



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

THIRD SECTION

DECISION

Application no. 33538/17
Miodrag DRAŠKIĆ
against Serbia

The European Court of Human Rights (Third Section), sitting on 8 September 2026 as a Committee composed of:

Peeter Roosma, *President*,

Úna Ní Raifeartaigh,

Mateja Đurović, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 33538/17) 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 April 2017 by a Serbian national, Mr Miodrag Draškić (“the applicant”), who was born in 1972 and lives in Vršac, and was represented by Mr D. Todorović, a lawyer practising in Pančevo;

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

the parties’ observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns divergent case-law concerning the 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).

2. From June 2013 onwards, the domestic courts simultaneously upheld and dismissed claims lodged by many colleagues of the applicant (*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 applicant. 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).

3. Like the applicants in *Šabanović and Others*, the applicant in the present case was a police officer with the status of authorised police officer, within the meaning of the Police Act 2005 (ibid., § 35), who lodged a compensation claim against the State with the Pančevo Court of First Instance. His claim was dismissed because the court compared his salary coefficients with those of civilian officers who had not worked during unsociable hours. On 22 June 2015 the Belgrade Court of Appeal upheld that judgment. The claims lodged by the applicants in *Šabanović and Others* were also dismissed on the same grounds (ibid., §§ 7, 9, 10, 12 and 15).

4. The applicant lodged a constitutional appeal with the Constitutional Court, arguing that the lower courts had incorrectly applied the relevant provisions of the Police Act. He further complained of divergence in the domestic case-law.

5. Referring to its previous decision, no. UŽ-3827/2012 of 12 December 2012, and finding that the appellants in that case had relied on a comparison with cases in which compensation claims had been upheld on different grounds, on 8 December 2016 the Constitutional Court dismissed as unfounded the applicant's constitutional appeal (see *Šabanović and Others*, cited above, §§ 62-64, in which this reasoning was presented in more detail).

6. Relying on Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicant complained that the domestic courts had arbitrarily interpreted and applied the substantive law when dismissing his claim and that their case-law had been inconsistent. He further complained that the reasoning of the Constitutional Court's decision of 8 December 2016 had been inadequate.

THE COURT'S ASSESSMENT

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

1. *Inconsistent case-law*

7. Notice of this complaint was given to the Government under Articles 6 and 13 of the Convention. Having regard to the substance of the applicant's complaint and the relevant context, however, the Court, which is the master of the characterisation to be given in law to the facts of any case before it (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), finds it appropriate to examine this complaint from the standpoint of Article 6 alone (see *Šabanović and Others*, cited above, § 67).

8. The Government raised an identical objection of non-exhaustion of domestic remedies as that in *Šabanović and Others*, arguing that the applicant had failed to lodge an appeal on points of law against the second-instance decision dismissing his claim (*ibid.*, § 68). The Court does not find it necessary to examine this objection, as the application is in any event inadmissible for the following reasons.

9. The relevant principles regarding alleged violations of Article 6 § 1 of the Convention on account of divergent 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).

10. The applicant's claim in the present case was dismissed on 22 June 2015 on the basis of a comparison between his salary coefficients and those of other civilian police officers. The Court has already observed that, during that same period, the domestic courts had allowed claims lodged by the applicants' fellow officers by comparing their salary coefficients with those of other authorised police officers, which had amounted to "profound and long-standing differences" in the case-law of the domestic courts of appeal (see *Šabanović and Others*, cited above, §§ 90-91 and 99-101). Those inconsistencies were eventually harmonised by a legal opinion of the Supreme Court on 10 November 2015 (*ibid.*, § 107). The domestic authorities therefore harmonised the case-law within a reasonably short period of time (*ibid.*, § 112).

11. The applicant in the present case was in a situation identical to that examined in *Šabanović and Others*. Having regard to the Court's conclusion in that case that the domestic courts' findings and interpretation of the relevant law could not be considered arbitrary or manifestly unreasonable (*ibid.*, §§ 114-15), the fact that the applicant's claim was determined before the Supreme Court had issued guidelines for dealing with all similar cases, and was therefore not examined in line with those guidelines, is not in itself

sufficient to amount to a breach of the principle of legal certainty (ibid., § 113).

2. Reasoning of the Constitutional Court's decision

12. As regards the applicant's complaint concerning the reasoning of the Constitutional Court's decision of 8 December 2016, the Court finds, on the basis of the materials in the case file, and having particular regard to the evidence of divergent case-law submitted by the applicant in his constitutional appeal, that this complaint is unsubstantiated and that the Constitutional Court gave relevant and sufficient reasons for its decision.

13. Accordingly, these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violation of Article 1 of Protocol No. 1 to the Convention

14. The Court has already examined complaints under Article 1 of Protocol No. 1 to the Convention identical to those raised by the applicant and declared them incompatible *ratione materiae* with that provision of the Convention (ibid., §§ 120-22). The Court discerns no basis for reaching a different conclusion in the present case.

15. It follows that this complaint is inadmissible under Article 35 § 3 (a) of the Convention as being incompatible *ratione materiae* with the provisions of the Convention and the protocols thereto and must be rejected pursuant to Article 35 § 4 thereof.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 1 October 2026.

Olga Chernishova
Deputy Registrar

Peeter Roosma
President