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

THIRD SECTION

DECISION

Application no. 34033/15
Dejan JEVTIĆ
against Serbia

The European Court of Human Rights (Third Section), sitting on 14 January 2025 as a Committee composed of:

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

Having regard to:

the application (no. 34033/15) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 22 June 2015 by a Serbian national, Mr Dejan Jevtić ("the applicant"), who was born in 1967, lives in Belgrade and was represented by Mr A. Samuilović, a lawyer practising in Belgrade;

the decision to give notice of the complaints concerning divergent case-law of the domestic courts and a lack of an effective domestic remedy for that complaint to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the divergent case-law of the domestic courts concerning payment for overtime work and a lack of an effective domestic remedy for that complaint.

2. The applicant was employed as an aircraft maintenance technician at the Serbian airline company JAT Airways ("JAT"). The company currently operates under the name of Air Serbia.

3. The applicant and approximately one hundred of his colleagues lodged civil claims against JAT with the domestic courts, seeking payment for overtime work in the period from February 2003 to May 2004.

4. On 20 November 2009 the Belgrade Fourth Municipal Court ("the Municipal Court") partially allowed the applicant's claim and dismissed the remaining part as unfounded. On 2 February 2012 the Belgrade Court of Appeal upheld that judgment. Contrary to the applicant's assertions that JAT's rules provided for a thirty-six-hour working week in the relevant period, the courts found that the rules provided for a forty-hour week and that, consequently, the applicant had not been able to claim any payment for overtime work. However, the courts did find that JAT owed the applicant compensation because he had worked in shifts while not being provided special leave days in accordance with the law.

5. On 26 May 2015 the Constitutional Court dismissed an appeal lodged by the applicant concerning the divergent case-law of the lower courts as manifestly ill-founded.

6. The applicant complained under Articles 6 and 13 of the Convention that the case-law of the domestic courts was inconsistent and that there was a lack of an effective domestic remedy in that respect. He relied on two domestic decisions in which the domestic courts had found that JAT's rules provided for a thirty-six-hour working week and had accepted the claims lodged by the applicant's colleagues. Those decisions had become final in 2007 and 2008.

THE COURT'S ASSESSMENT

A. Alleged violation of Article 6 § 1 of the Convention

7. Relying on Article 6 the applicant complained that the case-law of the domestic courts was divergent.

8. The general principles concerning divergent case-law have been summarised in *Nejdet Şahin and Perihan Şahin v. Turkey* ([GC], no. 13279/05, §§ 49-58, 20 October 2011), and *Stanković and Trajković v. Serbia* (nos. 37194/08 and 37260/08, § 40, 22 December 2015).

9. In the present case, the parties submitted that approximately one hundred claims concerning overtime payments had been lodged in civil courts against JAT. The domestic courts delivered decisions from December 2006 until June 2016. During that period, the domestic courts delivered at least two final judgments with an outcome opposite to the judgment in the applicant's case, which gave a different legal interpretation of JAT's rules regulating working hours (see paragraphs 4 and 6 above).

10. The Court will therefore first need to examine whether, in the present case, there are "profound and long-standing differences" in the case-law of the domestic courts.

11. The Court notes that, according to the relevant case-law provided by the parties, only two claims were accepted before 2008. After that period all the claims were dismissed on the same grounds as in the applicant's case (see paragraph 4 above). Although the domestic courts ruled partially in the applicant's favour, the Court notes that they did so on a different legal basis (ibid.).

12. While it is true that the Government submitted only thirteen Court of Appeal decisions in support of their argument that there were no "profound and long-standing differences" in the case-law of the domestic courts, justifying this with the fact that the remainder of the decisions had been destroyed in accordance with the 2009 Courts' Rules of Procedure, the applicant did not state, either in his application or in his observations, that there had been more than two different domestic decisions.

13. It therefore appears that, at the relevant time, the Serbian judiciary had harmonised their case-law on the matter. This is especially true for the period after 2008 (see paragraph 11 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 over a certain area. Such divergences may also arise within the same court. That in itself, however, cannot be considered to be in breach of the Convention (see *Nejdet Şahin and Perihan Şahin*, cited above, § 51).

14. In view of the fact that the only two divergent decisions were delivered at the beginning of the period in question and that, subsequently, the domestic courts adopted a uniform approach (see paragraph 11 above) in adjudicating these claims concerning a restricted category of possible applicants, the Court cannot but conclude that there are no "profound" (see, *mutatis mutandis*, *Stanković and Trajković v. Serbia*, cited above, § 41), nor "long-standing differences" in the case-law of the domestic courts (see, *mutatis mutandis*, *Lo Fermo v. Italy* (dec.), no. 58977/12, §§ 56-59, 20 June 2023). It is, of course, understood that it is not for the Court to pronounce as to what the actual outcome of the applicant's legal actions should have been (see, for example, *Vinčić and Others v. Serbia*, nos. 44698/06 and 30 others, § 56, 1 December 2009).

15. The Court also finds that the contested decisions of the Municipal Court and the Belgrade Court of Appeal (see paragraph 4 above) are well-reasoned and cannot be considered arbitrary. Moreover, there is nothing to suggest that the proceedings leading to those decisions were otherwise unfair.

16. It follows that this complaint is inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 thereof.

B. Alleged violation of Article 13 of the Convention

17. Relying on Article 13 of the Convention, and essentially complaining about the outcome of the constitutional proceedings, the applicant contended that the constitutional complaint had been ineffective in relation to his complaint of divergent case-law.

18. The Court, having found the complaint under Article 6 of the Convention inadmissible, concludes that the applicant has no arguable claim for the purposes of Article 13 of the Convention (see *Rodić and Others v. Bosnia and Herzegovina*, no. 22893/05, § 82, 27 May 2008). The applicant's complaint under Article 13 of the Convention taken in conjunction with Article 6 is thus likewise manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 6 February 2025.

Olga Chernishova Deputy Registrar	Peeter Roosma President