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

THIRD SECTION

DECISION

Application no. 84712/17
Miodrag MIRKOVSKI and Others
against Serbia

The European Court of Human Rights (Third Section), sitting on 3 December 2024 as a Committee composed of:

Peeter Roosma*, President,*
Diana Kovatcheva,
Mateja Đurović*, judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 84712/17) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 6 December 2017 by five Serbian nationals whose relevant details are listed in the appended table ("the applicants"), who were represented by Ms S. Jonkić, a lawyer practising in Belgrade;

the decision to give notice of the complaint of inconsistent practice on the part of the domestic courts to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar, and to declare the applicants' complaints under Articles 13 and 14 of the Convention inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present case primarily concerns a complaint by the applicants of inconsistent practice on the part of the domestic courts.

2. In 2011 the applicants initiated proceedings against their employer, seeking compensation for working night shifts. On 17 March 2014 the Požarevac Court of First Instance dismissed their claim, a judgment which was upheld by the Court of Appeal on 28 April 2015. The judgment of the

Court of Appeal was served on the applicants on 8 May 2015. The courts found, in substance, that the applicants' salary had already included an increase for working in shifts, and they referred to the relevant regulations in that regard.

3. On 18 May 2015 the applicants lodged a constitutional appeal with the Constitutional Court, complaining that the domestic law had been implemented incorrectly and that the decisions of the domestic courts had been arbitrary.

4. On 8 September 2015 the applicants lodged an additional constitutional appeal (*dopuna ustavne žalbe*), enclosing a judgment of the Belgrade Court of Appeal of 19 August 2015. That judgment had upheld a first-instance ruling in favour of some other employees of the same company, awarding them compensation for working in shifts.

5. On 19 December 2016 the applicants lodged another additional constitutional appeal, in which they complained that the domestic courts' practice was inconsistent. They referred again to the judgment of 19 August 2015 (see paragraph 4 above).

6. On 22 June 2017 the Constitutional Court rejected (*odbacuje se*) the applicants' constitutional appeal and referred to an earlier decision of 20 October 2016 which it had issued in relation to the same matter. The court reiterated that in that judgment it had found that judgments issued in relation to the same factual and legal situation, which had the same reasoning as the judgments appealed against by the applicants, had detailed and clear reasoning and were based on a constitutionally acceptable and non-arbitrary interpretation of the relevant law. The court found no reason to depart from those findings in the applicants' case. The court also found that the applicants' complaint of inconsistent practice on the part of the domestic courts had been raised out of time. More specifically, it noted that the Court of Appeal judgment had been served on the applicants on 8 May 2015, and that they had first raised their complaint in that regard in their additional constitutional appeal lodged on 8 September 2015 (see paragraphs 2 and 4 above). The court referred to Article 84 of the Constitutional Court Act, which provides that a constitutional appeal may be lodged within thirty days of a disputed decision being served.

7. The applicants complained under Article 6 of the Convention that the domestic courts' practice was inconsistent, and that their judgments, including the Constitutional Court judgment of 22 June 2017, were arbitrary and lacked reasoning.

THE COURT'S ASSESSMENT

A. Alleged inconsistent practice of domestic courts

8. The Government submitted that the applicants had failed to raise their complaint of inconsistent practice on the part of the domestic courts before the Constitutional Court in a timely manner, and had thus failed to properly exhaust effective domestic remedies.

9. The applicants maintained that they had raised their complaint before the Constitutional Court in a timely manner, but that that court had refused to examine it on the merits.

10. The relevant principles as regards the exhaustion of domestic remedies are set out in, for example, *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* ([GC], no. 21881/20, §§ 138-44, 27 November 2023). In particular, Article 35 § 1 requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, at least in substance, and in compliance with the formal requirements and time-limits laid down in domestic law (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014, and the authorities cited therein). Where an applicant has failed to comply with these requirements, his or her application should in principle be declared inadmissible for failure to exhaust domestic remedies (ibid.).

11. Turning to the present case, the Court notes that in their first constitutional appeal, lodged on 18 May 2015, that is, within the statutory time-limit, the applicants did not raise their complaint of inconsistent practice on the part of the domestic courts either expressly or in substance (see paragraph 3 above). It is therefore quite understandable that the Constitutional Court did not examine the matter of its own motion (see *Vučković and Others*, cited above, § 82). The applicants first raised their complaint in that regard in their additional constitutional appeal of 8 September 2015 (see paragraph 4 above), which was indeed lodged more than thirty days after the disputed decision had been served on them and therefore outside the thirty-day time-limit laid down in domestic law (see paragraph 6 *in fine* above). Accordingly, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Alleged arbitrariness and lack of reasoning in domestic decisions

12. The Court reiterates that normally, issues such as the weight attached by the national courts to given items of evidence or to findings or assessments in issue before them for consideration are not for the Court to review. The Court should not act as a court of fourth instance and will not question under

Article 6 § 1 the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015).

13. In the light of all the material in its possession, the Court considers that the applicants were able to present their arguments before courts which offered the guarantees set out in Article 6 § 1 of the Convention and which addressed those arguments in decisions that were duly reasoned and not arbitrary (see paragraphs 2-6 above), including the decision of the Constitutional Court, which, in respect of the complaint submitted within the statutory time-limit (see paragraph 3 above), referred to its earlier decision on the same matter and reiterated its reasoning (see paragraph 6 above). It follows that this complaint is inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 16 January 2025.

Olga Chernishova
Deputy Registrar

Peeter Roosma
President

Appendix

List of applicants:

Application no. 84712/17

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Miodrag MIRKOVSKI	1968	Serbian	Požarevac
2.	Dejan BLAGOJEVIĆ	1968	Serbian	Požarevac
3.	Vladoje GRUJIĆ	1966	Serbian	Požarevac
4.	Zoran JEVREMOVIĆ	1955	Serbian	Požarevac
5.	Slađan MARINKOVIĆ	1967	Serbian	Požarevac