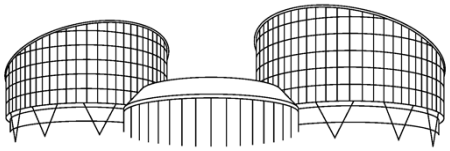

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF PETROVIĆ AND OTHERS v. MONTENEGRO

(Application no. 18116/15)

JUDGMENT

STRASBOURG

17 July 2018

FINAL

03/12/2018

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

In the case of Petrović and Others v. Montenegro,

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

Robert Spano, *President,*
Ledi Bianku,
Nebojša Vučinić,
Paul Lemmens,
Valeriu Griţco,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 26 June 2018,

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

PROCEDURE

1. The case originated in an application (no. 18116/15) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Montenegrin nationals, Mr Božidar Petrović (the first applicant), Ms Alma Kuzmanović (the second applicant), Ms Kristina Petrović (the third applicant) and Mr Željko Petrović (the fourth applicant), on 1 April 2015.

2. The applicants were represented by Mr V. Vuleković, a lawyer practising in Kotor. The Montenegrin Government ("the Government") were represented by their Agent, Ms V. Pavličić.

3. The applicants alleged that their land was *de facto* expropriated without any compensation, and that the courts' decisions in this respect were arbitrary.

4. On 12 January 2017 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1956, 1952, 1975, and 1980 respectively. The first applicant lives in Tivat and the second, third and fourth applicants live in Kotor.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. On 1 September 2009 the first and second applicants and the father of the third and fourth applicants instituted civil proceedings against the State, seeking that they be recognised as owners of two plots of land in the coastal zone (*u zoni morskog dobra*). They submitted, in particular, that the land at issue had been lawfully owned by their father, but that without any legal basis the State appeared as the registered owner thereof in the Real Estate Registry, and that they should be declared owners as their father's legal successors (*kao pravni sledbenici*).

8. On 2 March 2010 the Real Estate Administration in Tivat (*Uprava za nekretnine, područna jedinica Tivat*), acting upon the first applicant's request, issued a decision allowing the division into two of an adjacent plot of land, a forest in the coastal zone, the registered owner of which at the time was the Municipality. The Municipality remained registered as the owner of one part of it, whereas the other part was registered in the name of the applicants' predecessor (the father of the first and second applicants, and the grandfather of the third and fourth applicants).

9. On 21 November 2011, after a remittal, the Court of First Instance (*Osnovni sud*) in Kotor ruled against the first and second applicants and the third and fourth applicants' father. The court found that the land at issue had indeed been owned by their predecessors, notably their father, grandfather and grand-grandfather, but that they had not proved that they had inherited it when their last predecessor had died in 1997. Notably, the court considered that the land at issue was in the coastal zone and thus State property pursuant to section 4 of the Coastal Zone Act of 1992 and "section 13 and other sections" of the State Property Act (see paragraphs 21 and 24 below), and that the claimants could not claim the right to property in respect of such land. The court made no reference to section 30 of the Coastal Zone Act (see paragraph 22 below). As regards the State's submission that the land had been nationalised, the court noted that the contents of the decisions relied on by the State could not be clarified. Notably, the State Archive (*Državni arhiv*) informed the court, on 4 October 2010 and 26 August 2011, that the case files and decisions Dn 428/90 and Dn 615/92, referred to by the State, had not been found in that institution. Finally, the court considered that the Real Estate Administration decision of 2 March 2010 (see paragraph 8 above) was "of no particular influence" (*bez posebnog uticaja*) given that it related to a different plot of land which was not the subject of these proceedings.

10. In their appeal the first and second applicants and the third and fourth applicants' father confirmed that the said land had not been in their predecessor's estate when he died, which was exactly the reason why they had initiated these proceedings. They also submitted that: (a) section 30 of the Coastal Zone Act had never been complied with even though it was

indisputable that their predecessor had lawfully owned the land; and (b) the relevant legislation did not prohibit private ownership of land in the coastal zone, and referred to section 4 of the Coastal Zone Act and section 20 of the Property Act 2009 (see paragraphs 21 and 19 below). They reiterated that the adjacent plot of land, also a forest in the coastal zone, was privately owned, by them, and submitted the decision of the Real Estate Administration of 2 March 2010. They maintained that the first-instance court's reasoning that the said decision was of no influence indicated legal uncertainty, given that the same legal issue was treated differently without any explanation in that regard.

11. On 6 April 2012 the High Court (*Viši sud*) upheld the first-instance judgment. It found that the land at issue was indisputably forest in the coastal zone, that it was State property pursuant to section 13 of the State Property Act and that the claimants therefore could not claim ownership. The court further held that even assuming that the claimants had had ownership of these plots of land, they had lost it "in accordance with the State Property Act and the Coastal Zone Act. In support of this was also section 30 of the Coastal Zone Act, relied upon by the claimants, which provided that the owners of land in the coastal zone, who had obtained it in a lawful manner before that Act entered into force and which was duly registered in the Real Estate Register as private property, were entitled to compensation in case of an expropriation". The High Court made no reference to the decision of 2 March 2010 and the status of the adjacent plot of land, or as to whether the claimants could have inherited the land.

12. On 11 October 2012 the Supreme Court (*Vrhovni sud*) upheld the previous judgments. The court made no explicit reference to the adjacent plot of land and the decision of 2 March 2010. It held as follows:

> "As the real estate at issue is in the coastal zone regime – common resource (*dobro od opšteg interesa*), the lower courts correctly applied the substantive law when they ruled in the said way. Notably, pursuant to section 4 of the Coastal Zone Act, which had been in force until State Property Act entered into force (Official Gazette of Montenegro no. 21.09), coast is owned by the State and could not be object of the private property.
>
> The claimants were wrong to consider that the issue was to be resolved by means of section 30 of the Coastal Zone Act. That provision regulated the rights of the owners of land in the coastal zone who had obtained the property thereof before that Act entered into force by providing that they were entitled to compensation in case of an expropriation [...]. That means that the land did not remain in the private property regime, but became State property by the law itself.
>
> Likewise, section 20(2) of the Property Act 2009 is inapplicable to the present case as it cannot be retroactively applied to relations which had arisen before it came into force. Exceptionally, the right to property over a coastal zone can be acquired only after it entered into force."

13. On 25 December 2012 the first and second applicants and the third and fourth applicants' father lodged a constitutional appeal. They submitted,

inter alia, that it was not true that land in the coastal zone could not be privately owned, as numerous plots of land in that zone were private property, including the plot of land adjacent to the one at issue, which was owned by them. They invoked the right to a fair trial and the right to property, and reiterated the importance of legal certainty.

14. On 23 July 2014 the Constitutional Court dismissed the constitutional appeal. It held that the lower courts' assessment "was based on a correct application of substantive law and a constitutionally acceptable interpretation thereof, in accordance with Article 6 of the Convention". As regards Article 1 of Protocol No. 1 the court held that a claim which had been dismissed because the claimants did not meet statutory conditions was not considered a possession that could constitute property rights, and thus there could be no violation of such a right either. This decision was served on 13 October 2014 at the earliest.

15. On 16 December 2014 the third and fourth applicants' father died, leaving the third and fourth applicants as his heirs.

16. On 27 May 2015 the Supreme Court issued a general legal opinion (*načelni pravni stav*) relating to the use of land in the coastal zone. In reaching this opinion, the Supreme Court analysed the relevant domestic legislation, including the Constitution, the Coastal Zone Act 1992, the Property Act and the State Property Act. It found, *inter alia*, that section 20(2) of the Property Act provided that exceptionally coastal zone can be privately owned, while at the same time section 22(3) of the same Act provided that the coast cannot be privately owned. It also found that the conditions under which the coastal zone can be privately owned are not provided for by law (*nisu zakonom određeni*), "which leaves open numerous questions on practical implementation". The court concluded that "by analysing [the relevant legislation] it can be concluded that acquiring private property rights in respect of the coastal zone is not possible save in exceptional cases which are not defined by legislation. It can also be concluded that the issue of lawfully acquired rights in respect of the coastal zone is not regulated in a precise and clear manner...", but that it was a fact that there were lawfully acquired property rights over the coastal zone, as indicated by section 30 of the Coastal Zone Act.

II. RELEVANT DOMESTIC LAW

A. Constitution of Montenegro 2007 (*Ustav Crne Gore*; published in the Official Gazette of Montenegro - OGM - no. 01/07)

17. Article 58 guarantees the right to property. In particular, it provides that natural resources and resources in public use (*prirodna bogatstva i dobra u opštoj upotrebi*) are the property of the State.

B. Property Act 1980 (*Zakon o osnovama svojinsko-pravnih odnosa*; published in the Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 006/80 and 036/90; the Official Gazette of Socialist Republic of Yugoslavia no. 029/96; and OG RM no. 052/04)

18. This Act regulated property rights in detail. Section 20 provided that property could be acquired *ex lege*, through a legal transaction, by means of inheritance, or on the basis of a decision issued by a State body in accordance with the law.

C. Property Act 2009 (*Zakon o svojinsko-pravnim odnosima*; published in the OGM no. 19/09)

19. The Property Act 2009 repealed the previous Act. Section 20(2) provides that common resources (*dobra od opšteg interesa*), including forests and forest land, and exceptionally coastal zone, can be privately owned. Section 22(3) provides that natural resources, including the coast (*prirodna bogatstva (morska obala)*), cannot be privately owned. Section 28 provides that property can be acquired *ex lege*, through a legal transaction, by means of inheritance, or on the basis of a decision issued by the State in accordance with the law.

20. Section 91 provides that the deceased's property will be transferred *ex lege* to the legal heirs at the moment of death.

D. Coastal Zone Act (*Zakon o morskom dobru*; published in the OG RM nos. 014/92, 059/92, 027/94, OGM nos. 051/08, 021/09, 073/10, 040/11)

21. Section 3 defined the coastal zone (*morsko dobro*) as a strip of coast up to the line reached by the biggest waves in the stormiest weather (*do koje dopiru najveći talasi za vrijeme najjačeg nevremena*) and at least 6 metres beyond that. The Parliament could declare land beyond also as coastal zone. Section 4 provided that the coastal zone was the property of the State, but that exceptionally land beyond the 6 metre line that was declared coastal zone by the Parliament could be privately owned.

22. Section 30 provided, *inter alia*, that the owners of land in the coastal zone who had obtained the property thereof lawfully before this Act entered into force and which was duly registered in the Real Estate Registry as private property, were entitled to compensation in case of its expropriation, pursuant to the provisions on expropriation.

23. This Act entered into force on 11 April 1992.

E. State Property Act (*Zakon o državnoj imovini*; published in the OGM nos. 021/09 and 040/11)

24. This Act entered into force on 28 March 2009 and thereby repealed section 4 of the 1992 Coastal Zone Act. Sections 9, 10 and 13 thereof, taken together, provide, *inter alia*, that forests, forest land and land in the coastal zone are common resources which are managed (*kojima raspolaže*) by Montenegro.

F. Civil Procedure Act (*Zakon o parničnom postupku*; published in the OG RM nos. 22/04, 28/05 and 76/06, and the OGM no. 73/10, 47/15, 48/15, 51/17, and 75/17)

25. Section 2 provides that the court shall rule within the limits of the claim.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

26. The applicants complained under Article 1 of Protocol No. 1 to the Convention that their plots of land had been *de facto* expropriated without any compensation being paid therefor. 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."

27. The Government contested that argument.

A. The parties' submissions

28. The Government submitted that the complaint was inadmissible on various grounds, including that it was incompatible *ratione temporis* and *ratione materiae*. In particular, the Government maintained that the land at issue had been nationalised in 1990, which was before the death of the applicants' predecessor and thus was not part of his estate when he

died. Given that taking away of land is an instantaneous act and that the nationalisation had taken place before the Convention entered into force in respect of Montenegro, the applicants' complaint was incompatible *ratione temporis*. Since Article 1 of Protocol No. 1 does not guarantee the right to acquire property their complaint was also incompatible *ratione materiae*. The Government relied on *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX.

29. The applicants contested the Government's submissions. In particular, the land at issue had never been nationalised, and the Government had provided no evidence to the contrary. The applicants admitted that their predecessor had not been registered as the owner of the land when he had died, but that was precisely why they had initiated civil proceedings. Had he been registered as the owner there would have been no need for any court proceedings as they would have been declared his heirs in the inheritance proceedings.

B. The Court's conclusion

30. The relevant principles in this regard are set out, for example, in *Kopecký*, cited above, § 35. The Court reiterates, in particular, that it can examine complaints only to the extent that they relate to events which occurred after the Convention entered into force with respect to the relevant Contracting Party. It also reiterates that a deprivation of ownership or of another right *in rem* is in principle an instantaneous act and does not produce a continuing situation of "deprivation of a right" (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII, with further references).

31. Turning to the present case, the Court notes that the land at issue was lawfully owned by the applicants' predecessors, as was established by the domestic courts (see paragraph 9 above). The domestic courts, however, also found that the land was not part of the applicants' last predecessor's estate when he died in 1997, which was confirmed by the applicants (see paragraph 29 above). Even though no decision on transferring the ownership was procured it is clear that the land at issue had been assigned to the State on an unspecified date by 1997, that is long before 3 March 2004, which is when the Convention and its Protocols entered into force in respect of the respondent State. As a deprivation of ownership is an instantaneous act and does not produce a continuing situation of "deprivation of a right", the Court considers that the applicants' complaint under Article 1 of Protocol No. 1 is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 (a).

32. In view of this conclusion, it is not necessary for the Court to examine the Government's further objections related to the admissibility of this complaint.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

33. The applicants complained that the domestic courts' decisions were arbitrary in view of a different status of the adjacent plot of land, in which respect the domestic courts failed to provide any reasoning, and which in their opinion led to legal uncertainty. They relied on Article 6 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 ..."

34. The Government contested that argument.

A. The parties' submissions

35. The Government submitted that it was not up to the Court to assess how the national courts applied the national law, nor was it its function to deal with errors of fact or law unless these violated rights and freedoms protected by the Convention. While Article 6 obliged the courts to give reasons for their decisions, that could not be understood as requiring a detailed answer to every argument. The Government agreed that land in the coastal zone could be privately owned in certain circumstances. However, Article 2 of the Civil Proceedings Act provided that the courts would rule only within the limits of the claim, and the applicants' claim had been aimed at their being recognised as the owners of the land on the basis of inheritance. The courts had rejected their claim, finding that at the time of his death their last predecessor had not been the owner of the land at issue and hence they could not have inherited it either. Other circumstances and facts were thus not relevant for ruling on their claim. The applicants therefore had a fair trial and their complaint was manifestly ill-founded.

36. The applicants reaffirmed their complaint. They maintained that their predecessor indeed had not been registered as the owner of the land at the time of his death, but that was exactly why they had initiated the proceedings. The courts dismissed their claim on the grounds that the land at issue was in the coastal zone, and as such could not be privately owned, whereas the Supreme Court confirmed in its general legal opinion that private property was possible even within that zone.

B. The Court's conclusion

1. Admissibility

37. The relevant principles with regard to the applicability of Article 6 are set out in, for example, *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 71, ECHR 2016 (extracts), and *Károly Nagy v. Hungary* [GC], no. 56665/09, §§ 60-63, ECHR 2017. In particular,

by "rights and obligations" in Article 6 are meant rights and obligations which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether they are protected under the Convention (see *Boulois v. Luxembourg* [GC], no. 37575/04, § 90, ECHR 2012). The requirement, however, is only that the applicant has a "tenable" argument, not that he will necessarily win (see *Neves e Silva v. Portugal*, 27 April 1989, § 37, Series A no. 153-A).

38. Article 6 § 1 does not guarantee any particular content for (civil) "rights and obligations" in the substantive law of the Contracting States: the Court may not create by way of interpretation of Article 6 § 1 a substantive right which has no legal basis in the State concerned. The starting-point must be the provisions of the relevant domestic law and their interpretation by the domestic courts. This Court would need strong reasons to differ from the conclusions reached by the superior national courts by finding, contrary to their view, that there was arguably a right recognised by domestic law (see *Boulois*, cited above, § 91). In carrying out this assessment, it is necessary to look beyond the appearances and the language used and to concentrate on the realities of the situation (see *Boulois*, cited above, § 92). Other criteria which may be taken into consideration by the Court include the fact that the domestic courts examined the merits of the applicant's request (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 41, ECHR 2007-II).

39. Turning to the present case, the Court firstly notes that the domestic courts examined the merits of the applicants' claim. Secondly, even though in the proceedings initiated by the applicants the courts considered that land in the coastal zone could not be privately owned, the applicants provided evidence to the contrary, notably a relevant decision of 2 March 2010 relating to the adjacent plot of land, also in the coastal zone. Lastly, the Supreme Court itself held that, even though some statutory provisions relating to the ownership of land in the coastal zone were contradictory and the conditions under which the coastal zone could be privately owned were not provided for by law, acquiring private property rights in the coastal zone was possible in exceptional cases. In view of this, the Court considers that the applicants' had, at least on arguable grounds, a claim under domestic law, thus making Article 6 applicable.

40. The Court notes that this complaint 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.

2. Merits

41. The relevant principles concerning the provision of reasons by courts are set out in details in *Perez v. France* [GC] (no. 47287/99, §§ 80-83, ECHR 2004-I). In particular, the Court reiterates that Article 6 obliges the

courts to give reasons for their judgments but cannot be understood as requiring a detailed answer to every argument (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288). The extent to which this duty to give reasons applies may vary according to the nature of the decision. It is moreover necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question whether a court has failed to fulfill the obligation to state reasons, deriving from Article 6, can only be determined in the light of the circumstances of the case. If, however, a submission would, if accepted, be decisive for the outcome of the case, it may require a specific and express reply by the court in its judgment (see *Hiro Balani v. Spain*, 9 December 1994, §§ 27-28, Series A no. 303-B, and *Ruiz Torija v. Spain*, 9 December 1994, §§ 29-30, Series A no. 303-A).

42. Turning to the present case, the Court notes that the applicants had sought in the first place to be recognised as the owners of the land at issue on the basis of inheritance. However, as was duly explained by the Court of First Instance (see paragraph 9 above), the applicants' last predecessor was not registered as the owner of the property at issue at the time of his death in 1997. The Court further notes that during the proceedings the applicants explicitly referred to the different status of the adjacent plot of land. They argued that it would be arbitrary to reject their claim, and that the existence of different statuses would lead to legal uncertainty. Before the Court they argued that the domestic courts did not reply to this specific argument. The Court notes, however, that the Court of First Instance made a reference to the applicants' submission by considering that the Real Estate Administration decision of 2 March 2010 was of no particular influence because it did not relate to the land which was the subject of the examination in the domestic proceedings (*ibid.*). The High Court, while not referring to the decision of 2 March 2010 or to the status of the adjacent plot of land, explained why the applicants could not claim ownership over the land at issue. It specified that, assuming that they had had ownership, they had in any event lost it in accordance with the Coastal Zone Act 1992 and the State Property Act 2009 (see paragraph 11 above). Insofar as the High Court referred to the Coastal Zone Act 1992, its reasoning was thus based on the legal framework in force before the death of the applicants' predecessor in 1997. For its part, the Supreme Court upheld the judgment of the High Court, clarifying that it was indeed pursuant to the Coastal Zone Act 1992 that the coast could not be the object of private property. It accepted that private property in the coastal zone was possible under the Property Act 2009, but only if the property right was granted after the entry into force of that Act, which was not the applicants' case (see paragraph 12 above).

43. In view of the above, in particular in light of the reasoning adopted by the Supreme Court, explaining that the applicants could not claim ownership because of the Coastal Zone Act 1992, the Court considers that it was not necessary for the domestic courts to reply to the argument based on ownership with respect to a different plot of land, which stemmed from a decision taken in 2010, after the entry into force of the Property Act 2009. In other words, the Court considers that the domestic courts provided in their judgments specific and explicit reasons for the dismissal of the applicants' claim, which rendered irrelevant the latter's argument based on the status of an adjacent plot. There has accordingly been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint under Article 1 of Protocol No. 1 inadmissible;

2. *Declares*, unanimously, the complaint under Article 6 admissible;

3. *Holds*, by four votes to three, that there has been no violation of Article 6 of the Convention.

Done in English, and notified in writing on 17 July 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Robert Spano
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Vučinić, Griţco and Mourou-Vikström is annexed to this judgment.

R.S.
S.H.N.

JOINT DISSENTING OPINION OF JUDGES VUČINIĆ, GRIŢCO AND MOUROU-VIKSTRÖM

To our regret, we cannot agree with the majority's finding that there has been no violation of Article 6 § 1 of the Convention in the present case. The reasons, explaining our point of view, are the following.

1. According to the Court's established case-law, it is well known that Article 6 obliges the courts to give reasons for their judgments, but it cannot be understood as requiring a detailed answer to every argument, nor is the European Court called upon to examine whether arguments are adequately met (see *Van de Hurk v. the Netherlands*, § 61, 19 April 1994, Series A no. 288). The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). It is, moreover, necessary to take into account, *inter alia,* the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6, can only be determined in the light of the circumstances of the case. If, however, a submission would, if accepted, be decisive for the outcome of the case, as has been the applicants' situation in the present case, it may require a specific and express reply by the court in its judgment (see *Hiro Balani v. Spain*, 9 December 1994, § 27, Series A no. 303-B, and *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A).

2. In the case at hand, the applicants' claim was dismissed on the ground that the land at issue was in the coastal zone and as such was State property which could not be privately owned. In the course of the proceedings the applicants consistently and explicitly maintained that land in the coastal zone could be privately owned and referred to the different status of the adjacent plot of land, also in the coastal zone, owned by them. The applicants' objection, if it had been accepted, could have been decisive for the outcome of their case, and as such required a specific and express reply of the domestic courts. The Court of First Instance dismissed the argument as "of no particular influence" without providing any further explanation in that regard, and neither the High Court nor the Supreme Court made any reference to it whatsoever. That being so, the domestic courts failed to provide a specific and express reply to submissions of fundamental importance made by the applicants.

3. More precisely, the applicants have put before the domestic courts two substantial arguments in support of their applications for recognition of property rights: (i) the adjacent plot of land also located in a coastal area was the subject of a private possession; and (ii) section 4 of the Coastal Zone Act of 1992 allows the possibility for individuals to own coastal land privately, even if this possibility remains exceptional. In spite of the fact that these arguments were decisive for the outcome of the litigation, the domestic courts failed to give an answer in this respect. In our opinion, the domestic courts should have decided in a clear and explicit manner about the reasons why – and the conditions upon which – the disputed land did not benefit from the same legal status as the adjacent plot of land and why so-called "exceptional circumstances" could not be applied as regards the land in dispute.

4. In similar situations, when domestic courts had not addressed the main arguments which had crucial importance for the applicants, the Court has found a violation of Article 6 § 1 of the Convention (see *Mitrofan v. the Republic of Moldova*, no. 50054/07*,* §§ 42-55, 15 January 2013; *Kuznetsov and Others v. Russia,* no. 184/02, § 84, 11 January 2007; *Pronina v. Ukraine,* no. 63556/00, § 25, 18 July 2006).

5. Under Article 6 § 1 of the Convention, a party to judicial proceedings can also expect reasoning to be given by the courts in order to understand the reasons on which their decisions are based, together with a specific and express reply to those submissions which are decisive for the outcome of the proceedings in question (see *Ruiz Torija*, cited above, § 29). It can hardly be said that the domestic courts fulfilled this obligation in the present case.

6. Furthermore, on 27 May 2015 the Supreme Court of Montenegro issued a general legal opinion relating to the use of land in the coastal zone. It analysed the relevant domestic legislation, including the Constitution, the Coastal Zone Act 1992, the Property Act and the State Property Act. It found, *inter alia,* that section 20(2) of the Property Act provided that exceptionally a coastal zone could be privately owned, while at the same time section 22(3) of the same Act provided that the coast could not be privately owned. It also found that the conditions under which the coastal zone could be privately owned were not provided for by law, "which [left] open numerous questions on practical implementation". The Supreme Court stated as follows:

> "by analysing the relevant legislation it can be concluded that acquiring private property rights in respect of the coastal zone is not possible save in exceptional cases which are not defined in legislation. It can also be concluded that the issue of lawfully

acquired rights in respect of the coastal zone is not regulated in precise and clear manner ...”

Nevertheless, it was a fact that there were lawfully acquired rights in respect of the coastal zone, as indicated by section 30 of the Coastal Zone Act.

7. In this context it is to be noted that the Supreme Court, while it recognised the legal lacuna and a lack of precise regulation in the domain of interpretation and implementation of the Coastal Zone Act 1992, it did nothing to regulate the matter, thus leaving room for different and unequal decisions regarding the same or similar factual situations within that domain, which is what happened in the applicants’ case.

8. Thus, the combined effects of the above-mentioned shortcomings in the judgments of the Montenegrin courts, the lack of a clear response to the applicants’ main submissions, the absence of proper reasoning and the inability of the Supreme Court of Montenegro to establish legal security and clarity in the field of interpretation and implementation of the Coastal Zone Act 1992, have convinced us that the applicants’ case was not heard in accordance with the requirements of a fair trial, and that accordingly there has been a violation of Article 6 § 1 of the Convention.