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

FOURTH SECTION

DECISION

Applications nos. 3000/16 and 7189/16
Čedomir BELJIĆ against Serbia
and Miroljub MILINKOVIĆ and Others against Serbia

The European Court of Human Rights (Fourth Section), sitting on 23 January 2024 as a Chamber composed of:

Gabriele Kucsko-Stadlmayer, *President*,
Tim Eicke,
Branko Lubarda,
Armen Harutyunyan,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Răduleţu, *judges*,
and Ilse Freiwirth, *Section Registrar*,

Having regard to the above applications lodged on 4 January and 22 January 2016 respectively,

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

Having deliberated, decides as follows:

INTRODUCTION

1. The present cases concern, primarily, the applicants' complaint, under Articles 6 and 8 of the Convention, of the exhumation of their relatives' mortal remains, the relocation of the graves to another cemetery and a lack of procedural safeguards in the related proceedings. They also complained under Article 1 of Protocol No. 1 to the Convention of an alleged violation of their property rights caused by the relocation of their relatives' graves.

THE FACTS

2. A list of the applicants is set out in the appendix. They were all represented by Mr P. Savić, a lawyer practising in Belgrade.

3. The Serbian Government ("the Government") were represented by their Agent, Ms Z. Jadrijević Mladar.

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

A. Background information

5. The settlement of Vreoci is situated in the Kolubara coal-mining basin (*kolubarski ugljonosni basen*). It is situated in Lazarevac, which is part of the wider urban municipality of Belgrade (*Gradska Opština*).

6. On 25 November 1997 the Government established that there was a public interest in expropriation of specific plots of land in Vreoci, including some plots in the local cemetery, in order to further exploit the coal reserves there. The expropriation beneficiary (*korisnik eksproprijacije*) was the State-owned Electric Utility Power Company Serbia ("the EPS") – the coal-mining basin of Kolubara ("the RBK").

7. In May 2005 the Parliament of Serbia adopted an Energy Development Strategy for the period until 2015.

8. In 2007 the Government adopted a decree related to achieving the goals of the Energy Development Strategy between 2007 and 2012. It indicated in particular that the relocation (*preseljenje*) of the Vreoci settlement and the cemetery had to be ensured urgently, at the latest in 2011, given that as of 2012 there could be a significant deficit in the quantities of coal obtained from another part of the basin (*kop*).

9. On 12 November 2007 the EPS adopted a Relocation Programme for the settlement of Vreoci (*Programske osnove za preseljenje naselja Vreoci*), which was approved by the Government on 22 November 2007. It set out, in particular, that the expropriation of the land, including the relocation of the settlement and the local cemetery, was necessary in order to ensure the expansion of the existing mining area and to meet the expected increase in the consumption of electricity, otherwise the consequences would be particularly grave (*nesagledive*). It also specified that the RBK would ensure an organised relocation of Vreoci cemetery and would bear the costs of its relocation. On 29 November 2012 the Constitutional Court rejected an initiative for the assessment of the constitutionality and legality of the Relocation Programme as manifestly unfounded (*očigledno neosnovana*).

10. On 19 February 2009 the Government issued another decision finding that there was a public interest in expropriation, that is, the administrative transfer (*adminstrativni prenos*) of the land in Vreoci for further exploitation of coal reserves. The beneficiary was the RBK.

11. On 30 March 2009 the Lazarevac administrative authority decided to close the Vreoci cemetery (*stavljanje van upotrebe*; see paragraph 65 below), a decision which entered into force on 14 April 2009. It indicated that the relocation of entire gravesites – mortal remains, gravestones and other

elements of the graves – would be done in an organised manner and placed in a newly built cemetery, L., in Lazarevac or in another cemetery individually chosen by the "guardians of the gravesites" (*staraoci grobnih mesta*, for further explanations see paragraph 26 below). All the expenses would be borne by the RBK. On the same day it was decided that part of the L. cemetery would be used for the relocation of the Vreoci local cemetery. The decision specified that no fee or lease would be paid for the use of the new gravesites and that they could not be the object of legal transactions. On 27 January 2010 the Constitutional Court rejected (*odbacuje*) an initiative for the assessment of constitutionality and lawfulness of the decision on the closure of the cemetery, lodged by the local community (*Mesna zajednica*).

12. In April 2009 the Lazarevac administrative authority, the EPS and the RBK established a Cemetery Relocation Committee ("the Relocation Committee"), composed of ten members representing those three legal entities and the local community of Vreoci. The RBK provided remuneration for the representatives of the Lazarevac administrative authority and the local community who sat on the Relocation Committee. The Relocation Committee was in charge of planning, conducting and controlling the relocation. It ensured contact with the guardians of the gravesites and the relevant services and coordinated their participation in the relocation.

13. On 5 August 2010 the Property Department of the Lazarevac administrative authority delivered a decision allowing for an administrative transfer of some of the plots of land (nos. 1457/1 and 1457/2), which were owned by the State and the user of which was the local community, to the EPS – RBK in order to expand the mining activities. The proposal for the administrative transfer had been submitted by the EPS – RBK in May 1998 and it referred to the public interest established in 1997 (see paragraph 6 above). The decision of 5 August 2010 was upheld by the Ministry of Finance and the Administrative Court on 22 December 2010 and 19 July 2012 respectively. They referred, in particular, to Article 70 of the Expropriation Act (see paragraph 51 below) and found the disputed decision lawful. On 25 June 2015 the Constitutional Court partly dismissed and partly rejected a constitutional appeal lodged by the local community.

14. On 4 August 2011 the Administrative Court quashed (*poništava*) the Government's decision of February 2009 (see paragraph 10 above), holding that it had not been sufficiently specific and because the owners of some of the plots of land had not been able to participate in the proceedings.

15. On 29 September 2011 the Government issued a new decision finding that there was public interest in expropriation, that is, in the administrative transfer of the land, for the purposes of the further exploitation of coal reserves in accordance with the Energy Development Strategy and the Relocation Programme (see paragraphs 7 and 9 above). The beneficiary of the expropriation was the RBK.

B. Relocation of the applicants' relatives' graves

16. Between 30 August and 5 December 2011 all the applicants objected to the exhumation and relocation of their relatives' graves before the Relocation Committee.

17. Between 21 September 2011 and 31 January 2012 the Lazarevac Communal Affairs and Environmental Protection Department (*Odeljenje za zaštitu i unapređenje životne sredine, komunalne poslove i komunalnu inspekciju Uprave gradske Opštine Lazarevac*; "the Communal Affairs Department") authorised the exhumation and relocation of the applicants' relatives' mortal remains and grave markers (*posmrtnih ostataka i obeležja grobnih mesta*). In doing so it relied on the decision on the closure of the cemetery (see paragraphs 11 above and 65 below).

18. All the applicants appealed against those decisions to the Lazarevac administrative authority council (*Veće Gradske Opštine*; "the council"), which acted as a second-instance body. The fourth applicant submitted, *inter alia*, that two of his relatives' bodies had already been unlawfully exhumed (see paragraphs 37-38 below), in respect of which he had lodged a criminal complaint (see paragraph 39 below). The seventh applicant submitted that the first-instance decision did not relate to all the gravesites of which he was the guardian.

19. Between 2 November 2011 and 7 March 2012 all the decisions were upheld by the council. It found, in particular, that the relocation of the cemetery had been part of the relocation of the settlement and had been in accordance with the relevant documents and legislation (see paragraphs 9 and 11 above, and 44 and 54 below). The RBK could request exhumations, as the relevant plots of land had been identified for extending the mining basin. It also noted that the decision to close the cemetery provided that its relocation would be conducted in an organised manner and, therefore, the guardians of the gravesites could have no influence as to whether the exhumations would take place or not, but could only choose where the new graves would be placed. The council further noted that a period of mandatory rest, referred to by some of the applicants, meant that the mortal remains should be buried in a grave (*počivati u grobnom mestu*), which was ensured by their burial in another cemetery. It also found that the Ombudsman had informed the Lazarevac administrative authority on 15 June 2011 that his recommendation (see paragraph 46 below) had been complied with. It further held that a letter by the Ombudsman of September 2011 (see paragraph 47 below) did not contain any recommendation to the Lazarevac administrative authority to stop the exhumations and the relocation of the local cemetery.

20. The council further held that the decision of 5 August 2010, which allowed for the administrative transfer of the land, had been given on the basis of the Government's decision of 25 November 1997 (see paragraph 13 above).

21. As regards the fourth applicant's separate complaint (see paragraph 18 above), the council found that there were no exhumation decisions in respect of the two people named by the applicant. As regards the seventh applicant's complaint (see paragraph 18 *in fine* above), it found that two other persons had already declared themselves the guardians of the gravesites in question.

22. On 28 May 2012 the Communal Affairs Department delivered an additional decision in respect of the other gravesites referred to by the seventh applicant (ibid.), given that the persons who had initially declared themselves guardians had given them up. On 20 June 2012 the council upheld that decision.

23. All the applicants contested the second-instance decisions before the Administrative Court (*upravni spor*; see paragraphs 56-59 below). The fourth applicant reaffirmed his complaint that two of his relatives' mortal remains had been unlawfully exhumed (see paragraph 18 above) and submitted that there had been irregularities in the numbering of their respective graves in the RBK's request for exhumation.

24. Between 29 March and 29 November 2012 the Administrative Court held public hearings (*održao usmenu javnu raspravu*) and upheld the second-instance decisions, in substance endorsing the reasoning therein. In particular, it found that the exhumation decisions had been in accordance with the relevant legislation (see paragraphs 54 and 65 below) and that the guardians of the gravesites could not influence whether the exhumations would take place or not, but could only choose where the mortal remains would be placed. It held that the RBK was the user of most of the plots of land where the cemetery had been, while in respect of the other plots of land there had been an established public interest in their expropriation in favour of the RBK. The RBK could therefore participate in the proceedings (*ima aktivnu legitimaciju*) and could request exhumations. The RBK had requested the relocation of the graves in order to satisfy public interest, which was to ensure the stability of the supply of electric power, which was a legitimate aim.

25. The court agreed that Article 18 of the Burials and Cemeteries Act (see paragraph 53 below) set out that mortal remains had to rest in a grave during a specified period, which would be ensured by burying them in a new gravesite. It held that it could not rule differently on the basis of Articles 19 and 20 of the same Act (see paragraphs 54 and 55 below). In some of its decisions the court also specified that Articles 18 to 20 of the Burials and Cemeteries Act (see paragraphs 53-55 below) did not provide for any specific period during which exhumations would not be allowed, but rather set out details concerning the use of gravesites and the period in which burials could be performed. It also dismissed the applicants' objection concerning the quashing of the Government's decision of February 2009 (see paragraphs 10 and 14 above), as the Government had issued a new decision to the same effect on 29 September 2011 and in any event, there had also been a decision

on the public interest in expropriation in 1997 (see paragraphs 15 and 6 above). In some of the cases the court also found that the legal ground for the exhumation and relocation was the decision on the closure of the cemetery (see paragraph 65 below).

26. The court also referred to Article 22 of the Decision on Arranging and Maintaining the Cemeteries and Burials (see paragraph 62 below), finding that the Vreoci cemetery had not been legally regulated, as there had been no written contracts for the use of the graves, that is, there had been no formally recognised users of the graves within the meaning of that decision. It was for that reason that the term "guardian of the gravesite" had been invented and the Relocation Committee had been inviting by registered post all the potential guardians to come forward in order to identify the gravesites of which they were guardians and in order to choose a new location for them.

27. The court did not separately deal with the fourth applicant's additional complaint (see paragraphs 21 and 23 above), but held in general that his other submissions were unfounded and referred to the reasons established by the council in that regard.

28. As regards the seventh applicant, the court found that an earlier exhumation decision in respect of his family graves had not affected the lawfulness of the additional decision (see paragraph 22 above), as the previous guardian had given up the gravesites in question and the seventh applicant had declared himself as their real guardian, which was when the additional decision on exhumation had been delivered (ibid.).

29. The applicants lodged constitutional appeals, complaining of a violation of their right to a fair trial, and of a violation of their rights under Article 8 and Article 1 of Protocol No. 1. In addition, the fourth applicant complained of inconsistent practice of the Administrative Court, as, in the same set of circumstances, it had ruled differently in respect of his claim and in respect of his brother's claim (see paragraph 40 below).

30. On 2 September 2015 the Constitutional Court dismissed the first applicant's constitutional appeal in respect of the right to a fair trial and rejected it in respect of the complaints under Article 8 and Article 1 of Protocol No. 1.

31. In particular, the Constitutional Court found that the Administrative Court had provided acceptable reasoning for its conclusion that there had been no violation of law to the detriment of the applicant. The Constitutional Court found that a decision of 5 August 2010, which had been upheld, had allowed for the administrative transfer to the EPS – RBK of the land where the cemetery was located and that the proposal for the administrative transfer had been made on the basis of the Government's 1997 decision on public interest in expropriation (see paragraph 13 above). While the Government's decision of February 2009 had been quashed, the Government had issued another decision on 29 September 2011 establishing public interest in the administrative transfer of the land in question. The court thus considered

unfounded the applicant's argument that the quashing of the February 2009 decision had rendered the decision to close the cemetery null and void and that the RBK had not been authorised to request the exhumation of mortal remains and the relocation of graves. It also found that the first applicant had been invited to participate in the administrative proceedings and that he had given a statement about the relocation of his relatives' mortal remains. It further found that he had not relied on the ten-year mandatory rest period in his claim before the Administrative Court and could not therefore complain that that court had not given reasons in that regard. In view of its findings, the court decided that the first applicant's complaint of a violation of his right to a fair trial was unfounded.

32. The Constitutional Court further found that the first applicant's complaint under Article 8 of the Convention that there had been indications that the cemetery would immediately be repurposed before the expiry of the ten-year mandatory rest period "could not be put in relation to the content of the first-instance decision on exhumation of mortal remains or the judgment of the Administrative Court".

33. The court rejected the complaint under Article 1 of Protocol No. 1 and reiterated that the gravesites could not be the object of legal transactions (see paragraphs 52 and 62 below) and that the right to use a gravesite (*pravo korišćenja grobnog mesta*) had been in any event ensured by the relocation of the mortal remains to another cemetery.

34. Between 22 September and 15 October 2015 the Constitutional Court partly dismissed and partly rejected the other applicants' constitutional appeals, referring to the reasons given in respect of the first applicant.

35. As regards the fourth applicant's complaint (see paragraph 29 above), the Constitutional Court found that the Administrative Court had not dealt with the issue of inconsistency of the grave markers when ruling on his claim because he had not raised that issue in his claim before that court. In any event, as the brothers had been co-guardians of the gravesite in question and as the Administrative Court had quashed the decision in respect of the particular gravesites in the fourth applicant's brother's proceedings, any unlawfulness in respect of them could be rectified in a retrial. The court concluded that the fourth applicant had not provided arguments which would indicate that different rulings in the cases of the two brothers had amounted to a violation of the right to a fair trial.

36. As regards the seventh applicant's complaint that there had been two exhumation decisions in force, as the one for the previous guardian had not been revoked, the Constitutional Court found that, given that the applicant had been designated as the guardian of the relevant gravesites and that the exhumation had been executed, that circumstance had not affected the fairness of the proceedings and the applicant's right to a fair trial.

C. Other relevant facts

1. Other relevant facts related to the fourth applicant

37. On 3 November 2011 the Communal Affairs Department authorised the exhumation and relocation of four gravesites, including that of Matić Stojadin in grave no. 2002, for which there were no identified guardians. They were to be relocated to a single grave (A22-2/6 no. 9) in the L. cemetery. It is apparent from the material in the case file that on the same day an exhumation and relocation decision was also given in respect of Mitrović Zorka in grave no. 1996, in which that grave was ordered to be relocated to another grave (A22-2/6 no. 10) in the L. cemetery.

38. On 16 January 2012 the Communal Affairs Department authorised the exhumation and relocation of the fourth applicant's relatives' mortal remains and grave markers, including those of Mostić Stojadin[1] in grave no. 2002 and Mitrović Zorka in grave no. 1996. Both the fourth applicant and his brother appealed against this decision (see paragraphs 18 above and 40 below).

39. On 1 February 2012 the fourth applicant lodged a criminal complaint with the Public Prosecutor's Office in Belgrade against three persons for unlawful exhumation of the mortal remains of his two relatives, Mostić Stojadin and Mostić Zorka. It appears that that complaint was rejected on an unspecified date in 2013.

40. On 17 July 2012, in proceedings initiated by the fourth applicant's brother, the Administrative Court quashed the second-instance decision, delivered following his appeal in respect of the exhumation and relocation of the same deceased relatives, and remitted it for a fresh examination. It found, *inter alia*, that the identification numbers of the graves specified in the exhumation requests in respect of "Mostić Stojadin" and "Mitrović (Mostić) Zorka", nos. 5010 and 5014 respectively, had not corresponded to those in the first-instance decisions, graves nos. 2002 and 1996 respectively.

41. On 19 April 2013 the RBK requested the exhumation of "Mostić Stojadin, code 2002, and Mitrović Zorka, code 1996" from their existing graves in the L. cemetery and their relocation to other graves in the same cemetery. The request stated that it had been established that the decision of 3 November 2011 (see paragraph 37 above) had actually related to "Mostić Stojadin, code 2002" and that the fourth applicant and his brothers had declared themselves guardians of the gravesites of "Mostić Stojadin, code 2002, and Mitrović Zorka, code 1996".

2. Other relevant facts

42. The L. cemetery is approximately 6.5 km away from Vreoci.

[1] One deceased person was buried in grave no. 2002. In the decision of 3 November 2011 the relevant name was specified as "Matić Stojadin" and in the decision of 16 January 2012, and in the following decisions, it was specified as "Mostić Stojadin" (see paragraphs 37-41).

43. One of the first applicant's relatives and two of the second applicant's relatives were buried in 2003, 2004 and 2007, that is less than ten years before the decisions on the relocation of mortal remains and graves were given. All the other applicants' deceased relatives had been buried more than ten years before the exhumation and relocation of their graves.

44. The General Regulation Plan of 2008 (*Plan generalne regulacije za naselje Vreoci*, published in the Official Gazette of the City of Belgrade no. 54/2008), adopted by the Lazarevac administrative authority, provided for the relocation of the Vreoci local cemetery and listed all the activities necessary in that regard. It also provided that the organised relocation of the graves meant that the RBK would entirely relocate the graves and that it would cover all the related costs.

45. As from July 2010 the Relocation Committee used various means (birth and death certificate registers, church records, historical archive records, statements by the villagers and public calls published in newspapers and on the notice boards of the Lazarevac administrative authority) to invite all the persons who were potential guardians of gravesites to come forward in order to identify specific graves in connection with their relocation.

46. On 21 April 2011 the Ombudsman (*Zaštitnik građana*), acting on a complaint by the local community of Vreoci (*Savet Mesne zajednice*), found that the activities of the Lazarevac administrative authority and the RBK as the expropriation beneficiary had made it impossible for the inhabitants of Vreoci to peacefully use the cemetery, in particular, by the exhumation and forced relocation of the local cemetery without their consent and even though the conditions for the settlement relocation had not been established. The Ombudsman recommended that the cemetery be relocated in such a way as to resolve the issues that the inhabitants were facing. In particular, an agreement should be reached with the users of graves on how to resolve the issues relating to the relocation of their relatives' mortal remains. The relocation of the cemetery and the settlement should not be viewed only in respect of the public interest, but should also ensure that the fulfilment of that public interest was not to the detriment of the inhabitants' rights guaranteed by the Constitution and the legislation.

47. On 21 September 2011 the Ombudsman informed the local community of Vreoci that, as the Government's decision of February 2009 had been quashed (see paragraph 14 above), he had recommended that the Lazarevac administrative authority discontinue (*da prestane*) issuing decisions and any activities aimed at expropriation until the Government delivered another lawful decision on public interest. He had apparently also indicated to them that at that time there were no legal grounds for further expropriation, exhumation or relocation of the local cemetery.

48. Between 10 November 2011 and 10 July 2012 the sanitary inspector of the Ministry of Health issued relevant decisions specifying the sanitary conditions for the exhumations, including in respect of the mortal remains of

the applicants' relatives. There were no appeals lodged against those decisions.

49. Between 21 June and 5 July 2012 the Administrative Court delivered at least five more judgments in similar cases, likewise dismissing the claimants' claims.

RELEVANT LEGAL FRAMEWORK

A. Expropriation Act (*Zakon o eksproprijaciji*, published in the Official Gazette of the Republic of Serbia – OG RS - nos. 53/95, 16/2001, 20/2009, 55/2013 and 106/2016)

50. Articles 2, 8, 9 and 20, taken together, provide that the public interest in expropriation must be established by law or by means of a Government decision to that effect. This may be done in order to satisfy the needs of, *inter alia*, the Republic of Serbia, a town, a municipality or public companies. Through expropriation, the expropriation beneficiary acquires the right to use the real estate in question for the purposes for which the expropriation was carried out (*izvršena*). The Government may establish public interest in expropriation if, *inter alia*, it is needed for energy infrastructure or for the exploitation of raw mineral materials.

51. Article 70 provides that rights in respect of socially or State-owned real estate may be revoked or restricted and transferred to a different right holder, also socially or State-owned, if the public interest so requires ("an administrative transfer").

B. Burials and Cemeteries Act (*Zakon o sahranjivanjima i grobljima*, published in the Official Gazette of the Socialist Republic of Serbia – OG SRS – nos. 20/77, 24/85 and 6/89 and OG RS nos. 53/93, 67/93, 48/94, 101/2005, 120/2012 and 84/2013)

52. Article 17 provides that the company or the local community in charge of burials and cemetery maintenance must provide individual gravesites (plots of land) for use under conditions established by the municipal assembly. The gravesites cannot be the object of legal transactions (*ne može se stavljati u promet*).

53. Article 18 provides that the mortal remains of a deceased person must rest in a grave for at least ten years from the day of the burial. Family, relatives and other interested persons can extend the rest period of the mortal remains after this time-limit under conditions established by the municipal assembly. There can be no other burial in the same grave if this time-limit has not expired, save in cases established by the municipal assembly.

54. Article 19 provides that the mortal remains of a deceased person may be exhumed and transferred to another cemetery on condition that the consent

of a relevant municipal body and a relevant body in charge of sanitary inspection has been obtained and providing that a place for reburial is ensured in another cemetery. Paragraph 2 specifies that when the exhumation and the transfer of mortal remains are conducted before the expiry of an extended period for their rest, the expenses thereof are covered by the municipality which ordered the exhumation and the transfer.

55. Article 20 provides that a cemetery which has been closed, or part of such cemetery, may be used for other purposes in accordance with the urbanistic plan and the conditions set out therein after the expiry of the mandatory rest period for all graves or after the transfer of mortal remains from those graves for which an extended rest period for mortal remains has not yet expired.

C. Administrative Disputes Act 2009 (*Zakon o upravnim sporovima*, published in OG RS no. 111/2009)

56. Articles 4 and 6 provide, *inter alia*, that an "administrative act" is a decision adopted by a State body in the determination of one's rights and obligations concerning "an administrative matter".

57. Article 8 § 1 provides that administrative disputes shall be adjudicated by the Administrative Court.

58. Article 33 provides that the Administrative Court must rule on an administrative dispute on the basis of the facts established at an oral public hearing.

59. Article 42 § 1 provides, *inter alia*, that should the court rule in favour of the claimant, the impugned administrative decision must be quashed, fully or partially, and the matter must be remitted to the competent administrative authority for re-examination (*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 nature of the dispute in question allow for this particular course of action (*spor pune jurisdikcije*). Article 41 §§ 1 to 4 and Articles 61 and 62 provide details in respect of other situations in which a claimant's request may be decided on the merits.

D. Decision on Arranging and Maintaining Cemeteries and Burials (*Odluka o uređivanju i održavanju groblja i sahranjivanju*, published in the Official Gazette of the City of Belgrade nos. 27/2002, 30/2003, 11/2005, 18/2011, 17/2012, 44/2014, 11/2015 and 61/2015)

60. Article 5 of the decision provides that burials and the arrangement and maintenance of a cemetery are to be performed by a public utility company created for that purpose by the municipality or municipal administrative authority. The municipality or administrative authority may entrust some of the related tasks to another company or entrepreneur.

61. Article 9 provides that the company or entrepreneur must keep records of gravesites, graves and the names of the people buried in them and other relevant records.

62. Article 22 provides that the rights and obligations of those who are given the right to use a grave and the relevant company must be regulated by a written contract, which must be signed immediately and at the latest within six months as of the date when the deceased person was buried. It also specifies that the gravesites given for use cannot be the object of legal transactions.

63. Article 25 provides that in the event of the death of the user of the grave, the right to use it is to be passed on to his or her heir.

64. Article 26 provides that mortal remains must rest in a grave for at least ten years after the burial ("the period of mandatory rest"). Only the relatives specified in this Decision may be buried in the same grave before the expiry of that period, with the written consent of the user of the grave.

E. Decision to close the Vreoci local cemetery (*Odluka o stavljanju van upotrebe mesnog groblja u Vreocima*, published in the Official Gazette of the City of Belgrade no. 13/2009)

65. Article 2 § 2 of the decision provides that the cemetery land may be used for the purposes set out in the General Regulation Plan (see paragraph 44 above) only after the relocation of mortal remains from all graves to their new locations and after the removal, that is, the relocation of all gravestones and all other parts of the graves in accordance with the legislation in force. Article 3 provides that the mortal remains and gravestones will be relocated in an organised manner to the newly constructed L. cemetery or to other cemeteries individually chosen by the guardians. Article 5 provides that the RBK is to bear all the expenses related to the relocation.

F. Rulebooks on Conditions for and Methods of Exhumation and Transfer of Deceased Persons (*Pravilnik o uslovima i načinu iskopavanja i prenošenja umrlih lica*)

66. Article 4 of the 1976 Rulebook, published in OG SRS nos. 56/76 and 52/82, as in force at the material time, provided that a person buried in a wooden coffin could be transferred to another grave in the same town only in a metal coffin and to a different town only if a wooden coffin was placed in a metal coffin and then in another wooden coffin. The transfer of a deceased person who had been buried for more than ten years could be done either in a wooden or a metal coffin.

67. Article 4 of the 1985 Rulebook, published in the Official Gazette of the Socialist Federal Republic of Yugoslavia no. 42/85 and the Official Gazette of the State Union of Serbia and Montenegro no. 1/2003, as in force

at the material time, provided that a deceased person who was buried could only be transferred in a metal coffin which was placed in a wooden coffin, regardless of the means of transport. If a deceased person had been buried in a wooden coffin, after exhumation the body was to be placed in a metal coffin that had to be soldered and placed in a wooden coffin. The mortal remains which were exhumed in order to be transferred after the period of ten years from the funeral had to be placed in either a metal or a wooden coffin.

68. Both Rulebooks were in force from 4 February 2003 until 10 December 2016.

COMPLAINTS

69. The applicants complained about: (a) the exhumation and relocation of the local cemetery, in particular their deceased relatives' graves, without the applicants' consent and allegedly without their having been afforded adequate procedural safeguards in the related proceedings, and (b) an alleged violation of their property rights caused by the relocation. They relied on Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 respectively. In addition, the fourth applicant complained, under Article 6 of the Convention, of inconsistent practice of the domestic courts.

THE LAW

A. Joinder of the applications

70. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision (Rule 42 § 1 of the Rules of Court).

B. Article 8 of the Convention

71. The applicants complained that the exhumation of the mortal remains of their relatives and the relocation of their graves without the applicants' consent and without a possibility of effectively challenging it in any proceedings constituted an unlawful interference with their private and family life under Article 8 of the Convention. They raised the complaint about an alleged lack of adequate procedural safeguards also under Article 6 of the Convention.

72. The Court, being 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, § 126, 20 March 2018), considers that all the issues raised by the applicants in this context fall to be examined under Article 8 of the Convention (see, *mutatis mutandis*, *Adžić v. Croatia (no. 2)*,

no. 19601/16, §§ 68-69, 2 May 2019). The relevant part of Article 8 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."

1. The parties' submissions

(a) The Government

73. The Government acknowledged that there had been an interference with the applicants' rights under Article 8. They maintained, however, that the interference had been lawful and had been in response to public interest and a pressing social need – notably the production of electricity for households – and that it had been proportionate.

74. They submitted that all the necessary regulations and legal acts providing for the cemetery's relocation had been passed prior to the events in question (see paragraphs 6, 10, 11, 13, 15 and 44 above) and had been duly published in the relevant Official Gazettes. While the Government decision of February 2009 had indeed been quashed (see paragraph 14 above), that had not rendered the relocation of the cemetery unlawful, as there had been other Government's decisions establishing public interest in expropriation (see paragraph 15 above). In addition, the Lazarevac administrative authority had delivered a decision on the administrative transfer of the land in question to the RBK in August 2010 (see paragraph 13 above), which had given the RBK a direct legal basis on which to initiate exhumation and relocation proceedings. The Government argued that the ten-year period of mandatory rest had not been interrupted and referred to the relevant legal provisions and the domestic bodies' reasoning in that regard (see paragraphs 25 and 66 above). In addition, it had been only the first and second applicants who had been affected by this circumstance, as for the others this had not been the situation. They also maintained that the Ombudsman had not found any legally relevant irregularities in April 2011.

75. The Government asserted that the interference had pursued the legitimate aim of producing electricity and providing it to households and legal persons, thus ensuring the economic well-being of the country. There had been a pressing social need for it, as specified in the relevant decree (see paragraph 8 above). It had also been proportionate, as the applicants could choose the cemetery where their deceased relatives would be transferred, all the costs of the exhumation and the relocation had been borne by the RBK, and they had not had to pay for the use of the new gravesites, which were in a nearby cemetery. The Government maintained that the relocated gravesites

had been identical to the original ones in Vreoci, only the plot of land where they were located had been different.

76. The Government submitted that the relocation of the cemetery had been unavoidable, as the land had been expropriated for the further exploitation of coal reserves, and that the purpose of the administrative proceedings in question had been to identify the guardians of individual gravesites and give them an opportunity to choose where the graves should be relocated. The term "guardian of the gravesite" had indeed not been provided for by law, but had been attributed to the applicants precisely because the cemetery had not been legally regulated and in order to ensure the protection of their legitimate and reasonable interests during the relocation of the cemetery.

77. The Government also maintained that the applicants had been afforded the necessary procedural safeguards. In particular, they had had a fair hearing before the domestic bodies, which had not lacked independence or impartiality and whose reasoning had not been arbitrary.

(b) The applicants

78. The applicants submitted that the exhumation of their relatives' mortal remains and the relocation of their graves had constituted an unlawful interference with their rights under Article 8 of the Convention. In particular, the exhumations and relocation had been conducted without their consent and in violation of Articles 18, 19 and 20 of the relevant legislation (see paragraphs 53-55 above). The exhumations and relocation had also been unlawful, as the Government's decision of February 2009 on public interest in expropriation had been quashed, as confirmed by the Ombudsman (see paragraph 47 above). They also asserted that the RBK had not been authorised to request exhumations and that when the Relocation Committee could not establish the identity of the mortal remains buried in a grave, such remains would be buried in a collective grave in the L. cemetery, which was what had happened to some of the fourth applicant's relatives (see paragraphs 37-38 above).

79. They further maintained that they had not been afforded the necessary procedural safeguards. In particular, they could not effectively challenge the exhumations in the proceedings, but could only choose where the mortal remains of their relatives would be placed, which had been confirmed by the domestic bodies (see paragraphs 19 and 24 above). They had had no hearing before the first- and second-instance bodies in the administrative proceedings, the relevant bodies had not been impartial, their reasoning had been arbitrary and the interpretation of the relevant legal provisions had been unacceptable. In particular, the ten-year period of mandatory rest for mortal remains had not been complied with in respect of some of the first and second applicants' relatives and the domestic bodies' interpretation of that rest period – that the deceased did not have to rest in the same place – had been absurd. The

applicants further submitted that the fact that the Administrative Court and the Constitutional Court had accepted the term "guardian of the gravesite", which had not existed in the legislation and had been invented by the authorities, had also indicated a lack of impartiality on their part. They submitted that the local community had authorised its citizens, specifically the users of the gravesites, to ensure burials on their own, which was why the local community had not charged them for the use of the gravesites, but that had not refuted their legal status as the users of the gravesites.

80. The applicants also submitted that the interference in question had not been in the public interest, but only in the financial interest of the mining company, as the electricity produced was exported.

2. The Court's assessment

(a) Applicability of Article 8 of the Convention

81. The Government did not contest the applicability of Article 8 in the present cases, which concern the exhumation of deceased persons against the will of their family members and their transfer to another location. Regard being had to its case-law concerning surviving family members, the Court considers that the facts of the present case fall within the scope of the right to respect for private and family life (see, *mutatis mutandis*, *Solska and Rybicka v. Poland*, nos. 30491/17 and 31083/17, §§ 101-08, 20 September 2018, and the authorities cited therein; see also *Drašković v. Montenegro*, no. 40597/17, § 48, 9 June 2020, concerning specifically a request by a close relative to exhume the remains of a deceased family member for transfer to a new resting place).

(b) Whether there was an interference

82. The Government acknowledged that the exhumation of mortal remains and the relocation of the applicants' relatives' graves constituted an interference with their rights under Article 8 of the Convention (see paragraph 73 above).

83. The Court agrees that the exhumation of the mortal remains of the applicants' relatives and the relocation of their graves, carried out despite the applicants' objections, could be regarded as impinging on their relational sphere in such a manner and to such a degree as to disclose an interference with their right to respect for their private and family life (see *Solska and Rybicka*, cited above, § 110).

(c) Whether the interference was justified

84. In order to be justified under Article 8 § 2 of the Convention, any interference must be in accordance with the law, pursue one of the legitimate aims under that paragraph and be necessary in a democratic society (see

Pretty v. the United Kingdom, no. 2346/02, § 68, ECHR 2002-III, and *Glass v. the United Kingdom*, no. 61827/00, § 73, ECHR 2004-II).

(i) Whether the interference was in accordance with the law

85. The relevant principles in this connection are set out in *Solska and Rybicka* (cited above, §§ 112-13). In particular, the wording "in accordance with the law" requires the impugned measure both to have some basis in domestic law and to be compatible with the rule of law (see *Roman Zakharov v. Russia* [GC], no. 47143/06, § 228 *in limine*, ECHR 2015, and the authorities cited therein). The Court reiterates that the term "law", as it appears in the phrases "in accordance with the law" and "prescribed by law" in Articles 8 to 11 of the Convention, is to be understood in its "substantive" sense, not its "formal" one. It thus includes, *inter alia*, "written law", not limited to primary legislation but including also legal acts and instruments of lesser rank. In sum, the "law" is the provision in force as the competent courts have interpreted it (see *Vavřička and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, § 269, 8 April 2021, and the authorities cited therein).

86. The interference with the right to respect for private and family life must be based on a "law" that guarantees proper safeguards against arbitrariness. There must be safeguards to ensure that the discretion left to the executive is exercised in accordance with the law and without abuse of powers. The requirements of Article 8 with regard to safeguards will depend, to some degree at least, on the nature and extent of the interference in question. In a number of cases involving complaints under Article 8, the Court has found that proper legal safeguards against arbitrariness would necessitate the provision of judicial or other independent scrutiny of relevant measures affecting individuals (see *Solska and Rybicka*, cited above, § 113, and the authorities cited therein).

87. The Court notes that the decisions on the exhumation and transfer of the applicants' relatives' mortal remains were based on the relevant domestic legislation, in particular the Burial and Cemeteries Act and the decision on the closure of the cemetery (see paragraphs 17 *in fine*, 19, 24, 25 *in fine*, 53 and 64 above). It also observes that the exhumation and relocation requests as well as the RBK's standing to make such requests were based on the relevant expropriation decisions and decisions on the administrative transfer of the land (see paragraphs 6, 13, 19, 24 and 31 above). That being so, the Court is satisfied that the interference complained of had a legal basis in Serbian law.

88. The Court further observes that the domestic legislation does not require the consent of the users of graves for the exhumation of mortal remains and the relocation of graves nor does it specify who can request exhumation, except in a criminal context. It requires only the consent of

relevant bodies (see paragraph 54 above), all of which were duly obtained in the present case.

89. As regards the argument that the ten-year period of mandatory rest had not been complied with (see paragraph 79 above), the Court notes, firstly, that it was only the first and second applicants who could be considered to have been affected by that issue (see paragraph 43 above). Secondly, the Court notes that the domestic courts examined the applicants' explicit argument in that regard and found that the domestic legislation did not specify a period in which the exhumations could not be done, but rather regulated subsequent burials in the same grave (see paragraphs 25 and 53 *in fine* above). The Court does not find any indication of arbitrariness in the domestic courts interpretation, also in view of the relevant Rulebooks in force at the material time, which provided for different requirements for the transfer of a deceased person depending on whether the transfer was conducted before or after the expiry of the ten-year period (see paragraphs 66-67 above), thus implicitly indicating that exhumation and transfers of deceased persons were possible even before the expiry of the ten-year period. Lastly, the Court notes that the domestic bodies also held that the relevant provisions required only the consent of the relevant bodies (see paragraphs 19 and 24-25 above), which no party argued had not been obtained in the present case. The Court reiterates that it is not its task to take the place of the domestic courts, it being primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, among other authorities, and *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 49, 20 October 2011).

90. However, the applicants did not agree with the exhumation and the relocation of the graves and considered it unlawful, which were the issues that required clarification by the domestic bodies (contrast *Drašković*, cited above, § 54). They also contested the fairness of the relevant proceedings (see paragraph 79 above). In this context the Court will examine whether the law provided proper safeguards against arbitrariness (see paragraph 86 above).

91. The Court notes in that connection that, even though the first- and second-instance administrative bodies apparently did not hold a hearing, the applicants made statements about the exhumation and relocation of individual graves and expressed their objections before the Relocation Committee (see paragraph 16 above). They were also given an opportunity to put forward their case in writing in their appeals and administrative claims (see paragraphs 18 and 23 above; see also, *mutatis mutandis, Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 74, ECHR 2007-II). In any event, however, the first- and second-instance administrative decisions were subject to subsequent control by the Administrative Court, which had full jurisdiction (see paragraph 59 above) and which held oral hearings in all their cases (see paragraph 24 above), thus remedying any potential failing in that regard (compare, albeit in the context of Article 6, *Denisov v. Ukraine* [GC],

no. 76639/11, §§ 65 and 67, 25 September 2018; *De Haan v. the Netherlands*, 26 August 1997, §§ 52-55, *Reports* 1997-IV; *Helle v. Finland*, 19 December 1997, § 46, *Reports* 1997-VIII; and *Crompton v. the United Kingdom*, no. 42509/05, § 79, 27 October 2009).

92. The Administrative Court considered all the applicants' relevant submissions point by point, including the specific complaints of the fourth and seventh applicants (see paragraphs 24-28 above), without having to decline jurisdiction in replying to them (see, *mutatis mutandis*, *Potocka and Others v. Poland*, no. 33776/96, § 57, ECHR 2001-X). It also gave its reasoning for its findings, which the Court does not consider arbitrary or unreasonable. Lastly, when the court found it justified, it quashed a previous decision and ordered a re-trial (see paragraph 40 above). The Court reiterates, as noted above, that it is not its task to take the place of the domestic courts, it being primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see paragraph 89 *in fine* above). There is also nothing in the case file to indicate that any of the judges displayed personal bias or that there were any objectively justified fears that any of the judges involved, or the tribunal itself, lacked impartiality.

93. The Court notes that the Relocation Committee was an ad-hoc body established to deal with practical and technical issues and it did not participate in the decision-making process (see paragraph 12 above). The local administrative authority had its representatives on that Committee, who were remunerated by the RBK (ibid.). These representatives, however, have never been involved in the decision-making process at any point.

94. Having regard to the foregoing considerations, the Court concludes that Serbian law provided sufficient safeguards against arbitrariness with regard to the local authorities' decisions ordering the exhumation and relocation of gravesites.

95. In view of the considerations above, the Court is satisfied that the interference complained of was in accordance with law.

(ii) Whether the interference had a legitimate aim

96. The Government submitted that the interference in question had pursued a legitimate aim, notably the production of electricity and satisfying the increased consumption of electricity and, as such, had served the economic interests of the country as a whole.

97. The Court has already found that, in accordance with the second paragraph of Article 8, economic well-being constitutes a legitimate aim (see, *mutatis mutandis*, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 121, ECHR 2003-VIII).

(iii) Whether the interference was necessary in a democratic society

98. The relevant principles in this regard are set out in, for example, *Vavřička and Others* (cited above, §§ 273-75). In particular, an interference will be considered "necessary in a democratic society" for the achievement of a legitimate aim if it answers a "pressing social need" and, in particular, if the reasons adduced by the national authorities to justify it are "relevant and sufficient" and if it is proportionate to the legitimate aim pursued (ibid., § 273 *in limine*). It is primarily the responsibility of the national authorities to make the initial assessment as to where the fair balance lies in assessing the need for an interference in the public interest with individuals' rights under Article 8 of the Convention. Accordingly, in adopting legislation intended to strike a balance between competing interests, States must in principle be allowed to determine the means which they consider to be best suited to achieving the aim of reconciling those interests (ibid.). That assessment by the national authorities remains subject to review by the Court, which makes the final evaluation as to whether an interference in a particular case is "necessary", as that term is to be understood within the meaning of Article 8 of the Convention (ibid.). The Court reiterates that the respondent State's margin of appreciation will usually be wide if it is required to strike a balance between competing private and public interests or Convention rights (ibid., § 275).

99. The Court notes that in the present case the applicants' interest in ensuring the sanctity of their relatives' graves had to be weighed against the society's interest in ensuring the stability of the electric energy supply in the country. In the Court's view, this is such an important and sensitive issue that the States should be afforded a wide margin of appreciation (compare *Elli Poluhas Dödsbo v. Sweden*, no. 61564/00, § 25, ECHR 2006-I). It also notes that there may be circumstances in which exhumation is justified, despite opposition by the family (see *Solska and Rybicka*, cited above, § 121 *in fine*).

100. The Court observes that it was on the basis of the Serbian Parliament's Energy Development Strategy from 2005 that a relevant decree was adopted in 2007, which decree provided that the entire settlement, including the cemetery, needed to be relocated in order to enable the exploitation of the coal reserves in order to provide the necessary electricity for households (see paragraphs 7-8 above). The relevant domestic documents specified that this was necessary because the quantities of coal available in another part of the basin were running out and there was an increase in the consumption of electricity which needed to be satisfied urgently, as otherwise the consequences could be particularly grave (see paragraphs 8-9 above). In the circumstances of the present case, the expansion of the coal-mining basin could not have been attained through less restrictive means, as it was pre-determined by the diminishing coal reserves in another part of the basin and the location of the additional coal reserves. Although the domestic bodies held that the applicants could not object to the exhumation and relocation as such they nevertheless gave consideration to the applicants' interests within

the framework chosen. They examined all the applicants' relevant submissions and reviewed both the lawfulness of the impugned decisions and the necessity of the impugned measure (see paragraphs 19-21 and 24-28 above). The Administrative Court, in particular, found that the relocation in question had aimed to ensure the stability of the supply of electricity, which it considered to be a legitimate aim (see paragraph 24 above). It also examined in detail the lawfulness of the interference and found it lawful (see paragraphs 25-28 above). The Court considers that the national authorities acted within the wide margin of appreciation afforded to them in such matters, given that they had taken all the relevant circumstances into consideration and had weighed them carefully against each other, giving relevant and sufficient reasons for their decision (compare *Elli Poluhas Dödsbo*, cited above, § 28). There were also a number of accompanying measures which sought to attenuate the impact of the measures in question. In particular, another newly-built cemetery – situated at a reasonable distance – was allocated for the relocation of the Vreoci local cemetery (see paragraphs 11, 42 and 65 above). The applicants could also opt for any other cemetery of their own choosing (see paragraphs 11, 26 *in fine* and 65 above). Also, the expropriation beneficiary organised the exhumation and the relocation and bore all the costs related thereto (see paragraphs 9, 11 and 65 *in fine* above). It also took measures to rectify the established irregularities (see paragraphs 37 and 40-41 above). The relevant sanitary inspector issued all the necessary instructions regarding the sanitary conditions relevant for the relocation (see paragraph 48 above), to which there were no objections, either on the domestic level or before the Court. There were no issues as to whether the exhumation and relocation, in practical terms, were possible and/or easy and whether there were any public-health interests involved.

101. In view of the considerations above, the Court is satisfied that the interference complained of was necessary in a democratic society. The Court finds that it answered a pressing social need and was proportionate to the legitimate aim pursued. It also finds that the reasons adduced by the national authorities to justify it were relevant and sufficient.

(d) The Court's conclusion

102. In view of the considerations above, in particular that the interference in question was in accordance with the law, that it pursued a legitimate aim and that it was necessary in a democratic society, the Court considers that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Article 6 of the Convention

103. The fourth applicant complained of inconsistent practice of the domestic courts. He relied on Article 6 of the Convention, the relevant part of which reads as follows:

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

1. The parties' submissions

104. The Government submitted that Article 6 was not applicable in the present case and that, in any event, the fourth applicant's complaint was manifestly ill-founded.

105. The fourth applicant reaffirmed his complaint and submitted, in particular, that the Administrative Court had ruled differently in the proceedings initiated by his brother regarding the same set of circumstances (see paragraph 40 above).

2. The Court's assessment

106. The Court does not find it necessary to examine whether Article 6 is applicable as, even assuming that it is (see *Drašković*, cited above, § 61), it finds the applicant's complaint inadmissible for the following reasons.

107. The relevant principles in respect of inconsistent practice of domestic courts are set out in, for example, *Nejdet Şahin and Perihan Şahin* (cited above, §§ 49-58) and *Lupeni Greek Catholic Parish and Others v. Romania* ([GC], no. 76943/11, § 116, 29 November 2016). In particular, the Court has found that only profound and long-standing differences in the practice of the highest domestic court may be contrary to the principle of legal certainty (see *Nejdet Şahin and Perihan* Şahin, cited above, § 53).

108. Turning to the present case, the Court notes that the fourth applicant pointed to only one divergent decision, the one which the Administrative Court delivered in his brother's case (see paragraph 40 above). The particular point on which they differed related to the two particular gravesites specific to the fourth applicant and his family only. The Court also observes that the Administrative Court ruled in the other applicants' cases and in some other cases, giving consistent decisions (see paragraph 49 above). However, in the other cases the Administrative Court did not have to entertain the issue specific to the fourth applicant, therefore those judgments are irrelevant for the examination of the fourth applicant's separate complaint. As in the present case only one decision of the Administrative Court differed from the one delivered in the fourth applicant's case, the Court considers that it did not amount to "profound and long-standing differences" which would be contrary to the principle of legal certainty.

109. Accordingly, the fourth applicant's complaint under Article 6 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

D. Article 1 of Protocol No. 1

110. The applicants complained that the relocation of their relatives' graves had violated their rights under Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "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 parties' submissions

(a) The Government

111. The Government submitted that the applicants' complaint under Article 1 of Protocol No. 1 was incompatible *ratione materiae*, as the applicants had had no property or financial interests in respect of the gravesites and given that the gravesites could not be the object of legal transactions. They maintained that none of the applicants had had either a contract with the local community or any other legal act on which to rely in respect of using the graves, nor had they paid for using them. The Government contested the applicants' submission that the local community had authorised the inhabitants to perform the burials, as they had submitted no decision to that effect.

(b) The applicants

112. The applicants reaffirmed their complaint. They submitted that the right to use a gravesite was a kind of a property right, in particular as it was inherited (see paragraph 63 above), and that the relocation of gravesites constituted an unlawful interference with their property right. The applicants further maintained that the gravesites had been the property of the local community or some of the local burial companies but that the users of gravesites had certain property rights because they had paid on a monthly basis for using them. The local community in the present case had authorised its citizens, that is, the users of the graves, to ensure burials on their own, which was why the local community had not charged them for the use of the gravesites. However, this did not refute their legal status as users of the graves.

2. The Court's assessment

113. The Court reiterates that an applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his or her "possessions" within the meaning of this provision. The concept of "possessions" has an autonomous meaning which is independent from the formal classification in domestic law (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 60, ECHR 2000-XII). "Possessions" within the meaning of Article 1 of Protocol No. 1 can be either "existing possessions" or assets, including claims, in respect of which an applicant can argue that he or she has at least a "legitimate expectation" that they will be realised, that is, that he or she will obtain effective enjoyment of a property right. A claim may be regarded as an asset only when it is sufficiently established to be enforceable (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 49, ECHR 2004-IX). No "legitimate expectation" can come into play in the absence of a claim sufficiently established to constitute an asset (see *Bata v. the Czech Republic* (dec.), no. 43775/05, § 70 *in fine*, 24 June 2008).

114. Turning to the present case, the Court notes that the gravesites in question were not the applicants' property nor could they have been the object of legal transactions (see paragraphs 52 *in fine*, 62 *in fine* and 112 above). Even the formally recognised users of gravesites had to pay for using them but could not buy them. The applicants, however, did not dispute that they had never entered into any contracts allowing them to use the graves and that they had never actually paid for using them. While they stated that the local community had allowed them to organise burials on their own, they submitted no evidence in that regard. The applicants, therefore, never had any property rights in respect of the individual gravesites or had ever exercised any owner's rights in respect of them, nor did they have a legitimate expectation to obtain property rights or any other claim which was sufficiently established and enforceable. They cannot therefore argue that they had a "possession" within the meaning of Article 1 of Protocol No. 1. Consequently, the facts of the case do not fall within the ambit of Article 1 of Protocol No. 1. Accordingly, this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 15 February 2024.

Ilse Freiwirth Registrar	Gabriele Kucsko-Stadlmayer President

Appendix

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality
1.	3000/16	Beljić v. Serbia	04/01/2016	**Čedomir BELJIĆ** **(the first applicant)** 1973 Belgrade Serbian
2.	7189/16	Milinković and Others v. Serbia	22/01/2016	**Miroljub MILINKOVIĆ** **(the second applicant)** 1962 Vreoci Serbian **Nebojša MITROVIĆ** **(the third applicant)** 1970 Vreoci Serbian **Gvozden MOSTIĆ** **(the fourth applicant)** 1947 Vreoci Serbian **Dejan RANKOVIĆ** **(the fifth applicant)** 1976 Vreoci Serbian **Ljiljana STOJANOVIĆ** **(the sixth applicant)** 1956 Vreoci Serbian

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality
				Mihailo STOJANOVIĆ **(the seventh applicant)** 1958 Vreoci Serbian **Željko STOJKOVIĆ** **(the eighth applicant)** 1975 Vreoci Serbian