



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

SECOND SECTION

CASE OF RAKIĆ and OTHERS v. SERBIA

(Applications nos. 47460/07, 49257/07, 49265/07, 1028/08, 11746/08, 14387/08, 15094/08, 16159/08, 18876/08, 18882/08, 18997/08, 22997/08, 23007/08, 23100/08, 23102/08, 26892/08, 26908/08, 29305/08, 29306/08, 29323/08, 29389/08, 30792/08, 30795/08, 31202/08, 31968/08, 32120/08, 32537/08, 32661/08, 32666/08 and 36079/08)

JUDGMENT

STRASBOURG

5 October 2010

FINAL

05/01/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Rakić and Others v. Serbia,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria,

Kristina Pardalos,

Guido Raimondi, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 14 September 2010,

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

PROCEDURE

1. The case originated in thirty separate applications (nos. 47460/07, 49257/07, 49265/07, 1028/08, 11746/08, 14387/08, 15094/08, 16159/08, 18876/08, 18882/08, 18997/08, 22997/08, 23007/08, 23100/08, 23102/08, 26892/08, 26908/08, 29305/08, 29306/08, 29323/08, 29389/08, 30792/08, 30795/08, 31202/08, 31968/08, 32120/08, 32537/08, 32661/08, 32666/08 and 36079/08) lodged with the Court against Serbia, under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), by Mr Slobodan Rakić and 29 others (“the applicants”; see paragraph 5 below) on 22 October 2007, 6 November 2007, 6 November 2007, 24 December 2007, 29 February 2008, 15 March 2008, 20 March 2008, 25 March 2008, 7 April 2008, 7 April 2008, 7 April 2008, 16 April 2008, 16 April 2008, 16 April 2008, 16 April 2008, 26 May 2008, 24 May 2008, 9 June 2008, 9 June 2008, 9 June 2008, 9 June 2008, 19 June 2008, 19 June 2008, 19 June 2008, 23 June 2008, 23 June 2008, 1 July 2008, 1 July 2008, 1 July 2008 and 1 July 2008, respectively.

2. The applicants were represented before the Court by Mr N. Vukotić, a lawyer practising in Belgrade, and the Government of Serbia (“the Government”) were represented by their Agent, Mr S. Carić.

3. The applicants complained about the flagrantly inconsistent case-law of the domestic courts concerning the payment of the same salary increase granted to a certain category of police officers.

4. On 12 June 2009 the Court decided to communicate the applications to the Government. Applying Article 29 § 3 of the Convention, it also decided to rule on their admissibility and merits at the same time.

THE FACTS

5. The applicants, Mr Slobodan Rakić (“the first applicant”), Mr Živorad Ivković (“the second applicant”), Mr Damjan Šapić (“the third applicant”), Mr Dragan Jevtić (“the fourth applicant”), Mr Darko Glišović (“the fifth applicant”), Mr Radoš Mihajlović (“the sixth applicant”), Mr Ljubiša Janićijević (“the seventh applicant”), Mr Nenad Jovanović (“the eighth applicant”), Mr Milan Vitković (“the ninth applicant”), Mr Velibor Terentić (“the tenth applicant”), Mr Radojko Radosavljević (“the eleventh applicant”), Mr Dragoš Tomović (“the twelfth applicant”), Mr Predrag Todić (“the thirteenth applicant”), Mr Nebojša Milutinović (“the fourteenth applicant”), Mr Bojan Ilić (“the fifteenth applicant”), Mr Darko Trifunović (“the sixteenth applicant”), Mr Janko Janković (“the seventeenth applicant”), Mr Dragiša Zdravković (“the eighteenth applicant”), Mr Milojko Đorđević (“the nineteenth applicant”), Mr Slavko Milošević (“the twentieth applicant”), Mr Miroslav Vučković (“the twenty-first applicant”), Mr Ljubinko Ćirković (“the twenty-second applicant”), Mr Veselin Božović (“the twenty-third applicant”), Mr Nebojša Đorđević (“the twenty-fourth applicant”), Mr Srećko Janićijević (“the twenty-fifth applicant”), Mr Siniša Milić (“the twenty-sixth applicant”), Mr Vladimir Avdalović (“the twenty-seventh applicant”), Mr Slavoljub Vukić (“the twenty-eighth applicant”), Mr Rodoljub Obradović (“the twenty-ninth applicant”) and Mr Dejan Pantić (“the thirtieth applicant”) are all Serbian nationals.

I. THE CIRCUMSTANCES OF THE CASE

6. All applicants are employed as police officers with the Ministry of Internal Affairs of the Republic of Serbia (*Ministarstvo unutrašnjih poslova Republike Srbije*, hereinafter “the Ministry”). They reside and work in Kosovo.¹

7. The facts, as submitted by the parties, may be summarised as follows.

8. On 24 January 2000 and 17 July 2003, respectively, the Serbian Government adopted two decisions whereby, *inter alia*, all of its employees who resided and worked in Kosovo were to be paid double salaries.

9. On 31 January 2000 the Ministry issued a decision stating that the police officers in question were entitled to have their salaries increased based on a coefficient of 2.5 or 4.5, depending on the circumstances.

10. In reality, the applicants only received the increase approved by the Ministry, amounting to significantly less than the envisaged doubling of their salaries.

¹ All reference to Kosovo, whether to the territory, institutions or population, in this judgment shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

11. In 2006 and 2007, therefore, they filed separate civil claims against the Ministry with the First Municipal Court (*Prvi opštinski sud*) in Belgrade, seeking payment of the difference between the salary increase received and the one granted by the Government (the value of the seventh, thirteenth, seventeenth, twentieth, twenty-seventh and twenty-eighth applicants' claims, respectively, exceeded 500,000 dinars, whilst the claims of all other applicants were below this threshold). The applicants further requested payment of unspecified amounts on account of the related pension and disability insurance contributions.

12. Certain applicants were successful before the Municipal Court; others were not. However, all the applicants were unsuccessful at second instance before the District Court (*Okružni sud*) in Belgrade (hereinafter “the District Court”). The applicants received those decisions on the following dates:

- the first applicant on 26 April 2007;
- the second and third applicants on 7 May 2007;
- the fourth applicant on 26 June 2007;
- the fifth applicant on 3 September 2007;
- the sixth applicant on 19 September 2007;
- the seventh applicant on 1 October 2007;
- the eighth applicant on 26 September 2007;
- the ninth, tenth and eleventh applicants on 8 October 2007;
- the twelfth applicant on 16 October 2007;
- the thirteenth and fourteenth applicants on 29 October 2007;
- the fifteenth applicant on 19 October 2007;
- the sixteenth, nineteenth and twenty-first applicants on 11 December 2007;
- the seventeenth applicant on 26 November 2007;
- the eighteenth applicant on 17 December 2007;
- the twentieth applicant on 13 December 2007;
- the twenty-second applicant on 15 January 2008;
- the twenty-third applicant on 25 January 2008;
- the twenty-fourth and twenty-eighth applicants on 11 February 2008;
- the twenty-fifth applicant on 28 February 2008;
- the twenty-sixth applicant on 27 December 2007;
- the twenty-seventh and thirtieth applicants on 20 February 2008;
- the twenty-ninth applicant on 18 February 2008.

Many of the applicant's colleagues (hereinafter “the plaintiffs”) had brought separate claims concerning the same issue; some were successful whilst others were unsuccessful in the District Court.

13. In its reasoning in the applicants' cases, the District Court held, *inter alia*, that the applicable domestic regulation was contained in the decision of the Ministry adopted on 31 January 2000.

14. However, in seventy-three other judgments, rendered between 25 January 2006 and 1 October 2008, the same District Court ruled in favour of the plaintiffs, notwithstanding the fact that their claims were based on the same facts and concerned identical legal issues. In its reasoning in these other cases, the District Court held, *inter alia*, that the plaintiffs' salaries had to be paid in accordance with the Serbian Government's decisions of 24 January 2000 and/or 17 July 2003.

15. Of the seventy-three judgments mentioned above, in fifty cases the respondent lodged appeals on points of law (*revizije*) with the Supreme Court (*Vrhovni sud Srbije*, see paragraphs 24 and 27 below). In the remaining twenty-three cases, however, the respondent lodged no such appeal, apparently in the light of the statutory threshold (see paragraph 25 below).

16. The Government provided relevant case-law adopted by the Supreme Court, in particular six separate judgments of which one was issued on 3 July 2008 and the remaining five between 25 December 2008 and 1 October 2009. In each case, deciding upon appeals on points of law, the Supreme Court ruled against the plaintiffs, albeit with somewhat different reasoning compared to that employed by the District Court. In particular, the Supreme Court held, *inter alia*, that the Government's decision of 17 July 2003 had not been directly applicable.

17. In the meantime, on 23 September 2008, the Civil Division (*Gradansko odeljenje*) of the Supreme Court held a meeting which was meant to resolve the issue of how to rule in all cases such as the applicants' (see paragraph 29 below). In the minutes of this meeting, it was noted *inter alia* that in two cases registered in 2008, where appeals on points of law had been considered, the Supreme Court had in fact confirmed the lower courts' rulings rendered in favour of the plaintiffs (*Rev II 429/08 and Rev 623/08*). The meeting, however, was ultimately adjourned pending the outcome of a case which had been brought before the Constitutional Court (*Ustavni sud Srbije*) concerning the abstract review of the constitutionality of the Government's decision adopted on 17 July 2003. On 16 April 2010 the Constitutional Court held that the impugned decision was unconstitutional.

18. In eighteen separate cases the plaintiffs thereafter lodged their appeals with the Constitutional Court (*ustavne žalbe*), but, according to the information contained in the case file, these proceedings are all still pending.

19. None of the applicants lodged an appeal on points of law or attempted to obtain constitutional redress.

II. RELEVANT DOMESTIC LAW

A. Provisions concerning the constitutional appeal procedure

20. The relevant provisions in this respect are set out in the *Vinčić and Others v. Serbia* judgment (nos. 44698/06, 44700/06, 44722/06, 44725/06, 49388/06, 50034/06, 694/07, 757/07, 758/07, 3326/07, 3330/07, 5062/07, 8130/07, 9143/07, 9262/07, 9986/07, 11197/07, 11711/07, 13995/07, 14022/07, 20378/07, 20379/07, 20380/07, 20515/07, 23971/07, 50608/07, 50617/07, 4022/08, 4021/08, 29758/07 and 45249/07, §§ 22-34, 1 December 2009).

B. The Civil Procedure Act 2004 (*Zakon o parničnom postupku*; published in the Official Gazette of the Republic of Serbia - OG RS - no. 125/04)

21. Article 2 § 1 provides, *inter alia*, that all parties shall be entitled to the equal protection of their rights.

22. Articles 355-384 provide details as regards an appeal which may be filed against a judgment rendered at first instance (*žalba*). Article 355 § 1, in particular, provides that such an appeal must be filed within a period of fifteen days.

23. Article 438, however, provides that an appeal (*žalba*) in a labour dispute must be filed within a period of eight days.

24. Articles 394 § 1, 396 and 398 provide that parties may file an appeal on points of law (*revizija*) with the Supreme Court. They may do so within a period of 30 days following receipt of a final decision rendered at second instance, and only if the relevant legislation, procedural or substantive, has been breached by the lower courts.

25. Article 394 § 2 provides, *inter alia*, that an appeal on points of law is “not admissible” in pecuniary disputes (*kad se tužbeni zahtev odnosi na potraživanje u novcu*) where the “value of the part of the final judgment being contested” does “not exceed 500,000 dinars”.

26. Article 439 provides that an appeal on points of law shall be admissible in labour cases which concern one's hiring or dismissal or the “existence” of one's employment (*u parnicama o sporovima o zasnivanju, postojanju i prestanku radnog odnosa*)

27. In accordance with Articles 396 and 406-409, *inter alia*, the Supreme Court shall, should it accept an appeal on points of law lodged by one of the parties concerned, have the power to overturn and/or amend the impugned judgment or quash it and order a re-trial before the lower courts.

28. Article 422.10 provides that a case may be re-opened if the European Court of Human Rights has in the meantime rendered a judgment in respect of Serbia concerning the same or a similar legal issue.

C. The Court Organisation Act (Zakon o uređenju sudova; published in OG RS nos. 63/01, 42/02, 27/03, 29/04, 101/05 and 46/06)

29. Article 40 §§ 2 and 3 provides, *inter alia*, that a meeting of a division (*sednica odeljenja*) of the Supreme Court shall be held if there is an issue as regards the consistency of its case-law. Any opinions (*pravna shvatanja*) adopted thereupon shall be binding for all panels (*veća*) of the division in question.

THE LAW

I. JOINDER OF THE APPLICATIONS

30. The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their similar factual and legal background.

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

31. Under Article 6 § 1 of the Convention, the applicants complained about the flagrantly inconsistent case-law of the District Court in Belgrade.

32. The relevant provisions of the said Article read as follows:

Article 6 § 1

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

A. Admissibility

1. The parties' arguments

33. The Government maintained that the applicants had not exhausted all effective domestic remedies within the meaning of Article 35 § 1 of the Convention. In particular, they had all failed to lodge a constitutional appeal, whilst the seventh, thirteenth, seventeenth, twentieth, twenty-

seventh and twenty-eighth applicants had also not made use of an appeal on points of law provided under Article 394 § 2 of the Civil Procedure Act (see paragraphs 11, 25 and 27 above).

34. The applicants submitted that, in view of Article 439 of the Civil Procedure Act, an appeal on points of law was only available in respect of specified labour-related disputes, not in cases such as theirs involving salary arrears (see paragraph 26 above). They further noted that the judgments rendered by the First Municipal Court contained instructions to the effect that the parties could lodge an appeal against them within a period of eight rather than fifteen days (see paragraphs 22, 23 and 26 above), thus implying that the said court had itself considered their cases as labour-related and excluded the application of Article 394 § 2 of the Civil Procedure Act.

35. As regards the constitutional appeal, the applicants argued that this remedy had not been effective at the relevant time.

36. Lastly, the Government added, concerning Article 394 § 2 of the Civil Procedure Act, that the applicants' cases were clearly of a pecuniary nature and that the domestic courts had consistently deemed them as such. The eight day deadline for the submission of an appeal was hence of no particular relevance, especially given that the First Municipal Court had given the suits in question a "P" rather than a "P1" registration number (the former indicating pecuniary disputes) and that the Supreme Court itself had routinely accepted to consider appeals on points of law in cases such as the applicants whenever the statutory threshold had been exceeded (see paragraphs 15 and 16 above).

2. The Court's assessment

(a) As regards the seventh, thirteenth, seventeenth, twentieth, twenty-seventh and twenty-eighth applicants

37. The Court considers that, given its nature, an appeal on points of law must, in principle and whenever available in accordance with the relevant civil procedure rules, be considered an effective domestic remedy within the meaning of Article 35 § 1 of the Convention (see paragraphs 24-27 above; see also *Jevremović v. Serbia*, no. 3150/05, § 41, 17 July 2007; *Ilić v. Serbia*, no. 30132/04, §§ 20 and 21, 9 October 2007; and, *mutatis mutandis*, *Debelić v. Croatia*, no. 2448/03, §§ 20 and 21, 26 May 2005).

38. In the specific circumstances of the present case, however, the Court is of the opinion that the exhaustion issue raised by the Government in respect of the said six applicants is closely linked to the merits of their complaints. In particular, it involves the question of whether an appeal on points of law, even if available (see paragraphs 25 and 26 above) and made use of, could have secured consistency in the adjudication of the claims at issue (see paragraphs 16 and 17 above). Consequently, the Court joins its

examination of this question to its assessment of the merits of the applicants' complaints.

(b) As regards all applicants

39. 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 introduced as of 7 August 2008 (see *Vinčić and Others v. Serbia*, cited above, § 51). Since the applicants in the present case had all brought their cases before that date and given that it finds no reason to depart from its conclusion in *Vinčić*, the Court considers that the Government's objection in this regard must be dismissed.

(c) Conclusion

40. The Court notes that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other ground. They must therefore be declared admissible.

B. Merits

41. The applicants re-affirmed their submissions, adding that the Supreme Court had ignored its own decision of 23 September 2008 and proceeded to rule against the plaintiffs despite the fact that the Constitutional Court had yet to decide on the constitutionality and/or legality of the Government's decision of 17 July 2003 (see paragraph 17 above).

42. The Government maintained that there had been no violation of the Convention. They noted that the domestic courts were independent in dispensing justice and that it was up to them to interpret and apply the relevant domestic legislation, which in the applicants' cases they had done correctly. Further, the inconsistency alleged by the applicants did not relate to any prior systemic and/or grave injustice nor did it involve the Supreme Court's case-law since this court had, just like the District Court in the applicants' cases, consistently ruled against the plaintiffs. Lastly, the Government argued that the Supreme Court had not been formally bound to await the outcome of any proceedings before the Constitutional Court and had to be mindful of, *inter alia*, the Convention requirement to conclude the suits in question within a reasonable period of time.

43. The Court recalls that whilst certain divergences in interpretation could be accepted as an inherent trait of any judicial system which, just like the Serbian one, is based on a network of trial and appeal courts with authority over a certain territory, in the applicants' cases the conflicting interpretations stemmed from the same jurisdiction, i.e. the District Court in Belgrade, and involved the inconsistent adjudication of claims brought by

many persons in identical situations (see *Vinčić and Others v. Serbia*, cited above, § 56; see also, *mutatis mutandis*, *Tudor Tudor v. Romania*, no. 21911/03, § 29, 24 March 2009). All this created a state of continued uncertainty, which in turn must have reduced the public's confidence in the judiciary, such confidence, clearly, being one of the essential components of a State-based on the rule of law. Further, notwithstanding the Governments submission to the contrary, it would appear that even the Supreme Court's case-law on the matter had not effectively become consistent until, at best, the latter part of 2008 (see paragraphs 16 and 17 above), which was well after some of the applicants could have attempted to lodge their respective appeals on points of law (see paragraphs 12 and 24 above), whilst formally this consistency had apparently never been secured in accordance with Article 40 of the Court Organisation Act (see paragraphs 17 and 29 above). Or, in other words, it could not reasonably be argued that, irrespective of the fact that the applicants' claims had never been considered by the Supreme Court at third instance, their suits had nevertheless substantively been determined in a manner consistent with that court's settled case-law (see, *mutatis mutandis*, *Iordan Iordanov and Others v. Bulgaria*, no. 23530/02, § 47, 2 July 2009).

44. In view of the foregoing and without deeming it appropriate to pronounce as to what the actual outcome of the applicants' suits should have been (see *Vinčić and Others v. Serbia*, cited above, § 56), the Court dismisses the Government's preliminary objection and considers that the judicial uncertainty in question deprived the applicants of a fair hearing before the District Court in Belgrade. There has consequently been a violation of Article 6 § 1 on this account (see, *mutatis mutandis*, *Tudor Tudor v. Romania*, cited above, § 32).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

46. The applicants claimed EUR 10,000 each for the total damage suffered as a result of a violation of their rights guaranteed under Article 6 § 1 of the Convention.

47. The Government contested those claims.

48. Having regard to the violation found in the present case and its reasons for so doing (see paragraph 44 above, particularly the reference to the outcome of the applicants' suits), the Court considers that the applicants' claims, in so far as they relate to the payment of the respective sums sought domestically, must be rejected (see *Vinčić and Others v. Serbia*, cited above, § 61).

49. The Court, however, takes the view that the applicants have suffered some non-pecuniary damage as a result of the violation found which cannot be made good by the Court's mere finding of a violation (see, *mutatis mutandis*, *Tudor Tudor v. Romania*, cited above, § 47). Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court therefore awards each applicant EUR 3,000 under this head.

B. Costs and expenses

50. Each applicant also claimed EUR 250 for the application giving rise to the proceedings before the Court, as well as EUR 250 for the submission of their joint written observations and the related postal and office expenses.

51. The Government contested those claims.

52. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were also reasonable as to their quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award each applicant EUR 255 for their costs and expenses incurred in connection with their Strasbourg case.

C. Default interest

53. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;
2. *Decides* to join to the merits the Government's objection as to the non-exhaustion of domestic remedies, in so far as it concerns an appeal on points of law, and dismisses it;

3. *Declares* the applications admissible;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following sums, to be converted into Serbian dinars at the rate applicable on the date of settlement:
 - (i) EUR 3,000 (three thousand euros) in respect of the non-pecuniary damage suffered, plus any tax that may be chargeable,
 - (ii) EUR 255 (two hundred and fifty-five euros) for costs and expenses, plus any tax that may be chargeable to each applicant;
 - (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;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 5 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President