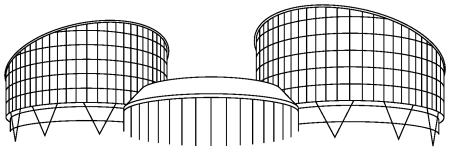

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ĐORĐEVIĆ AND MILOSAVLJEVIĆ v. SERBIA

(Applications nos. 34317/17 and 75858/17)

JUDGMENT

STRASBOURG

22 September 2026

This judgment is final but it may be subject to editorial revision.

In the case of Đorđević and Milosavljević v. Serbia,

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

Lətif Hüseynov*, President*,
Mateja Đurović,
Canòlic Mingorance Cairat*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the 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 two Serbian nationals, whose relevant details are listed in the appended table ("the applicants"), on the various dates indicated therein;

the decision to give notice of the applications to the Serbian Government ("the Government") represented by their Agent, Ms Z. Jadrijević Mladar;

the parties' observations;

Having deliberated in private on 1 September 2026,

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

SUBJECT MATTER OF THE CASE

1. The case concerns divergent case-law concerning dismissal of police officers' compensation claims for unpaid salary supplements in respect of work on public holidays, night work and overtime ("work during unsociable hours"). The Court has already dealt with a similar issue in *Šabanović and Others v. Serbia* (nos. 39819/16 and 4 others, 7 October 2025).

I. RELEVANT BACKGROUND

2. From June 2013 onwards the domestic courts simultaneously upheld and dismissed claims lodged by many colleagues of the applicants (ibid., §§ 96 and 97). The courts interpreted Article 147 §§ 1 and 3 of the Police Act differently, choosing different comparator employees when assessing whether the claimants' salary coefficients had been increased in respect of work during unsociable hours, leading to conflicting decisions in factually identical claims (ibid., § 101). Finding the need to harmonise the case-law of the lower courts, the Supreme Court adopted a guiding legal opinion on 10 November 2015. The legal opinion stated that a "comparable worker" had to be an authorised officer, rather than a civilian officer, who had the same level of education as a claimant but did not work during unsociable hours (ibid., §§ 52-54). Subsequently, by applying that method, the lower courts allowed claims similar to those of the applicants. Where they continued to rule contrary to the legal opinion, the Supreme Court either quashed the

impugned decisions and ordered a retrial or reversed the appellate decisions following an appeal on points of law (ibid., § 104).

II. THE APPLICANTS' SITUATION

3. On 20 April and 10 September 2015 the competent first-instance courts dismissed the applicants' claims, comparing their salary coefficients with those of civilian officers who had not worked during unsociable hours. The competent courts of appeal upheld those decisions, which became final on 4 and 16 December 2015.

4. The applicants lodged constitutional appeals against those decisions, complaining of case-law divergence and noting that certain courts had allowed identical claims brought by their colleagues. The first applicant, in particular, submitted evidence of inconsistent case-law, in which courts had ruled in favour of claimants by comparing their salary coefficients with those of authorised officers. The applicants also complained that the lower courts had applied substantive law arbitrarily.

5. On 8 December 2016 the Constitutional Court, referring to its previous decision (no. Už-3827/2012 of 12 December 2012), dismissed the first applicant's constitutional appeal, holding that he had relied on a comparison with cases in which compensation claims had been upheld on different grounds, rather than on the basis of a differing method of comparison of salary coefficients (this reasoning was presented in more detail in *Šabanović and Others*, cited above, §§ 62-64). On 20 September 2017 the Constitutional Court dismissed the second applicant's constitutional appeal as unsubstantiated, as he had relied only on two first-instance decisions and had not demonstrated that those decisions had become final.

THE COURT'S ASSESSMENT

6. Relying on Article 6 § 1 of the Convention, the applicants complained that the domestic courts had dismissed their claims while simultaneously and inconsistently ruling both in favour of and against hundreds of the applicants' fellow officers, despite the fact that their claims had been based on the same or similar facts and had concerned identical legal issues, which had created legal uncertainty and had amounted to a denial of justice. The applicants also alleged that the domestic courts had arbitrarily interpreted and applied the substantive law when dismissing their claims.

I. JOINDER OF THE APPLICATIONS

7. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

A. Admissibility

8. The Government raised an identical objection of non-exhaustion of domestic remedies as in *Šabanović and Others*, arguing that the applicants had failed to lodge appeals on points of law against the second-instance decisions dismissing their claims (ibid., § 68). They further submitted that the second applicant had failed to properly make use of the constitutional remedy, as he had not provided sufficient proof of the existence of inconsistent case-law of the lower courts.

9. As regards the first objection, the situation is identical to *Šabanović and Others* (ibid., §§ 74-78). The applicants' constitutional appeals were not rejected on the ground that they had failed to lodge appeals on points of law, and it would be unduly formalistic to require the applicants to pursue a remedy which the highest court of the respondent State did not consider mandatory (see, *mutatis mutandis*, *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, §§ 117 and 118, ECHR 2007-IV). The Government's objection must therefore be dismissed.

10. As regards the objection concerning the second applicant, the Court observes that it is closely linked to the substance of his complaints and considers it appropriate to join it to the merits.

11. Lastly, the Court holds that the applicants' complaints are neither manifestly ill-founded nor inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

12. The relevant principles regarding alleged violations of Article 6 § 1 of the Convention on account of inconsistent domestic case-law are summarised in *Nejdet Şahin and Perihan Şahin v. Turkey* ([GC], no. 13279/05, §§ 49-58, 20 October 2011), *Lupeni Greek Catholic Parish and Others v. Romania* ([GC], no. 76943/11, § 116, 29 November 2016) and *Šabanović and Others* (cited above, §§ 87-88).

13. Turning to the present case, the Court notes that the inconsistencies in the case-law of the domestic courts concerning compensation claims for unpaid salary supplements for work during unsociable hours were eventually harmonised by a legal opinion of the Supreme Court on 10 November 2015 (see *Šabanović and Others*, cited above, § 107; see also paragraph 2 above). Following that opinion, the domestic courts allowed claims on the basis of a comparison of a claimants' salary coefficient with the salary coefficient of authorised officers who had the same level of education but did not work during unsociable hours. Where lower courts subsequently ruled contrary to that opinion, the Supreme Court either quashed the impugned decisions and

ordered a retrial or reversed the appellate decisions following an appeal on points of law (see *Šabanović and Others*, cited above, § 104).

14. In *Šabanović and Others*, the applicants' claims had been dismissed before the Supreme Court had issued the guidelines on the manner in which comparable cases concerning police officers' salary supplements were to be resolved and therefore could not have been examined in the light of those guidelines. However, that circumstance alone was insufficient to amount to a breach of the principle of legal certainty (ibid., § 113).

15. In the present case, however, the second-instance courts gave their decisions approximately one month after the Supreme Court's opinion had been adopted (see paragraph 3 above) and nevertheless ruled contrary to that opinion, comparing the applicants' salary coefficients with those of civilian police officers. The applicants did not lodge appeals on points of law against those decisions. They challenged them in the Constitutional Court, which did not reject their constitutional appeals on the ground that they had failed to lodge such appeals before the Supreme Court (see paragraph 9 above).

16. In this connection, the Court reiterates that it is the Contracting States' responsibility to organise their legal systems in such a way as to avoid the adoption of discordant judgments (see *Lupeni Greek Catholic Parish and Others*, cited above, § 129). In principle, a constitutional appeal constitutes an effective remedy within the meaning of Article 35 § 1 of the Convention in respect of applications introduced against Serbia as of 7 August 2008 (see *Vinčić and Others v. Serbia*, nos. 44698/06 and 30 others, § 51, 1 December 2009), including in cases raising issues of inconsistent case-law (see *Golubović and Others v. Serbia* (dec.), nos. 10044/11 and 8 others, § 43, 17 September 2013).

17. As the Constitutional Court did not reject the applicants' constitutional appeals on grounds of non-exhaustion of an appeal on points of law before the Supreme Court, it was incumbent on the Constitutional Court to examine the applicants' complaints of inconsistent case-law in the light of the Supreme Court's opinion of 10 November 2015. As they failed to do so, the Court must conclude that the mechanism for overcoming inconsistencies in the case-law of the lower courts, although generally applied to appropriate effect (see *Šabanović and Others*, cited above, §§ 103-16), failed to produce results compatible with the Convention in the present case. It is, of course, understood that it is not for the Court to pronounce itself on what the actual outcome of the impugned civil proceedings should have been.

18. Lastly, as regards the Government's argument that the second applicant, in his constitutional appeal, failed to provide sufficient proof of the existence of inconsistent case-law of the lower courts (see paragraph 8 above), the Court has previously held that the Constitutional Court's requirement that appellants submit proper evidentiary support for their allegations is reasonable (see *Golubović and Others*, cited above, § 43). However, it observes that the first applicant, who was in an identical position

in all other relevant procedural respects, submitted evidence of such inconsistency (see paragraph 4 above). Nevertheless, the Constitutional Court failed to address the decisive fact that his claim had been dismissed after the adoption of the Supreme Court's legal opinion of 10 November 2015 and contrary to the interpretation set out therein. It appears that, in a somewhat automatic manner, it equated the first applicant's situation with that of a claimant in another case (see paragraph 5 above), without addressing the fact that he was in a different position and had provided different evidence of inconsistent case-law. In these circumstances, and given that the Constitutional Court did not engage with this issue in the first applicant's case, the Court considers that rejecting the second applicant's complaints for non-exhaustion would amount to excessive formalism (see *Gherghina v. Romania* (dec.), [GC] no. 42219/07, § 87, 9 July 2015). The Government's objection must therefore be dismissed.

19. There has accordingly been a violation of Article 6 § 1 of the Convention.

20. Having regard to the facts of the case, the submissions of the parties and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no.47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. The first applicant claimed 18,500 euros (EUR) and the second applicant claimed EUR 990 plus interest in respect of pecuniary damage resulting from loss suffered on account of the dismissal of their civil claims.

22. Furthermore, the first applicant claimed EUR 6,430 and the second applicant claimed EUR 10,820 in respect of costs and expenses incurred before the domestic courts and before the Court.

23. The Government contested those claims.

24. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects these claims. As to non-pecuniary damage, the Court notes that the applicants have made no claim under that head.

25. Turning to the claims for costs and expenses, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and were also reasonable as to their quantum. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress (see, for example, *Stevan Petrović v. Serbia*, nos. 6097/16 and 28999/19, § 186, 20 April 2021). Having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 1,220 to

the first applicant and EUR 2,620 to the second applicant covering costs under all heads, plus any tax that may be chargeable to the applicants, and dismisses the remainder of the claims.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Joins* the Government's objection concerning non-exhaustion of the remedy of a constitutional appeal in respect of the second applicant to the merits and *dismisses* it;

3. *Declares* the complaint concerning inconsistent case-law admissible;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the complaint concerning inconsistent case-law;

5. *Holds* that there is no need to examine the admissibility and merits of the remaining complaint;

6. *Holds*
   (a) that the respondent State is to pay the applicants, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of costs and expenses:
      (i) EUR 1,220 (one thousand two hundred and twenty euros) to the first applicant;
      (ii) EUR 2,620 (two thousand six hundred and twenty euros) to the second applicant;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 September 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova	Lətif Hüseynov
Deputy Registrar	President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	34317/17	Đorđević v. Serbia	13/04/2017	**Milan ĐORĐEVIĆ** 1970 Odžaci Serbian	Branislav MILOJIČIĆ
2.	75858/17	Milosavljević v. Serbia	20/10/2017	**Saša MILOSAVLJEVIĆ** 1965 Pančevo Serbian	Branislav MANIĆ