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

FIFTH SECTION

CASE OF ZAFFERANI AND OTHERS v. SAN MARINO

(Applications nos. 38127/22 and 6 others – see appended list)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Legislative intervention through the enactment and immediate retrospective application of a new law to pending proceedings, regarding the applicants' career reconstruction for the purposes of their employment in the military, definitively modifying their outcome in the State's favour • Absence of sufficient compelling reasons capable of outweighing the dangers inherent in the use of retrospective legislation

Prepared by the Registry. Does not bind the Court.

STRASBOURG

9 January 2025

FINAL

09/04/2025

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Zafferani and Others v. San Marino,

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

Mattias Guyomar, *President*,
María Elósegui,
Armen Harutyunyan,
Stéphanie Mourou-Vikström,
Gilberto Felici,
Kateřina Šimáčková,
Mykola Gnatovskyy, *judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 38127/22 and 6 others, see appended list) against the Republic of San Marino lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), on 1 August 2022, by seven nationals of San Marino (“the applicants”), whose details are indicated in the appended table;

the decision to give notice to the Government of San Marino (“the Government”) of the complaints concerning Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention and to declare inadmissible the remainder of the applications;

the parties’ observations;

Having deliberated in private on 3 December 2024,

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

INTRODUCTION

1. The case concerns a legislative intervention affecting the outcome of proceedings regarding the applicants’ career reconstruction for the purposes of their employment in the military.

THE FACTS

2. The applicants were represented by Ms E. Zaghini and earlier some of the applicants had been represented by Mr R. Fabbri, both lawyers practising in Borgo Maggiore at the time, as indicated in the appended table.

3. The Government were represented by their Agent, Ms S. Bernardi, Representative of San Marino to the European Court of Human Rights.

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

THE CIRCUMSTANCES OF THE CASE

5. As of different dates between 2006 and 2008 the applicants were officers, originally employed on a temporary basis, of the Uniformed Unit of

the Fortress Guard (*Nucleo Uniformato della Guardia di Rocca*), a military body of San Marino. In the applicants' view their enrolment should have become definite following a successful one-year probationary period according to law no. 132/1987 (Regulations of the Uniformed Unit of the Fortress Guard) as amended by law no. 99/1997 (Amendment to the Regulations of the Uniformed Unit of the Fortress Guard), which also provided for career advancements (see paragraph 20 below).

6. Nevertheless, their employment was periodically extended until 18 January 2016 when the Parliament (*Consiglio Grande* e *Generale*), by decision no. 8 of 18 January 2016, acknowledged (*presa d'atto*) their permanent recruitment pursuant to Article 63 (1) of law no. 189/2015 (Budget of the State and State Entities for the 2016 tax year and multi-year budgets for the period 2016/2018) (see paragraph 22 below) attributing to them a "Scale 5" career category.

7. Following that decision, on dates between 28 January and 2 February 2016, the applicants submitted to the Public Administration Personnel Management Office ('PAPMO'), a request for the reconstruction of their career, which would have an impact on their salary and entitlements. According to acknowledgment of receipt forms given to the applicants, those dates constituted the date from which the deadline for the conclusion of proceedings started to run ("*data da cui decorre il termine per la conclusione del procedimento*"). The forms also indicated that the relevant remedies were those provided under law no. 68/1989 (proceedings before the administrative courts). No reply to their requests ensued at the time.

8. By legislative Delegated Decree no. 88 of 25 July 2016 (Provisions for the recruitment of Police Officers and for the verification of psychophysical fitness to serve in the Gendarmerie Corps and in the Uniformed Unit of the Fortress Guard) (hereinafter 'law no. 88/2016', see paragraph 23 below), the legislator, bearing in mind the need and urgency to regulate employment in the Police and other forces in the light of the needs of the State, specified under its Article 1 that for the purposes of persons recruited pursuant to Article 63 of law no. 189/2015 any economic benefits derived from the retrospective adjustment of careers, could only start to run as of 1 February 2016, without payment of arrears and without the payment by them of the statutory withholding taxes referred to in Article 54 of law no. 41/1972 on the sums not paid to them.

9. Following the enactment of law no. 88/2016, the applicants career reconstruction was carried out by the PAPMO pursuant to Article 1 of law no. 88/2016. Consequently, each of the applicants alleged to have suffered losses of around 25,000 euros (EUR) or more.

10. ln 2018 the applicants asked the Minister of Foreign and Political Affairs and the Director General of Civil Service to intervene in order to obtain also the payment of arrears, in application of the ordinary provisions.

11. On 7 November 2018 the Director of Civil Service and the Director of Human Resources, confirmed the compliance of the career reconstruction adopted by the PAPMO in line with law no. 88/2016, noting that the applicants had not been employed under the ordinary procedure envisaged under law no. 132/1987 as amended by law no. 99/1997.

12. On 20 March 2019, the applicants filed an application before the Judge of First Instance ('CoL', *Commissario della Legge*), exercising administrative jurisdiction, seeking the annulment of the decision of 7 November 2018. They complained about the unlawfulness of their career reconstruction which had been done in line with Article 1 of law no. 88/2016 (see paragraph 23 below) arguing that the latter law was unconstitutional, since it conflicted with Articles 4 (principle of equality) and 9 (principle of equitable remuneration) of the Declaration of the Citizens' Rights. Therefore, they asked the CoL to refer the matter to the Constitutional Court (*Collegio Garante della Costituzionalità delle Norme*). On 9 December 2019, the CoL dismissed the referral request, considering it manifestly ill-founded, it being legitimate to apply different conditions to persons employed on the basis of extraordinary procedures, and ordered the continuation of the proceedings.

13. On 29 January 2020, the applicants asked the CoL to abstain from deciding the case in so far as, in his order of 9 December 2019, he had not merely carried out a superficial control of the grounds put forward in support of the referral request but, on the contrary, improperly expressed his own conviction on the matter at issue.

14. A further challenge by the applicants to the CoL hearing the case was dismissed on 17 July 2020 by the Judge for Extraordinary Remedies ('JER'), who held that the CoL – who had had the duty to decide on the referral request – had to examine the question raised, to consider whether the request was manifestly ill-founded or deserving of a referral. Such an assessment did not mean that he was usurping the functions of the Constitutional Court nor that he had expressed himself on the administrative complaint. However, in what appears to be an *obiter dictum*, the JER continued to note that the impugned provision of law had to be examined by the CoL in the light of Convention principles, and in the present case the applicants had suffered a legislative interference (the justification of which was being challenged) in pending proceedings which had started in January/February 2016 before the enactment of the impugned legislative decree in July 2016. The case was thus sent back to the CoL for him to continue hearing the case.

15. By a judgment of 4 November 2020, the CoL dismissed their claim considering that the calculation was in line with the new law no. 88/2016, which clarified the content of Article 63 (1) of law no. 189/2015, which was a *lex specialis derogat legi generali* and thus prevailed over law no. 132/1987 (and in so far as relevant the provisions of law no. 41/1972). Furthermore, the applicants had benefitted from Article 63 of law no. 189/2015, which had allowed them to be permanently recruited without having participated in any

public competition. That placed the applicants in a different position from that of other officers who had been permanently recruited by means of a public selection, thus, the different remuneration of the former was not contrary to the principle of reasonableness. Likewise, no violation of Article 9 (principle of equitable remuneration) of the Declaration of the Citizens' Rights could be established.

16. On 4 December 2020, the applicants lodged an appeal before the Judge of Appeal (*Giudice d' Appello*) exercising administrative jurisdiction. They reiterated their request for a constitutional reference concerning the constitutionality of Article 1 of law no. 88/2016 and extended the list of constitutional parameters considered to have been violated, by also including Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention. This request was later withdrawn by the applicants.

17. By a judgment of 30 March 2022, notified to the applicants on 4 April 2022, the Judge of Appeal upheld the first-instance judgment in its entirety, emphasising that the applicants had not been employed by means of a public competition but through an *ad hoc* process and therefore that the ordinary law dealing with the former type of recruitments could not apply to them. It ordered the applicants, jointly and severally, to pay the costs and fees of the appeal proceedings.

RELEVANT LEGAL FRAMEWORK

18. The translation of the relevant domestic law has been provided by the Government.

19. Law no. 41/1972 and subsequent amendments (law on public employment), in so far as relevant, reads as follows:

Article 6

> "Posts for civil servants shall be filled by means of a competition announced by the Parliament (...)"

Article 54

> "Service rendered after reaching the age of 21 and prior to appointment in the Public Administration, whether for assignments or substitutions lasting more than ten working days at normal working hours, shall be counted in full and retroactively for the purposes of career advancement and establishment of periodic increases. This service shall be recognised at the employee's request, against payment of statutory withholding taxes calculated on the basis of the last salary."

20. Law no. 132 of 13 November 1987 (Regulations of the Uniformed Unit of the Fortress Guard) as amended by law no. 99 of 5 September 1997 (Amendment to the Regulations of the Uniformed Unit of the Fortress Guard), in so far as relevant, reads as follows:

Article 6

"Cadet Guards shall be recruited in the Uniformed Unit of the Fortress Guard following a public competition, in which anyone meeting the requirements indicated in the recruitment announcement issued by the Government Body (*Congresso di Stato*) may participate (...)"

Article 15

"Rank advancement in the Corps shall take place as follows:

- Rank advancement by seniority

from Cadet Guard to Guard: after one year of service from recruitment;

from Guard to Major Corporal: after 8 years of service from recruitment;

from Major Corporal to Sergeant: after 13 years of service from recruitment;

For the above-mentioned ranks there shall be no limit of number in the Corps' Staff.

- Rank advancement based on qualifications and exams

Sergeants-Major shall be recruited following an internal competition, provided that they have served at least 13 years in the Corps or have a High School Diploma and have served at least 6 years in the Corps;

Assistant Sergeants-Major shall be recruited following an internal competition, provided that they have been Sergeants-Major far at least three years or that they have a degree in law or economics and have served at least 3 years in the Corps.

All rank advancements, both based on seniority and on competition, shall be decided by the Government Body, upon proposal of the Commander following the favourable opinion of the Higher Command of the Militia.

Always in order to advance to a higher rank, seniority in the Corps shall be effective.

(...)

Rank advancement of Officers shall be decided by the Government Body, upon proposal of the Higher Command of the Militia (*Comando Superiore delle Milizie*)

(...)"

Article 21

"The levels of remuneration of the Guards in accordance with the provisions of the Annex to law no. 86 of 25 November [1980 Restructuring of the offices and services of the State; Amendments to the regulation of public employment relationships] and subsequent amendments:

(...)

Remuneration shall be subject to any increases and variations as established in favour of State employees.

(...)"

21. Article 5 of law no. 54/2003 (Implementation of the Agreement between the Government Body and Trade Unions concerning the contractual relationship of civil servants - four-year period 2001-2002-2003-2004

Amendments to Annex ‘F’ to the Law on public employment) reads as follows:

> “For the purposes of calculating seniority steps and anything else deriving from career advancement as provided for by the regulations, the service rendered within the Public Administration in accordance with the provisions in force, by employees who will benefit from regularisation, shall be taken into account.
>
> The effects in terms of remuneration deriving from the career reconstruction, which will take place after recruitment, shall start to run from 1 March 2003 and shall not include the payment of arrears.”

22. Article 63 of Law no. 189/2015 (Budget of the State and State Entities for the 2016 tax year and multi-year budgets for the period 2016/2018), reads as follows:

> “1. To implement the indications contained in the decision approved by the Parliament on 30 April 2015 concerning the reorganisation of the Police Corps, also with a view to strengthening prevention and territorial control activities, by arranging for further actions to counter widespread predatory and most socially alarming crime, through the reinforcement of 24-hour patrol services throughout the territory by the Police Corps and the establishment of the Inter-agency Operations Centre, by way of derogation from the provisions of Article 6 of Law no. 132/1987 and subsequent amendments, (...), those who are already serving at the entry into force of this Law with the rank of ‘Cadet Guard’ (...) shall be permanently recruited in the Uniformed Unit of the Fortress Guard (*Nucleo Uniformato della Guardia di Rocca*) with the rank of ‘Guard’, (...), provided they have served continuously for a period of at least five years starting from 1 January 2008.
>
> 2. The officers who meet the requirements set forth in paragraph 1 above shall be permanently recruited in the Uniformed Unit of the Fortress Guard (...) with the rank of ‘Guard’ (...) following acknowledgment by the Parliament (...)”

23. Article 1 of Delegated Decree no. 88/2016 (Provisions for the recruitment of Police Officers and for the verification of psychophysical fitness to serve in the Gendarmerie Corps and in the Uniformed Unit of the Fortress Guard) reads as follows:

> “1. The effects in terms of remuneration deriving from the career reconstruction resulting from the permanent recruitment in the Uniformed Unit of the Fortress Guard of those persons falling within the scope of Article 63 (1) of law no. 189 of 22 December 2015 shall run from 1 February 2016, given the acknowledgment of the recruitment by the Parliament with decision no. 8 of 18 January 2016.
>
> 2. The effects in terms of remuneration deriving from the career reconstruction shall not include the payment of arrears and of the statutory withholding taxes referred to in Article 54 of law no. 41 of 22 December 1972.”

24. Article 4 of Delegated Decree no. 23/2016 (Implementation of the Agreement between the Government Body and Trade Unions to overcome precarious employment in the Overall Public Sector and regulations on the appointment of medical personnel) read as follows:

> “The effects in terms of remuneration deriving from the career reconstruction, which will take place after recruitment and/or appointment, shall start to run according to the

> terms set out in the Agreement and shall not include the payment of arrears and of the statutory withholding taxes referred to in Article 54 of law no. 41 of 22 December 1972."

25. Article 4 of Delegated Decree no. 214/2020 (Implementation of the Agreement between the Government Body and Trade Unions to overcome precarious employment in the Social Security Institute) read as follows:

> "The effects in terms of remuneration deriving from the career reconstruction, which will take place after appointment, shall start to run according to the terms set out in the Agreement and shall not include the payment of arrears and of the statutory withholding taxes referred to in Article 54 of law no. 41 of 22 December 1972."

THE LAW

I. JOINDER OF THE APPLICATIONS

26. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment (Rule 42 § 1 of the Rules of Court).

II. SCOPE OF THE CASE

27. The Court observes that while the applicants and the Government in their replies referred to the issue of remuneration relating to higher duties performed without any assignment in the corresponding rank, a matter raised in the context of another complaint, the latter had been declared inadmissible at the stage of communication of the application by the President of the Section acting as single judge (see the preamble above).

III. PRELIMINARY OBJECTIONS

28. The Government submitted that the applicants had not exhausted domestic remedies in so far as they had withdrawn their request to the Judge of Appeal, based on their Convention complaints, for the matter to be referred to the Constitutional Court (see paragraph 16 *in fine*).

29. The applicants submitted that they had no direct access to the Constitutional Court and could only ask for the administrative courts to refer the matter to the Constitutional Court, thus it was not a remedy to be exhausted. Moreover, the applicants had made such a request at first instance, and it had been deemed manifestly ill-founded by the CoL. The request made on appeal had also been rejected given that the applicants had waived it, without the Court of Appeal considering that it could have referred it of its own motion.

30. The Court has already held that while in San Marino an administrative court hearing the merits of a case has the possibility of making a reference to the Constitutional Court, at the request of a party or of its own motion, such

an application cannot be a remedy whose exhaustion is required under the Convention, in the absence of exceptional circumstances taking into account the specifics of the functioning of constitutional review proceedings in the domestic system at issue (see *Pasquinelli and Others v. San Marino*, no. 24622/22, § 40, 29 August 2024 and the case-law cited therein). No such circumstances having been established in the present case, the Court confirms that such an application cannot be a remedy whose exhaustion is required under the Convention and therefore dismisses the Government's objection in this respect.

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

31. The applicants complained about a legislative intervention by the State in pending proceedings to ensure that the outcome was favourable to it, which they considered was contrary to Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

32. The Court observes that the Government have not raised any objection *ratione materiae*. However, it notes that competence *ratione materiae* is a matter which goes to the Court's jurisdiction and which it is not prevented from examining of its own motion (see, for example, *Pasquini v. San Marino*, no. 50956/16, § 86, 2 May 2019).

33. The Court reiterates that for Article 6 § 1 to be applicable under its "civil" limb, there must be a "dispute" regarding a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see *Regner v. the Czech Republic* [GC], no. 35289/11, § 99, 19 September 2017, and *Fabbri and Others v. San Marino* [GC], nos. 6319/21 and 2 others, § 76, 24 September 2024).

34. There can in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of relationship between the particular civil servant and the State in question. There will, in effect, be a presumption that Article 6 applies. It is for the respondent Government to demonstrate firstly that a civil-servant applicant does not have a right of access to a court under national law and, secondly,

that the exclusion of the rights under Article 6 for the civil servant is justified (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-II).

35. As noted above, the Government raised no objection, and indeed the proceedings at issue in the present case, at least at their judicial stage, concerned directly and were determinative of a dispute about, *inter alia*, the applicants' salaries and entitlements (see paragraphs 7 above). Having regard to this fact and noting that the dispute fell within the jurisdiction of the domestic courts, it finds that Article 6 was applicable (see, for example, *Vasilchenko v. Russia*, no. 34784/02, §§ 34-36, 23 September 2010).

36. The Court further notes that the applicants' complaint under Article 6 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

(a) The applicants

37. The applicants submitted that law no. 88/2016 (see paragraph 23 above) enacted after their requests for career reconstruction to the PAPMO (see paragraph 7 above) constituted a legislative intervention having retroactive effect aimed to influence the outcome of the dispute eventually brought before the domestic courts, thus constituting a breach of Article 6 § 1 of the Convention. Relying on the findings of the JER (see paragraph 14 above) they considered that there was no doubt that the proceedings had been initiated as of their request to the PAPMO, and therefore that the legislative intervention occurred pending proceedings. The mere fact that, as noted by the Government, it was promulgated only a few months after their request had no bearing on its aims or effects.

38. The applicants noted that the decision of parliament of 18 January 2016 (see paragraph 6 above) had merely dealt with their employment and their salary scale but had not concerned remuneration in relation to career reconstruction. There was thus no doubt that, in the absence of the enactment of law no. 88/2016, the applicable law was the general law no. 132/1987. To perpetrate this abuse the Government had had in fact to resort to law no. 88/2016, which, as shown by its title "decree law" was only used in cases of urgency and necessity. As a result, the administrative jurisdictions' conclusions had only been limited to a finding that the calculation applied to the applicants had complied with the law, but no considerations regarding any compelling public interest or any other Convention related assessment had been made concerning the legitimacy of that law.

39. In reply to the Government's arguments, the applicants contended that the derogation from the ordinary law in the present case could not be comparable to exceptional regularisation situations which had occurred in the past. This was so because the Government had neither entered into a trade union agreement with the Military (its special status not allowing for such trade unions), unlike the other situations (see paragraphs 21, 24 and 25 above), nor had there been any agreement with the applicants' themselves. The situation had simply been imposed on them by analogy.

(b) The Government

40. The Government submitted that the applicants suffered no legislative interference pending proceedings. Although they had applied for career reconstruction in January/February 2016, the relevant administrative procedure had not been initiated by the PAPMO which could not have taken any action due to the "peremptory" nature of Article 63 of law no. 189/2015. The latter had derogated from the ordinary rules (law no. 132/1987 and subsequent amendments, which, concerning remuneration, referred back to public employment laws, see paragraphs 20 and 19 above) and presupposed the adoption of a further regulatory intervention to complete it, which was then adopted, immediately after, *via* law no. 88/2016. It was only after this further legislation, which was complementary and could not be considered as having retroactive application, that the PAPMO could start the administrative procedure pertaining to the applicants' career reconstruction. Prior to that it would have been unable to do so given the legal vacuum.

41. The Government explained that the financial claims which were put forward by the applicants had been based on the provisions of Article 6 of law no. 132/1987 and subsequent amendments (see paragraph 20 above), which, however, necessarily presupposed, for the purposes of their application, that employees were recruited by means of a public competition. This was, however, not the case for the applicants and therefore their request had no basis in law. Indeed, the applicants were permanently recruited through an extraordinary procedure (so-called regularisation of precarious personnel, already used in the past) which in the present case was authorised *via* Article 63 of law no. 189/2015, supplemented, six months later, by law no. 88/2016, whereby the legislator defined the remuneration (including in relation to career reconstruction) of officers recruited through this extraordinary procedure, which derogated from the law which had been relied on by the applicants.

42. The Government noted that in previous regularisations, the legislator had also provided for career reconstruction starting from a date other than that on which employees effectively took office, generally coinciding with the date of regularisation, without recognising the payment of arrears. As in the present case, on such occasions, the permanent recruitment in the Public Administration of precarious staff had also not been the result of a public

competition – the only method envisaged by law no. 41/1972 (on public employment, see paragraph 19 above) – but through the verification of specific requirements (such as the type of assignment and its duration) indicated by the legislation specifically adopted for the regularisation.

43. The inapplicability of law no. 132/1987 in the applicants' cases was also evident by the fact that they had not become employed definitively after one year of their probationary period, and indeed the applicants raised their requests only after being recruited under the new law, and not before. This delay coupled with the fact that they awaited a further two years following their recruitment to initiate judicial proceedings went to show that they had been aware that the provisions of the ordinary law could not apply to their special situation. Domestic case-law had also taken this orientation in similar disputes concerning extraordinary procedures for the regularisation of Public Administration personnel which had emphasised that "facilitated" access (i.e., in the absence of a public competition but by means of direct recruitment through appointments) to employment in the overall Public Administration may constitute a justification for the purposes of adopting a different legislation [1].

44. The application of this model also to the present cases was envisaged by the legislator in order to ensure uniformity of remuneration of all personnel employed by the Public Administration who benefitted from regularisation procedures - both civil and military personnel - taking into account the fact that the Regulations of the Uniformed Unit of the Fortress Guard referred, for the purposes of regulating the remuneration of officers, to the legislation relating to public employment (see Article 21 of law no. 132/87 at paragraph 20 above)[2]. Thus, military personnel were also subject to the economic treatment of civil personnel. It followed that, just as military personnel would be guaranteed the remuneration envisaged by law no. 41/1972 in the case of recruitment following a public competition, in the same way military personnel recruited through an extraordinary procedure were subject to the same salary model already envisaged for civil personnel employed by the Public Administration who had benefited from past regularisations. Moreover, such regularisations had a basis in law irrespective of any agreements with the relevant trade unions.

45. The aim of law no. 88/2016 was therefore not to interfere with any ongoing proceedings, nor to circumvent the rule of law, but rather to ensure uniform remuneration to all personnel employed in the overall public sector, including military personnel permanently recruited through an extraordinary procedure who had to be granted the same remuneration as civil employees

[1] see, in this regard, judgment no. 2 of 18 March 2009 of the Judge of Third Instance; Judgment no. 5 of 17 June 2022 of the Judge of Third Instance and judgment no. 17 of 24 September 2008 of the Administrative Judge of Appeal.

[2] see, in this regard, judgment no. 4 of 12 April 2020 of the Administrative Judge of Appeal and judgment of the Judge of First Instance no. 26 of 25 November 2021.

recruited through similar procedures. This was an imperative requirement in the public interest as it was undeniable that the impartiality of the actions performed by the Public Administration was an essential guarantee for the functioning of the State, grounded in various laws including the Declaration of the Citizens' Rights, which enshrines the principle of equality understood as the State's obligation to treat substantially equal situations in an equal way and different situations in a different way.

2. *The Court's assessment*

(a) General principles

46. In the context of civil disputes, the Court has repeatedly ruled that although, in principle, the legislature is not prevented from regulating, through new retrospective provisions, rights derived from the laws in force, the principle of the rule of law and the concept of a fair trial enshrined in Article 6 preclude any interference by the legislature with the administration of justice designed to influence the judicial determination of a dispute, save on compelling grounds of general interest (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 49, Series A no. 301-B; *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 9 others, § 57, ECHR 1999-VII; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 126, ECHR 2006-V; and, more recently, *Dimopulos v. Turkey*, no. 37766/05, § 45, 2 April 2019, and *Hussein and Others v. Belgium*, no. 45187/12, § 60, 16 March 2021).

47. There are dangers inherent in the use of retrospective legislation which has the effect of influencing the judicial determination of a dispute to which the State is a party, including where the effect is to make pending litigation unwinnable (see *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, § 112, *Reports of Judgments and Decisions* 1997-VII – hereinafter the "*Building Societies case*"). Respect for the rule of law and the concept of a fair trial therefore require that any reasons adduced to justify such measures be treated with the greatest possible degree of circumspection (ibid.; see also *Maggio and Others v. Italy*, nos. 46286/09 and 4 others, § 45, 31 May 2011, and *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, § 93, 3 November 2022). Financial considerations cannot by themselves warrant the legislature substituting itself for the courts in order to settle disputes (see *Scordino*, cited above, § 132, and *Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*, nos. 48357/07 and 3 others, § 76, 24 June 2014).

48. It is possible for general legislation which may prove unfavourable to litigants to be enacted if it did not actually target pending judicial proceedings and was not aimed at circumventing the principle of the rule of law (see *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 72, ECHR 2004-III).

Laws may also be enacted before the start of proceedings without raising an issue under Article 6 § 1 (see *Organisation nationale des syndicats d'infirmiers libéraux (ONSIL) v. France* (dec.), no. 39971/98, ECHR 2000-IX). However, a legislative intervention contrary to the Convention may occur even before judicial proceedings have started, this is so when an administrative authority's decision is a necessary preliminary for bringing the case before a tribunal, in such circumstances that period must also be taken into account (see *OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others v. France*, nos. 42219/98 and 54563/00, § 62, 27 May 2004, as well as the Court's considerations in *Azzopardi and Others v. Malta* (dec.), nos. 16467/17 and 24115/17, § 44, 12 March 2019).

(b) Application to the present case

49. The applicants complained that the enactment of law no. 88/2016 constituted a legislative intervention by the State in pending proceedings, causing them financial losses.

50. The Court would start by examining whether the legislative action in the present case can be considered to have occurred pending the proceedings determining the applicants' civil rights. In this regard the Court notes that there is no dispute on the fact that, for the purposes of the San Marino legal framework, the procedure in the present case was an administrative one and that the administrative courts had the competence to decide on the challenge raised by the applicants to the computation of their career reconstruction. It stands to reason that, the relevant judicial proceedings could not have been initiated prior to that computation, and therefore the applicants' request for the calculation of their career reconstruction was an obligatory step without which no challenge before the domestic courts could ensue. It follows that, as also evidenced by the paper work given to the applicants (see paragraph 7 above) and the considerations of the JER (see paragraph 14 above) (albeit his competence pertaining to other matters), the proceedings in the present cases must be considered as having started in January/February 2016 when the applicants first lodged their claims with the State and therefore that the legislative intervention occurred pending proceedings (see, *mutatis mutandis*, *OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others*, cited above, § 62).

51. In so far as the Government argued that law no. 88/2016 merely supplemented law no. 189/2015, which had derogated from law no. 132/1987, but had left a vacuum, the Court observes that even in the event that that was the case, compelling grounds of general interest would still be necessary to allow a State to interfere in such a way with proceedings, in their own favour (compare, *mutatis mutandis*, *Azienda Agricola Silverfunghi S.a.s. and Others*, cited above, § 81).

52. However, the Court does not find convincing and supported by sufficient argument's the Government's position that such a vacuum existed

as a result of law no. 189/2015 which they claim had derogated from the ordinary law no. 132/1987. The Court observes that Article 63 (1) of law no. 189/2015 only derogated from "Article 6 of Law no. 132/1987 and subsequent amendments" (see paragraph 22 above) but did not derogate from any other provision of law no. 132/1987. Nor has the Government indicated any other provision in law no. 189/2015 providing for any further derogations. Bearing in mind that Article 6 of law no. 132/1987 only refers to the means of recruitment (see paragraph 22 above) with no reference whatsoever to emoluments, grades or career reconstruction, it was reasonable to argue that the latter had to be considered as remaining regulated by law no. 132/1987 (with further reference to the employment law). It follows that, in the absence of such vacuum, it cannot be said that in the circumstances of the present cases the applicants could have foreseen a reaction by Parliament (contrast with *OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others*, cited above, §§ 69-72 and, albeit in different circumstances, the *Building Societies case*, cited above, § 112).

53. Thus, while the applicants had initially a fair opportunity of putting their case to the administrative authorities, and later the courts, for the determination of their claims, the subsequent enactment of law no. 88/2016 had the effect of definitively modifying the outcome of the pending litigation, to which the State was a party, through one of its administrative entities, endorsing the State's position to the applicants' detriment.

54. It remains to be determined whether that legislative interference, which occurred at the administrative stage, but which had the result of influencing the outcome of the judicial determination of the dispute in favour of the State, can be justified on compelling grounds of general interest. The Court accepts that treating similar situations equally, or different situations accordingly, is certainly, as argued by the Government, a policy in the general interest. Nevertheless, besides the fact that there might be reasons for treating the military differently to other categories, no explanation has been submitted as to why this treatment had not been put in place as of the start (i.e., six months earlier) by means of law no. 189/2015 or any other accompanying text at the time of its enactment. Other than the equality argument no further justification has been put forward by the respondent Government. Thus, while the aim of the law, if applied *pro futuro*, may have been legitimate, the Court is not convinced that sufficiently compelling reasons for making it immediately and retrospectively applicable to pending proceedings have been shown to exist. In these circumstances, the Court finds that in the present case the State, without compelling reasons capable of outweighing the dangers inherent in the use of retrospective legislation, adopted and applied legislation which had the effect of influencing the judicial determination of the pending dispute to which the State and the applicants were parties.

55. There has accordingly been a violation of Article 6 § 1 of the Convention.

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

56. The applicants complained under Article 1 of Protocol No. 1 that their career reconstruction pursuant to law no. 88/2016 was in breach of their property rights. The provision 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' observations

1. The Government

57. The Government referred to their submissions under Article 6 § 1 above, reiterating that Article 63 of law no. 189/2015 was explicit in derogating from the ordinary rules applicable to the usual recruitment procedures. It should therefore have been clear to the applicants that no legitimate expectation could arise from the application of those other laws. Nor could such a legitimate expectation arise from any domestic case-law.

58. Without prejudice to the above objection, the Government considered that, in any event, the remuneration they were entitled to had been in accordance with the law and pursued a legitimate aim, namely, the rapid reorganisation and strengthening of the Police Corps with the guarantee of equal treatment of regularised military personnel and of regularised civil personnel of the public administration.

59. It also could not give rise to a disproportionate burden given the specific facilitated situation (no public competition nor a probationary period) which created an entitlement to that remuneration. Moreover, the date (1 February 2016) established in Article 1 of law no. 88/2016, from which all effects in terms of remuneration deriving from the permanent recruitment should run, did not adversely affect the applicants' established seniority, which was recognised by the Administration in full, namely, for all service actually rendered – not only for career advancement but also for pension purposes. They had also been exempted from paying social security contributions relating to the arrears not received, which they would have been required to pay following recruitment under the ordinary provisions. Therefore, the arrears not paid to them pursuant to Article 1 of law no. 88/2016 were partly offset by the savings deriving from the exemption from paying statutory withholding taxes.

60. Lastly, the Government challenged the applicants' calculation of the alleged losses (see paragraph 61 below), noting that for around seven years of service their arears could not have amounted to more than EUR 10,000 each according to the calculations prepared by the PAMPO for the purposes of the present case, which have been submitted to the Court.

2. The applicants

61. The applicants considered that in the absence of law no. 88/2016 they had a legitimate expectation to have their career reconstructed otherwise in accordance with law no. 132/1987. Consequent to the enactment of law no. 88/2016, each of the applicants alleged to have suffered losses of between approximately EUR 25,000 to 50,000. They relied on their submissions at paragraph 38 above.

62. They further considered that such an interference created an arbitrary difference in treatment between persons employed *via* a public competition, and persons, like the applicants, who were employed *via* special procedures. They considered that there had been no public interest behind such a measure.

B. The Court's assessment

1. General principles

63. The Court reiterates that, according to its case-law, an applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his "possessions" within the meaning of that provision. "Possessions" can be "existing possessions" or assets, including, in certain well-defined situations, claims. For a claim to be capable of being considered an "asset" falling within the scope of Article 1 of Protocol No. 1, the claimant must establish that it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it. Where that has been done, the concept of "legitimate expectation" can come into play (see *Maurice v. France* [GC], no. 11810/03, § 63, ECHR 2005-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 (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 50, ECHR 2004-IX, and *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 65, ECHR 2007-I).

64. An essential condition for interference to be deemed compatible with Article 1 of Protocol No. 1 is that it should be lawful. Any interference by a public authority with the peaceful enjoyment of possessions can only be justified if it serves a legitimate public (or general) interest. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to decide what is "in the public interest" (see *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 113,

13 December 2016). Article 1 of Protocol No. 1 also requires that any interference be reasonably proportionate to the aim sought to be realised (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, §§ 81-94, ECHR 2005-VI). The requisite fair balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 69-74, Series A no. 52, and *NIT S.R.L. v. the Republic of Moldova* [GC], no. 28470/12, § 252, 5 April 2022).

2. Application to the present case

65. The Court has already held at paragraph 52 above that Article 63 (1) of law no. 189/2015 only derogated from "Article 6 of Law no. 132/1987" and that bearing in mind that Article 6 of law no. 132/1987 only referred to the means of recruitment (see paragraph 22 above) with no reference whatsoever to emoluments, grades or career reconstruction, it was reasonable to argue that the latter had to be considered as remaining regulated by law no. 132/87. It is, however, also true, that no domestic jurisprudence confirmed such an interpretation, in general, and the applicants' claims were rejected by the domestic courts given the Government's timely legislative intervention which has been found to breach Article 6 § 1.

66. In any event, the Court does not consider it necessary to decide on the Government's objection and therefore to determine whether the applicants in the present case had a possession within the meaning of Article 1 of Protocol No. 1, as in any event it considers that the complaint is manifestly ill-founded for the following reasons.

67. The Court has previously acknowledged that laws with retrospective effect which were found to constitute legislative interference still conformed with the lawfulness requirement of Article 1 of Protocol No. 1 (see, *inter alia*, *Maurice*, cited above, § 81; *Draon v. France* [GC], no. 1513/03, § 73, 6 October 2005; *Arras and Others v. Italy*, no. 17972/07, § 81, 14 February 2012; and *Maggio and Others*, cited above, § 60). It finds no reason to deem otherwise in the present case.

68. It further accepts that the enactment of law no. 88/2016 pursued the public interest (such as providing a harmonised calculation of arrears for persons recruited *via* specifical procedures, across the board, irrespective of which category of State employees they fell into).

69. In considering whether the interference imposed an excessive individual burden on the applicants, the Court accepts the Government's argument (see paragraph 59 above), supported by domestic jurisprudence (see paragraph 43 above) that it was reasonable to adapt the career reconstruction calculation given the specific facilitated situation (no public competition nor a probationary period) with which the applicants were employed. Thus, while they benefitted on the one hand, they suffered a diminution in their remuneration on the other hand. However, this different calculation only

limitedly effected their remuneration, their basic salary and grade having been recognised accordingly.

70. The applicants' argument that everyone should have been treated equally irrespective of the different situations, with no further elaboration, does not suffice to consider that they suffered a disproportionate burden as a result of this regime. This is even more so given that the Contracting Parties, by necessity, enjoy wide latitude in organising State functions and public services, including such matters as regulating access to employment in the public sector and the terms and conditions governing such employment, in the context of their obligations under the Convention (see *Fábián v. Hungary* [GC], no. 78117/13, § 122, 5 September 2017).

71. With that in mind the Court considers that, for the purposes of the invoked provision, there is nothing to indicate that the State did not reach a fair balance between the demands of the general interest and the interests of the applicants.

72. It follows that the complaint under Article 1 of Protocol No. 1, even assuming it applies, is manifestly ill-founded with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

74. The applicants claimed 7,000 euros (EUR) each in respect of non-pecuniary damage and the following amounts in respect of pecuniary damage "relating to arrears":

- Mr Zafferani EUR 24,849.16
- Mr Volpinari EUR 24,929.50
- Mr Montinori EUR 25,044.96
- Mr Ghiotti EUR 24,804
- Mr Ceccoli EUR 49,011.88
- Mr Palma EUR 24,781.44
- Mr Tordi EUR 24,901.29

75. The Government considered that the claims for non-pecuniary damage were excessive. They were of the view that a finding of a violation would constitute sufficient just satisfaction. As to the claims for pecuniary damage the Government considered that they were not precise, and the

method of calculation leading to the quantification of damage remained unclear, the applicants relying on a domestic judgment concerning higher duties performed which had no relevance for the subject matter of this application. The Government referred to the detailed calculations prepared by the PAMPO for the purposes of the present case which showed that the applicants had incurred the following losses:

- Mr Zafferani EUR 4,825.18
- Mr Volpinari EUR 6,068.84
- Mr Montinori EUR 4,539.25
- Mr Ghiotti EUR 5,390.48
- Mr Ceccoli EUR 10,772.29
- Mr Palma EUR 4,539.25
- Mr Tordi EUR 4,539.25

76. The Court firstly notes that it has already held at paragraph 27 above that the issue of remuneration relating to higher duties performed falls outside of the scope of these applications. It therefore cannot be taken into account for the purpose of the applicants' calculations, which remain nonetheless set out in the absence of any explanation or accompanying computation (compare *Caligiuri and Others v. Italy*, nos. 657/10 and 3 others, § 48, 9 September 2014), other than that supplied with the application form. The Court takes note however of the calculations presented by the Government, as calculated by the appropriate body, and gives credence to those computations.

77. The Court further notes that in the present case an award of just satisfaction can only be based on the fact that the applicants did not have the benefit of the guarantees of Article 6 in respect of the fairness of the proceedings. Whilst the Court cannot speculate as to the outcome of the trial had the position been otherwise, it does not find it unreasonable to regard the applicants as having suffered a loss of real opportunities (see *Zielinski and Pradal and Gonzalez and Others*, § 79; *Maggio and Others*, § 80; *Azienda Agricola Silverfunghi S.a.s. and Others*, § 112; and *Arras and Others*, § 88, all cited above).

78. Bearing in mind the above, it awards the applicants the following sums in pecuniary damage:

- Mr Zafferani EUR 2,400
- Mr Volpinari EUR 3,000
- Mr Montinori EUR 2,250
- Mr Ghiotti EUR 2,700
- Mr Ceccoli EUR 5,300
- Mr Palma EUR 2,250
- Mr Tordi EUR 2,250

79. It further awards the applicants, EUR 3,000 each, plus any tax that may be chargeable, in non-pecuniary damage.

B. Costs and expenses

80. The applicants also claimed EUR 3,565.90 each for the costs and expenses which were incurred partly before the domestic courts (EUR 2,451.62) and partly before the Court (EUR 1,114.28).

81. The Government submitted that certain invoices had been issued in the name of Ms E. Zaghini, despite her only representing some of the applicants at the relevant time. They also considered that certain documents proving payment could not be verified as being related to these proceedings, and the claims had not been set out in the appropriate manner.

82. While it is true that the claims for legal costs are rather vague, leaving it for the Government and the Court to discern the claims in the light of the supporting material, the Court reiterates that Article 41 does not impose on applicants or their representatives before the Court any procedural requirements (non-) compliance with which would, at the same time, circumscribe the Court's decision on the matter of just satisfaction (see *Nagmetov v. Russia* [GC], no. 35589/08, § 58, 30 March 2017). However certain requirements are contained in the Rules of Court and the Practice Direction to the Rules of Court concerning just satisfaction claims. Under Rule 60 § 2 of the Rules of Court an applicant must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of the applicant's observations on the merits. If the applicant fails to comply with these requirements, the Court may reject the claim in whole or in part (Rule 60 § 3) (see also *Abdi Ibrahim v. Norway* [GC], no. 15379/16, § 167, 10 December 2021). Under the Practice direction, in respect of costs it provides that the Court can order the reimbursement to the applicant of costs and expenses which he or she has necessarily, thus unavoidably, incurred – first at the domestic level, and subsequently in the proceedings before the Court itself – in trying to prevent the violation from occurring, or in trying to obtain redress (see *A.D. v. Malta*, no. 12427/22, § 219, 17 October 2023). Moreover, 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 are reasonable as to quantum (see *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023).

83. In the present case, regard being had to the above considerations, as well as the documents in its possession and the above criteria, in view of the repetitive nature of the observations filed by the same legal firm before this Court as well as the fact that the proceedings were dealt with jointly both before this Court and at the administrative level, and that the applicants were successful in only one of their complaints, the Court considers it reasonable to award the sum of EUR 3,000 to each applicant in cost and expenses, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaints concerning Article 6 § 1 admissible and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
   (i) in respect of pecuniary damage:
   - Mr Zafferani EUR 2,400 (two thousand four hundred euros),
   - Mr Volpinari EUR 3,000 (three thousand euros),
   - Mr Montinori EUR 2,250 (two thousand two hundred and fifty euros),
   - Mr Ghiotti EUR 2,700 (two thousand seven hundred euros),
   - Mr Ceccoli EUR 5,300 (five thousand three hundred euros),
   - Mr Palma EUR 2,250 (two thousand two hundred and fifty euros euros),
   - Mr Tordi EUR 2,250 (two thousand two hundred and fifty euros euros);
   (ii) EUR 3,000 (three thousand euros), each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (iii) EUR 3,000 (three thousand euros), each, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (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;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 9 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Mattias Guyomar President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	38127/22	Zafferani v. San Marino	01/08/2022	**Gian Luca ZAFFERANI** 1985 Domagnano San Marinese	Elena ZAGHINI
2.	38131/22	Volpinari v. San Marino	01/08/2022	**Daniele VOLPINARI** 1983 San Marino San Marinese	Rossano FABBRI Elena ZAGHINI
3.	38138/22	Montironi v. San Marino	01/08/2022	**Gabriele MONTIRONI** 1984 Serravalle San Marinese	Elena ZAGHINI
4.	38144/22	Ghiotti v. San Marino	01/08/2022	**Davide GHIOTTI** 1985 Dogana San Marinese	Rossano FABBRI Elena ZAGHINI
5.	38147/22	Ceccoli v. San Marino	01/08/2022	**Enrico CECCOLI** 1983 Fiorentino San Marinese	Elena ZAGHINI
6.	38238/22	Palma v. San Marino	01/08/2022	**Alessandro PALMA** 1989 Fiorentino San Marinese	Rossano FABBRI Elena ZAGHINI

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
7.	38660/22	Tordi v. San Marino	01/08/2022	**Maurizio TORDI** 1988 Domagnano San Marinese	Elena ZAGHINI