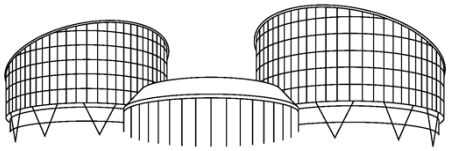

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF SVILENGAĆANIN AND OTHERS v. SERBIA

(Applications nos. 50104/10 and 9 others – see appended list)

JUDGMENT

Art 6 (civil) • Impartial tribunal • Meeting and agreement on procedural matters with Ministry of Defence, a future defendant in army salary dispute, not affecting objective impartiality of Supreme Court • Entering into institutional relations for the purpose of dealing effectively with large influx of cases legitimate, where an appropriate balance is struck with the need for impartiality and the appearance thereof • Meeting public and taking place outside the framework of proceedings before the Supreme Court • No reason to doubt the ability of professional and tenured judges of the court of last resort to ignore any extraneous considerations • No indication that the Supreme Court changed its interpretation of the law as a result of the meeting

STRASBOURG

12 January 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Svilengaćanin and Others v. Serbia,

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

Yonko Grozev, *President,*
Carlo Ranzoni,
Stéphanie Mourou-Vikström,
Georges Ravarani,
Alena Poláčková,
Jolien Schukking,
Péter Paczolay, *judges,*
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the ten separate applications 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") by eleven Serbian nationals (see appendix);

the decision to give notice of the applications to the Serbian Government ("the Government");

the decision to give priority to the applications (Rule 41 of the Rules of Court);

the parties' observations;

Considering that Judge Branko Lubarda, the judge elected in respect of Serbia, was unable to sit in the case (Rule 28);

Considering that on 25 June 2018 the President of the Chamber decided to appoint Judge Alena Poláčková to sit as an *ad hoc* judge (Rule 29);

Having deliberated in private on 29 September and 25 November 2020,

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

INTRODUCTION

1. The applications concern the alleged partiality of the Supreme Court, in breach of applicants' right to a fair hearing, in view of its meeting with a representative of the Ministry of Defence. They also concern allegedly divergent case-law of domestic courts about the competence *ratione materiae* of the civil courts to examine claims related to the calculation of military salaries.

THE FACTS

2. A list of the applicants is indicated in the appended table, as are the applicants' personal details, the dates of introduction of their applications before the Court and the dates of their claims and the relevant decisions at domestic level, respectively.

3. The applicants were represented by Mr M. Cvetković, a lawyer practising in Belgrade. The Serbian Government ("the Government") were represented by their then Agent, Ms N. Plavšić.

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

I. THE RELEVANT CONTEXT

5. The applicants are active, former or retired professional or civilian officers of the, at that time, Yugoslav Army or, later, the Army of the State Union of Serbia and Montenegro.

6. At the relevant time, the Federal Assembly of Serbia and Montenegro determined the defence budget, including military salaries, in the Budget Act. The individual salaries of professional and civilian military personnel were determined by multiplication of a base salary by the coefficient for salary calculation. The latter was to be determined by the Minister of Defence within the resources for salaries provided by the above-mentioned Government defence budget, and published in the Official Military Gazette. Lastly, using the above-mentioned parameters and monthly lists indicating the number of hours worked, the military calculation units determined, calculated and paid salaries to the officers (for more details on the determination of military salaries, see paragraphs 28-31 and 33 below).

7. The applicants considered that the Minister of Defence had not properly and regularly determined the coefficient for salary calculation. As a result, the applicants had allegedly for years been receiving a monthly income which was significantly lower than that which had been approved by the Federal Government and stipulated by law (see paragraphs 6 above and 31 below).

8. In its submissions of 10 September 2002, the Ministry of Finance explained that the funds allocated by the Federal Assembly in the budget for military salaries had been reduced by the Ministry of Defence and transferred in order to pay pensions and other current expenses. The Ministry had not regularly adapted the coefficient to the relevant economic parameters or published it in the Gazette, but had been sending it as a "confidential document" to the military units to calculate salaries. According to confidential reports of the Ministry of Defence dated 7 February 2003 and 20 March 2006, military salaries in 2001 and 2002 had not been calculated in accordance with the relevant domestic law and the funds allocated for their

payment had been transferred elsewhere in order to pay unanticipated defence-related expenses.

II. ADMINISTRATIVE AND CIVIL PROCEEDINGS BROUGHT BY THE APPLICANTS

9. The applicants in the second, third, fifth, sixth, eighth, ninth and tenth cases (see appendix) brought administrative claims against the relevant military units, requesting the appropriate calculation and payment of their salaries. The relevant military units declined jurisdiction (*zaključak*). In so doing, they maintained that the matter in issue was not of an administrative nature but civil, given that the military units had not issued any separate decisions to determine and calculate the salaries.

10. According to the applicants, dozens of military officers appealed unsuccessfully against the same decisions in their respective administrative cases. Two claimants also initiated judicial review proceedings (*upravni spor*). The Supreme Military Court rejected their requests. Specifically, it declared that the lower military authorities lacked jurisdiction *ratione materiae* to consider the claimants' requests, reiterating that the matter in issue should be considered a civil matter concerning damages caused by the payment of salaries lower than the statutory minimum in the particular circumstances (see decisions Up. no. 864/2003 of 26 June 2003 (claimant S.V.), and Up. No. 2161/2003 of 24 November 2003 (claimant M.V.)).

11. In view of the above-mentioned decisions of the Supreme Military Court, the applicants did not pursue the administrative remedy further.

12. Instead, on different dates between 2003 and 2007 (see appendix), the applicants filed separate civil claims against the respondent State with various courts, seeking pecuniary damage owing to improper and malfeasant acts on the part of the Minister of Defence, and payment of salary arrears by way of redress.

13. At various points between 2005 and 2009 the applicants were successful before the respective municipal courts. In their reasoning, the courts stated that the Minister of Defence had failed to properly determine, as required by law, the coefficient relevant for the calculation of salaries and to accurately calculate the salaries as guaranteed by law. They found that the State should be held liable for the damage caused to personnel by improper and malfeasant acts on the part of its officials, in accordance with Article 172 of the Obligations Act (see paragraph 42 below). The courts relied on the opinions of experts, who found that there had been sufficient resources in the military budget to comply with the Armed Forces Act (see paragraph 6 above, as well as paragraphs 31 and 33 below).

14. According to the applicants, some 910 first-instance judgments were delivered in favour of military personnel in situations similar to those of the applicants.

15. In the meantime, some of the first-instance courts applied to the Supreme Court (*Vrhovni sud Srbije*) to seek an opinion and guidance, given the large number of cases, on the issue of jurisdiction regarding the calculation of military salaries in order to harmonise the domestic inconsistent case-law on the issue (see paragraphs 44 and 36 below, in that order). On 31 May 2005 the Supreme Court of Serbia adopted a legal opinion in this context, finding that the administrative route should be pursued to challenge the legality of an administrative decision establishing rights or the amount of salary or pension to be paid, while the civil courts were, in this regard, competent to adjudicate cases involving claims for damages caused by malfeasance (*nezakonit i nepravilan rad*) on the part of State bodies (see paragraphs 37-40 below for the summarised legal opinion of the Supreme Court).

16. At various points between 2005 and 2010 the appellate courts ruled either in favour of or against the applicants in respect of the main request for pecuniary damage.

17. Either the government or the unsuccessful applicants appealed on points of law. All the applicants were unsuccessful before the Supreme Court between 2007 and 2010, which reaffirmed its earlier reasoning for the opinion (see paragraph 15 above). It pointed out that the disputes could not be characterised as civil-law disputes coming within the competence *ratione materiae* of the civil courts to hear the applicants' cases. It stated that the disputes between the Ministry of Defence and its employees had concerned the improper calculation of salaries as determined by the decisions of the military units/officers, which should have been regarded as a public-law matter and been brought before the administrative authorities and courts in the form of a challenge to their lawfulness in accordance with the Yugoslav Armed Forces Act (see paragraph 32 below).

18. The Ministry of Defence brought an action for unjust enrichment (*tužba zbog sticanja bez osnova*) against the eighth applicant, requesting the reimbursement of the amount that had been paid to him in accordance with the lower judgments in his favour. The bailiff has initiated enforcement proceedings in this respect.

19. According to the applicants, more than 20,000 military personnel brought civil actions. At least 6,000 of those cases pending before municipal or appellate courts were suspended (*prekinuti*). According to media reports, Ministry representatives said that there were between 50 and 70,000 people in Serbia who could have decided to sue the army on the same basis.

III. MEETING BETWEEN THE SUPREME COURT AND A REPRESENTATIVE OF THE MINISTRY OF DEFENCE

20. In its submissions to the Užice Municipal Court on 16 March 2004 (case P. 85/04; claimant V.K., not one of the applicants in the present case),

a representative of the Ministry of Defence (N.L., the Department for Property and Legal Affairs (*Direkcija za imovinsko-pravne poslove*), Unit in Podgorica, Montenegro) asked the court to suspend the relevant civil proceedings pending the outcome of a case before the Supreme Court. In so doing, it stated that the then President of the Supreme Court, S.B., the President of its Civil Division, P.T., and the President of a first-instance court, G.M., had met with the Head of the Department for Property and Legal Affairs of the Ministry of Defence, M.R., with a view to dealing effectively with the influx of cases overburdening the judicial system and military bodies. It was agreed in principle that the first-instance court would adopt a partial decision (*međupresuda*) as to the legal basis of the civil claim (hence without making findings as to quantum). The Supreme Court would then give a final ruling on the merits of the case. If the Supreme Court accepted the civil claims, the Ministry would settle all pending cases out of court. A request to the same effect was made on 25 October 2004 by a representative of the Ministry in other similar proceedings of the same kind.

21. In the eighth applicant's case, the lower court ruled in his favour (Par.br. 1504/04/P. br. 231/06; a subsequent appeal was rejected as out of time). On 28 October 2008 the Ministry (the Department for Property and Legal Affairs, Unit in Belgrade), as the defendant, appealed to the Supreme Court, and on 15 December 2008 sent a formal letter asking it to take a decision in the case as a priority, as well as on two other appeals on points of law, in order to prevent execution of the lower courts' judgments and thus irreparable damage to the military budget. They also requested to be served with the final judgment directly and not via the lower courts as was required by law. It appears that on 4 February 2009 the Supreme Court ordered a retrial at second instance.

IV. CONSTITUTIONAL AVENUE OF REDRESS

22. By 2012 a constitutional appeal had been lodged with the Constitutional Court (*Ustavni sud*) on behalf of each applicant.

23. Relying on Articles 32 and 36 of the Constitution (see paragraph 26 below) and Article 6 of the Convention, the third applicant complained in his appeal that the civil proceedings had been unfair, in particular, that the Supreme Court of Serbia had lacked impartiality and adopted a judgment which had been the result of the agreement it had reached with the Ministry of Defence, without providing any appropriate argument.

24. The Constitutional Court summarily dismissed the third applicant's complaint of partiality as ill-founded, stating that his allegations represented only his subjective impression and that he had failed to procure evidence of partiality or arbitrariness. The court found that the judgment had been adopted by a lawfully established court, which had properly established the facts, applied the relevant law and provided valid and constitutionally acceptable

arguments for its decision. It also held that the dispute in issue was an "administrative" matter to be decided by the administrative authorities rather than a civil matter for the civil courts, given that it concerned the legality of a decision on salary calculation and payment.

25. The other nine applicants lodged identical or very similar constitutional appeals. The Constitutional Court's decisions in their cases were identical or summarised versions of its decision in the third applicant's case. The Constitutional Court also examined and dismissed various complaints by the applicants about the alleged partiality of other adjudicating judges against whom they had made criminal complaints or initiated civil proceedings.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Constitution of the Republic of Serbia (*Ustav Republike Srbije*, published in the Official Gazette of the Republic of Serbia – OG RS – no. 98/06)

26. The relevant provisions of the Constitution read as follows:

Article 32 § 1

"Everyone shall have the right to ... [a fair hearing before a] ... tribunal ... [in the determination] ... of his [or her] rights and obligations ..."

Article 36 § 1

"Equal protection of rights before the courts of law ... shall be guaranteed."

B. Yugoslav Armed Forces Act (*Zakon o vojsci Jugoslavije*, published in the Official Gazette of the Federal Republic of Yugoslavia – OG FRY – nos. 43/94, 28/96, 44/99, 74/99, 3/02 and 37/02, as well as in the Official Gazette of Serbia and Montenegro – OG SCG – nos. 7/05 and 44/05)

27. Article 7 of the Yugoslav Armed Forces Act states that professional members of the armed forces are professional and civilian personnel.

28. The individual salaries of professional and civilian military personnel are determined by multiplication of a base salary (*bodovi/koeficijenati*) by the coefficient for salary calculation (*novčana vrednost boda/koeficijenta*).

29. The Federal Government, as stated by Articles 87 and 150, fixes various determining factors for salaries. Under Article 71, the base salary (*osnovna plata izražena u bodovima*) of military personnel depends on

position, rank, specific military service, responsibilities, conditions and complexity of work, pension scheme, and so on (*plata prema činu, plata prema stažu, položajna plata i vojni dodatak prema posebnim uslovima službe*). Article 132 states that the base salary of civilian personnel depends on position, education, work achievements, career stage and particular conditions of work. Base salaries are determined by administrative employment/appointment decisions (*rešenje o postavljenju*) taken by the relevant superiors (*načelnik Generalštaba ili starešina jedinice*) in accordance with the determining factors fixed by the Government for each position, rank, and so on (*razni dodaci*). According to the testimonies of the military personnel and certain judgments of the domestic courts, these decisions are communicated to the staff only verbally.

30. The local military unit (*vojna pošta*) is to submit to the Ministry of Defence's calculation unit (*Vojno-računovodstveni centar MO u Beogradu*) monthly lists indicating the number of hours worked (*radne liste s brojem radnih sati; podaci o oceni rezultata rada*); they do not apparently adopt separate decisions on salary determination (*ne obračunavaju plate u novčanom iznosu*). Lastly, using the above-mentioned parameters, the military calculation unit determine, calculate and pay salaries (*sastavlja platne spiskove i isplaćuje plate preko tekućeg računa*) on the basis of the monthly lists and the coefficient (*vrednost boda*), which the Minister is to supply every month and publish in the Official Military Gazette. Salaries are apparently not calculated by a decision or in a pay slip, but by directly applying the Regulation on military salaries (see paragraph 33 below).

31. Article 75 states that the overall budget for military salaries is determined in relation to the national monthly average wage, which is used as the basis for calculating salaries in general, and that the part of the average salary of professional officers and officers on contracts (*profesionalnih oficira i oficira po ugovoru*) based on position and rank must not be less than three times the national monthly average wage or more than five times the national monthly average wage. This part of the salary of non-commissioned officers (*podoficir*) is 65-70%, and of soldiers is 55-60% of the above average salary of officers. Article 137 § 1 states that the funds for salaries of civilian personnel in the army is to be determined in such a way as to ensure that their average base salary is not less than the national monthly average wage or more than four times the national monthly average wage.

32. Under Article 156, competence for taking decisions on administrative matters lies with the commanding officer in a command, unit or establishment of the Serbian Armed Forces at the position of battalion commander or an officer of the same rank or higher, save where the law or regulations provide otherwise. Appeals are decided by the superior of the officer who gave the first-instance decision. Article 154 § 3 states that judicial review proceedings (*upravni spor*) cannot be initiated against administrative employment or mobility-related decisions (*akt o postavljenju i premeštanju*) relating to

professional soldiers, or decisions concerning extraordinary promotion. Article 149 does not specify whether Article 154 § 3 also applies to civilian personnel.

C. Regulation on military salaries and other renumerations of professional and civilian personnel in the Yugoslav Army (hereinafter "Regulation on military salaries"; *Uredba o platama i drugim novčanim primanjima profesionalnih vojnika i civilnih lica u Vojsci Jugoslavije*, published in the OG FRY nos. 35/94, 9/96, 1/00 and 54/02)

33. The Minister of Defence regularly determines the coefficient for salary calculation within the resources for salaries provided by the Government defence budget (section 52 of the Regulation on military salaries). Salaries of professional and civilian personnel are determined on the basis of administrative employment decisions (*naredbe*/*rešenje o postavljenju*) taken by the relevant superiors and data indicating the monthly results. They are calculated and paid on the basis of lists (*po platnom spisku*)(section 53).

D. Legal opinion adopted by the Supreme Court's Civil Division on 6 April 2004 *(Pravno shvatanje Građanskog odeljenja Vrhovnog suda Srbije, sa obrazloženjem, utvrđeno na sednici od 6. aprila 2004. godine)*

34. The Supreme Court of Serbia adopted a legal opinion in response to the divergent case-law as to which domestic authorities, judicial or administrative, are vested with jurisdiction over cases concerning the right to remuneration governed by the Veterans, Military Invalids and Veterans' Families (Rights) Act and the Armed Forces Act.

35. The legal opinion states that the competence of the administrative bodies in claims seeking a determination of the above-mentioned rights does not limit the jurisdiction of the civil courts to adjudicating claims for damages based on the State's alleged malfeasance (*nezakonit i nepravilan rad*). Essentially, the legislature vested administrative bodies with the authority to protect beneficiaries and control administrative acts through administrative proceedings and judicial review. They decide on the rights and their exercise, including initial enforcement. The legal opinion further clarifies that only if the competent administrative body fully or partially withholds payments, pays selectively, or acts in any other malfeasant manner while there are sufficient budgetary resources for the remuneration concerned, the civil courts have jurisdiction to rule on the merits in those cases. Damages in such cases would equate to the amount of outstanding remuneration.

E. Legal opinion adopted by the Supreme Court's Civil Division on 31 May 2005 *(Pravno shvatanje Građanskog odeljenja Vrhovnog suda Srbije, sa obrazloženjem, utvrđeno na sednici od 31. maja 2005. godine)*

36. In view of the number of pending cases concerning actions for damages of military officers and pensioners, like those of the applicants, and pursuant to Article 176 of the Civil Procedure Act (see paragraphs 44 and 45 below), the lower courts identified three preliminary legal issues of relevance for consistent adjudication and sought a preliminary legal opinion from the Supreme Court of Serbia on: (a) the jurisdiction of the ordinary civil courts to adjudicate such claims; (b) the standing of the respondent State – at the time the State Union of Serbia and Montenegro – to be sued; and (c) whether the salaries of military and civilian personnel in the army should be determined and calculated in accordance with Articles 75 and 137 of the Armed Forces Act (see paragraph 31 above), respectively, or on the basis of the Regulation on military salaries (see paragraph 33 above) and decisions of the Federal Government. The Supreme Court, acknowledging the complexity of the issues, agreed to provide a legal opinion.

37. The legal opinion states that the individual salaries of professional members of the Yugoslav Armed Forces, as well as the pensions of retired military personnel, are to be determined by individual administrative decisions.

38. It further explains that administrative proceedings (*upravni postupak*) and, if need be, judicial review proceedings (*upravni spor*) would be the appropriate avenue to challenge the legality of an administrative decision establishing rights or the amount of salary or pension to be paid.

39. Lastly, the legal opinion also notes that the civil courts are, in this regard, competent to adjudicate cases involving claims for damages caused by malfeasance (*nezakonit i nepravilan rad*) on the part of State bodies.

40. Reiterating the relevance of its legal opinion of 6 April 2004 (see paragraphs 34 and 35 above), the Supreme Court clarified that the act determining the right to salary and its scope was an administrative act whose legality and conformity with the law had to be assessed or controlled by the administrative bodies vested with the authority to adopt such acts and by the court at final instance through administrative proceedings and judicial review (formerly the Military Court, then the Court of Serbia and Montenegro – none of the two courts exist nowadays). Only a final and enforceable decision on the amount of salary created an obligation. The State could then be held liable for damages, as provided for by Article 172 of the Obligations Act (see paragraph 42 below), in the event that its administrative authorities fully or partially withheld payments, failed to pay entire or partial amounts, or paid them selectively, owing to malfeasance.

F. Decision (*rešenje*) of the Court of Serbia and Montenegro UZ br. 29/2005, issued at the Plenary Session on 24 June 2005

41. Following a request, the Court of Serbia and Montenegro found no reason to initiate proceedings to assess the compatibility of the general legal acts (*opšti akti*) concerning the determination of military salaries. The reasoning stated that when determining the coefficient for salary calculation, the Minister of Defence was limited by the overall financial resources provided by the Government defence budget and the base salaries fixed by the Federal Government in view of each determining factor (*visina plata iz člana 87 izraženih u bodovima*). Determination of the coefficient for salary calculation did not result in an increase or decrease in salaries, and was used only for payroll accounting purposes. Therefore, a possible decrease in overall resources concerned the application of the law and was not a matter to be examined by the court. A possible decrease in the total funds based on established coefficients fell within the scope of the application of contested acts, which was not assessed by the court within its competence.

G. Obligations Act (*Zakon o obligacionim odnosima*, published in the Official Gazette of the Socialist Federal Republic of Yugoslavia - OG SFRY - nos. 29/78, 39/85, 45/89 and 57/89, as well as in OG FRY no. 31/93)

42. Article 172 § 1 of the Obligations Act provides that a legal entity (*pravno lice*), which includes the State, is liable for any damage caused by one of "its own bodies" (*njegov organ*) to a "third person".

H. Civil Procedure Act 2004 (*Zakon o parničnom postupku*; published in OG RS no. 125/04)

43. The Civil Procedure Act 2004 entered into force on 23 February 2005, repealing the Civil Procedure Act 1977.

44. Article 176 provides that when there are a number of cases pending at first instance raising the same preliminary legal issue of decisive importance for adjudication of the cases, the court of first instance may, either of its own motion or at the request of one of the parties, institute separate proceedings before the Supreme Court, asking it to resolve the preliminary legal issue in question. Any cases pending at first instance are in the meantime stayed.

45. Article 177 states that the request to the Supreme Court should contain a brief statement of the facts, the parties' allegations concerning the issue in question and the reasons why the court of first instance is requesting an interpretation.

46. Pursuant to Article 178, the Supreme Court must provide its standing on the legal issue in question within ninety days of receipt of the request, in

accordance with the rules governing the adoption of legal opinions or interpretations. The adopted legal opinion is served on the requesting court and published in the bulletin of the Supreme Court.

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

47. Pursuant to Article 43 § 3 of the Court Organisation Act, all legal opinions adopted by a Division of the Supreme Court are binding for all chambers of that Division.

II. INTERNATIONAL MATERIALS

48. The relevant international standards in respect of independence and impartiality of the judiciary may be found, *inter alia*, in the following documents:

(a) Recommendation CM/Rec(2010/12) which was adopted by the Committee of Ministers of the Council of Europe on 17 November 2010, on the proposal of the European Committee for Legal Co-operation (CEPJ);

(b) The Magna Carta of Judges (Fundamental Principles), which summarises and codifies the main conclusions of the twelve Opinions that the Consultative Council of European Judges ("the CCJE") has already adopted;

(c) CCJE Opinion No. 1 (2001) for the attention of the Committee of Ministers of the Council of Europe on standards concerning the independence of the judiciary and the irremovability of judges (Recommendation No. R(94)12);

(d) CCJE Opinion No. 3 (2002) for the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality; and

(e) The Bangalore Principles of Judicial Conduct 2001, adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held in The Hague in November 2002, and the Commentary thereon.

THE LAW

I. JOINDER OF THE APPLICATIONS

49. Having regard to the common factual and legal background of the applications, the Court finds it appropriate to order their joinder in accordance with Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION IN RESPECT OF THE ALLEGED LACK OF IMPARTIALITY OF THE SUPREME COURT OF SERBIA

50. The applicants complained under Articles 6, 13, 14 and/or 17 of the Convention that the Supreme Court of Serbia could not be regarded as independent or impartial. In particular, after its meeting with a representative of the Ministry of Defence, the opponent in the proceedings (see paragraph 20 above), the Supreme Court had allegedly changed its practice on the matter in issue and influenced the other courts on how to adjudicate.

51. Being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114, 124 and 126, 20 March 2018), the Court considers that these complaints fell to be examined under Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. Admissibility

52. 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.

B. Merits

1. The parties' submissions

(a) The applicants

53. The applicants complained that the Supreme Court of Serbia had lacked impartiality, in breach of their right to a fair hearing. They submitted that the present case clearly showed objective bias on the part of the Supreme Court, which was evident from the fact that its President and the President of the Civil Division had met one of the parties in the proceedings, significantly a Government Ministry, to discuss the case without the other party present. Following this meeting, in the applicants' view, the Supreme Court had changed its practice on the matter in issue and influenced the other courts on how to adjudicate. The applicants submitted that the reasoning in the Supreme Court's decisions (see, for example, paragraph 17 above) had been the product of the agreement reached by those involved in the meeting and had aimed at rejecting the applicants' claims and saving the State budget. The applicants disputed the legal opinion that administrative proceedings were the appropriate avenue of redress in their cases (see paragraphs 37-40 above).

They argued that, contrary to the interpretation of the domestic law by the Government and the domestic courts, the salary arrears were not "an administrative matter", but clearly a civil matter.

(b) The Government

54. The Government submitted that no issue as to impartiality had arisen in the present case. They did not dispute that the meeting had been held and pointed out that it had not been hidden from the public. It had been important for the Supreme Court to meet with the Ministry's representative to clarify the complex facts concerning the determination of salaries and on the simultaneous application of numerous laws, which had made the issue even more complex. The applicants had not proved that the judges had acted to the detriment of a party, nor had it been the case. The meeting therefore had not disclosed any bias on the part of the Supreme Court judges, who had remained impartial within the meaning of Article 6 § 1 of the Convention.

55. In the Government's view, the applicants' lawyer had simply chosen an inappropriate avenue of redress, that is to say, a civil claim, instead of making use of the existing effective and sufficient administrative remedies before the administrative authorities, and he was trying to find an excuse for erroneously representing numerous individuals. The applicants' lawyer was merely "manipulating" the Court, as he had done at domestic level by making numerous applications to have judges withdrawn for lack of impartiality without any evidence, including those who had not even been involved in the cases. The Constitutional Court found that his allegations in the constitutional appeals were not supported by any evidence of partiality, and represented his purely subjective impression (see paragraph 25 above). The Government also submitted examples of what the applicant had claimed to be allegedly incorrect and manipulative interpretations of divergent case-law of the various higher courts, or a change in jurisdictional practice by the Supreme Court.

56. According to the Government, as to the subjective test, the applicants failed to provide any evidence, either in the domestic proceedings or to the Court, that there had been any personal conviction or conduct on the part of the acting judges, or any personal prejudice or affection in the present case. In addition, the domestic courts offered sufficient guarantees to exclude any legitimate doubt as to impartiality since "the adjudicating judges of the [higher] courts adopted their decisions in accordance with the legal opinion adopted by the Supreme Court in exercising its legal jurisdiction".

2. The Court's assessment

(a) General principles

57. Impartiality normally denotes the absence of prejudice or bias and its existence or otherwise can be tested in various ways. According to the Court's

settled case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test, where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see, *inter alia*, *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 145, 6 November 2018).

58. As to the subjective test, the principle that a tribunal must be presumed to be free of personal prejudice or partiality is long-established in the case-law of the Court (see, for example, *Kyprianou v. Cyprus* [GC], no. 73797/01, § 119, ECHR 2005-XIII). The Court has held that the personal impartiality of a judge must be presumed until there is proof to the contrary (see, for example, *Morice v. France* [GC], no. 29369/10, § 74, 23 April 2015). As regards the type of proof required, the Court has, for example, sought to ascertain whether a judge has displayed hostility or ill will for personal reasons (see *De Cubber v. Belgium*, 26 October 1984, § 25, Series A no. 86).

59. In the vast majority of cases raising impartiality issues the Court has focused on the objective test. However, there is no watertight division between subjective and objective impartiality, since the conduct of a judge may not only prompt objectively held misgivings as to impartiality from the point of view of the external observer (objective test) but may also go to the issue of his or her personal conviction (subjective test – see *Kyprianou*, cited above, § 119). Thus, in some cases where it may be difficult to procure evidence with which to rebut the presumption of the judge's subjective impartiality, the requirement of objective impartiality provides a further important guarantee (see *Pullar v. the United Kingdom*, 10 June 1996, § 32, *Reports of Judgments and Decisions* 1996-III).

60. As to the objective test, it must be determined whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his or her impartiality. This implies that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge or a body sitting as a bench lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (see *Wettstein v. Switzerland*, no. 33958/96, § 44, ECHR 2000-XII, and *Ferrantelli and Santangelo v. Italy*, 7 August 1996, § 58, *Reports* 1996-III).

61. The objective test mostly concerns hierarchical or other links between the judge and other actors in the proceedings (see court martial cases, for example, *Miller and Others v. the United Kingdom*, nos. 45825/99, 45826/99 and 45827/99, 26 October 2004; see also cases regarding the dual role of a judge, for example, *Mežnarić v. Croatia*, no. 71615/01, § 36, 15 July 2005, and *Wettstein*, cited above, § 47, where the lawyer representing the

applicant's opponents subsequently judged the applicant in a single set of proceedings and overlapping proceedings respectively) which objectively justify misgivings as to the impartiality of the tribunal, and thus fail to meet the Convention standard under the objective test (see *Kyprianou*, cited above, § 121). It must therefore be decided in each individual case whether the relationship in question is of such a nature and degree as to indicate a lack of impartiality on the part of the tribunal (see, *mutatis mutandis*, *Pullar*, cited above, § 38).

62. In this connection, even appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done" (see *De Cubber*, cited above, § 26). What is at stake is the confidence which the courts in a democratic society must inspire in the public. Thus, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw (see *Castillo Algar v. Spain*, 28 October 1998, § 45, *Reports* 1998-VIII).

63. Moreover, in order that the courts may inspire in the public the confidence which is indispensable, account must also be taken of questions of internal organisation (see *Piersack v. Belgium*, 1 October 1982, § 30(d), Series A no. 53). The existence of national procedures for ensuring impartiality, namely rules regulating the withdrawal of judges, is a relevant factor. Such rules manifest the national legislature's concern to remove all reasonable doubts as to the impartiality of the judge or court concerned and constitute an attempt to ensure impartiality by eliminating the causes of such concerns. In addition to ensuring the absence of actual bias, they are directed at removing any appearance of partiality and so serve to promote the confidence which the courts in a democratic society must inspire in the public (see *Mežnarić*, cited above, § 27). The Court will take such rules into account when making its own assessment as to whether a tribunal was impartial and, in particular, whether the applicant's fears can be held to be objectively justified (see, *mutatis mutandis*, *Pescador Valero v. Spain*, no. 62435/00, §§ 24-29, ECHR 2003-VII).

64. Lastly, the Court emphasises that the notion of the separation of powers between the political organs of government and the judiciary, as well as importance of safeguarding the independence of judiciary, have assumed growing importance in its case-law (see *Stafford v. the United Kingdom* [GC], no. 46295/99, § 78, ECHR 2002-IV; see also, *mutatis mutandis*, *Ramos Nunes de Carvalho e Sá*, cited above, § 144, concerning the dual role of the President of the Supreme Court and the careers of its judges, linked to the High Council of the Judiciary; *Baka v. Hungary* [GC], no. 20261/12, §§ 121 and 165, 23 June 2016, concerning an access-to-court complaint in the context of the removal of judges). The Court also found that the applicants had been deprived of a hearing by an independent and impartial tribunal resulting in infringements of the basic principles of the rule of law when executive authorities had intervened in judicial proceedings, obtaining

annulment or the setting aside of final judgments (see *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 75-82, ECHR 2002-VII).

(b) The Court's assessment

65. The Court does not observe in the present case such issues as unclear separation of powers or internal structural impartiality (compare and contrast *Procola v. Luxembourg*, 28 September 1995, § 45, Series A no. 326, and *Kleyn and Others v. the Netherlands* [GC], nos. 39343/98 and 3 others, §§ 193-96, ECHR 2003-VI, in which judicial functions and the structural function of advising the government were combined within the *Conseil d'Etat* and where the structure of the body in issue was such that its members could successively exercise both functions).

66. The central question raised is whether, in the circumstances of the present case, the holding of the meeting with the representative of the Ministry of Defence (see paragraph 20 above), which later became a party to the proceedings, was capable of casting doubt on the Supreme Court's impartiality sufficiently to compromise the impartiality of the chambers which determined the appeals on points of law lodged in the applicants' cases at a later stage (see paragraph 17 above) and adopted the relevant legal opinion by which it influenced the other courts on how to adjudicate the cases. The Court will therefore examine the case in its overall context, and more specifically, it should determine whether the Supreme Court itself and its chambers offered sufficient guarantees to exclude any legitimate doubt in respect of their impartiality or whether the applicants' doubts can be regarded as objectively justified in the circumstances of the case (see the case-law quoted in paragraph 60 above). Therefore, while the standpoint of the applicants is important, the decisive factor is whether there are ascertainable facts which may raise doubts as to the court's impartiality from the point of view of an external observer (see, *mutatis mutandis*, *Morice*, cited above, § 75).

67. The Court notes that the cases before the domestic courts involved a large number of litigants (see paragraphs 14 and 19 above), including the applicants, against an executive authority, namely the Ministry of Defence, concerning a complex factual and legal issue, which could also have significantly affected the military budget (see paragraph 21 above). Against such a background, the Court accepts that it is legitimate for the Supreme Court to seek methods to effectively deal with a large influx of cases at domestic level, particularly if they raise preliminary jurisdictional issues that fall within its competence (see paragraphs 36 and 44 above), or if, for example, the outcome may indeed lead to out-of-court settlements (see paragraph 20 above). In that regard, the courts may enter into institutional relations to the extent that is consistent with the impartiality required of judges. They should, in particular, strike an appropriate balance between the need to maintain the impartiality and the appearance of impartiality on the

one hand, and the courts' interest in obtaining information relevant to adjudication or effectively dealing with an influx of cases on the other. Meetings with any interested party, even the more so with a State body, on issues which are the subject of pending or foreseeable litigation should be held in a way which does not undermine the decision-making process and the public confidence that the courts must inspire.

68. The Court notes with regret that it does not appear that the Supreme Court kept any written records of who initiated the meeting, its purpose and the discussions that took place, or, at least, they were not submitted to the Court by the Government. Such a written record would have certainly helped to provide more transparent information on what occurred during the meeting. This would have protected the Supreme Court from accusations of partiality and appearance, being it actual or perceived, that the Ministry could have attempted to improperly interfere with the merits and the outcome of the cases.

69. Having regard only to the available facts about the meeting in question from the submissions of the Ministry's representative (see paragraph 20 above; see also paragraph 54 above) and without entering into assumptions and speculation, the Court notes that on an unspecified date, before March 2004, the President of the Supreme Court and the Civil Division President had a meeting with a President of a first-instance court and a representative of the Ministry. They were, according to the Government, given background information on the complex way in which military salaries were determined, but the conversation seems to have turned principally to procedural matters. In particular, it was, according to the Ministry, agreed in principle that "the lower court would adopt a partial decision (*medjupresuda*) as to the legal basis of the civil claim" (hence without making findings as to quantum) and that the Supreme Court would then give a final ruling on the admissibility and merits of the case. If the court accepted the civil claims, the Ministry intended to propose out-of-court settlements of all pending cases to avoid further litigation costs (see paragraph 20 above).

70. On another occasion, in December 2008, the Ministry sent a formal letter further asking the Supreme Court to take a decision in the case concerning the eighth applicant as a priority and on two other appeals on points of law, as well as to serve its final judgment on the Ministry directly and not via the lower courts as required by law, in order to prevent execution of the lower judgments and thus irreparable damage to the military budget. A month and a half later, the Supreme Court ordered a retrial at second instance (see paragraph 21 above).

71. The Court observes that the meeting between the judges and the Ministry's representative was not a private communication on a pending case, but a public meeting which occurred outside the framework of any proceedings before the Supreme Court itself. If the cases had been pending before the Supreme Court, the holding of the meeting with only one party to

discuss the matters, in these particular circumstances, could have possibly raised an issue. However, at the time of the meeting in question (which must have been before 16 March 2004, see paragraphs 20 and 54 above), neither the applicants' cases nor other cases of the same kind were pending before the Supreme Court; most of the applicants' claims had not even been lodged with a first-instance court (for the relevant dates, see appendix).

72. Furthermore, the complaints in the present case concern the court of last resort in ordinary judicial proceedings in Serbia, which is composed exclusively of professional judges with guaranteed tenure. The applicants have not claimed that those judges were specifically appointed with a view to adjudicating their case, but that the decisions of all the judges were influenced by the two judges who had participated at the meeting (see, *mutatis mutandis*, *Ramos Nunes de Carvalho e Sá*, cited above, § 155). The Court sees no real reason to doubt the ability of the judges to ignore extraneous considerations, if any, in the present case. They are in principle expected and trusted to abide by the law until there are ascertainable facts which may raise doubts as to their impartiality from the point of view of an external observer. The Court does not consider that extracting one case to be the lead for all the other cases compromises in any way the impartial decision-making process, as it is a regular procedural step when required. It does not suffice to persuade the Court to find bias on the part of the Supreme Court judges or favouring of a particular party, especially if it may lead to, depending on the outcome, a reduction in the number of pending cases by means of out-of-court settlements or their disposal by the lower courts.

73. As to the influence on adjudication by the lower courts, the Court notes that they made use of their statutory entitlement to seek a legal opinion from the highest court in view of apparently divergent practice on the impugned matter (see paragraph 15 and 36 above). The Supreme Court provided a comprehensive interpretation of the relevant legislation causing ambiguities in this area and gave guidance to the lower courts on the subject matter, and was confined to its proper judicial role of determining who is vested with which authority (see paragraphs 44-45 and 47 above; compare and contrast *Procola*, cited above, § 45, where the members of the *Conseil d'Etat* could exercise dual – judicial and administrative – assignments in respect of the same decisions). There is also no indication that the Supreme Court changed its interpretation of the law as a result of the meeting. Indeed, the view it ultimately reached – that the administrative bodies are vested with jurisdiction as regards the determination of military salaries – was consistent with its earlier view on an equivalent issue in a different context (compare paragraphs 34 and 35 and paragraphs 37-40 above). Notably, the outcome of the Supreme Court's opinion differs from the situation that had allegedly been discussed at the meeting (see paragraph 20 above). Lastly, the Court notes that the Constitutional Court subsequently upheld the legal interpretation provided by the Supreme Court (see paragraph 24 *in fine* above).

74. Consequently, while emphasising the importance of "appearances" in this context, regard being had to all the specific circumstances of the case and the foregoing considerations, the Court is of the opinion that the holding of the meeting to discuss the procedural matters between two Supreme Court's judges, the President of a lower court and a representative of the Ministry as a later party to the proceedings, was not such as to cast doubt on the objective impartiality of the Supreme Court in ruling on the applicants' appeals on points of law against the lower courts' decisions. There remains the issue that the applicants might not have seen the Supreme Court as being totally free from bias after the meeting. However, the existence of such sentiments and fears on their part is not sufficient to establish that they were objectively justified within the meaning of the Court's case-law (see paragraph 60 above).

75. Consequently, the Court considers that there has been no violation of Article 6 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION IN RESPECT OF THE ALLEGED INCONSISTENCY IN THE CASE-LAW

76. The applicants also complained of inconsistencies in the case-law of the Serbian courts, given that the competent civil courts had declined jurisdiction to decide their cases while the other municipal or appellate courts had accepted jurisdiction and ruled in favour of the claimants in situations similar to theirs. They submitted copies of twenty-one judgments in support of their allegations regarding the divergent case-law at issue which, according to them, created legal uncertainty together with hundreds of other such cases.

They relied on Article 6 of the Convention.

A. The parties' submissions

77. The Government did not dispute the fact that the lower civil courts had initially adopted conflicting conclusions as to the competence *ratione materiae* of the civil courts in same factual and legal situation as the applicants. However, at the initiative of certain lower courts, the Supreme Court had adopted its legal opinion on the issue in question in accordance with Article 176 of the then applicable Civil Procedure Code Act (see paragraph 44 above), providing a detailed interpretation of the relevant domestic law causing ambiguities in this area (see paragraphs 37-40 above). The Government claimed that as of that date, the interpretation of the Supreme Court had been applied in the decisions of all lower courts, including in the applicants' cases, and had also been upheld by the Constitutional Court (see paragraph 24 above). All departures from this legal opinion, which had occurred in exceptionally rare cases, such as that of the

third applicant, had however been harmonised at the latest at Supreme Court level, in the proceedings on appeal on points of law. The Government alleged that the Serbian legal system clearly provided a mechanism effective and capable of overcoming the divergent case-law of the lower courts, and its further consistent application eliminated any possibility of the occurrence of non-harmonised case-law, namely of "fundamental and long-term differences" potentially leading to legal uncertainty.

78. The applicants maintained that the domestic case-law on the matter was inconsistent.

B. The Court's assessment

1. General principles

79. In *Nejdet Şahin and Perihan Şahin v. Turkey* ([GC], no. 13279/05, §§ 49-58, 20 October 2011), the Court recapitulated the main principles applicable in cases concerning the issue of conflicting court decisions. In *Stanković and Trajković v. Serbia* (nos. 37194/08 and 37260/08, § 40, 22 December 2015), these same principles have been summarised as follows:

> "(i) It is not the Court's function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). Likewise, it is not its function, save in the event of evident arbitrariness, to compare different decisions of national courts, even if given in apparently similar proceedings, as the independence of those courts must be respected (see *Ādamsons v. Latvia*, no. 3669/03, § 118, 24 June 2008);
>
> (ii) The possibility of conflicting court decisions is an inherent trait of any judicial system which is based on a network of trial and appeal courts with authority over the area of their territorial jurisdiction. Such divergences may also arise within the same court. That, in itself, cannot be considered contrary to the Convention (see *Santos Pinto v. Portugal*, no. 39005/04, § 41, 20 May 2008, and *Tudor Tudor v. Romania*, no. 21911/03, § 29, 24 March 2009);
>
> (iii) The criteria that guide the Court's assessment of the conditions in which conflicting decisions of different domestic courts, ruling at last instance, are in breach of the fair trial requirement enshrined in Article 6 § 1 of the Convention consist in establishing whether "profound and long-standing differences" exist in the case-law of the domestic courts, whether the domestic law provides for a machinery capable of overcoming these inconsistencies, whether that machinery has been applied and, if appropriate, to what effect (*Iordan Iordanov and Others v. Bulgaria*, no. 23530/02, §§ 49-50, 2 July 2009; *Beian v. Romania (no. 1)*, no. 30658/05, §§ 34-40, ECHR 2007-V (extracts); *Ştefan and Ştef v. Romania*, nos. 24428/03 and 26977/03, §§ 33-36, 27 January 2009; *Schwarzkopf and Taussik v. the Czech Republic* (dec.), no. 42162/02, 2 December 2008; *Tudor Tudor*, cited above, § 31; *Ştefănică and Others v. Romania*, no. 38155/02, § 36, 2 November 2010);
>
> (iv) The Court's assessment has also always been based on the principle of legal certainty which is implicit in all the Articles of the Convention and constitutes one of the fundamental aspects of the rule of law (see, amongst other authorities, *Beian (no.*

1), cited above, § 39; *Iordan Iordanov and Others*, cited above, § 47; and *Ştefănică and Others*, cited above, § 31);

(v) The principle of legal certainty guarantees, *inter alia*, a certain stability in legal situations and contributes to public confidence in the courts. The persistence of conflicting court decisions, on the other hand, can create a state of legal uncertainty likely to reduce public confidence in the judicial system, whereas such confidence is clearly one of the essential components of a State based on the rule of law (see *Paduraru v. Romania*, § 98, no. 63252/00, ECHR 2005-XII (extracts); *Vinčić and Others* [*v. Serbia*, nos. 44698/06 and 30 others, § 56, 1 December 2009]; and *Ştefănică and Others*, cited above, § 38);

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

2. Application of these principles to the present case

80. Turning to the present case, the Court notes that the Government did not dispute that conflicts as regards case-law concerning a procedural matter of general importance evolved between the submission of the first civil claims in 2003 and the first judgments in 2005 (see paragraph 77 above). While this is a matter of concern for those involved, as already noted above, the possibility of conflicting court decisions is an inherent trait of any judicial system which is based on a network of trial and appeal courts with authority in a certain area. Such divergences may also arise within the same court. That in itself, however, cannot be considered in breach of the Convention (see *Stanković and Trajković*, cited above, § 41).

81. The Court observes that after the initial divergent domestic case-law, the competent lower courts, faced with an influx of similar cases and aware of the divergent adjudication, made use of the possibility of requesting an interpretation of the relevant legal provisions from the Supreme Court in order to harmonise the case-law (see paragraphs 15 and 36 above). The inconsistencies were institutionally resolved by a legal opinion of 31 May 2005, clarifying that the applicants' cases fell exclusively within the domain of public law (see paragraphs 37-40 above). According to the Government, from June 2005 onwards the legal opinion was fully implemented and no legal uncertainty continued, while the "extremely rare exceptions" were rectified by the Supreme Court at last instance and upheld by the Constitutional Court in the process of constitutional protection (see paragraph 77 above).

82. It is noted that final rulings were issued in the applicants' cases following the date on which the Supreme Court had adopted its legal opinion on the matter (see paragraph 37-40 above). The Court finds that in the specific circumstances of the present case, the Serbian legal system provided the

applicants with a mechanism capable of overcoming the case-law inconsistencies complained of in a satisfactory manner. The applicants did not contest the submission that the domestic courts had harmonised their approach in the determination of claims such as theirs, but on the contrary confirmed that the appellate or the Supreme Court had reversed earlier judgments which were not in conformity with the Supreme Court's approach. This interpretation of the domestic law, while difficult to reconcile with the views expressed by the administrative and lower civil courts in other cases of this type, as well as the earlier interpretations (see paragraphs 9 and 10 above), is certainly not untenable and was adopted by the highest ordinary court. In any event, the Court observes that the applicants did not complain about the outcome of the domestic claims or the arbitrariness, or the protection of their property rights. The Court therefore, without considering it appropriate to pronounce as to what the actual outcome of the applicants' cases should have been (see, *mutatis mutandis*, *Garcia Ruiz*, cited above, § 28, and *Vinčić and Others,* cited above, § 56), considers that there were no "profound and long-standing differences" in the relevant case-law during the relevant period in the applicants' cases (see, *mutatis mutandis*, *Schwarzkopf and Taussik*, decision cited above; *Pérez Arias v. Spain*, no. 32978/03, § 25, 28 June 2007; and *Stanković and Trajković*, cited above, §§ 42-43; contrast *Rakić and Others v. Serbia*, nos. 47460/07 and 29 others, § 44, 5 October 2010).

83. In view of the foregoing considerations, the Court considers that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join the applications;

2. *Declares*, unanimously, the applicants' complaint concerning the alleged lack of impartiality of the Supreme Court admissible and the remainder of the applications inadmissible;

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

Done in English, and notified in writing on 12 January 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Yonko Grozev
Registrar	President

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

Y.G.
A.N.T.

APPENDIX

No.	Application number	Lodged on	Applicant's name, year of birth and place of residence	Date of submission of civil claims and the relevant domestic decisions
1.	50104/10	16/08/2010	**Ninoslav SVILENGAĆANIN** 1979 Ruma **Veljko IVANOVIĆ** 1978 Vučak	25/09/2003 (civil claim) 23/11/2005 (Ruma Municipal Court) 24/08/2006 (Novi Sad Appellate Court) 07/02/2008 (Supreme Court of Serbia) 17/05/2010 (Constitutional Court)
2.	50673/10	16/08/2010	**Ivica MILENKOVIĆ** 1964 Banjaluka	29/07/2003 (Military unit (*Vojna pošta*) Belgrade 2977) 23/04/2003 (civil claim) 05/12/2006 (Belgrade Second Municipal Court) 20/09/2007 (Belgrade District Court) 01/10//2008 (Supreme Court of Serbia) 06/04/2010 (Constitutional Court)
3.	50714/10	16/08/2010	**Ljubiša KOCIĆ** 1958 Ćuprija	(Military Unit Ćuprija 9932) 18/07/2005 (civil claim) 18/05/2006 (Ćuprija Municipal Court) 29/12/2006 (Jagodina District Court) 01/11/2007 (Supreme Court of Serbia), 12/3/2009 (Supreme Court on a request for retrial) 15/04/2010 (Constitutional Court)
4.	13078/11	19/01/2011	**Dnjepar ZEČEVIĆ** 1995 Leskovac	26/10/2004 (civil claim) 31/03/2006 (Ćuprija Municipal Court) 02/08/2006 (Jagodina District Court) 21/2/2008 (Supreme Court of Serbia) 07/05/2010 (Constitutional Court, served on 26/07/10)
5.	15596/11	21/01/2011	**Zoran JOVANOVIĆ** 1957 Ćuprija	(Military Unit Ćuprija 9932) 26/07/2005 (civil claim) 07/03/2006 (Ćuprija Municipal Court) 18/08/2006 (Jagodina District Court) 06/12/2007 (Supreme Court of Serbia) 27/07/2010 (Constitutional Court, served on 28/07/2010)
6.	8024/12	20/07/2011	**Ivan CVETKOVIĆ** 1969 Ćuprija	(Military unit Ćuprija 4418) 23/08/2005 (civil claim) 06/02/2006 (Ćuprija Municipal Court) 29/12/2006 (Jagodina District Court) 14/10/2008 (Supreme Court of Serbia) 01/02/2011 (Constitutional Court)
7.	1404/13	11/12/2012	**Nikola KOPANJA** 1957 Backa Palanka	10/10/2007 (civil claim) 05/09/2009 (Bačka Palanka Municipal Court) 10/02/2010 (Novi Sad Appellate Court) 07/07/2010 (Supreme Cassation Court) 21/06/2012 (Constitutional Court)
8.	3603/13	08/01/2013	**Dragan MILOJEVIĆ II** 1963 Jagodina	2003 (Military Unit 4418/1 Ćuprija) 29/08/2003 (Ćuprija Municipal Court) 29/04/2009 (Jagodina District Court) 30/09/2010 (Supreme Cassation Court) 06/12/2012 (Constitutional Court)
9.	7444/13	08/01/2013	**Dejan LUKIĆ** 1974 Niš	(Military Unit 9650 Prokuplje) 27/09/2005 (civil claim) 31/07/2006 (Prokuplje Municipal Court) 22/11/2006 (Prokuplje District Court)

				25/06/2008 (Supreme Court of Serbia) 12/07/2012 (Constitutional Court)
10.	7452/13	08/01/2013	**Dragan JOVANOVIĆ** 1970 Niš	(Military Unit 9650 Prokuplje) 27/09/2005 (civil claim) 31/07/2006 (Prokuplje Municipal Court) 22/11/2006 (Prokuplje District Court) 25/06/2008 (Supreme Court of Serbia) 12/07/2012 (Constitutional Court)

DISSENTING OPINION OF JUDGE MOUROU-VIKSTRÖM

(Translation)

1. I am unable to subscribe to the majority's view that there has been no violation of Article 6 of the Convention.

2. The question posed by this case is a fundamental question of principle concerning the independence of the Supreme Court of Serbia, or more precisely the independence of the judges comprising the country's highest court.

3. The question is a simple one: was the meeting between members of the judicial authorities and a representative of the executive contrary to the requirements of Article 6? Is the impartiality of the Supreme Court judges who took part in the meeting open to question?

4. Even though the authority which initiated the meeting is not known, it is established that on an unspecified date, but in any event before March 2004, some judges of the Supreme Court (the President of the Supreme Court itself and the President of the Civil Division) and a first-instance court judge had a meeting with a representative of the Ministry of Defence (the Head of the Department for Property and Legal Affairs).

5. Members of the judiciary therefore had a conversation with a representative of the executive on a legal and technical issue liable to have a major impact on the military budget and hence on a part of the public finances. But above all, the meeting concerned matters which had already come before the first-instance courts and which would in all likelihood be submitted to the Supreme Court for consideration.

6. According to the Government, the meeting had simply decided on a procedure for the courts' handling of cases concerning the determination of the coefficient for calculating military salaries. In the Government's view, no issue of impartiality arose out of the fact that the parties present at the meeting had agreed that the first-instance courts would adopt an initial, partial decision on the legal basis for claims lodged by military personnel and that the Supreme Court would then give a final ruling after examining the admissibility and merits of each case.

7. The mere fact that the meeting took place raises an issue regarding the appearance of independence and impartiality of the Supreme Court.

Moreover, it should be noted that important information concerning the meeting was not disclosed.

8. What was on the agenda for the meeting? What was the content of the discussions? Did the meeting simply set out a procedural timetable or did it address matters of substance?

9. No record was drawn up after the meeting, a fact which lends it the confidential character of an "institutional closed circle".

In addition to this lack of transparency, the fact that no one representing the interests of military personnel was invited to take part in the meeting upset the fundamental balance that must be struck in dealing with court cases.

10. A neutral outside observer might legitimately discern in such a meeting a wish to discuss not just the procedural handling of large numbers of cases, but also how they should be dealt with on the merits. As such, it raises an issue under Article 6.

11. In concluding that the impartiality of the Supreme Court is not open to question the majority attribute considerable weight to the fact that, at the time the meeting was held, no case was pending before the Supreme Court. Nevertheless, some cases had already been dealt with in civil proceedings from 2003 onwards, and the prospect of an influx of cases of the same type had of course been anticipated by the authorities.

12. The meeting could quite easily have been conducted in a way that would not have cast doubt on the impartiality of the Supreme Court judges.

13. For instance, simply having a representative of military personnel present at the meeting would have sufficed to allay any suspicion of a risk to the impartiality of the Supreme Court.

14. Similarly, the members of the Supreme Court could have met without the representative of the Ministry of Defence, who could have been asked to submit an explanatory memorandum on the method of calculating salaries. That document could also have been submitted to representatives of military personnel for comments.

15. Furthermore, in the course of the judicial proceedings, and in accordance with the adversarial principle, questions could have been put to the Ministry of Defence concerning the method of calculating salaries. Here again, representatives of military personnel could usefully have made observations, and challenged or approved the calculation methods and indexes.

16. The decision to involve a representative of the executive, a potential party to future judicial proceedings, in the meeting was liable to give rise to doubts as to the impartiality of the Supreme Court and its divisions, which play a key role in appeal proceedings and non-contentious procedures, and whose legal opinion of 31 May 2005 was directly connected to the proceedings in which the applicants were involved.

The meeting therefore constituted an event incompatible with the requirements of Article 6 of the Convention