



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

THIRD SECTION

CASE OF ALBU AND OTHERS v. ROMANIA

(Applications nos. 34796/09 and 63 other cases)

(see Appendix for other applications)

JUDGMENT

STRASBOURG

10 May 2012

FINAL

10/08/2012

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

In the case of Albu and Others v. Romania,

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

Josep Casadevall, *President*,

Egbert Myjer,

Ján Šikuta,

Ineta Ziemele,

Nona Tsotsoria,

Mihai Poalelungi,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 10 April 2012,

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

PROCEDURE

1. The case originated in sixty-four applications against Romania (see the appended list) lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by sixty-four Romanian nationals (“the applicants”) on 10 June 2009. Details of the names and application numbers are set out in the appended table.

2. The applicants were represented by Mr I. Banicioiu, a lawyer practising in Timișoara. The Romanian Government (“the Government”) were represented by their Agent, Ms I. Cambrea, from the Ministry of Foreign Affairs.

3. The applicants alleged a breach of their rights under Articles 6 and 14 of the Convention on account of the extended divergence of case-law on the issue of granting specific allowances to public servants.

4. On 22 February 2011 notice of the applications was given to the Government. It was also decided to join the applications and to rule on their admissibility and merits at the same time (Article 29 § 1).

5. As Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mr Mihai Poalelungi to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

6. The applicants are Romanian nationals. They are all civil servants employed by the Caraş Severin District Employment Agency.

7. On 5 May 2008 the applicants filed a petition with their employer, the Caraş Severin District Employment Agency, a State agency, asking to have their entitlement to certain wage-related rights acknowledged. More specifically, relying on section 31(1) (c) and (d) of Law no. 188/1999 on the status of civil servants, they asked for two allowances to be added to their basic salary, namely a grade supplement and a supplement related to their salary step. The applicants quantified each of these supplements at 25% of the basic salary.

The aforesaid allowances were to be paid retroactively, starting from April 2004, but also in the future, until the applicants' contracts ended.

At the same time, the applicants requested that these entitlements be noted in their employment record books.

On 19 May 2008 their employer dismissed the petition as ill-founded.

8. On 30 May 2008 the applicants contested that decision before the Caraş Severin County Court. They contended that even though, in accordance with Government Emergency Ordinance no. 92/2004, the application of the provisions granting them the rights in question had been suspended until 31 December 2006, this did not mean that they were not due for payment starting from 1 January 2007, when the suspension had ended, as the suspension of a right was not equivalent to the extinction of that right.

In any event, they considered that the suspension was in breach of Articles 41 and 53 of the Constitution, and that the allowances claimed were therefore to be paid retroactively, from 2004 onwards.

9. On 10 September 2008 the County Court dismissed the applicants' claim. The court acknowledged that, according to the provisions of the Labour Code applicable to the case, the employer was obliged to pay its employees all the allowances derived from the law and from the employment contract. Therefore, the applicants, civil servants, were entitled to receive, in addition to their other salary entitlements, the two supplements in question – the grade allowance and the allowance corresponding to the salary step – as provided for by section 31(1) (c) and (d).

The two supplements were first provided for by section 29 of Law no. 161/2003 of 16 April 2003, but without any indication as to the exact amount. In fact, none of the subsequent legal texts on civil servants' salary rights made any reference to a method or criterion for determining the amount of any of the supplements.

Hence, even though Law no. 188/1999 expressly stated that a civil servant's salary was also composed of the grade supplement and the salary-step supplement, the determination of these rights was left to the executive, which was entitled to set out rules for the application of the law. Consequently, the court held as follows:

“In the absence of a legal act issued or adopted by the executive in which the amount of the two allowances claimed is defined, the court does not have jurisdiction to determine by itself the amounts, as this would undermine the separation of powers principle by encroaching on the powers of the administrative authorities.

The court therefore holds that in the above-mentioned circumstances, the respondent cannot be ordered to pay the allowances claimed before their amount has been determined.”

10. The applicants appealed against that judgment to the Timișoara Court of Appeal, reiterating the arguments they had submitted before the first-instance court. In addition, they stated that under Article 38 of the Labour Code the acquired rights of employees could not be made subject to any limitations. Furthermore, they contended that it was a basic legal principle that laws were made in order to produce effects, it being inconceivable that a legal text would have only a superficial value and not be applicable. They asserted that their right to the allowances they had requested was protected by Article 1 of Protocol No. 1 to the Convention, in so far as it was a right provided for by law.

The applicants alleged that the interpretation of the applicable legal provisions given by the court in refusing to allow their claims rendered those texts completely ineffective and thus devoid of any substance.

Moreover, such an interpretation was discriminatory and in breach of Article 14 of the Convention, in so far as there was consistent national case-law granting other claimants (also civil servants) the right to the supplements in question. The discrimination was even more disturbing given that another person, S.S.M., employed by the same institution as them, had obtained the allowances following a decision of 21 March 2008 given by the same first-instance court, the Caraș Severin County Court. That decision had been upheld by the Timișoara Court of Appeal on 2 October 2008, when it became final.

11. On 21 January 2009 the Timișoara Court of Appeal dismissed the applicants' appeal.

The court noted that there was no legal justification for claiming the allowances in an amount of 25% of the basic salary, and consequently for allowing such a claim, as the figure in question was not laid down anywhere in the law.

In that connection, in order to be able to determine the exact amount of the allowances in question, additional legislation was needed, either in the form of legal provisions adopted by the legislature designed to regulate the

application of section 31, or in the form of instructions issued by the Government in a separate legal text designed to explain how the law should be applied.

The Court of Appeal also referred to the Constitutional Court's case-law to the effect that:

"The courts do not have jurisdiction to repeal or to refuse to apply specific normative acts which they consider to be discriminatory, and thus to replace them with norms created by judicial intervention or with provisions contained in other normative acts."

Therefore, the court considered that it could not allow the applicants' claims, in so far as those claims had not been determined by the competent authorities.

Regarding the divergent case-law referred to by the applicants in their arguments, the court held that in the Romanian legal system, legal precedents were not a source of law and therefore could not be taken into consideration.

On the applicability of Article 1 of Protocol No. 1 to the Convention, the court mentioned that the applicants had not proved the existence of a "possession", or at least of a "legitimate expectation", since the case-law on the matter was not well-established.

Furthermore, the court held that the Labour Code was not applicable to civil servants, as they were appointed to their posts on the basis of Law no. 188/1999. The appointments were thus made by means of individual administrative acts which did not make any reference to the allowances in question and, in any event, had not been contested by any of the applicants at the time of their appointment.

In conclusion, the applicants' claims were dismissed as unfounded.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. The Public Servants' Statute

12. The Public Servants' Statute entered into force on 7 January 2000, once Law no. 188/1999 had been enacted. On 1 January 2004 section 29 of the Statute was amended to provide that, starting from that date, certain allowances were to be included in the salaries of public servants.

Section 29

"1. For discharging their activities public servants shall have the right to a salary composed of the following:

- (a) the basic salary
- (b) seniority allowance

(c) grade allowance

(d) step allowance

2. Public servants shall be granted bonuses and other salary entitlements, in accordance with the law.

3. The remuneration of public servants shall take place in accordance with [the criteria] set forth in the law on the implementation of a uniform remuneration scheme for public servants.”

On 19 July 2006, point (d) was amended to read “allowance corresponding to the salary step”. With effect from 1 June 2007, section 29 became section 31, while no amendments were made to the content.

The application of these provisions was suspended from 2004 until 2006, first by Law no. 164/2004 of 15 May 2004, then by Government Emergency Ordinance no. 92/2004, enacted as Law no. 76/2005, and then by Government Ordinance no. 2/2006, enacted as Law no. 417/2006.

With effect from 1 January 2010 the two allowances, namely the grade supplement and the allowance corresponding to the salary step, were abolished by Law no. 330/2009.

2. Case-law on similar claims

13. The applicants submitted two other judgments given by the Court of Appeal of Timișoara, in which the claimants’ requests had been granted. In one of the judgments, given on 23 January 2008 by the same panel as the one which sat in the applicants’ case, it was stated, *inter alia*, as follows:

“It is irrelevant that the legal text did not lay down the exact amount of the salary entitlements in question, as this cannot constitute a well-founded reason for dismissing the claims; such an interpretation would render ineffective the legal provisions concerned, which are part of the positive law, and this would be inconceivable.”

In another judgment submitted by the applicants, the Suceava Court of Appeal held on 5 June 2008 in a similar case that the claimants, employees of the Suceava District Employment Agency, were entitled to the allowances in question, as the corresponding rights were provided for by the law, it being irrelevant whether their amount was determined or not.

14. The Government contended that, of the fifteen courts of appeal across the country, a number had dismissed similar claims relating to salary entitlements even before 21 September 2009, when the High Court of Cassation and Justice had ruled on an appeal in the interests of the law (see paragraph 15 below). These included the Alba Iulia Court of Appeal, the Galați Court of Appeal and the Bacău Courts of Appeal, as well as the courts of appeal in Constanța, Cluj, Ploiești and Bucharest. The reasons given for dismissing the claims had been identical, resembling those subsequently given in the ruling on the appeal in the interests of the law.

3. *The appeal in the interests of the law of 21 September 2009*

15. On 13 May 2009, noting that since 2008 a divergence of case-law had emerged across the country concerning the granting of certain allowances to public servants, the Prosecutor General applied to the High Court of Cassation and Justice in accordance with the provisions of Article 329 of the Romanian Civil Procedure Code, in order to ensure the uniform interpretation and application of the law.

The High Court delivered its judgment on 21 September 2009, confirming the existence of a divergence in the case-law concerning the interpretation of section 31(1) (c) and (d) of Law no. 188/1999, while also setting out guidelines for a uniform interpretation of the text, as follows:

“For the uniform interpretation and application of Article 31(1) (c) and (d) of Law no. 188/1999, the High Court holds that, in the absence of a legal determination of their amount, the grade allowance and the allowance relating to the salary step cannot be granted by the judiciary.”

The High Court further held that the entitlements claimed by the public servants did not constitute a “possession”, as, in the absence of criteria for their calculation, they were only “virtual rights”.

According to Article 329 of the Romanian Civil Code of Procedure, the High Court’s interpretation of the provisions in question is binding on all the domestic courts. A decision delivered on an appeal in the interests of the law cannot alter the outcome of cases already decided.

Following the adoption of the above-mentioned judgment, the divergent case-law on the issue ceased and the domestic courts followed the High Court’s guidelines (see also *Zelca and Others v. Romania* (dec.), no. 65161/10, §15, 6 September 2011).

III. RELEVANT INTERNATIONAL LAW INSTRUMENTS

A. Report on the Rule of Law by the Venice Commission, 25-26 March 2011

16. The report states in its relevant parts that, in order for the principle of legal certainty, essential for maintaining confidence in the judicial system and the rule of law, to be achieved, the State must make the law easily accessible and must also apply the laws it has enacted in a foreseeable and consistent manner. As the existence of conflicting decisions within the highest courts may be contrary to this principle, it is therefore necessary for these courts to establish mechanisms to avoid conflicts and ensure the coherence of their case-law.

B. Preliminary conclusions and observations by the UN Special Rapporteur on the Independence of Judges and Lawyers

17. In her preliminary assessment on the independence of the Romanian judiciary following the visit to Romania in May 2011, the Rapporteur stressed that the practice of the domestic courts had been undermined by the absence of a stable legislative framework, resulting in a lack of uniform interpretation and application of the law. The lack of predictability of judicial decisions and the lack of acceptability of judicial decision-making were structural factors that needed to be addressed.

C. Opinion no.11 (2008) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on the quality of judicial decisions

18. In its relevant parts, the Opinion reads as follows:

“...

47. While recognising the judges' power to interpret the law, the obligation of the judges to promote legal certainty has also to be remembered. Indeed legal certainty guarantees the predictability of the content and application of the legal rules, thus contributing in ensuring a high quality judicial system.

48. Judges will apply the interpretative principles applicable in both national and international law with this aim in mind. ... In civil law countries, they will be guided by case law, especially that of the highest courts, whose task includes ensuring the uniformity of case law.

49. Judges should in general apply the law consistently. However when a court decides to depart from previous case law, this should be clearly mentioned in its decision.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6, TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

19. The applicants complained under Articles 6 and 14 of the Convention that the proceedings which culminated in the judgment of 21 January 2009 had been unfair, in so far as the domestic courts had wrongfully dismissed their claims relating to the grade and the salary-step allowances and had not taken into consideration the existence of conflicting rulings on the same subject, in which those allowances had been granted to

many of their fellow civil servants across the country. Articles 6 and 14 of the Convention, in so far as relevant, 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 ...”

Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

A. Admissibility

20. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

21. The Government pointed to the fact that, according to the Court's case-law, where an applicant invoked a breach of Article 6 § 1 regarding legal certainty, three conditions had to be analysed: firstly, whether the divergence in the case-law complained of was profound and long-standing; secondly, whether the national legislation provided an effective remedy in respect of the impugned divergence; and thirdly, whether that remedy was applied, and if so, to what effect (the Government referred to *Iordan Iordanov and Others v. Bulgaria*, no. 23530/02, § 49, 2 July 2009).

22. The Government further contended that these criteria had not been met in the present applications, for the following reasons.

As to the persistence and degree of the impugned divergence, the Government argued that since 2008 the national courts had taken a varying approach to the interpretation of the legal texts concerning the specific allowances to be granted to public servants. Some courts had dismissed such claims from the very beginning, whereas others had allowed them at first and then gradually started to change their own case-law, especially following the meetings with judges organised on 19 November 2008 and 10 April 2009 by the Supreme Council of Magistracy committee on the

harmonisation of domestic case-law. In both of those meetings it had been agreed that a divergence existed concerning the interpretation of the legal texts governing specific allowances for civil servants. The members of the committee had agreed that the lodging of an appeal in the interests of the law was necessary in order to put an end to the divergence. Taking as a starting-point the findings made by the committee on 13 May 2009, the Prosecutor General had lodged an appeal in the interests of the law which had been allowed by the High Court of Cassation and Justice on 21 September 2009, thus marking the end of the divergence on the subject.

23. The Government further pointed out that the large number of claimants involved in the impugned proceedings was not necessarily an indicator of the degree of divergence in the case-law. In that regard, the Government acknowledged that the controversial issue of the granting of certain allowances to public servants concerned a great number of people, namely all public servants to whom the impugned provisions of the relevant law applied. However, in spite of the large number of applicants the controversial issue was not liable to escalate, unlike in the case of *Tudor Tudor v. Romania* (no. 21911/03, 24 March 2009), where the issue of the application of restitution laws in Romania was acknowledged to be a matter which affected the whole of Romanian society.

24. Pointing out that the Court had already held that a mere change in the practice of a domestic court did not imply a breach of the Convention, especially if that practice was not arbitrary, the Government further contended that in the present case the divergent approaches taken at different points in time by various courts could not be interpreted as constituting a profound and long-standing divergence in the case-law.

25. Taking the view that the High Court's task of ensuring the uniformity of the case-law had been successfully achieved within about one year from the date when the divergence had arisen, the Government contended that the appeal in the interests of the law had proved to be an effective remedy in respect of such divergences (the Government referred to *Schwarzkopf and Taussik v. the Czech Republic* (dec.), no. 42162/02, 2 December 2008).

Moreover, the High Court's interpretation of the applicable legal texts coincided with the approach taken by the courts in the applicants' cases. This was further proof that there had been no breach of Article 6 of the Convention (the Government cited *Usnul v. the Czech Republic* (dec.), no. 33945/06, 29 March 2011, and *Karakaya v. Turkey* (dec.), no. 30100/06, 25 January 2011).

26. The Government therefore argued that in the present cases, the applicants' complaints regarding a lack of legal certainty were ill-founded.

27. In response to the Court's question whether divergences of case-law constituted a systemic problem in Romania, the Government denied that this was the case, pointing to the fact that the present cases themselves

demonstrated perfectly that the national system for ensuring uniformity of the case-law worked in an efficient manner, regard being had to the fact that an appeal in the interests of the law had been lodged.

Furthermore, the Government reiterated that even though the issues complained of in the present cases affected a large number of people, namely the social category of public servants, this was not decisive for the existence of a structural problem.

28. On the contrary, in so far as the Court had found against the Romanian State in a very limited number of cases concerning breaches of legal certainty due to the existence of a divergent case-law (*Driha v. Romania*, no. 29556/02, 21 February 2008; *Beian v. Romania (no. 1)*, no. 30658/05, ECHR 2007-V (extracts); *Tudor Tudor*, cited above; and *Ștefănică and Others v. Romania*, no. 38155/02, 2 November 2010), it could not be argued that there was a systemic problem concerning diverging case-law in Romania.

29. In any event, the most important mechanisms for the unification of Romanian case-law were functioning and effective, as set out below.

An appeal in the interests of the law was the main instrument capable of putting an end to differing approaches in the domestic case-law. In this connection the Government mentioned that, with effect from 26 October 2010, the provisions governing this kind of appeal had changed, making it more effective. The list of those who had *locus standi* to lodge such appeals had been extended to include the Minister of Justice, the Management Board of the High Court of Cassation and Justice, the management boards of the courts of appeal and the Ombudsman.

The efficiency of this mechanism was also borne out by the statistics. In 2008, the High Court had ruled on 46 appeals in the interests of the law, all of which had been allowed; in 2009, 2010 and 2011, the respective figures had been as follows: 38 appeals, of which 26 had been allowed, 9 of which 8 had been allowed, and 11 of which 10 had been allowed.

From 2005 to 2011, the High Court had ruled on 24 appeals in the interest of the law concerning the interpretation of various legal texts governing salary entitlements; 21 of these had been allowed.

30. A new remedy was also provided for in the draft of the new Romanian Code of Civil Procedure, due to enter into force in June 2012; the preliminary judgments procedure gave both the applicants and the courts giving final judgments in their case the possibility of lodging an application with the High Court of Cassation and Justice where specific legal issues relating to the merits of their case had been interpreted differently across the country. In such proceedings, the High Court was required to give an answer within three months from the date of the application; the judgment thus given, setting out guidelines for the correct interpretation of the legal texts in issue, was binding on all the courts and not only on the parties to the case.

31. The most important general measure envisaged by the Government to address the issue of divergences in the case-law of the national courts was therefore to continue to improve the implementation of the mechanisms mentioned above.

32. As to the applicants' complaints of discrimination, the Government submitted that the mere existence of divergences in the case-law could not be regarded as discrimination. Moreover, the applicants had not indicated any criteria on the basis of which they had allegedly been discriminated against.

Referring to the Court's case-law on similar issues (*Tudor Tudor*, cited above; *Veselinski v. "the former Yugoslav Republic of Macedonia"*, no. 45658/99, 24 February 2005; *Ferrazzini v. Italy* [GC], no. 44759/98, ECHR 2001-VII; and *Karakaya*, cited above), the Government asked the Court to dismiss the complaint as ill-founded.

33. The applicants briefly submitted that they maintained their claims as formulated in their initial applications.

2. The Court's assessment

(a) General principles

34. In its recent Grand Chamber judgment in *Nejdet Şahin and Perihan Şahin v. Turkey* ([GC], no. 13279/05, 20 October 2011), the Court reiterated the main principles applicable in cases concerning the issue of conflicting court decisions (§§ 49-58). These can be summarised as follows:

(i) It is not the Court's function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). Likewise, it is not its function, save in the event of evident arbitrariness, to compare different decisions of national courts, even if given in apparently similar proceedings, as the independence of those courts must be respected (see *Adamsons v. Latvia*, no. 3669/03, § 118, 24 June 2008);

(ii) 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 over the area of their territorial jurisdiction. Such divergences may also arise within the same court. That, in itself, cannot be considered contrary to the Convention (see *Santos Pinto v. Portugal*, no. 39005/04, § 41, 20 May 2008, and *Tudor Tudor*, cited above, § 29);

(iii) The criteria that guide the Court's assessment of the conditions in which conflicting decisions of different domestic courts ruling at last instance are in breach of the fair trial requirement enshrined in Article 6 § 1 of the Convention consist in establishing whether "profound and long-standing differences" exist in the case-law of the domestic courts, whether the domestic law provides for machinery for overcoming these

inconsistencies, whether that machinery has been applied and, if appropriate, to what effect (see *Iordan Iordanov and Others*, cited above, §§ 49-50; see also *Beian (no. 1)*, cited above, §§ 34-40; *Ștefan and Ștef v. Romania*, nos. 24428/03 and 26977/03, §§ 33-36, 27 January 2009; *Schwarzkopf and Taussik*, cited above, 2 December 2008; *Tudor Tudor*, cited above, § 31; and *Ștefănică and Others*, cited above, § 36);

(iv) The Court's assessment has also always been based on the principle of legal certainty which is implicit in all the Articles of the Convention and constitutes one of the fundamental aspects of the rule of law (see, amongst other authorities, *Beian (no. 1)*, cited above, § 39; *Iordan Iordanov and Others*, cited above, § 47; and *Ștefănică and Others*, cited above, § 31);

(v) The principle of legal certainty, guarantees, *inter alia*, a certain stability in legal situations and contributes to public confidence in the courts. The persistence of conflicting court decisions, on the other hand, can create a state of legal uncertainty likely to reduce public confidence in the judicial system, whereas such confidence is clearly one of the essential components of a State based on the rule of law (see *Paduraru v. Romania*, § 98, no. 63252/00, ECHR 2005-XII (extracts); *Vinčić and Others v. Serbia*, nos. 44698/06 and others, § 56, 1 December 2009; and *Ștefănică and Others*, cited above, § 38);

(vi) However, the requirements of legal certainty and the protection of the legitimate confidence of the public do not confer an acquired right to consistency of case-law (see *Unédic v. France*, no. 20153/04, § 74, 18 December 2008). Case-law development is not, in itself, contrary to the proper administration of justice since a failure to maintain a dynamic and evolutive approach would risk hindering reform or improvement (see *Atanasovski v. "the Former Yugoslav Republic of Macedonia"*, no. 36815/03, § 38, 14 January 2010).

(b) Application of these principles to the present cases

35. The Court notes at the outset that from 2008 onwards conflicting approaches emerged across the country, concerning the interpretation and implementation of the legal provisions granting all public servants specific allowances, in the absence of precise criteria for the calculation of those allowances (see paragraph 15 above). As admitted by the Government, the issue complained of in the present cases affected a large number of people (see paragraph 27 above).

36. In the same context but on a more general level, as the Government also acknowledged, the Court observes that the High Court of Cassation and Justice gave more than one hundred judgments on appeals in the interests of the law between 2008 and 2011, designed to ensure the uniformity of the case-law on various legal provisions interpreted and/or applied differently by the domestic courts (see paragraph 29 above).

37. The Court therefore views with concern the scale of the divergent domestic court practices on the same legal matter, including the one referred to in the present cases (see paragraphs 27 and 28 above).

38. The Court reiterates that the persistence of conflicting court decisions, especially when the impugned divergence involves massive numbers of applicants, can in certain circumstances create a state of legal uncertainty likely to reduce public confidence in the judicial system, which is clearly one of the essential components of a State based on the rule of law (see also Relevant international instruments, paragraphs 16 to 18 above).

Divergences of approach may arise between the courts as part of the process of interpreting legal provisions while adapting them to the material situation. These divergences may be tolerated when the domestic legal system is capable of accommodating them (see *Nejdet Şahin and Perihan Şahin*, cited above, §§ 86-87).

While the accommodation of divergences in isolated cases (see *Karakaya*, cited above) may in practice prove to be less demanding, however, when the divergence involves judicial matters affecting large parts of the public, their confidence in the judicial system may be particularly undermined. It is why the system must put in place effective mechanisms that need to be fully and promptly implemented via the highest courts responsible for ensuring the uniformity of the case-law, so as to rectify at the appropriate juncture any inconsistencies in the decisions of the various domestic courts and thus maintain public confidence in the judicial system.

39. Turning back to the present cases, the Court observes that the applicants had the benefit of adversarial proceedings, in which they were able to adduce evidence and freely formulate their defence and in which their arguments were properly examined by the courts. Likewise, the courts' conclusions and their interpretation of the relevant law cannot be regarded as manifestly arbitrary or unreasonable.

It remains therefore to be examined whether the national system provides a mechanism capable of ensuring consistency in the practice of the national courts, notwithstanding the fact that the process of unifying and ensuring the consistency of the case-law may require a certain amount of time (see *Schwarzkopf and Taussik*, cited above).

40. In this respect, the Court notes that on 21 September 2009 an appeal in the interests of the law was granted by the Romanian High Court of Cassation and Justice, which laid down binding guidelines for the uniform interpretation of the legal provisions in issue.

The High Court's ruling brought the divergence on this subject to an end, as the Court has already acknowledged in its decision in *Zelca and Others v. Romania* (no. 65161/10, 6 September 2011), a case very similar to the present ones. In that decision (see § 15), the Court held that the mechanism provided for by Article 329 of the Romanian Code of Civil Procedure, as a mechanism designed to resolve, and not preclude, conflicting court

decisions, had proved to be effective, since in a reasonably short period of time it had put an end to the divergence in the case-law concerning the issue of the granting of grade and salary-step allowances to public servants.

41. It is true that in the present cases, in contrast to the case of *Zelca and Others*, the impugned judgment dismissing the applicants' claims was given before the High Court had had the opportunity to give a uniform interpretation of the legal texts in issue. Nevertheless, the approach adopted by the domestic courts in the applicants' case was similar to that advocated by the High Court only a few months later in its ruling on the appeal in the interests of the law (see *Usnul v. the Czech Republic*, no. 33945/06, 29 March 2011).

42. From that perspective, even though in the present cases the impugned judgment was given at a time when the divergence still existed, the Court sees no reason to depart from its findings in *Zelca and Others* regarding the effectiveness of the appeal in the interests of the law, a mechanism which was set in motion relatively promptly, as it was lodged with the High Court around one year after the onset of the impugned divergence. The High Court, in its turn, assessed the matter promptly and gave unequivocal guidelines on the correct interpretation of the legal text, as a result of which the divergence ceased rapidly and the domestic courts' interpretation became uniform (see, by contrast, *Tudor Tudor*, cited above, § 30, and *Ștefănică and Others*, cited above, § 38). As already mentioned above, achieving consistency of the law may take time, and periods of conflicting case-law may therefore be tolerated without undermining legal certainty (see *Nejdet Şahin and Perihan Şahin*, cited above, § 83), provided that the domestic legal system proves, as in the present cases, capable of accommodating them.

43. Having regard to all of the above, the Court considers that there was no breach of the principle of legal certainty in the applicants' cases. It further holds that there has been no violation of Article 6 of the Convention.

44. In view of its findings in paragraphs 41 to 43 above, the Court considers that it is not necessary to examine separately the applicants' complaint under Article 14 of the Convention.

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

45. Under Article 1 of Protocol No. 1, the applicants complained in substance that as a result of the wrongful interpretation of the law, the court of appeal had deprived them of their right to be awarded the allowances relating to their grade and to their salary step. Article 1 of Protocol No. 1 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.”

46. The Court notes at the outset that Article 1 of Protocol No. 1 applies only to a person’s existing possessions. Thus, future income cannot be considered to constitute “possessions” unless it has already been earned or is definitely payable (see, for example, *Koivusaari and others v. Finland* (dec.), no. 20690/06, 23 February 2010). However, in certain circumstances, a “legitimate expectation” of obtaining an “asset” may also enjoy the protection of Article 1 of Protocol No. 1. Thus, where a proprietary interest is in the nature of a claim, the person in whom it is vested may be regarded as having a “legitimate expectation” if there is a sufficient basis for the interest in national law, for example where there is settled case-law of the domestic courts confirming its existence (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 52, ECHR 2004-IX).

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 (*ibid.*, § 50).

47. In the present cases, the applicants’ alleged salary entitlements, although expressly recognised by the State in the relevant domestic legislation, cannot be regarded as having sufficient basis in domestic case-law, since the courts gave varying and even conflicting interpretations of the relevant legal provisions, resulting in a long-lasting divergence in the case-law on the matter.

In this connection, it cannot be argued that the applicants had a possession within the meaning of Article 1 of Protocol No. 1. Likewise, as to the existence of a general climate of uncertainty, incompatible with the concept of “settled case-law”, regarding the outcome of the proceedings brought by the applicants, the Court considers that the latter cannot be said to have had a “legitimate expectation” either (see, *mutatis mutandis*, *Liepājnieks v. Latvia* (dec.), no. 37586/06, 2 November 2010, §§ 95-96).

Moreover, the High Court’s ruling of 21 September 2009 on the appeal in the interests of the law, which ended the divergence on the matter, confirmed that civil servants were not entitled to the allowances claimed, an interpretation which was in line with what the court of appeal had held when it dismissed the applicants’ claims.

It follows that the applicants did not have a possession within the meaning of Article 1 of Protocol No. 1.

48. The complaint under Article 1 of Protocol No. 1 is therefore inadmissible as being incompatible *ratione materiae*, in accordance with Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 taken alone and in conjunction with Article 14 concerning the divergence in the case-law of the domestic courts admissible and the remainder of the applications inadmissible;
2. *Holds* that there has been no violation of Article 6 of the Convention;
3. *Holds* that there is no need to examine separately the complaint under Article 14 of the Convention.

Done in English, and notified in writing on 10 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President

No.	Application no.	Lodged on	Applicant's name, date of birth, place of residence
1.	34796/09	10/06/2009	Dorin Petru ALBU 13/06/1959 Baile Herculane
2.	34797/09	10/06/2009	Ana ANGHELOIU 23/02/1955 Resita
3.	34798/09	10/06/2009	Stefania BONTEA 08/04/1954 Resita
4.	34799/09	10/06/2009	Marioara Viorica BUDIMIR 20/08/1951 Resita
5.	34800/09	10/06/2009	Ion BERBENTEA 18/07/1957 Resita
6.	34801/09	10/06/2009	Simona BENGĂ 12/08/1975 Resita
7.	34802/09	10/06/2009	Claudiu Mihai BALABAN 30/10/1978 Resita
8.	34803/09	10/06/2009	Gheorghe Vasile BALAJ 24/02/1969 Resita
9.	34804/09	10/06/2009	Codrut Dan BUCATES 21/08/1969 Resita
10.	34805/09	10/06/2009	Sebastian BUZORI 04/10/1973 Bocsa
11.	34806/09	10/06/2009	Floarea BOROZAN 17/01/1971 Bania
12.	34807/09	10/06/2009	Emanuel CRING 27/02/1969 Moldova Noua
13.	34808/09	10/06/2009	Daniela CORICOVAC 11/02/1970 Resita

14.	34809/09	10/06/2009	Iulica DINA 01/08/1970 Resita
15.	34810/09	10/06/2009	Marius DUMBRAVA 16/11/1962 Resita
16.	34811/09	10/06/2009	Elena DRAGHICESCU 27/01/1954 Otelu Rosu
17.	34812/09	10/06/2009	Ovidiu George DRAGILA 27/02/1976 Resita
18.	34813/09	10/06/2009	Gheorghe DRAGHICI 06/07/1967 Resita
19.	34814/09	10/06/2009	Maria DITESCU 29/03/1963 Resita
20.	34815/09	10/06/2009	Daniela Lavinia DANILIUC 30/05/1980 Moldova Noua
21.	34816/09	10/06/2009	Mircea Laurentiu GRIGORE 26/09/1968 Resita
22.	34817/09	10/06/2009	Ileana HREBENCIUC 22/08/1963 Resita
23.	34818/09	10/06/2009	Caius ISAC 05/11/1962 Resita
24.	34819/09	10/06/2009	Dorina GROZA 28/03/1951 Boca
25.	34820/09	10/06/2009	Carla Maria GOAGA 10/08/1972
26.	34821/09	10/06/2009	Lenuta Liliana LINTA 10/11/1969 Resita
27.	34822/09	10/06/2009	Viorel Florin LAZAR 17/09/1974 Caransebes

28.	34823/09	10/06/2009	Dorin Ioan LUCA IORGA 14/07/1974 Bocsa
29.	34824/09	10/06/2009	Alina LOTOROSANU 17/12/1981 Resita
30.	34825/09	10/06/2009	Ramaian MITRICA 04/09/1979 Resita
31.	34826/09	10/06/2009	Maria MURGU 05/10/1973 Resita
32.	34827/09	10/06/2009	Ion MARAN 07/05/1967 Ciclova Romana
33.	34828/09	10/06/2009	Florica MALACHI 19/10/1957 Resita
34.	34829/09	10/06/2009	Carmen NECHITA 15/12/1952 Baile Herculane
35.	34830/09	10/06/2009	Nicolae NEGRU 30/10/1953 Moceris
36.	34831/09	10/06/2009	Nicolae NOVACESCU 13/04/1963 Caransebes
37.	34832/09	10/06/2009	Cristian Sandel PAPUC 09/09/1972 Resita
38.	34833/09	10/06/2009	Marius PUIE 18/04/1977 Resita
39.	34834/09	10/06/2009	Alina Silvia ROSCA 23/09/1971 Resita
40.	34835/09	10/06/2009	Alina Domnica PETRE 16/08/1974 Resita
41.	34836/09	10/06/2009	Constanta POP 20/05/1958 Resita

42.	34837/09	10/06/2009	Daniela PRUNA 10/08/1965 Resita
43.	34838/09	10/06/2009	Lidia RADU 10/05/1954 Anina
44.	34839/09	10/06/2009	Emilian Marius RADOI 04/09/1971
45.	34840/09	10/06/2009	Alexandru SUTA 29/10/1956 Resita
46.	34841/09	10/06/2009	Ion STIRBU 28/02/1953 Resita
47.	34842/09	10/06/2009	Loredana STAMATE 27/02/1975 Resita
48.	34843/09	10/06/2009	Mihaela STETA 28/01/1965 Resita
49.	34844/09	10/06/2009	Ana TOMA 22/06/1951
50.	34845/09	10/06/2009	Calina TURCIN 15/11/1964 Obreja
51.	34846/09	10/06/2009	Elisabeta TOMA 22/08/1958 Resita
52.	34847/09	10/06/2009	Marius ZAVELCUTA 07/07/1975 Resita
53.	34848/09	10/06/2009	Dumitru MIU 28/12/1949 Resita
54.	34849/09	10/06/2009	Iosif CORCAN 11/07/1945 Resita
55.	34850/09	10/06/2009	Florina Veronica LUNGU 12/07/1973 Resita

56.	34851/09	10/06/2009	Gheorghe Sabin POP 02/07/1954 Resita
57.	34852/09	10/06/2009	Virginia MIU 25/10/1961 Resita
58.	34853/09	10/06/2009	Nicolae ARDELEAN 09/07/1945 Oravita
59.	34854/09	10/06/2009	Ioan Mihai BALMEZ 08/11/1957 Resita
60.	34855/09	10/06/2009	Rodica Stefania BIRCEA 21/05/1966 Resita
61.	34856/09	10/06/2009	Dorin TANASESCU 25/05/1963 Resita
62.	34857/09	10/06/2009	Erika INISCONI 28/07/1972 Resita
63.	34858/09	10/06/2009	Ion VISAN 26/01/1952 Resita
64.	34859/09	10/06/2009	Aneta NEGOIANU 12/09/1957 Resita