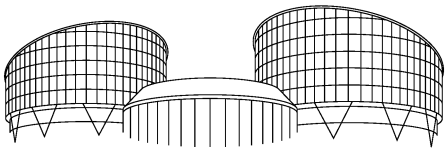

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 75915/12
Saša POPOVIĆ against Serbia
and 6 other applications
(see list appended)

The European Court of Human Rights (Third Section), sitting on 23 September 2014 as a Chamber composed of:

Josep Casadevall, *President*,
Alvina Gyulumyan,
Ján Šikuta,
Dragoljub Popović,
Luis López Guerra,
Johannes Silvis,
Valeriu Griţco, *judges*,
and Marialena Tsirli, *Deputy Section Registrar*,

Having regard to the applications listed in the Appendix and lodged on the dates indicated therein,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicants are Serbian nationals and residents of the town of Majdanpek (their further personal details are set out in the Appendix to this decision). They were all represented before the Court by Mr D. Vasiljević, a lawyer practising in the same town. The Serbian Government ("the Government") were initially represented by their former Agent, Mr S. Carić, and subsequently by their current Agent, Ms Vanja Rodić.

A. The circumstances of the case

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

1. The imposition and collection of a specific local tax

3. An assembly of the Majdanpek local community (*Gradska mesna zajednica Majdanpek*)[1] referred a proposal to its residents to levy a self-imposed local tax (*samodoprinos*, hereinafter "the SILT") to fund the building/maintenance of certain facilities/utilities for the local community.

4. As a result of a ballot held between 10 June and 10 July 2006 in the Majdanpek local community, the proposal was approved.

5. On 11 July 2006 the Council of the Majdanpek local community (hereinafter "the Council") enacted an Ordinance introducing the SILT and elaborating on its purpose, administration and levying.[2] The Ordinance, *inter alia*,

(a) specified the persons liable for the SILT (*poreski dužnici*), the basis, rate and the method of its collection (in the case of taxable incomes, "deduction at source", the tax being paid by intermediary institutions (*poreski platci*), that is, the taxpayers' employers (Articles 6-10; see also paragraph 44 below);

(b) identified the local community's current account X, held by the Majdanpek field office of the Zaječar Public Revenue Service (*Uprava za javna plaćanja Zaječar, filijala Majdanpek*), as the account to be used for the collection of the SILT (Article 15);

(c) identified the exact amounts to be allocated per year for services, and entrusted the Council with adopting annual plans in that regard (Articles 4.2 and 5);

(d) limited, temporarily, the local community's power to levy the SILT to five years (Article 3) or until the resources needed to fund the designated projects had been collected (Article 4.1);

(e) designated the local community's finance departments to carry out the necessary financial administrative tasks and to track income and expenditure in accordance with the law (Article 12);

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[1] The Municipality of Majdanpek consists of two towns (Majdanpek and Donji Milanovac) and twelve villages. The Majdanpek local community is situated in Majdanpek and has around 10,000 inhabitants.

[2] Ordinance no. 101-3 on the introduction of a local tax to fund, reorganise, maintain and erect facilities on the territory of the Majdanpek local community (published in the Official Gazette of the municipalities of Boljevac, Bor, Zaječar, Kladovo, Knjaževac, Majdanpek, Negotin i Sokobanja, no. 13 of 15 July 2006; it came into force on 23 July 2006).

(f) stated that if the targeted amount was collected before the expiry of the time allotted for levying the SILT, the process should be discontinued and any overpayments repaid to the intermediary institutions in order to be passed on to the SILT taxpayers (Article 16); and

(g) provided that the legislation governing tax proceedings and tax administration should be applicable, as relevant, to various issues (Article 11).

6. It would appear that on an unspecified date, following certain legislative changes (see paragraph 42 below), the finance department of the Majdanpek municipality (*Opštinska uprava opštine Majdanpek-odeljenje za budžet, finansije i trezor*) informed all of its local communities, by an instruction of 17 December 2007, that all public revenues should be paid into the municipality's current account Y. It would appear that the Majdanpek local community received this instruction on 19 December 2007, but did not inform the applicants' employers of it.

7. The applicants' liability to pay the SILT was discharged by their employers, who withheld their contributions on a "pay-as-you-earn" basis in the form of a periodic monthly deduction from their taxable wages. It would appear that various employers, including those of the applicants, continued to pay all or most of the contributions into account X.

2. Discontinuation of imposition of the SILT and the related refund proceedings

8. On 6 October 2010 a non-governmental organisation informed the officials of the Majdanpek municipality that, in analysing the annual financial reports of the Majdanpek local community, it had discovered that by June 2010 twice the targeted amount had already been collected.

9. It would appear that on 13 December 2010, on receiving the above information, the Majdanpek municipality requested an opinion on the collection of the SILT from the Finance Ministry and the Ministry of State Administration and Local Self-Government.

10. On 7 February 2011 the Finance Ministry, referring to Article 16 of the Ordinance (see paragraph 5(f) above), stated that the Council should have monitored the collection of incomes from the SILT on a regular basis and, if the required amount was collected before the expiry of the period of five years, should have informed the taxpayers that collection of the SILT was being discontinued and that any overpayments would be refunded to them.

11. Following pressure from the inhabitants of Majdanpek and the re-election of the Council's members, the newly formed Council issued a decision on 23 March 2011 to discontinue the levying of the SILT. On the same date the Council also formed a Commission to establish the total

amount collected in respect of the SILT. On 6 April 2011 the levying of the SILT was discontinued.

12. On 16 May 2011, on the basis of the data provided by the relevant finance departments of the Majdanpek municipality and the corresponding local community, the Commission found that: (a) the targeted amount had been collected by the end of February 2009 and, thereafter, a further RSD 33,410,126.99 dinars (RSD; 335,000 euros on that date) had been collected unlawfully and without cause; (b) each taxpayer was entitled to claim a refund of the amounts deducted from his or her income after the said date; and (c) a total of RSD 3,422,524.32 remained in the current accounts into which the SILT had been paid.

13. On 26 August 2011 the Ministry of Finance stated that the reimbursement of the overpaid public revenues – if the ground for collection of the public income had been wrong – should be carried out in accordance with the law governing the collection of public revenues and that refunds should be made from the relevant revenue account.

14. On an unspecified date in 2011 the finance department of the Majdanpek municipality announced that it would refund overpayments to the SILT taxpayers once they had filed their claims in that regard.

15. According to a report from the finance department submitted by the Government, it dismissed twelve applications as incomplete and adopted 1,869 decisions for the refund of overpayments, of which twenty-two were the subject of appeals. Two out of the twenty-two appeals are pending, while twenty have been decided upon. The first claim was submitted on 20 June 2011 and, since then, a total amount of RSD 12,938,571.70 has been reimbursed to citizens, the latest payment being made on 22 July 2013. The finance department further clarified that it had refunded only the overpaid SILT which the taxpayers' employers as intermediary institutions had paid into current account Y (see paragraph 6 above). Following the instruction of 17 December 2007 (ibid.), the contributions paid into current account X (see paragraph 5(b) above) could not be considered as overpaid SILT, but only as "funds paid into the wrong current account".

16. According to the documents submitted by the applicants, the first four applicants and twenty-four other SILT taxpayers filed a claim with the finance department of the Majdanpek municipality requesting the refunding of overpayments made after 1 March 2009. Between 30 July 2011 and 7 May 2012 the finance department ruled on their claims as follows.

17. In two cases, on 30 July 2011 and 7 May 2012 respectively, the finance department refunded the claimants without making reference to any current account.

18. Between 8 August 2011 and 30 January 2012 the finance department, referring to its instruction of 17 December 2007, agreed to refund the other claimants, including the first four applicants, only the

overpaid SILT which their employers had paid into account Y, and rejected the remainder of their claims. In so doing, it informed the first four applicants and another two claimants that they could appeal to the Niš Regional Centre of the Ministry of Finance's Public Revenue Service, and directed the remaining claimants to appeal to the Majdanpek municipality's executive council (*Opštinsko veće Opštine Majdanpek*). On 21 February 2012 the latter authority rejected all the appeals in a one-sentence decision, on the same ground as that cited by the finance department.

19. It would appear that the first four applicants and the other two claimants did not appeal against the first-instance decisions.

20. The remaining three applicants and the majority of SILT taxpayers did not institute tax proceedings, but filed civil claims instead.

3. The relevant civil proceedings

21. Between 15 July and 2 November 2011 all of the applicants filed separate civil claims for unjust enrichment (*tužba zbog sticanja bez osnova*) with the Negotin Court of First Instance – Majdanpek unit (*Osnovni sud u Negotinu – Sudska jedinica Majdanpek*; hereinafter "the Court of First Instance"), seeking a refund of the overpaid SILT from the Majdanpek municipality and the Majdanpek local community jointly, together with the statutory interest accrued. It would appear that several hundred SILT taxpayers in Majdanpek pursued the same remedy.

22. On 17 August 2011 the Court of First Instance ruled in favour of one of the claimants. On 16 November 2011 the Negotin High Court quashed this judgment, stating that the matter in issue should not be considered as a civil matter.

23. On 23 and 25 November 2011 respectively the applicants' lawyer applied to the Court of First Instance and its President, requesting them to initiate proceedings before the Supreme Court of Cassation to resolve the issue of civil jurisdiction in respect of the SILT refunds, in order to harmonise the domestic case-law (see paragraphs 48-50 below). On 26 November 2011 he also submitted a request to the Supreme Court of Cassation urging it to adopt an opinion on that issue. He did not receive any response to his requests.

24. Between 24 November 2011 and 6 January 2012 the Court of First Instance stated that it did not have competence *ratione materiae* to hear the applicants' cases. In its reasoning, the court considered the SILT as a source of primary income for municipalities (*izvorni prihod opštine*). It observed that the Tax Proceedings and Tax Administration Act, which defined tax matters as public-law matters between the Central Revenue Service on the one hand and natural and legal persons on the other, empowered the latter to request a refund of overpaid or erroneously levied tax and ancillary contributions in tax proceedings. The court further stated that the provisions

of that Act should accordingly be applicable to various SILT-related matters not specifically covered by the Local Government Act, and that, according to the Tax Proceedings and Tax Administration Act, the powers of local government departments as regards the assessment, levying and control of the primary incomes of municipalities should correspond to the powers of the Central Revenue Service. Therefore, and also given that the Majdanpek local community had never adopted a decision revoking the SILT, the present disputes could not be characterised as civil-law disputes coming within the competence *ratione materiae* of the civil courts.

25. Between 26 January 2012 and 21 February 2012 the Negotin High Court upheld the first-instance decisions on appeal.

4. Other civil suits

26. The Constitutional Court declared null and void several ordinances enacted by other local governments imposing or extending the levying of the SILT as being unlawful or unconstitutional for various reasons.

27. On 29 June 2006 the Constitutional Court declared null and void one such ordinance adopted by the Prijepolje local community as it had, *inter alia*, retroactively imposed the SILT between March 2003 and July 2006. In apparently more than three thousands cases examined between February 2010 and November 2011, the Prijepolje Court of First Instance and the Užice High Court accepted jurisdiction and upheld the claims for a refund of the above-mentioned unlawfully imposed SILT as being civil in nature. Referring to Articles 210-214 of the Obligations Act and the Local Government Finance Act (see paragraphs 60 and 45 below), the courts in question ordered the Prijepolje municipality and one of its local communities to jointly refund the claimants (see, for example, the final decisions of the Prijepolje Basic Court P. 1571/10 of 1 December 2010, P. 3124/10 of 25 November 2011 and P. 420/12 of 7 August 2012; and the decisions of the Užice High Court upholding the first-instance decisions of the Prijepolje Basic Court, Gž. 1675/10 of 13 December 2010; Gž. 65/11 of 19 January 2011; 62/11 of 21 January 2011; 58/11 of 18 January 2011; 172/11 of 4 February 2011; 70/11 of 24 January 2011 and 1234/11 of 15 July 2011).

5. Constitutional remedies

28. In a constitutional appeal of 23 March 2012 the first applicant contested the relevant judicial decisions in civil proceedings, relying on various Articles of the Constitution (see paragraph 35 below). He claimed that (i) the summary dismissal of his civil claim had arbitrarily deprived him of judicial protection and of the expected refunds; (ii) the municipal bodies had acted unlawfully, in an untimely manner and in breach of the rule of

law and property rights when collecting the SILT and, thereafter, when ruling on his and others' claims; and (iii) the divergent case-law of the competent courts in his case and of the domestic courts which had accepted jurisdiction *ratione materiae* in similar cases amounted to legal uncertainty, unequal protection of citizens before the law and discrimination against him. The applicant did not, however, provide the Constitutional Court with copies of any of the judgments in which the civil courts had accepted jurisdiction in cases similar to his own.

29. On 14 April 2012 the Constitutional Court, referring to Article 85 § 2 of the Constitutional Court Act (see paragraph 39 below), requested the applicant to provide a copy of the first-instance administrative decision in his case and, if he had appealed against it, of the second-instance decision.

30. On 25 April 2012 the first applicant provided a copy of the finance department's decision of 16 August 2011, clarifying that he had not appealed against that decision to the executive council (compare and contrast with paragraph 18 above). He considered that avenue of redress to be futile in view of overall municipal policy and the rejection of claims in respect of contributions that had been paid into account X.

31. In its decision of 11 September 2012 the Constitutional Court held that the applicant had not been denied access to a court, given that the dispute in issue had been a "tax administrative" matter to be decided by the tax authorities rather than a civil matter for the civil courts.

32. It further dismissed the property-related complaints on the grounds that it "could not identify any link between the applicant's allegations and the contested judicial decisions in civil proceedings". Nevertheless, the Constitutional Court pursued its analysis, considering that the applicant and other SILT taxpayers should not have suffered harm on account of the Majdanpek local community's failure to amend its Ordinance and inform the tax intermediaries in a legally valid manner of the change in the relevant current account. It concluded that "the applicant and his employer were entitled to request the reimbursement of overpayments from the Majdanpek local community in tax (administrative) proceedings, within the time-limits and prescription periods laid down by law, given that the overpayments had been paid into its current account".

33. The Constitutional Court further summarily dismissed the applicant's complaint alleging unequal protection of rights, considering that the general allegations before it, which were unsupported by evidence (*paušalno izneti navodi*), provided no constitutional basis for claiming a breach of that right. It also stated that there was no constitutional basis for examining the alleged violations of the general principles set out in Articles 18 to 21 (see paragraph 35 below), given that no violation of substantive constitutional rights had been found.

34. Throughout 2012 the other six applicants lodged constitutional appeals identical or very similar to that lodged by the first applicant. The Constitutional Court's decisions rendered in their cases between 26 November 2012 and 18 December 2012 were summarised versions of its leading ruling in the first applicant's case.

B. Relevant domestic law and practice

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

35. The relevant provisions of the Constitution relevant to the applicants' appeals are as follows: Article 18 (direct application of guaranteed rights), Article 19 (purpose of constitutional guarantees), Article 20 §§ 1 and 3 (restriction of human rights), Article 21 §§ 1, 2 and 3 (equality and prohibition of discrimination), Article 22 § 1 (right to judicial protection of human rights), Article 32 § 1 (right to a fair trial), Article 35 § 2 (right to be awarded damages) and Article 58 §§ 1 and 4 (right to peaceful enjoyment of property).

2. *Constitutional Court Act (Zakon o Ustavnom sudu; published in OG RS nos. 109/07 and 99/11)*

36. Article 36 § 1 (3) provides, *inter alia*, that the Constitutional Court shall reject (*odbacić*e) a constitutional appeal when the appellant has failed, following an additional request issued in this regard, to furnish the court with all the relevant details indispensable for the proper conduct of the proceedings before it.

37. Article 36 § 1 (4) provides, *inter alia*, that the Constitutional Court shall reject a constitutional appeal whenever the relevant legal conditions for its examination have not been fulfilled. It is not required to issue any additional warning in this regard.

38. Article 85 § 1 refers to the compulsory information which must be contained in any constitutional appeal. This information includes: (a) the appellant's personal data; (b) information concerning his or her legal counsel; (c) the particulars of the decision being challenged; (d) an indication of the relevant provisions of the Constitution; (e) a description of the violations alleged; (f) the redress sought by the appellant; and (g) the appellant's personal signature.

39. Article 85 § 2 provides that appellants should also substantiate their constitutional appeals with any and all evidence of relevance for the determination of their case, provide a copy of the impugned decision, and

demonstrate by means of supporting documents that all other effective remedies have already been exhausted.

3. Constitutional Court opinion of 30 October 2008, amended on 2 April 2009

40. According to this opinion, where a constitutional appeal lacks any of the compulsory elements (*obavezni elementi*) mentioned in Article 85 of the Constitutional Court Act, the appellant should be invited to provide the additional information by a certain deadline or have the appeal rejected pursuant to Article 36 § 1 (3) of the Constitutional Court Act.

4. Self-imposed local tax ("samodoprinos")

41. The provisions regarding the legal nature and administration of local taxation, including the self-imposed local tax ("the SILT"), are set out in the following legal acts which have been amended or repealed on numerous occasions over the years: (a) the Local Government Act 2002 (*Zakon o lokalnoj samoupravi*, published in OG RS nos. 9/02, 33/04 and 135/04); (b) the Local Government Act 2007 (OG RS no. 129/07, which came into force on 1 January 2008 and repealed the Local Government Act 2002); (c) the Local Government Finance Act (*Zakon o finansiranju lokalne samouprave*, OG RS nos. 62/06, 47/11 and 93/12, which came into force on 1 January 2007 and repealed Article 5, Chapter V on local government financing and Articles 77 to 104 of the Local Government Act 2002); (d) the Budgetary System Act 2002 (*Zakon o budžetskom sistemu*, OG RS nos. 9/02 ... 86/06); (e) the Budgetary System Act 2009 (OG RS nos. 54/09, 73/10 and 101/10); (f) the Act on Public Income and Public Expenditure (*Zakon o javnim prihodima i javnim rashodima*, OG RS nos. 76/91 ... 135/04); and (g) the Tax Proceedings and Tax Administration Act (*Zakon o poreskom postupku i poreskoj administraciji*, OG RS nos. 80/02 ... 2/2012).

42. The legal status of the SILT at the relevant time for the present cases will be summarised below. With the gradual decentralisation of governmentance in the early 2000s, the assessment, collection and control of several taxes and revenues, including the SILT, were redefined and transferred entirely from central to local government level (the Local Government Finance Act, Articles 60 and 6 in that order). Accordingly, the local government units (municipalities, towns and the city of Belgrade) have, in principle, the same rights and duties as the Central Revenue Service of the Ministry of Finance with its field offices (there are certain exception which are not relevant for the present case; see Articles 2a and 62 of the Tax Proceedings and Tax Administration Act).

43. The SILT was initially defined as a source of primary public revenue either for local government units such as municipalities or for the lower tier

of government, the local communities (*mesne zajednice*), depending on whether the contributions in question were collected on and for the territory of the whole municipality or only the particular local community (Articles 78 § 14 and 73 § 1.2 of the Local Government Act 2002). However, the Local Government Act 2007 and the Local Government Finance Act (Articles 75 § 1.1 and 6 § 15 respectively) stipulated that the SILT was designed as a source of primary revenue exclusively for the local government units, and that the collected funds were credited to their budgets and strictly intended for specific purposes, while funds for the functioning of the local communities were provided only under specific budget headings.

44. Pursuant to the Local Government Finance Act, where a majority of citizens vote in favour of imposing the SILT for specific investments (for instance, to fund the building or maintenance of utility services or buildings of value to the community), contributions become mandatory and are required from all citizens with different taxable incomes, including those who voted against the SILT or did not vote at all (Article 26). The competent local government authorities subsequently define the procedures for calculating and collecting the SILT in the relevant decision, except where this is done by applying the principle of "deduction at source". In the latter case, the deduction of the SILT from taxable income is the responsibility of those who pay these personal incomes and/or revenues (intermediaries; *poreski platci*), who deduct it when paying other applicable taxes and benefits (Article 28). The Act also provides that the legislation governing tax proceedings and tax administration should be applicable, as relevant, to issues such as the manner of determination and assessment of the SILT, its collection, deadlines for payments, statutes of limitation, calculation of interest and other issues not specifically covered by the relevant legislation (Article 30).

45. Lastly, the municipality's administrative departments (*opštinsko uprava*) and the executive council (*opštinsko veće*) respectively decide at first and second instance on administrative matters which fall within the competence of the municipality (Articles 52 § 3 and 46 § 5 respectively of the Local Government Act 2007).

5. Organisation of the Courts Act 2008 (Zakon o uređenju sudova; published in OG RS nos. 116/08, 104/09, 101/10, 31/11, 78/11 and 101/11)

46. Article 4 provides that a court of law cannot refuse to consider a claim in respect of which its jurisdiction has been established by law or by the Constitution.

47. Article 29 provides that the Administrative Court adjudicates in administrative matters.

48. Article 31 provides that the Supreme Court of Cassation, *inter alia*, shall adopt general legal positions in order to ensure uniform application of the law by the courts.

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

49. Article 176 provided that where there was a large number of cases pending at first instance raising the same preliminary legal issue, the court of first instance could, either of its own motion or at the request of one of the parties, institute separate proceedings before the Supreme Court requesting the latter to resolve the issue in question. The lawsuits pending at first instance were stayed in the meantime. Article 178 provided that the Supreme Court determined the request under the procedure for the adoption of its legal opinions and could refuse to examine it if the preliminary legal issue was not of prejudicial importance in a large number of pending cases.

7. Civil Procedure Act 2011 (Zakon o parničnom postupku; published in OG RS no. 72/11)

50. The Civil Procedure Act 2011 entered into force on 1 February 2012, thereby repealing the 2004 Act. Articles 180 to 185 correspond, in principle, to the provisions of the 2004 Act described at paragraph 49 above, save that the Supreme Court of Cassation has competence to rule on the request within sixty days of receiving it and to adjudicate on the issue.

8. General Administrative Proceedings Act (Zakon o opštem upravnom postupku; published in the Official Gazette of the Federal Republic of Yugoslavia – OG FRY – nos. 33/97 and 31/01 and in OG RS no. 30/10)

51. Under Articles 19 and 56 §§ 3 and 4, no administrative authority may take over an administrative matter which is within the jurisdiction of another authority and decide thereon, save where so provided by law. If the authority finds that it is not competent to receive written submissions, its officer shall advise the claimant or appellant accordingly and refer him or her to the competent authority. If the submission was received by mail, the authority shall immediately send the submission to the competent authority and notify the party thereof. If the authority which does not have competence cannot establish with certainty which authority is competent in the matter, it must decline competence and serve that decision immediately on the party concerned.

9. Administrative Disputes Act (Zakon o upravnim sporovima; published in OG RS no. 111/09; entered into force on 30 December 2009)

52. Article 3 of the Act provides, *inter alia*, that the Administrative Court adjudicates on the lawfulness of final decisions rendered in administrative matters and/or in the determination of rights, duties or direct personal interests based on the law, where judicial protection has not been secured otherwise.

53. Under Article 5, an administrative matter within the meaning of this Act is an individual situation of public interest where the necessity to legally and authoritatively determine the future conduct of a party arises directly from the provisions of the law.

54. According to Article 6, the competent authorities for the purposes of this Act are, *inter alia*, local government bodies.

55. Articles 18 § 1 and 19 provide that judicial review proceedings may be brought within thirty days from the date on which the final decision was served on the party in question, or where an appellate administrative body fails to decide on an appeal lodged more than sixty days previously and again fails to do so within a further seven days after receipt of the plaintiff's repeated request to this effect. The competent court should, in principle, hold a public hearing and may also rule in accordance with the principle of equity (*načelo pravičnosti*).

56. Article 42 § 1 provides that if the competent court decides to uphold the action it shall quash the impugned administrative act in part or whole and order fresh consideration of the case (*spor ograničene jurisdikcije*). Article 43 § 1 provides, however, that the competent court may instead rule on the merits of the claim, if the facts of the case and the very nature of the dispute in question allow for this particular course of action (*spor pune jurisdikcije*). Articles 41 §§ 1 to 4, 61 and 62 provide details of other situations in which a claimant's request may be decided on the merits.

10. Relevant domestic case-law

57. When deciding in a case concerning collection of the SILT, the Administrative Court considered that the municipality rather than the local community was the creditor in respect of the SILT for the purposes of standing to sue (see 9 U. 740/11 of 30 August 2011; see also Administrative Court Bulletin no. 3/2012).

58. No details of the practice of the Administrative Court on SILT refunds, if any, have been provided. However, between 9 December 2010 and 15 October 2012 the Administrative Court rendered six judgments in cases concerning tax refunds. In two of these judgments it quashed the administrative acts and/or ordered fresh consideration of the case, while in

four cases it rejected (*odbio*) the applications for judicial review (see 7 U 427/10, 9 U 23584/10, 7 U 6202/10, 9 U 9004/10, 12 U 30082/10 and I-2 U 25802/10).

59. Furthermore, in six judgments rendered between 8 December 1999 and 9 April 2009 the Supreme Court and the Supreme Military Court (formerly the competent courts for judicial review in administrative matters), respectively, ruled on the merits of administrative disputes concerning property-related municipal decisions, pension entitlements, disability benefits, the right to stand for election and a proposed change in the registration of persons authorised to represent political parties (see Up. br. 2530/03, Už. 133/92, Už. 11/08, U.br. 1739/08, U.br. 48/08 and U.br. 1093/02).

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

60. Articles 210 to 219 set out provisions concerning unjust enrichment (*sticanje bez osnova; condictio sine causa*). Under the general rule set forth in Article 210, when a part of the property of one person passes, by any means, into the property of another person and that transfer has no basis in a legal transaction or statute, the beneficiary is required to return the property. If restitution is not possible, he or she is required to provide compensation equal to the value of the benefit received. The obligation to return the property or provide compensation for its value arises even when it was received in connection with a cause which did not come into existence or which subsequently ceased to exist.

COMPLAINTS

61. Under Articles 6, 13 and 14 of the Convention, Article 1 of Protocol No. 1 and Article 1 of Protocol No. 12, the applicants complained that the incorrect levying of the SILT and, in particular, the fact that it had been impossible to obtain refunds of overpayments, amounted to a violation of their property rights. They further complained of the lack of access to a court on account of the unlawful and unforeseeable outcome of their civil cases. Lastly, they complained of the ensuing judicial inconsistency regarding civil jurisdiction in respect of SILT refund claims, and alleged that they had been discriminated against in that regard.

THE LAW

A. Joinder of the applications

62. The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their common factual and legal background.

B. The applicants' complaints in respect of the refund of overpayments and access to a court in that regard

63. The applicants complained, in substance, about the unlawfulness of the levying of their contributions after the necessary funds had already been collected, of not obtaining refunds of overpayments and of being unlawfully and unforeseeably prevented from asserting their claims before a civil court.

64. The Court considers that these complaints fall to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, the relevant provisions of which read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

"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."

1. The Government's submissions

65. The Government did not dispute the existence of the Majdanpek municipality's debt, but maintained that the applicants had not yet received the overpayments simply because they had chosen an inappropriate avenue of redress, that is to say, a civil claim, instead of making use of or further pursuing the existing effective and sufficient administrative remedies before the municipal administrative authorities and the Administrative Court (see paragraphs 45, 52 and 55 above). In support of their arguments, the Government acknowledged that the Administrative Court had not yet ruled on any SILT-related cases, but stated that it had frequently ruled in

regular tax disputes. In that regard, the Government had provided the Court with relevant case-law (see paragraphs 58-59 above). They further referred to the Court's own case-law, according to which the same remedy "had already been deemed effective" in respect of two different matters (they cited *Juhas Đurić v. Serbia* (revision), no. 48155/06, 10 April 2012, and *Veličković v. Serbia*, no. 36158/10, 10 September 2013).

66. The Government further stated that, in view of the above, the applicants had not been denied access to a court since, had they made use of the appropriate remedy, they would have had access to the Administrative Court as provided for in the Administrative Disputes Act.

67. In addition or in the alternative, the Government argued that the proceedings in the present cases had not involved the applicants' "civil rights and obligations" within the meaning of Article 6 of the Convention, but concerned questions relating to local taxation, which clearly came within the sphere of public-law relationships and did not attract the guarantees of that Article (the Government referred to *Ferrazzini v. Italy* [GC], no. 44759/98, § 29, ECHR 2001-VII).

2. The applicants' submissions

68. The applicants refuted the Government's argument that Article 6 of the Convention was inapplicable to the present cases or that they had not exhausted domestic remedies within the meaning of Article 35 § 1 of the Convention.

69. In the applicants' view, the municipality had owed them the overpaid contributions once it had been proved that the SILT had been unduly paid. Accordingly, the municipality had to duly honour that pecuniary obligation, which was in fact a private-law matter concerning the reimbursement of overpayments. This pecuniary dispute was therefore actionable before the civil courts on the basis of the provisions relating to unjust enrichment and of earlier judicial practice in civil proceedings (see paragraphs 60 and 27 above in that order). Hence, notwithstanding their fiscal dimension, the proceedings had indisputably been brought for the determination of the applicants' civil rights and obligations within the meaning of the domestic law and Article 6 of the Convention. However, the applicants had been deprived of a judicial determination of the disputes at issue, since the civil courts had successively declared that they lacked jurisdiction to deal with the cases, in an erroneous application of the relevant domestic law and notwithstanding the simultaneous recognition of jurisdiction by other appellate courts when ruling on similar claims that the authorities had acted illegally in issuing demands for the SILT.

70. The applicants further disputed the assertion that administrative proceedings were, in any event, the appropriate avenue in the present cases. They argued that, contrary to the Government's and the domestic courts'

reading of the domestic law, the impugned overpayments were not "an administrative matter" as defined under Article 5 of the Administrative Disputes Act (see paragraph 53 above). The Tax Proceedings and Tax Administration Act related exclusively to compulsory taxes and revenues levied by the Central Revenue Service. The SILT could not be considered as a "tax" as it had not been instituted and levied by the Central Revenue Service; rather it had been administered by the municipal authorities, through the applicants' employers as intermediaries, on the basis of a voluntary decision by citizens.

Secondly, the relevant Ordinance stipulated that if the targeted amount was collected before the expiry of the time allotted for levying of the SILT, any overpayments should be repaid to the intermediaries in order to be returned afterward to the SILT taxpayers themselves (see paragraph 5(f) above). Therefore, only the taxpayers' employers could have claimed the overpaid contributions, and the call for refund applications by the municipal finance department could not be considered as a basis for the institution of administrative proceedings by the applicants or other citizens. In that respect and in view of the large number of persons involved, this was a collective situation rather than an individual one. Only the latter could be classified as "an administrative matter".

71. Furthermore, the municipal finance department had announced that it would refund overpayments only after the applicants and other citizens had already filed their civil claims. It had done so with the explicit intention of avoiding paying any statutory interest on the delayed refunds, as the claimants could not receive any subsidiary payments such as interest or damages in the administrative proceedings. The applicants also alleged that it would have been pointless for them to pursue the administrative proceedings further, given that the administrative municipal authorities at both instances had clearly stated that they were not prepared to refund the amounts paid into the wrong bank account.

72. Lastly, the applicants pointed out that, in any event, even if more than one potential remedy was available, it was for the applicants to select which remedy to pursue, as they were required to use only one of them.

3. The Court's assessment

(a) General principles of the Court's case-law

73. It is a fundamental feature of the machinery of protection established by the Convention that it is subsidiary to the national systems safeguarding human rights. States are therefore dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as regards complaints against a

State are thus obliged to use first the remedies provided by the national legal system (see, among many authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV, and *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII). The Court cannot emphasise enough that it is not a court of first instance; it does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large numbers of cases which, for example, require the finding of basic facts or the calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions (see *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04, § 69, ECHR 2010, and *Vučković and Others v. Serbia* [GC], no. 17153/11, § 69, 25 March 2014).

74. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are effective, available and sufficient in respect of his or her Convention grievances. To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *Sejdović v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II). When such a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *Kozacıoğlu v. Turkey* [GC], no. 2334/03, § 40, 19 February 2009).

75. The Court also emphasises that it has recognised the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism (see *Akdivar*, cited above, § 69). According to the "generally recognised rules of international law", there may be special circumstances which absolve applicants from the obligation to exhaust the domestic remedies at their disposal (see *Aksoy v. Turkey*, 18 December 1996, § 52, *Reports* 1996-VI).

76. However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX). At the same time, the exhaustion rule normally requires that the complaints intended to be made subsequently at Strasbourg should have been made to the appropriate domestic body, at least in substance (see *Gäfgen v. Germany* [GC], no. 22978/05, §§ 144 and 146, ECHR 2010) and in compliance with the formal requirements and time-limits laid down in domestic law (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200, and *Golubović and Others v. Serbia* (dec.), no. 10044/11 et seq., 17 September 2013) and, further, that any procedural means that might prevent a breach of the Convention should have been used (see, as the original authority, *Akdivar*, cited above, § 66, and as a recent authority, *Vučković*, cited above, § 72).

77. Lastly, in terms of the burden of proof, it is up to the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Akdivar and Others*, cited above, § 68, and *Vučković*, cited above, § 77).

(b) Application of these principles to the present case

78. Firstly, having regard to the history and attributes of the SILT, as well as the intention of the national legislature simply to decentralise government and fiscal policy, the Court cannot uphold the applicants' argument that the SILT, having been introduced by the citizens themselves and administered by the local authorities, should not be equated to taxes and other revenues. Even though, admittedly, the SILT seems to be a *sui generis* institution of tax law, the Court considers that it would appear to fall within the realm of local taxation. In that respect, the Court reiterates that tax-related matters still form part of the hard core of public-authority prerogatives, with the public nature of the relationship between the taxpayer and the community remaining predominant. Furthermore, tax disputes, despite the pecuniary effects which they necessarily produce for the taxpayer, do not attract, in principle, the applicability of Article 6 § 1 under its civil head (see *Ferrazzini*, cited above, §§ 24-31; *Västberga Taxi Aktiebolag and Vulic v. Sweden*, no. 369985/97, § 75, 23 July 2002; *Optim and Industerre v. Belgium* (dec.), no. 23819/06, 11 September 2012; and *Di Belmonte v. Italy (no. 2)*(dec.), no. 72665/01, 3 June 2004), although some exceptions to this rule exist (see *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, *Reports* 1997-VII, and *Editions Périscope v. France*, 26 March 1992, Series A no. 234-B). However, the Court does not consider it necessary on this occasion to determine whether Article 6 applies to the relevant complaints made by the applicants under that Article, given the conclusions which it reaches below.

79. In the Court's view, all the applicants' complaints are inevitably intertwined with the questions as to which domestic authority is invested with jurisdiction as regards the refunding of overpaid local taxes to individuals, and whether the applicants exhausted all the available and effective domestic remedies in that regard.

80. The Court reiterates that the States have a wide margin of appreciation in the tax field and in designing the appropriate procedures for ensuring the collection or refunding of taxes. In addition, it observes that,

particularly in the sphere of taxation, it is not always possible to attain absolute precision in the framing of laws, whose interpretation and application may, however, be settled by practice (see *Wolfhard Koop-Automaten Golden 7 GmbH & Co. KG v. Germany* (dec.), no. 38070/97, 30 March 1999).

81. The applicants' civil actions were designed to secure recovery of those payments alleged to have been wrongfully collected and withheld by the Majdanpek municipality, given that the applicants had not been required to make them. It could perhaps be argued, as the applicants suggested, that an action to obtain reimbursement of monies paid under invalidated tax provisions may, in certain circumstances, be considered as a "civil" matter, and that a civil action on the ground of unjust enrichment could be filed in certain legal systems. However, having regard to the provisions of the relevant domestic law and their interpretation by the domestic courts, the Court cannot but note that jurisdiction within the Serbian legal system for examining the merits of SILT refund claims apparently lies with the administrative authorities and the Administrative Court. Specifically, (i) the various domestic laws and practice suggest that administrative proceedings are the appropriate avenue and that the municipal administrative authorities are competent (see paragraphs 44 (Article 30), 45, 47 and 57 above); (ii) both the domestic civil courts and the Constitutional Court considered SILT refund claims to be an administrative matter, excluded civil jurisdiction in the applicants' disputes on the grounds of the fiscal nature of the dispute and identified tax proceedings as an appropriate avenue of redress, offering acceptable reasoning in that regard (see paragraphs 24-25 and 31-32 above; see, in the context of acceptable reasoning, *Atanasovski v. the former Yugoslav Republic of Macedonia*, no. 36815/03, §§ 36-39, 14 January 2010); and (iii) the administrative authorities at first and second instance accepted jurisdiction in this matter, including the municipal first-instance authorities in the first four applicants' cases (see paragraphs 15-18 above).

82. This Court would need compelling reasons to depart from the unanimous conclusions reached by the national courts by substituting its own views for those of the national courts on a question of the interpretation of national law on judicial jurisdiction, which is a procedural matter of general importance. It observes that the applicants provided evidence that two other civil courts had accepted jurisdiction in cases that were allegedly the same (see paragraph 27 above). In that regard, the applicants also maintained that where there was a choice of remedies, the selection of the most appropriate one was primarily for the applicant. However, the Court does not attach decisive importance to this factor, given that in those other cases asserted by the applicants as being the same or similar to the present ones, the Constitutional Court had previously declared the relevant

municipal decision on the levying of the SILT to be unconstitutional and unlawful, and invalidated it retroactively (ibid.). In the present case, the SILT decision remained valid and only certain contributions had been wrongly overpaid. More fundamentally, the judgments furnished in support of the applicants' arguments in respect of the civil courts' jurisdiction were all adopted before the Constitutional Court's interpretation on the appropriate avenue of redress in the matter of SILT refunds (see paragraphs 27 and 31-32 above).

83. The Court further notes that it has already made clear that the administrative and relevant judicial review proceedings were fully capable of affording the applicants adequate redress in various contexts. In the *Juhas Đurić* case, the Court held that the applicant had not been denied access to a court where the civil court had declined jurisdiction, since he could have pursued his claim before the Supreme Court based on the relevant provisions of the Administrative Disputes Act (see *Juhas Đurić*, cited above, § 48). In the *Veličković* case, in an administrative-related matter (the rejection of the applicant's request for a sub-specialisation), the Court pointed out that this remedy had acquired the requisite degree of legal certainty to enable and oblige an applicant to use it for the purposes of Article 35 § 1 of the Convention (see *Veličković*, cited above, §§ 50-51). In that case, the respondent State had produced ample case-law of the competent national courts indicating that the domestic judiciary had been willing to consider very diverse claims within an administrative dispute context, as well as to grant redress on the merits where appropriate (ibid., §§ 39 and 49; see also paragraph 59 above).

84. In view of the foregoing, the Court considers that the applicants could have made use of administrative proceedings and, if necessary, brought their cases further to the Administrative Court, which, ultimately, could have ruled on the merits. It notes, however, that the first four applicants exercised this remedy only at first instance, while the last three applicants opted exclusively for the civil remedy, thereby preventing the competent local authorities from examining the relevant issues. As regards the former group, the applicants in question had been directed to appeal to an administrative authority, which did not have competence at second instance (see paragraph 18 above). The Court considers, however, that this should not be regarded as a factor absolving the applicants in the present cases from exhausting administrative remedies. Firstly, the administrative body that was not competent had a statutory obligation to direct the applicants to the competent administrative body (see paragraph 51 above); alternatively, if it had remained silent for a certain period of time, the applicants could have opted for direct access to judicial review (see paragraph 55 above). Secondly, the applicants' lawyer before this Court had represented more than one thousand SILT taxpayers, including the

applicants, in domestic fora, and knew that the competent second-instance authority was the municipality's executive council (see paragraph 30 above). In this regard the Court points out that it should not usurp the role of the respondent State in the protection of human rights without serious reasons, where such protection may be provided within the domain of domestic jurisdiction (see *Vučković*, cited above, §§ 69 and 84).

85. In view of the foregoing, the Court considers that the present complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

C. The applicants' complaints concerning the inconsistency of the case-law

86. The applicants also complained under Articles 6 and 14 of the Convection, Article 1 of Protocol No. 1 and Article 1 of Protocol No. 12 about the divergent case-law of the Serbian courts, given that the competent civil courts had declined jurisdiction to rule in their cases while the other appellate courts had accepted jurisdiction in ruling on similar claims lodged by persons paying local tax in other municipalities.

87. The Government contended that the applicants had not properly exhausted the constitutional remedies and had not given the Constitutional Court a chance to examine their complaints. Specifically, the applicants had not properly documented their complaints, as they had failed to furnish any evidence and provide copies of the judgments in support of their allegations regarding the divergent case-law at issue (see paragraph 28 above).

88. The applicants argued that, under domestic law, the Constitutional Court had been under an obligation to request the relevant copies of the judgments from the applicants just as it had requested other documents, and also to warn the applicants about the effects of failure to do so (see paragraphs 36 and 39-40 above). They further maintained that, quite apart from the fact that they would have needed to submit more than three thousands judgments, the practice of the Serbian civil courts should be available to the Constitutional Court, which should acquaint itself with it.

89. The Court observes that it has already held that a constitutional appeal should, in principle, be deemed effective within the meaning of Article 35 § 1 of the Convention in respect of all applications introduced against Serbia as of 7 August 2008 (see *Vinčić and Others v. Serbia*, nos. 44698/06 et seq., § 51, 1 December 2009). The Court notes that the applicants raised their complaints before the Constitutional Court with sufficient clarity but did not, however, substantiate them by providing evidence of the allegedly divergent case-law, as required by Article 85 § 2 of the Constitutional Court Act (see paragraph 39 above). It also notes that the Constitutional Court did not request the applicants to provide copies of

the judgments demonstrating the alleged divergence in the case-law when requesting the administrative decisions.

90. In the context of the present case, the Court observes that in the *Golubović* case it held that, where the applicants had already decided to seek redress before the Constitutional Court, it could not be said that the requirement to include proper evidence in support of their complaints was anything but reasonable, and that the Constitutional Court was under no obligation to provide the applicants with a prior warning to that effect (see *Golubović*, cited above, § 43). The Court sees no reason to hold otherwise in the present case.

91. In view of the foregoing and even assuming that the applicants' complaints are not manifestly ill-founded or incompatible *ratione materiae* in respect of Article 6 § 1 of the Convention, the Court considers that these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President

APPENDIX

No.	Application no.	Lodged on	Applicant name date of birth place of residence
1.	75915/12	20/11/2012	**Saša POPOVIĆ** 21/11/1970 Majdanpek
2.	1436/13	18/12/2012	**Mile RADIĆ** 10/01/1956 Majdanpek
3.	1696/13	31/12/2012	**Silvana LAZAREVIĆ** 28/05/1965 Majdanpek
4.	3501/13	31/12/2012	**Dragoslav LAZAREVIĆ** 28/05/1965 Majdanpek
5.	3504/13	31/12/2012	**Dragan TIZMONAR** 29/03/1958 Majdanpek
6.	3506/13	31/12/2012	**Slavko ANĐIĆ** 10/05/1958 Majdanpek
7.	3510/13	31/12/2012	**Živorad GOLUBOVIĆ** 19/06/1956 Majdanpek