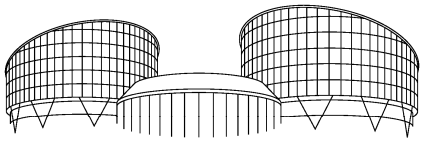

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MILOJEVIĆ AND OTHERS v. SERBIA

(Applications nos. 43519/07, 43524/07 and 45247/07)

JUDGMENT

STRASBOURG

12 January 2016

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 Milojević and Others v. Serbia,

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

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Johannes Silvis,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 15 December 2015,

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

PROCEDURE

1. The case originated in three applications (nos. 43519/07, 43524/07 and 45247/07) 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 three Serbian nationals, Mr Ivan Milojević ("the first applicant"), Mr Miodrag Radosavljević ("the second applicant") and Mr Petar Veličković ("the third applicant"), on 5 September 2007 and 3 October 2007 respectively. They were born in 1978, 1952 and 1962.

2. The first and the second applicants, who live in Ćuprija, were represented by Mr M. Cvetković, a lawyer practising in Belgrade. The third applicant, who lives in Niš, was represented by Mr Z. Mitić, a lawyer practicing in Niš. The Serbian Government ("the Government") were represented by their Agent, Ms V. Rodić.

3. The applicants alleged, in particular, that their dismissal violated their right to private life and that judicial decisions delivered in respect of their dismissals were arbitrary.

4. On 3 September 2013 complaints concerning the alleged violation of applicants' right to private life and arbitrariness of judicial decisions were communicated to the Government and the remainder of the applications was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Introduction

5. The applicants were employed as police officers. They were all charged with the commission of various criminal offences. They were dismissed from the police force pursuant to Article 45 of the Ministry of Interior Act 1991 which was in force at the time. Subsequently, all the applicants were acquitted. However, their dismissals remained in force. They unsuccessfully challenged their dismissals in civil proceedings before the national courts.

B. Particular circumstances

1. The first applicant

6. On 26 April 2004 a criminal complaint was lodged against the first applicant with the Jagodina District Court ("the District Court"). He was reported to have instigated his superior, the second applicant, to abuse his power. He was arrested the same day and criminal proceedings were instituted against him.

7. On 26 April 2004, simultaneously with the initiation of criminal proceedings, the Ministry of Interior instituted disciplinary proceedings against the applicant. He was suspended from the police force on the same day, pending the decision of the Disciplinary Court.

8. On 5 May 2004 the Ćuprija Municipal Prosecutor charged the applicant for alleged instigation to abuse of power.

9. On 7 June 2004 the competent directorate of the Ministry of the Interior rendered a decision by which the applicant was dismissed from the police force. The decision noted that criminal proceedings had been instituted against the applicant and that Article 45 of the Ministry of Interior Act 1991 which was in force at the time of the dismissal could be applied. The applicant lodged an appeal against this decision. On 16 July 2004 the Minister, acting as a second-instance administrative body, rejected his appeal, confirming the dismissal.

10. On 27 August 2004 the disciplinary proceedings against the applicant were stopped without any decision on the merits. The Disciplinary Court concluded that the applicant had already been dismissed from the police force as a result of the initiation of the criminal proceedings against him and that this fact rendered the disciplinary proceedings redundant.

11. On 29 November 2004 the Ćuprija Municipal Court ("the Municipal Court") acquitted the applicant. The Prosecutor appealed against this decision. On 29 March 2005 the District Court confirmed the Municipal Court's decision and the applicant's acquittal became final.

12. Shortly after the applicant's acquittal in the criminal proceedings, he instituted civil proceedings in which he requested the annulment of the above decisions on dismissal. On 10 March 2006 the Municipal Court accepted the applicant's claim and ordered the Ministry of Interior to reinstate him in his former post. The court held that the formulation of Article 45 of the 1991 Ministry of Interior Act left broad discretionary powers to the Ministry of Interior to dismiss its employees even when no criminal responsibility was attributable to them. It concluded that this legal solution "most certainly left the possibility of abuse of this authority." It also observed that the applicant had been acquitted in criminal proceedings instituted against him. Finally, the court noted that the applicant had been dismissed without any determination of his disciplinary responsibility but solely through the use of the discretionary power given to the Ministry by Article 45 of the 1991 Ministry of Interior Act and without any further reasoning.

13. The Ministry of the Interior appealed against this decision. On 2 November 2006 the District Court upheld the decision and reasoning of the Municipal Court.

14. The Ministry of the Interior lodged an appeal on points of law before the Supreme Court. On 25 April 2007 the Supreme Court quashed the District Court's decision and decided that the applicant's dismissal was lawful. According to the Supreme Court, the Ministry of Interior had used its discretionary power under Article 45 of the Ministry of Interior Act 1991 in accordance with the law. It concluded that the applicant's acquittal in the criminal proceedings and the absence of a decision on the merits in the disciplinary proceedings were irrelevant to his dismissal. It also held that the lower courts had overstepped the limits of their authority in considering the necessity, proportionality and correctness of the dismissal decision.

2. The second applicant

15. On 26 April 2004 a criminal complaint was lodged against the second applicant with the District Court. He was alleged to have committed the crime of abuse of power. He was arrested the same day and criminal proceedings were instituted against him.

16. On 26 April 2004, simultaneously with the initiation of the criminal proceedings, the Ministry of Interior instituted disciplinary proceedings against the applicant. He was suspended from the police force on the same day, pending the decision of the Disciplinary Court.

17. On 5 May 2004 the Municipal Prosecutor charged the applicant with alleged abuse of power.

18. On 7 June 2004 the Ministry of Interior rendered a decision by which the applicant was dismissed from the police force. The reasoning of the decision was identical to that in the case of the first applicant. The applicant appealed against this decision. On 19 July 2004, the second-instance administrative body confirmed the decision.

19. On 27 August 2004 the disciplinary proceedings against the applicant were stopped without any decision on the merits for the same reasons as in the case of the first applicant.

20. On 29 November 2004 the Municipal Court acquitted the applicant. The prosecutor lodged an appeal which was dismissed on 29 March 2005 by the District Court. It confirmed the Municipal Court's decision and the applicant's acquittal became final.

21. The applicant instituted civil proceedings after the acquittal, in which he requested the annulment of the above decision on dismissal. On 25 April 2005 the Municipal Court accepted the applicant's claim and ordered the Ministry of Interior to reinstate him in his previously held post. The reasoning of the court was the same as in the case of the first applicant.

22. The Ministry of the Interior appealed against this decision. On 8 July 2005 the District Court upheld the decision and reasoning of the Municipal Court.

23. The Ministry of the Interior lodged an appeal on points of law. On 27 March 2007 the Supreme Court quashed the above decisions on the same grounds as in the case of the first applicant.

3. The third applicant

24. On 19 October 1999, the Vranje District Prosecutor lodged an indictment with the Vranje District Court ("the District Court") against the third applicant for the alleged unauthorised possession of weapons and ammunition. On 17 December 1999 the Vranje District Court found him guilty as charged and sentenced him to one year of imprisonment.

25. On 14 June 2000 the Ministry of Interior rendered a decision by which the applicant was dismissed from the police force with the same reasoning as in the case of the first and the second applicants. The applicant appealed. On 13 July 2000 the second-instance administrative body confirmed the above decision. No disciplinary proceedings were instituted against the applicant.

26. On 6 November 2001 the Supreme Court confirmed the applicant's conviction in criminal proceedings. The applicant lodged a request for the re-opening of the proceedings, which was granted. On 2 September 2005 the Vranje District Court acquitted the applicant. The Prosecutor appealed against this decision. On 22 February 2006 the Supreme Court confirmed the acquittal.

27. Shortly after the applicant was acquitted in the criminal proceedings, he instituted civil proceedings in which he requested the annulment of the 14 June 2000 decision on dismissal.

28. On 18 October 2006 the Vranje Municipal Court accepted the applicant's claim and ordered the Ministry of the Interior to reinstate the applicant in his previously held post. The Ministry of the Interior appealed. On 7 February 2007 the Vranje District Court quashed this decision, giving essentially the same reasons as in the decisions of the Supreme Court delivered in the cases of the first and the second applicant. The applicant lodged an appeal on points of law. On 3 August 2007 the Supreme Court upheld the District Court's decision.

C. Other relevant facts submitted by the parties

29. In the criminal proceedings against the third applicant, another police officer, G.M. was a co-defendant. G.M. was charged with the same crime as the applicant and was acquitted. He is still employed as a police officer.

30. The third applicant also instituted a separate set of civil proceedings in which he requested compensation for non-pecuniary damage related to his unlawful detention, stress sustained in prison and the loss of reputation caused by the imprisonment. On 10 October 2008 the Gnjilane Municipal Court partially accepted the applicant's claim and awarded him 780,000 dinars (RSD), (approximately 6,330 euros (EUR)). On 18 December 2008 the Gnjilane District Court partially upheld this decision, decreasing the awarded amount to RSD 530,000 (approximately EUR 5,640). The awarded sum was paid to the applicant accordingly.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

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

"Article 32

Everyone shall have the right to a public hearing before an independent and impartial tribunal established by the law within a reasonable time which shall pronounce judgment on their rights and obligations, grounds for suspicion resulting in initiated procedure and accusations brought against them."

B. Ministry of Interior Act 1991 (*Zakon o unutrašnjim poslovima* published in the OG RS nos. 44/91, 79/91, 54/96, 17/99, 33/99, 25/2000, 8/2001 and 106/2003)

32. The relevant provisions of this Act read as follows:

"Article 34

1. A person can be employed by the Ministry of Interior in the post of police officer and employee responsible for specific duties if, besides fulfilling the general requirements for employment in the civil service, he also fulfils the following special requirements:

1) that the person was not convicted of criminal offences against constitutional order and security, the armed forces, economy and property, abuse of power and crimes motivated by financial gain or immoral motives;

2) that no criminal proceedings are pending against the person for criminal offences which are prosecuted *ex officio* and that there is no protective measure established by a final decision of the court precluding the applicant from employment or conduct of duties, as long as such protective measure is in force.

...

Article 45

An employee of the Ministry of Interior shall be dismissed *ex lege* if convicted by a final decision of a court for crimes enumerated in Article 34(1)(1) of this Act; an employee of the Ministry of Interior can also be dismissed if he or she ceases to fulfil the requirements of Article 34(1) or (2) of this Act or it is subsequently discovered that he or she did not meet the requirements for employment in the civil service at the time of employment."

C. Subsequent amendments of the Ministry of interior Act 1991

33. In 2005 the Ministry of Interior Act 1991 was repealed and the Police Act 2005 was adopted following an official letter of the Constitutional Court instructing the Parliament to clarify the reasons for the dismissal of police officers against whom criminal proceedings were initiated. The Constitutional Court in its letter also requested the Parliament to determine the rights of those officers who were acquitted or against whom the charges were dropped. Article 165(3) of the Police Act 2005 provides that a police officer can only be suspended pending criminal proceedings.

D. Civil Service Act 1991 (*Zakon o radnim odnosima u državnim organima* published in OG RS nos. 48/91, 66/91, 44/98, 49/99, 34/2001 and 39/2002)

34. The relevant provision of this Act reads as follows:

> **"Article 6**
>
> A person can join the civil service provided that he or she:
>
> 1) is a national of SFR Yugoslavia;
>
> 2) is over 18 years old;
>
> 3) fulfils general health requirements;
>
> 4) has adequate education;
>
> 5) has never been sentenced for the commission of a crime to more than 6 months' imprisonment and has never been convicted for a crime which makes that person unsuitable for the civil service;
>
> 6) fulfils other requirements provided by law or other rules or by the act on systematisation of a particular organ."

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

35. Article 426 § 11 of the 2011 Act provides that terminated civil proceedings may be reopened if it subsequently becomes possible for a party in civil proceedings to rely on a judgment of the European Court of Human Rights finding a violation of a human right, which could have resulted in a more favourable decision in the domestic proceedings.

F. Case-law of the Constitutional Court

36. The Constitutional Court has so far delivered two decisions in cases with essentially the same factual background as those in the present cases (*Stefanović v. Serbia*, UŽ-753/2008, 19 January 2011 and *Radovanović v. Serbia*, UŽ-1757/2009, 27 September 2012). The relevant parts of the decision of 27 September 2012 read as follows:

> "The Constitutional Court finds that Article 45 of the Ministry of Interior Act provides for a possibility, but not an obligation, of delivering a decision on termination of employment of a police officer when criminal proceedings are opened against him for criminal offences that are prosecuted ex officio.
>
> Therefore, the only condition that needs to be met at the moment of the delivery of the decision on termination of employment which is founded on the discretionary power from the quoted provision of the Act is that criminal proceedings against a police officer are ongoing.

In the opinion of the Constitutional Court, the possibility of dismissing a police officer in accordance with Article 45 of the Ministry of Interior Act was introduced precisely for the purpose of protecting the specific nature of the Ministry's work and its particular significance for State affairs. On the other hand, the actual utilisation of this possibility presupposes the limitation of the rights of individuals for the protection of the public interest. Every limitation of individual rights must be necessary for the achievement of a legitimate goal and that goal is, in this case, the protection of the interests of police integrity.

The Constitutional Court points out that the civil courts in labour disputes, when deciding on the annulment of an act delivered on the basis of discretionary power, are bound to examine the lawfulness of such acts. In this particular case, this means that the civil courts should have examined if the decision on the termination of employment could be delivered and if the conditions for its delivery required by law were met. This means that the legality of the decision on termination of employment should be assessed in the light of the circumstances of a specific case at the moment of the delivery of the decision. It is the Constitutional Court's opinion that the subsequent acquittal of the applicant in the criminal proceedings cannot be of relevance when assessing the legality of the impugned decision on termination of employment, since the Ministry of Interior Act prescribes as the only condition for the dismissal the initiation of the criminal proceedings at the time of the delivery of the decision.

The Ministry of Interior Act, however, has no instructions on the legal consequences of the final judgment of a criminal court by which the defendant is acquitted and the influence of such decision on the police officer's dismissal.

Since the Ministry of Interior Act gives discretionary power to the competent authority to use or not to use its right to dismiss a police officer if criminal proceedings are instituted against him, and since no provision of this Act provides an answer on what are the legal consequences of the acquittal of the former employee, the Constitutional Court holds that in this particular case it was necessary for the civil courts to assess, besides the legality of the decision on dismissal, the issue of the proportionality between the legitimate aim which was sought to be achieved by these decisions on one side and individual rights on the other.

The ordinary courts in this case failed to assess the nature of the limited rights, the aim of that limitation, the achievement of such aim and proportionality between the legitimate aim and the consequences of the limitation of individual rights produced by the decision on dismissal reached in accordance with discretionary powers from Article 45 of the Ministry of Interior Act [...], which resulted in violation of the applicant's right to a fair trial and his right to work."

37. In its decision of 19 January 2011 the Constitutional Court also noted:

"The Constitutional Court finds that the potential use of discretionary powers [under Article 45 of the Ministry of Interior Act] contrary to the purpose for which it was established, or potential abuse of such power, had to be a subject of deliberation in the civil proceedings against the impugned decision on dismissal before the ordinary courts. In the opinion of the Constitutional Court, these proceedings are a 'corrective measure' in cases where the discretionary power was used contrary to the purpose for which it was established, especially since the Ministry of Interior Act did not

prescribe what will happen to an employee who was dismissed [on the grounds of Article 45], but who was acquitted by a final decision in criminal proceedings or the indictment against him was withdrawn.

[...]

On the basis of what has been stated, the Constitutional Court holds that, from the perspective of the right to fair trial, the ordinary courts were obliged to examine if in this specific case the discretionary power of the employer prescribed by Article 45 of the Ministry of Interior Act was exercised contrary to its purpose...

The Constitutional Court holds that the impugned judgments of the District Court [...] and the Supreme Court [...] violated the applicant's right to fair trial..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

38. The applicants, without relying on any particular provision of the Convention, complain that their dismissal based on the allegation of the commission of criminal offences for which they have been acquitted brought great shame on them and that it deprived them of their material well-being. The Court, being a master of characterisation to be given in law to the facts of any case before it (see *Akdeniz v. Turkey*, no. 25165/94, § 88, 31 May 2005), considers that this complaint falls to be examined under Article 8 of the Convention, which, in so far as relevant, reads as follows:

"1. Everyone has the right to respect for his private and family life...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. As regards the first and second applicant

(a) Whether Article 8 is applicable

39. The Court notes that the parties do not dispute the applicability of Article 8 of the Convention in the present case.

40. It considers that Article 8 is applicable to the applicants' complaints in that it concerned the protection of their moral and psychological integrity as well as their reputation, all of which fall within the scope of Article 8 of the Convention (see, *inter alia*, *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012; *Kyriakides v. Cyprus*, no. 39058/05,

§ 41, 16 October 2008; *X and Y v. the Netherlands*, 26 March 1985, § 22, Series A no. 91; *Raninen v. Finland*, 16 December 1997, § 63, *Reports of Judgments and Decisions* 1997-VIII; *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B). Specifically, in respect to the protection of an individual's reputation, the Court notes that it has been acknowledged as an interest guaranteed by Article 8 of the Convention (see, *inter alia*, *Pfeifer v. Austria*, no. 12556/03, § 35, 15 November 2007; *White v. Sweden*, no. 42435/02, § 19, 19 September 2006; *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI; *Abeberry v. France* (dec.) no. 58729/00, 21 September 2004).

41. The Court further considers that Article 8 of the Convention is applicable to the applicants' complaints in that they concern the protection of their "inner circle", particularly the material well-being of themselves and their families (see *Oleksandr Volkov v. Ukraine,* no. 21722/11, § 166, ECHR 2013).

(b) Exhaustion of domestic remedies

42. The Government maintain that the applicants failed to exhaust the effective domestic remedies. Specifically, they did not bring a civil action in accordance with Articles 157, 172, 199 and 200 of the Obligations Act. The Government further argued that the applicants could have lodged a constitutional appeal.

43. The applicants made no comment in this respect.

44. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system, thus dispensing States from answering before the Court for their acts before they have had an opportunity to put matters right through their own legal system. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 66-67, *Reports* 1996-IV; *Assenov and Others v. Bulgaria*, 28 October 1998, § 85, *Reports* 1998-VIII). Where there are several effective remedies available, it is for the applicant to select which remedy to pursue in order to comply with the requirements of Article 35 § 1 (see *Airey v. Ireland*, 9 October 1979, § 23, Series A no. 32).

45. Turning to the present case, the Court notes that the applicants were dismissed by the administrative decisions of the Ministry of Interior. They all lodged the appeals against these decisions, which were rejected by the second-instance administrative body. They further initiated civil proceedings in which they raised complaints that were substantially the same as those brought before the Court and which were decided by three instances at the domestic level. In these circumstances, the Court considers that, having exhausted the available remedies in both administrative and

civil proceedings, the applicants could not in addition have reasonably been expected to make use of yet another civil proceedings based on Articles 157, 172 § 1, 199 and/or 200 of the Obligations Act (see *Matijašević v. Serbia*, no. 23037/04, §§ 32 and 33, ECHR 2006-X; *Hajnal v. Serbia*, no. 36937/06, § 121, 19 June 2012).

46. The Court further recalls that it has already held that a constitutional appeal should, in principle, be considered an effective domestic remedy, within the meaning of Article 35 § 1 of the Convention, but only in respect of applications introduced against Serbia as of 7 August 2008 (see *Vinčić and Others v. Serbia*, nos. 44698/06 et seq., § 51, 1 December 2009). It sees no reason to hold otherwise in the present case, and notes that both applicants introduced their complaints before the Court on 5 September 2007.

47. It follows that both limbs of the Government's objection concerning the exhaustion of domestic remedies must be dismissed.

(c) Other admissibility issues

48. The Court is of the opinion that the first and second applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and are not inadmissible on any other ground. They must therefore be declared admissible.

3. As regards the third applicant

(a) Compatibility *ratione temporis* of the third applicant's Article 8 complaint

49. The Court notes that the Government made no objection in their written observations as to the compatibility *ratione temporis* of the third applicant's complaint under Article 8 of the Convention. Nevertheless, the Court reiterates that incompatibility *ratione temporis* is a matter which goes to the Court's jurisdiction rather than a question of admissibility in the narrow sense of that term (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III). Since the scope of the Court's jurisdiction is determined by the Convention itself, in particular by Article 32, and not by the parties' submissions in a particular case, the mere absence of a plea of incompatibility cannot extend that jurisdiction. The Court has to satisfy itself that it has jurisdiction in any case brought before it, and is therefore obliged to examine the question of its jurisdiction of its own motion and at every stage of the proceedings (see *Blečić*, cited above, § 67).

50. The Court reiterates that, in accordance with the general rules of international law, the provisions of the Convention do not bind a Contracting Party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the Convention with respect to that Party (see, for example, *Kadiķis v. Latvia* (dec.), no. 47634/99, 29 June 2000). In order to establish the Court's

temporal jurisdiction it is therefore essential to identify, in each specific case, the exact time of the alleged interference. In doing so the Court must take into account both the facts of which the applicant complains and the scope of the Convention right alleged to have been violated.

51. The Court further notes that in cases where the interference pre-dates ratification while the refusal to remedy it post-dates ratification, to retain the date of the latter act in determining the Court's temporal jurisdiction would result in the Convention being binding for that State in relation to a fact that had taken place before the Convention came into force in respect of that State. This would be contrary to the general rule of non-retroactivity of treaties (see *Blečić,* cited above, § 79).

52. Applying the above principles to the present case, the Court observes that the applicant was dismissed on 13 July 2000 while the Convention entered into force in respect of Serbia on 3 March 2004. The Court reiterates that dismissal is, in principle, an instantaneous act, which does not give rise to any possible continuous situation of a violation of the Convention (see *Jovanović v. Croatia* (dec.), no. 59109/00, 28 February 2002). The subsequent 2007 decision of the Supreme Court only resulted in allowing the interference allegedly caused by the dismissal – a definitive act which was by itself capable of violating the applicant's rights – to subsist. That decision, as it stood, did not constitute the interference. Having regard to the date of the applicant's dismissal, the interference falls outside the Court's temporal jurisdiction. It follows that the applicant's complaint under Article 8 must be rejected as incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3.

53. In view of this conclusion, it is not necessary for the Court to examine the Government's further objection based on the applicant's failure to exhaust domestic remedies, his loss of victim status and the abuse of the right of individual application.

B. Merits

1. The parties' submissions

54. The applicants argued that their dismissal amounted to an interference with their right to respect for their private and family life. They in particular argued that their dismissal from the police force on the basis of the initiation of criminal proceedings against them had affected their reputation which affected them all the more in that they worked and lived in small communities. They further argued that it significantly affected the material well-being of themselves and their families.

55. The applicants contended that this interference was not in accordance with the law within the meaning of Article 8 of the Convention. They submitted that the provision of Article 45 of the Ministry of Interior

Act on the ground of which they were dismissed left unlimited discretionary power to the Ministry to terminate the employment of police officers solely on the basis of the initiation of criminal proceedings. The applicants also claimed that this discretionary power was not consistently applied. They further maintained that the law in question had no provision regulating the renewal of employment upon acquittal in criminal proceedings. They essentially argued that the law was not foreseeable enough and that, for these reasons, it did not satisfy the requirement of lawfulness from Article 8 of the Convention. The applicants further argued that the definitive termination of their employment solely on the basis of the initiation of criminal proceedings was not proportionate to the legitimate aim pursued.

56. The Government acknowledged that the applicants' dismissal consituted an interference with their private and family life, but argued that such interference was in accordance with the law and that it was proportionate to the legitimate aim pursued.

57. They maintained that the applicants' dismissal was grounded on an explicit legal provision. While admitting that this legal provision "had certain failures" in sense that it was "imprecise... in respect of the rights of those persons wishing to return to work with the Ministry of Interior upon... acquittal", such failures had later been remedied by the Constitutional Court and through the adoption of the new Police Act of 2005. The Government further argued that, although imprecise, the provision was "consistently applied" by the Ministry of Interior and such actions were upheld by the Supreme Court.

58. They further submitted that the interference pursued a legitimate aim, namely the protection of the reputation of the Ministry of the Interior. It was the opinion of the legislature, the Government argued, that the prescribed discretionary power for dismissal was necessary to protect the reputation of the service dealing with detection of perpetrators of criminal acts, and that it was not consistent with the position of police officers to have criminal proceedings initiated against them.

2. The Court's assessment

(a) Whether there was an interference with applicants' right to private and family life

59. Although no general right to employment can be derived from Article 8, the Court has consistently held that the notion of "private life" includes professional activities (see, *inter alia*, *Fernández Martínez v. Spain* [GC], no. 56030/07, §§ 109-110, ECHR 2014, *Bigaeva v. Greece*, no. 26713/05, § 23, 28 May 2009, and *Oleksandr Volkov v. Ukraine*, no. 21722/11, §§ 165-67, ECHR 2013). The Court reiterates its established case-law which provides that dismissal from office can constitute an interference with the right to respect for private life (see *Oleksandr Volkov*

v. Ukraine, cited above, § 165 and *Kyriakides v. Cyprus*, no. 39058/05, § 50, 16 October 2008). The reasons for dismissal can also affect the applicants' reputation (see, *mutatis mutandis*, *Kyriakides*, cited above, § 52). It can also have an impact on their "inner circle", as the loss of job must have tangible consequences for the material well-being of the applicants and their families (see, *mutatis mutandis*, *Oleksandr Volkov*, cited above, § 166).

60. Turning to the present case, the Court is prepared to accept that the dismissal of the applicants from the police force affected a wide range of their relationships with other persons, including relationships of a professional nature. Likewise, the Court accepts that it had an impact on their "inner circle" as the loss of their job must have had tangible consequences for the material well-being of the applicants and their families. Moreover, the Court accepts that the reason for the applicant's dismissal, namely the initiation of criminal proceedings against them, must have had affected their reputation.

61. It follows that the applicants' dismissal constituted an interference with their right to respect for private life within the meaning of Article 8 of the Convention.

(b) Whether the applicants' dismissal was in accordance with the law

62. The Court reiterates its settled case-law according to which the expressions "prescribed by law" and "in accordance with the law" in Articles 8 to 11 of the Convention not only require that the impugned measure should have some basis in domestic law, but also refer to the quality of the law in question. The law should be both adequately accessible and foreseeable, that is, formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct (see *the Sunday Times v. the United Kingdom* (no. 1) judgment of 26 April 1979, Series A no. 30, p. 31, § 49; *the Larissis and Others v. Greece* judgment of 24 February 1998, *Reports* 1998-I, p. 378, § 40; *Hashman and Harrup v. the United Kingdom* [GC], no. 25594/94, § 31, ECHR 1999-VIII; *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V, *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI).

63. For domestic law to meet these requirements it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise (see *Rotaru*, cited above, § 55).

64. An imprecise formulation of the law can be rectified if sufficient procedural safeguards are set in place, such as adversarial proceedings before an independent body which can scrutinize the application of the discretionary powers and ensure that they are not exercised in an arbitrary manner (see *M. and Others v. Bulgaria*, no. 41416/08, § 100, 26 July 2011 and *Al-Nashif v. Bulgaria*, no. 50963/99, §§ 123, 20 June 2002). It is not enough that the discretionary power, unconfined in its terms, is only formally subject to judicial scrutiny (*Ostrovar v. Moldova*, no. 35207/03, § 100-101 and 105-108, 13 September 2005). The body in question must be competent to examine whether the measures taken pursue a legitimate aim and are proportionate (*M. and Others v. Bulgaria*, cited above, § 100).

65. Turning to the present case, the Court at the outset notes that the Government acknowledge the imprecise formulation of Article 45 of the Ministry of Interior Act. This provision left to the complete discretion of the Ministry the decision about the dismissal of the officers against whom criminal proceedings were under way. It provided no guidance as to the exercise of this discretionary power. It also provided no instruction as to the consequences of the acquittal of the police officers. In the absence of any explanation as to the use of the discretion, the legislation on the basis of which the applicants were dismissed was not only imprecise, but it was arbitrarily applied by the Ministry of Interior.

66. The Court further notes that the above deficiencies of the law might have been ameliorated through the establishment of procedural safeguards, such as adversarial proceedings before an independent body, against arbitrary exercise of the discretion left to the Ministry. The Court acknowledges that the applicants had access to civil proceedings to challenge the legality of their dismissal. However, it notes that the Supreme Court explicitly refused to scrutinise the manner in which the discretionary powers were exercised by the Ministry, stymying the attempt of the lower courts to examine the legitimacy and proportionality of the impugned measures. The Supreme Court, therefore, failed to provide meaningful independent scrutiny of the applicants' dismissals. It applied a formalistic approach and left the Ministry full and uncontrolled discretion. As these civil proceedings did not provide any meaningful judicial scrutiny, there was no safeguard against arbitrariness.

67. In view of the above, the Court concludes that Article 45 of the Ministry of Interior Act 1991 on the basis of which the applicants were dismissed did not satisfy the requirement of foreseeability. Accordingly, the applicants' dismissal was not "in accordance with the law", as required by Article 8 § 2 of the Convention.

68. In view of this conclusion, the Court is not required to examine the remaining issues, which concern the existence of a legitimate aim and proportionality.

69. There has therefore been a violation of Article 8 of the Convention concerning the first and second applicant.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

70. The applicants complain, under Article 6 § 1 of the Convention, that the decisions of the domestic authorities in civil proceedings regarding their dismissal were arbitrary and lacked sufficient reasons.

71. The relevant part of Article 6 § 1 reads as follows:

> 1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly ...

A. Admissibility

1. Exhaustion of domestic remedies

72. The Government argued that the applicants failed to exhaust the effective domestic remedies. Specifically, they failed to lodge a constitutional appeal.

73. The applicants made no comment in this respect.

74. The Court recalls that it already dealt with this objection when it ruled on admissibility of the applicants' complaints under Article 8 of the Convention (see §§ 45-47 above). It sees no reason to depart from these findings.

75. It follows that the Government's objection concerning the exhaustion of domestic remedies must be dismissed.

2. Compatibility of the third applicant's Article 6 § 1 complaint ratione temporis

76. The Court has already held that the applicant's complaint under Article 8 of the Convention related to his dismissal is incompatible *ratione temporis* with the Convention (see § 52 above). It remains to be determined whether the Court has temporal jurisdiction to entertain the applicant's complaint under Article 6 § 1 of the Convention.

77. The Court must reiterate at the outset the difference in the nature of the interests protected by Articles 6 and 8 of the Convention. While Article 6 affords a procedural safeguard, namely the "right to a court" which will give "reasons for its decisions" in the determination of one's "civil rights and obligations", Article 8 serves the wider purpose of ensuring proper respect for, *inter alia*, private and family life. The difference between the purpose pursued by the respective safeguards afforded by Articles 6 and 8 may, in the light of the particular circumstances, justify the examination of the same set of facts under both Articles (see, among many authorities,

McMichael v. the United Kingdom, 24 February 1995, § 91, Series A no. 307-B and *Golder v. the United Kingdom*, 21 February 1975, §§ 20-22, Series A no. 18). The Court observes that the possibility of reaching different legal results when applying different legal rules on one factual situation is obvious (see, for example, in the context of Articles 6 and 8 *Anghel v. Italy*, no. 5968/09, §§ 71 et seq, 25 June 2013).

78. The Court recalls the principles relevant for the determination of its temporal jurisdiction elaborated above (see § 49-51). The Court, however, reiterates its established case-law that when the applicant has a defendable claim under domestic law at the time of the Convention's entry into force for the Respondent, the claim outlives the original fact, act or situation from which the claim arises and the Court's competence *ratione temporis* is to be examined in relation to the domestic proceedings related to this claim if the applicant, in fact, raised the complaint against these proceedings (see *Kotov v. Russia* [GC], no. 54522/00, § 69, 3 April 2012; *Plechanow v. Poland*, no. 22279/04, §§ 76 et seq., 7 July 2009; *Broniowski v. Poland* (dec.) [GC], no. 31443/96, §§ 74 et seq., ECHR 2002-X; *Jovanović,* cited above).

79. The Court finds that there can be no doubt that the applicant's Article 6 complaint is raised against the proceedings in which the legality of his dismissal was challenged. Given that these proceedings both commenced and were finalized after the Convention came into force in respect of Serbia, and considering that the applicant at the time had a defendable claim under the Serbian legal system, the Court concludes that it has jurisdiction *ratione temporis* to entertain the applicant's complaint under Article 6 § 1 of the Convention.

3. Other admissibility issues

80. The Court is of the opinion that the applicants' complaints under Article 6 § 1 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and are not inadmissible on any other ground. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

81. The applicants complain, under Article 6 § 1 of the Convention, that the decisions of the domestic authorities in civil proceedings regarding their dismissal were arbitrary and lacked sufficient reasoning. They claim that these decisions simply reiterated legal provisions on the basis of which they were dismissed without any further explanation as to the reasons and the appropriateness of their application in their specific cases. They argue that such considerations were of crucial importance since the legal provision which served as the basis for their dismissal was itself arbitrary, leaving the

unlimited discretionary power to the Ministry of Interior to decide whether to apply it or not.

82. The Government disagreed. They claimed that the impugned decisions were sufficiently reasoned and that, at the time of their delivery, they constituted a body of a consistent case-law of the domestic courts on the relevant issue.

2. The Court's assessment

83. The Court reiterates that according to its established case-law, reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain* and *Hiro Balani v. Spain*, 9 December 1994, §§ 27, 29, Series A nos. 303-A and 303-B; and *Higgins and Others v. France*, 19 February 1998, § 42, *Reports* 1998-I). Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument of the parties involved (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288). When applying legal rules lacking in precision, however, the domestic courts must show particular diligence in giving sufficient reasons as to why such a rule was applied in a particular manner, given the circumstances of each specific case. Merely citing the language of the imprecise provision cannot be regarded as sufficient reasoning (see *H. v. Belgium*, 30 November 1987, § 53, Series A no. 127-B).

84. Turning to the present case, the Court must at the outset reiterate its finding as to the quality of the legal provision on the ground of which the applicants were dismissed and the conduct of the domestic courts in applying this provision (see §§ 65-68 above). The Court also notes that the Constitutional Court of Serbia, after becoming fully operational in 2008, had an opportunity to deal with two cases raising substantially identical issues to those brought by the applicants before this Court. In its decisions cited above (see §§ 36-37), it concluded that both the law on the basis of which the applicants had been dismissed and the judicial decisions which were identical to those rendered in the applicants' cases had been arbitrary in violation of the right to a fair trial. In light of the almost identical factual and legal circumstances of the cases resolved by the Constitutional Court and the present case, the Court sees no reason to depart from the reasoning of the Constitutional Court.

85. There has therefore been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

A. Article 41 of the Convention

86. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

1. Damage

(a) As regards the first applicant

87. The first applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

(b) As regards the second applicant

88. The second applicant claimed EUR 20,000 in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

89. The Government disputed his claims. With respect to pecuniary damage they pointed out that the claim was not substantiated and insufficiently specified. They further claimed, in respect of both types of damage, that no causal link could be discerned between the damage and the violation.

90. The Court finds that the applicant's claim of a lump-sum of EUR 20,000 for pecuniary damage is not specified and substantiated. For these reasons, it rejects this claim.

91. With regard to non-pecuniary damage, the Court considers that the applicant must have suffered distress and anxiety on account of the violations found. Ruling on an equitable basis, it awards the applicant EUR 5,800 in respect of non-pecuniary damage.

(c) As regards the third applicant

92. The applicant claimed EUR 95,000 in respect of pecuniary damage for the loss of salary from the day of his dismissal on 13 July 2000 until the day when he managed to find new employment on 28 June 2011. He based his claim on the average salary of the police officers holding the same rank as his at the time of dismissal. He did not claim any interests or inflation adjustments. He further claimed EUR 6,000 in respect of non-pecuniary damage.

93. The Government maintained that no causal link could be discerned between the damage and the violation.

94. With regard to pecuniary damage, the Court agrees with the Government that there is no causal link between the damage and the violation found. The Court, therefore, rejects the applicant's claim for pecuniary damage.

95. With regard to non-pecuniary damage, the Court considers that the applicant must have suffered distress and anxiety on account of the violation found. Ruling on an equitable basis, it awards the applicant EUR 2,400 in respect of non-pecuniary damage.

2. Costs and expenses

96. The second applicant also claimed EUR 5,000 for the costs and expenses incurred before the Court. The third applicant claimed EUR 3,500 for the same purposes. They provided no documentation in support of this claim.

97. The Government contested these claims as unsubstantiated.

98. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (*Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). In the present case, regard being had to the fact that the applicants have provided no documentation in support of this claim, the Court rejects it.

3. Default interest

99. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

D. Article 46 of the Convention

100. Article 46 of the Convention, in so far as relevant, reads as follows:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution...."

101. The third applicant considered that the Court should order the Respondent to re-open the civil proceedings in which the domestic courts would apply the principles established by the Court in this judgment and in such manner secure, upon the finalisation of all relevant administrative procedures of verification, the renewal of the applicant's employment in the police force.

102. The Court notes that Article 426.11 of the Civil Procedure Act provides that a case may be reopened if a party to civil proceedings gains an

opportunity to rely on a judgment of the European Court of Human Rights finding a violation of a human right, which may have precluded a more favourable outcome of the civil proceedings in question.

103. In light of the above, the Court does not consider it necessary to order the requested individual measure.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the applications of the first and second applicant admissible;

2. *Declares* the third applicant's complaint under Article 8 inadmissible;

3. *Declares* the third applicant's complaint under Article 6 § 1 admissible;

4. *Holds* that there has been a violation of Article 8 of the Convention with respect to the first and second applicant;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention with respect to all three applicants;

6. *Holds*
   (a) that the respondent State is to pay the second applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,800 (five thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that the respondent State is to pay the third applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,400 (two thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (c) 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' claims for just satisfaction.

Done in English, and notified in writing on 12 January 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Deputy Registrar	Luis López Guerra President