinion of 10 November 2015, adopted by the Civil Division of the Supreme Court, amending the legal opinion of 23 September 2014

53. According to the amended legal opinion of 10 November 2015, a "comparable worker" (the term "civil servant" from Article 147 § 1 of the Police Act – see paragraph 36 above) had to be an authorised officer who had the same level of education as the claimant but did not work during unsociable hours. The remainder of the opinion of 23 September 2014 remained unchanged.

54. Following the adoption of the amended legal opinion, the Supreme Court rendered a number of decisions in cases which were factually and legally identical or similar to the applicants' cases, and applied the "new" approach to the issue of a "comparable worker". In decisions Rev2 523/2015 of 18 November 2015, Rev2 460/15 of 3 December 2015, Rev2 736/15 of 15 December 2015, Rev2 1645/15 of 15 December 2015, Rev2 1800/15 of 23 December 2015 and Rev2 2046/15 of 23 December 2015, the Supreme Court allowed special appeals on points of law lodged by the claimants because there was a need to harmonise the case-law, quashed the decisions dismissing the claimants' compensation claims and ordered retrials, indicating that the claimants' salaries should be compared with the salary of an authorised officer who had the same level of education but did not work during unsociable hours. In Rev2 1301/16 of 14 September 2016, the Supreme Court applied the same approach, but reversed the second-instance decision in question and allowed the claimants' claim. On the other hand, in Rev2 604/17 of 12 April 2017, Rev2 919/17 of 27 April 2017 and Rev2 725/19 of 10 April 2019, the Supreme Court did not allow the special appeals on points of law lodged by the defendant, ruling that the lower courts' decisions to allow the compensation claims were in accordance with the case-law, which had been harmonised in the meantime.

C. The Constitutional Court

1. Iu-16/06 of 21 September 2006

55. The Constitutional Court rejected an initiative to assess the constitutionality of Article 147 § 3 of the Police Act (see paragraph 36 above) and held that the legislature's decision to regulate differently the manner in which the salaries of a particular group of State employees were determined and increased, taking into account the specific nature of their work, was in conformity with the Constitution. It further held that a salary increase of that nature constituted a special situation which excluded the application of the general rules of labour law on salary increases.

2. Case-law of the Constitutional Court on constitutional appeals

56. The claimants in all of the cases were police officers who, like the applicants, sought compensation for unpaid salary supplements in respect of work during unsociable hours.

(a) Už-1530/08 of 21 January 2010

57. The claimant in that case lodged a compensation claim on 6 April 2006, which was dismissed by a final decision of the Čačak District Court on 12 November 2008. The claimant lodged a constitutional appeal.

58. The Constitutional Court ruled in favour of the claimant and held that his right to fair remuneration had been violated (see paragraph 17 above). It quashed the second-instance decision finding that the claimant was not entitled to salary supplements for work during unsociable hours because Article 147 § 3 of the Police Act excluded the application of the general rules of labour law, irrespective of the fact that the claimant's salary coefficients had not been increased in accordance with Article 147 § 1 of the Police Act. The Constitutional Court ruled that the MoI could indeed decide whether to increase the salary coefficients of its employees who worked during unsociable hours. However, the application of the general rules of labour law was to be excluded only if an employee's salary coefficients had been increased by a decision of the employer (*rešenjem poslodavca*) in the manner and by the amount specified in Article 147 § 1. The Constitutional Court expressed the same legal opinion in decision Už- 2472/10 of 23 May 2012.

(b) Už-2007/2010 of 13 June 2012

59. The claimants in that case lodged compensation claims on 14 December 2006, which were dismissed by a final decision of the Novi Sad District Court on 22 October 2008. The claimants lodged a constitutional appeal.

60. The Constitutional Court ruled in favour of the claimants, finding a violation of their rights under Article 36 § 1 and Article 60 § 4 of the Constitution of Serbia. However, it did so in relation to decisions of the lower courts on claims for compensation under the Internal Affairs Act, which had been in force until 29 November 2005. In contrast, as regards the claims relating to the period when the Police Act applied, the Constitutional Court held that the lower courts had acted correctly in deciding to dismiss the claimants' claims on the grounds that their salary coefficients had been increased and were 30% higher than the coefficients of other civil servants pursuant to Article 147 § 1, which excluded the application of the general rules of labour law pursuant to Article 147 § 3 of the Police Act. It is unclear to whom the courts compared the claimants' salary coefficients.

61. The Constitutional Court also found a violation of the claimants' right to a fair trial on account of the divergent case-law of the lower courts.

However, such divergences concerned the application of the Internal Affairs Act.

(c) Už-3827/2012 of 12 December 2012

62. The claimant in that case lodged a compensation claim on 25 June 2010. It was dismissed on the same grounds as those relied on in the applicants' cases (see paragraph 7 above). The final decision was adopted on 12 January 2012. The Constitutional Court referred to that decision in dismissing the constitutional appeals in the applicants' cases.

63. In a constitutional appeal, the claimant complained of inconsistent case-law because claims made by his colleagues based on the same factual and legal context had been upheld. The domestic courts had upheld those claims because the MoI had failed to render separate decisions on increases in additional salary coefficients in accordance with Article 147 § 1 of the Police Act. Relying on Article 36 § 1 of the Constitution, the Constitutional Court dismissed this part of the constitutional appeal, holding that those cases were not significantly factually similar (*ne postoji bitno slična činjenična situacija*) because the lower courts had not dismissed the claims on the basis of a comparison of the claimants' salary coefficients with those of a comparable employee.

64. As for the allegations that the lower courts had wrongly applied Article 147 § 1 of the Police Act, the Constitutional Court determined this complaint under Article 32 § 1 of the Constitution (see paragraph 17 above). Referring to decision Už-1530/08 of 21 January 2010 (see paragraphs 57 and 58 above) the Constitutional Court held that unlike in that case, the claimant's salary coefficients had been increased in accordance with Article 147 § 1 of the Police Act and the increase had been determined on the basis of a salary coefficient comparison. In addition, the lower courts had correctly ruled that the application of the general rules of labour law was excluded pursuant to Article 147 § 3 of the Police Act. The claimant's additional salary coefficient had been compared with the additional salary coefficient of another civil servant who had the same level of education but did not work during unsociable hours.

(d) Už-4045/2012 of 20 June 2013

65. A claim for compensation lodged by the claimant in that case was dismissed by a final decision of the Novi Sad Court of Appeal on 21 March 2012. The claimant lodged a constitutional appeal. The Constitutional Court found a violation of his right to a fair trial (Article 32 § 1 of the Constitution) and right to fair remuneration (Article 60 § 4 of the Convention) because the lower courts had arbitrarily applied the Internal Affairs Act (like in Už- 007/2010 of 13 June 2012, see paragraphs 59-61 above). In assessing the application of Article 147 § 1 of the Police Act, the Constitutional Court ruled

that the lower courts had acted correctly in dismissing the claimant's compensation claim after finding that his additional salary coefficient (Article 4 of the Salaries Regulation, see paragraph 40 above) had been increased by 41.43% in comparison with the additional salary coefficient of a civilian officer. Lastly, the Constitutional Court decided that it was not necessary to examine the claimant's allegations that the case-law on this issue was divergent, as it had already found a violation of his rights and ordered a retrial.

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

67. The applicants complained that the domestic courts had dismissed their claims while simultaneously and inconsistently ruling both in favour of and against hundreds of the applicants' fellow officers, despite the fact that their claims had been based on the same or similar facts and had concerned identical legal issues, which had created legal uncertainty and had amounted to a denial of justice. The applicants also alleged that the domestic courts had arbitrarily interpreted and applied the substantive law when dismissing their claims. They alleged a breach of Article 6 § 1 of the Convention which in its relevant part reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

1. The Government's objection of non-exhaustion of domestic remedies

(a) The parties' submissions

68. The Government argued that the applicants had failed to lodge appeals on points of law against the second instance decisions dismissing their claims. In particular, the Government argued that a special appeal on points of law (*specijalna revizija*) had been an available and effective remedy for the applicants' complaints since the adoption of the legal opinion of the Supreme Court of 23 September 2014 (see paragraph 52 above). As the applicants had not lodged such an appeal, the Government claimed that they had not exhausted domestic remedies in accordance with Article 35 § 1 of the Convention.

69. The applicants submitted that they had not fulfilled the conditions to lodge "regular" appeals on points of law (see paragraphs 21 and 24 above). As to the special appeal on points of law (see paragraphs 22, 25 and 29 above), they argued that that legal remedy had become effective for their complaints only after the Supreme Court's amended legal opinion of 10 November 2015 because the dismissal of their claims had been in accordance with the Supreme Court's opinion of 23 September 2014 (see paragraph 53 above). The second, third, fourth and fifth applicants also emphasised that the Constitutional Court had not rejected their constitutional appeals as inadmissible, even though they had not lodged special appeals on points of law.

(b) The Court's assessment

(i) Relevant principles

70. At the outset, the Court reiterates that under Article 35 § 1 of the Convention it may only deal with an application after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, for example, *Mirković and Others v. Serbia*, nos. 27471/15 and 12 others, § 96, 26 June 2018).

71. The relevant principles as regards the exhaustion of domestic remedies are set out in *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* ([GC], no. 21881/20, §§ 138-45, 27 November 2023).

(ii) Application of the above principles to the present case

72. The Government argued that the applicants had access to both the 'ordinary' appeal on points of law (see paragraphs 21 and 24 above) and the special appeal on points of law (see paragraphs 22, 25 and 29 above).

73. There is no need for the Court to decide whether the 'ordinary' or special appeal on points of law was an available and effective legal remedy in the applicants' case, since the Government's plea of non-exhaustion must be rejected for the reasons set out below.

74. The Court notes that, in the circumstances of the present case, the Serbian legal system provides for two remedies against a final second-instance decision: a constitutional appeal to the Constitutional Court, and an appeal on points of law to the Supreme Court. Both must be lodged within thirty days from the delivery of the final second-instance decision (see paragraphs 18, 21 and 24 above). The Court has already held that a constitutional appeal should, in principle, be deemed effective within the meaning of Article 35 § 1 of the Convention in respect of all applications lodged from 7 August 2008 onwards (see *Vinčić and Others v. Serbia*,

nos. 44698/06 and 30 others, § 51, 1 December 2009). The Court sees no reason to hold otherwise in the present case.

75. In its guidelines (*Stavovi Ustavnog suda koji se odnose na postupak prethodnog ispitivanja ustavne žalbe*) of 2 April 2009, the Constitutional Court noted that an appeal on points of law had to be exhausted before a constitutional appeal could be lodged, only if the law provided that an appeal on points of law was available as of right.

76. The applicants lodged constitutional appeals against final decisions rendered by second-instance courts, which were dismissed as manifestly unfounded (see paragraphs 8, 9, 10, 13 and 15 above). The Court emphasises that the applicants' constitutional appeals were not rejected by the Constitutional Court on the grounds that they had failed to lodge appeals on points of law.

77. In the light of the foregoing, it would be unduly formalistic of the Court to require the applicants to exhaust a remedy which even the highest court of their country would not oblige them to exhaust (see, *mutatis mutandis*, *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, §§ 117 and 118, ECHR 2007-IV). It appears that the Constitutional Court held, albeit implicitly, that the applicants were not obliged to lodge appeals on points of law before lodging their constitutional appeals.

78. Consequently, in the particular circumstances of the case, the Court finds that the Government's plea of non-exhaustion must be rejected.

2. Further question regarding non-exhaustion

79. It appears that in their constitutional appeals the applicants did not rely on the same conflicting decisions as those submitted to the Court to demonstrate the divergences in the case-law (see paragraph 63 above for the reasons for which the Constitutional Court dismissed the applicants' constitutional appeals in respect of the divergent case-law complaints).

80. This raises the question of whether the applicants exhausted domestic remedies in accordance with the domestic rules of procedure.

81. However, the Court observes that when notice of the applications was given to the Government, they did not raise an objection as to non-exhaustion in respect of the above-mentioned facts (see paragraph 79 above). This being so, the Court cannot examine this question of its own motion (see, *mutatis mutandis*, *M.C. v. Türkiye*, no. 31592/18, § 44, 4 June 2024, and the authorities cited therein).

3. Conclusion

82. The Court finally holds that the applicants' complaints are neither manifestly ill-founded nor inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Preliminary remarks

83. The Court observes at the outset that the present case concerns disparities between the decisions of different appellate courts ruling as courts of last instance.

84. The parties have submitted copies of numerous domestic decisions in support of their arguments. In its assessment of the applicants' complaints, the Court did not take into account the following documents:

(a) the decisions of first-instance courts, where the Court could not determine whether the parties in those proceedings had appealed against the decisions and what (if any) decisions had been taken by courts of second instance;

(b) the decision of the Constitutional Court Už-429/09 of 13 October 2011 and the decision of the Supreme Court Rev2 83/15 of 17 June 2015, which concern compensation claims by police officers in respect of a period prior to the entry into force of the Police Act;

(c) the decision of the Novi Sad Court of Appeal Gž1 2494/13 of 23 September 2013 and the decision of the Supreme Court Rev2 1127/20 of 8 July 2020, which concern other work-related benefits.

2. The parties' submissions

85. The applicants maintained that the domestic case-law on the issue of salary supplements for work during unsociable hours had been inconsistent for a considerable period of time. They acknowledged that following the adoption of the legal opinion of the Supreme Court of 10 November 2015, the case-law of courts of first and second instance had been harmonised. However, the applicants argued that this harmonisation process had taken too long and had violated the principle of legal certainty. The applicants also claimed that the Constitutional Court had failed to apply the above-mentioned opinion in their cases.

86. The Government claimed that there had been no violation of Article 6 § 1 and the principle of legal certainty. They conceded that there had been a period when the case-law of different appellate courts had been inconsistent, but submitted that such inconsistency had not been "profound and long-standing". In any event, the Government argued that any inconsistencies that had existed had been resolved by the adoption and application of the legal opinion of the Supreme Court of 10 November 2015.

3. The Court's assessment

87. The relevant principles regarding alleged violations of Article 6 § 1 of the Convention on account of divergent domestic case-law are summarised

in *Nejdet Şahin and Perihan Şahin v. Turkey* ([GC], no. 13279/05, §§ 49-58, 20 October 2011), and *Lupeni Greek Catholic Parish and Others v. Romania* ([GC], no. 76943/11, § 116, 29 November 2016).

88. In particular, when dealing with allegations concerning the conflicting decisions of domestic courts, the Court must determine in the first place whether the allegedly conflicting decisions concerned identical factual situations (see *Nejdet Şahin and Perihan Şahin*, cited above, § 61). Where the facts are identical but the application of the law by a domestic court or courts differs, the Court must be guided in its examination of the issue by the following criteria: whether "profound and long-standing differences" exist, whether the domestic law provides for machinery for overcoming these inconsistencies, and whether that machinery has been applied and, if appropriate, to what effect (ibid., § 53).

(a) The existence of "profound and long-standing differences"

89. The present applications concern five sets of civil proceedings brought by the applicants, who are police officers, for compensation for unpaid salary supplements for work on public holidays, night work and overtime. The applicants lodged their claims between 9 June 2010 and 26 September 2011, and the Belgrade Court of Appeal and the Novi Sad Court of Appeal ruled against them between 8 May 2013 and 10 September 2015. The courts ruled that the applicants' salaries had already been increased to account for work during unsociable hours under Article 147 § 1 of the Police Act, on the basis of a comparison of their additional salary coefficients with the additional salary coefficients of other civilian officers who had the same level of education as them but did not work during unsociable hours, and that the application of the general rules of labour law providing for salary supplements for work during unsociable hours was excluded pursuant to Article 147 § 3 of the Police Act.

90. Between 8 May 2013 and 10 September 2015 appellate courts in Belgrade, Novi Sad and Kragujevac adopted at least eleven decisions in which they ruled in favour of other police officers on the basis of salary coefficient comparison method (see paragraphs 46, 48 and 50 above). In those cases, the courts allowed the claims in question because they found that the claimants' salaries had not been increased in the manner and by the amount provided for in Article 147 § 1 of the Police Act. In some cases, the courts compared the claimants' total salary coefficients, and in others they compared their additional salary coefficients. In all of those cases, the courts compared the claimants' salary coefficients with the salary coefficients of other authorised officers who had the same level of education as the claimants but did not work during unsociable hours.

91. The applicants also claimed that the domestic courts had ruled both for and against hundreds of their colleagues. The Government did not contest this.

92. Moreover, it appears that questions as to the interpretation of Article 147 of the Police Act existed even prior to the period in which the courts decided the applicants' claims.

93. Thus, the Court notes that as early as 22 October 2008 and 12 November 2008 the domestic authorities adopted final decisions dismissing as unfounded claims brought by police officers for compensation for unpaid salary supplements for work during unsociable hours (see paragraphs 57-58 and 59-60 above). The claim dismissed on 12 November 2008 was dismissed because the courts ruled that Article 147 § 3 of the Police Act precluded the application of the general rules of labour law, irrespective of whether a claimant's salary coefficients had been increased in accordance with Article 147 § 1 of the Police Act. That legal interpretation appears to have been in line with the case-law of the Supreme Court at the time (see paragraph 52 above).

94. The Constitutional Court found that that interpretation of the law was contrary to the right to just remuneration under Article 60 § 4 of the Constitution, and ruled that the exclusion of the application of the general rules of labour law was subject to a prior case-by-case determination of whether the salary coefficients of a claimant had been increased in the manner and by the amount prescribed by Article 147 § 1 of the Police Act (see paragraphs 57-58 above).

95. In order to comply with the above decision, the domestic courts began to determine such an increase on the basis of a comparison of the applicant's salary coefficients with the salary coefficients of a "comparable employee". The question that arose in the domestic case-law was who could be considered as a comparable employee.

96. The Court observes that the first final decision in which a court dismissed claimants' compensation claims on the basis of the comparison method was issued on 22 October 2008 (see paragraphs 59 and 60 above). However, this appears to be the only such decision from that period. Following the Constitutional Court's decision that, before finding that the general rules of labour law did not apply, the courts must first determine whether the salary coefficients of a claimant had been increased in the manner and by the amount prescribed by Article 147 § 1 of the Police Act (see paragraph 94 above), the courts began dismissing claimants' compensation claims on the basis of the comparison method as early as 12 January and 21 March 2012 (see paragraphs 62 and 65 above).

97. On the other hand, the earliest final decision in which a court allowed another police officer's claim on the basis of a comparison of his or her additional salary coefficient with the additional salary coefficient of another authorised officer was adopted on 26 June 2013 (see paragraph 48 above).

98. In the present case, the applicants complained that the domestic courts had reached inconsistent conclusions because they had interpreted Article 147 §§ 1 and 3 of the Police Act differently (see paragraph 36 above).

In particular, the courts chose different comparator employees when assessing salary coefficients, leading to conflicting decisions in factually identical claims (see paragraphs 89 and 90 above).

99. In view of this, the Court finds that differences in the domestic case-law existed at the time when the appellate courts adopted their decisions in the applicants' cases, namely between 8 May 2013 and 10 September 2015.

100. The Court finds that the Government's objection that the differences were not "profound and long-standing" is not convincing. It appears that the case-law had been consistent until the Constitutional Court ruled that an increase in coefficients under Article 147 § 1 of the Police Act had to be determined on a case-by-case basis before it could be ruled that the application of the general rules of labour law was excluded, pursuant to Article 147 § 3 of the same Act (see paragraphs 93 and 94 above). The Court is aware of one final decision from that period with a different legal interpretation of Article 147 §§ 1 and 3 of the Police Act, but in that case the courts also dismissed the claim as unfounded, so it is not a conflicting decision (see paragraphs 59-60, 93 and 96 above).

101. In the period that followed, the domestic courts adopted conflicting decisions in claims by police officers for unpaid salary supplements in respect of work during unsociable hours based on different salary coefficient comparison methods (see paragraphs 96 and 97 above). The Supreme Court finally found it necessary to issue two legal opinions in order to harmonise the case-law of the lower courts (see paragraphs 52 and 53 above).

102. However, the existence of conflicting court decisions cannot, in itself, be considered to be in breach of the Convention, as the possibility of conflicting court decisions is an inherent trait of any judicial system which is based on a network of trial and appeal courts with authority in a certain area (see *Stanković and Trajković v. Serbia*, nos. 37194/08 and 37260/08, § 41, 22 December 2015). It thus remains to be established whether the domestic law provided for a mechanism to overcome those inconsistencies, whether that mechanism has been applied and to what effect.

(b) The existence and use of a domestic-law mechanism to overcome inconsistencies in the case-law

103. It is the Contracting States' responsibility to organise their legal systems in such a way as to avoid the adoption of discordant judgments. This requirement is all the stronger where the conflicting case-law is not an isolated incident, but an inconsistency which affects a large number of persons bringing proceedings before the courts (see *Lupeni Greek Catholic Parish and Others*, cited above, § 129).

104. The Court notes the Government's contention and the applicants' agreement that following the adoption of the amended legal opinion of the Supreme Court of 10 November 2015, the courts started to rule on cases in accordance with that opinion. That is to say, they began to rule in favour of

claimants on the basis of a comparison of a claimant's additional salary coefficient with the additional salary coefficient of an authorised officer who had the same level of education but did not work during unsociable hours (see paragraphs 46-48 and 50 above). In cases where the appellate courts still ruled in a manner contrary to that opinion, the Supreme Court would either quash the relevant decision and order a retrial, or reverse the decision of the appellate court following a special appeal on points of law (see paragraph 54 above).

105. In *Svilengaćanin and Others v. Serbia* (nos. 50104/10 and 9 others, §§ 14 and 81, 12 January 2021) the Court held that a legal opinion of the Supreme Court which was subsequently applied by the lower courts (or by the Supreme Court itself in rare cases where the lower courts had still ruled in a manner contrary to that opinion) was an adequate mechanism in overcoming divergences in the domestic case-law.

106. The Court is therefore satisfied that the domestic judicial system was ultimately successful in dealing with the inconsistencies in the case-law.

107. The domestic courts started ruling in favour of claimants on the basis of the comparison method in June 2013, around the time when the second applicant's claim had been dismissed (see paragraphs 9 and 97 above). The divergences were ultimately resolved on 10 November 2015 when the Supreme Court issued its second opinion (see paragraph 104 above). Thus the period under consideration lasted two years and five months.

108. In that respect the Court has noted that the domestic courts allowed compensation claims for unpaid salary supplements in respect of work during unsociable hours lodged by the applicants' colleagues even before the aforesaid period (see paragraph 45 above). However, the claimants in those cases were not in the same factual situation as the applicants, because their claims had not been dismissed on the basis of the salary coefficient comparison method. Therefore, the Court does not take them into account for the purposes of determining the period of inconsistency of case-law in the present case (see, *mutatis mutandis*, *Erol Uçar v. Turkey* (dec.), no. 12960/05, 29 September 2009).

109. The Court observes that it is not possible to establish from the case file the exact moment when the Supreme Court became aware of the divergent case-law of the appellate courts. In any event, it took it one year and three months from June 2013 (see paragraph 107 above) to issue its first opinion aimed at harmonising the case-law (see paragraph 52 above), and approximately another year to resolve the issue after observing the application of the first opinion (see paragraph 53 above).

110. In this connection, the Court notes the complexity of the issue adjudicated in the present case and similar cases and multiple different legal interpretations of Article 147 §§ 1 and 3 of the Police Act by the domestic courts.

111. The Court recalls that it has examined a situation where inconsistent appellate decisions affected numerous individuals; the discrepancies lasted more than three years but were eventually harmonised by a unifying opinion of the supreme court (see *Croatian Radio-Television v. Croatia*, nos. 52132/19 and 19 others, §§ 147 and 149-53, 2 March 2023). Although in that case the Court did not scrutinise the time factor as such, it still found no violation of Article 6 § 1 of the Convention. It notes that the harmonisation in the present case unfolded within a shorter interval.

112. In light of the above, the Court considers that the domestic authorities harmonised the case-law within a reasonably short period of time.

113. The Court is aware that the second-instance decisions in the applicants' cases had been delivered before the Supreme Court provided guidelines as to how all similar police officers' salary supplements cases should be dealt with and that therefore they could not have been decided in accordance with those guidelines. However, that fact is not sufficient in itself to breach the principle of legal certainty (see, for example, *Schwarzkopf and Taussik v. the Czech Republic* (dec.), no. 42162/02, 2 December 2008, and *Petrescu and Others v. Romania* (dec.), nos. 31390/18 and 9 others, § 61, 7 March 2023). The Court further observes that the applicants did not refer to the Supreme Court's opinion of 10 November 2015 in their constitutional appeals as those appeals were lodged either prior to or shortly after the adoption of that opinion (see paragraphs 8, 9, 10, 13 and 15 above).

114. Finally, regarding the applicants' complaints about how the domestic courts interpreted the law and dismissed their claims, the Court reiterates the subsidiary nature of its role. It is not for the Court to act as a court of third or fourth instance and review the choices of the domestic courts concerning the interpretation of legal provisions and the inconsistencies that may result, nor is it its role to intervene simply because there have been conflicting court decisions. Where there is no evidence of arbitrariness, examining the existence and impact of such conflicting decisions does not mean examining the wisdom of the approach the domestic courts have chosen to take (see *Nejdet Şahin and Perihan Şahin*, cited above, §§ 88 and 89). In other words, the Court will question the domestic courts' assessment only if their findings can be regarded as arbitrary or manifestly unreasonable (see *De Tommaso v. Italy* [GC], no. 43395/09, § 170, 23 February 2017).

115. Turning to the present case, the applicants had the benefit of adversarial proceedings, and their arguments were thoroughly examined by the courts. The courts' conclusions and interpretation of the relevant law cannot be regarded as arbitrary or manifestly unreasonable. Regarding the applicants' claim that the Constitutional Court failed to apply the amended legal opinion of the Supreme Court, the Court notes that the Constitutional Court was not asked to rule on the merits of the applicants' claims. Its role was limited to assessing whether the applicants' right to a fair trial, as well as their right to property under the Constitution, was respected by the lower

courts in the handling of their civil claims. Its findings also cannot be regarded as arbitrary or manifestly unreasonable.

116. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

117. The first and second applicants complained that their claims had been dismissed because Article 147 of the Police Act had been interpreted incorrectly, and that the courts in their cases had compared their salaries with those of inappropriate "comparative employees". They also emphasised that some of their colleagues had succeeded in claims made during the same period. They relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The parties' submissions

118. The Government claimed that the applicants did not have a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention because they could not had had "legitimate expectations" that their claims would be allowed, bearing in mind that the case-law concerning the salary supplements of police officers who worked during unsociable hours was not settled at the relevant time and that the domestic courts had different interpretations of section 147 § 1 of the Police Act.

119. The first and second applicants reiterated their complaints.

B. The Court's assessment

120. The relevant general principles are set out in *Béláné Nagy v. Hungary* ([GC], no. 53080/13, §§ 74-77, 13 December 2016). In particular, the Court has held that in certain circumstances a "legitimate expectation" of obtaining an asset may also enjoy the protection of Article 1 of Protocol No. 1 (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 65, ECHR 2007- I). However, no legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts. Where the proprietary interest is in the nature of a claim

it may be regarded as an "asset" only where it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it (see *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 50 and 52, ECHR 2004-IX).

121. In the present case, the applicants claimed salary supplements under either the Labour Act or the Salaries of Civil Servants and Employees Act (see paragraphs 6, 32 and 33 above). Pursuant to Article 147 § 3 of the Police Act, those provisions were applicable only if the claimants' salaries had not already been increased in accordance with Article 147 § 1 of the same Act (see paragraphs 55 and 58 above; see also paragraph 42 above for examples of domestic court decisions allowing claims based on a comparison of salary coefficients). The Court has previously found that, at the time the applicants' claims were adjudicated, there was a conflict in the domestic case-law regarding the interpretation of Article 147 § 1 of the Police Act (see paragraphs 98-101 above). In view of the foregoing, the Court concludes that the applicants' claims cannot be considered to have had a sufficient basis in the domestic case-law since at the relevant time the courts gave conflicting interpretations of the relevant legal provision.

122. As a consequence it cannot be argued that the applicants had a possession within the meaning of Article 1 of Protocol No. 1 at the time when the contested decisions were given, that is before the Supreme Court's legal opinion of 10 November 2015 (see *Petrescu and Others v. Romania* (dec.), cited above §§ 68-72). It follows that these complaints are inadmissible under Article 35 § 3 (a) of the Convention as being incompatible *ratione materiae* and must be rejected pursuant to Article 35 § 4 thereof.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaint under Article 6 § 1 of the Convention admissible and the complaint under Article 1 of Protocol No. 1 to the Convention inadmissible;

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 7 October 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Ioannis Ktistakis President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant	Represented by
1.	39819/16	Šabanović v. Serbia	27/06/2016	**Safet ŠABANOVIĆ**	Nataša MIJALJEVIĆ
2.	39902/16	Boričić v. Serbia	27/06/2016	**Dragan BORIČIĆ**	Nataša MIJALJEVIĆ
3.	60773/16	Tešić v. Serbia	03/06/2015	**Zoran TEŠIĆ**	Julijana STEPANIĆ PAVLOVIĆ
4.	17816/17	Majstorović v. Serbia	24/02/2017	**Tijana MAJSTOROVIĆ**	Branislav MILOJIČIĆ
5.	31419/17	Pifar v. Serbia	13/04/2017	**Zoran PIFAR**	Branislav MILOJIČIĆ