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European Convention on Human Rights from the perspective of the Republic of Serbia**

ABSTRACT: This article explores the role of the European Convention on Human Rights (ECHR) in the constitutional and legal order of the Republic of Serbia. It outlines the historical development of the constitutional guarantees of human rights and the gradual incorporation of international human rights standards into domestic constitutional law. The paper discusses the constitutional stratus of the ECHR and the obligation of the domestic authorities to interpret national law in accordance with the case-law of the European Court of Human Rights. Particular focus is placed on the role of the Constitutional Court as a key domestic mechanism for the protection of Convention rights. The paper analyses selected landmark cases against Serbia and highlights the transformative effect of the ECtHR jurisprudence on national law and judicial practice. The paper concludes that effective implementation of the Convention remains essential for ensuring sustainable human rights protection in Serbia.

KEYWORDS: European Convention on Human Rights, European Court of Human Rights, Republic of Serbia; constitutional system, national human rights protection, constitutional complaint, landmark cases of the ECtHR.

1. Historical development of human rights in Serbia

The historical context and various forms of state in which Serbia has existed and functioned in the last two centuries have affected the development and constitutionalisation of human rights in the country. Although the idea of human rights has its roots in the early stages of the medieval Serbian state[1]

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[1] The document most often considered as the first written text in Serbia that provided and safeguarded what was to become of modern human rights is Dušan's code from 1349. [Online]. Available at: https://www.harmonius.org/sr/pravni-izvori/jugoistocna-evropa/javno-pravo/srbija/Dusanov_zakonik.pdf (Accessed: 16 December 2025).

and human rights were recognised by the Ottoman Empire that once ruled Serbia, the establishment and development of human rights are usually linked to the emergence of modern Serbian constitutionalism.

Several historical periods of Serbian constitutionalism can be distinguished from textbooks on constitutional law.[2] From 1835 to 1918, the Principality of Serbia and the Kingdom of Serbia experienced their first period of constitutionalism. The second period occurred in the first Yugoslav state – the Kingdom of Serbs, Croats and Slovenes (renamed the Kingdom Yugoslavia from 1929) – of which Serbia was an integral part; it lasted from 1918 to 1941. The next phase of constitutionalism took place in the second Yugoslav state, and lasted from 1943 to 2003. Serbia's modern constitutional period began with the fall of the Yugoslav state and the breakup of the State Union of Serbia and Montenegro. Each of these periods is characterised by the adoption of several constitutions; from 1835 to the present, Serbia has enacted numerous constitutions that recognised and incorporated human rights as an integral part of constitutional documents. Yet, the scope of human rights and their protection differed according to the context and circumstances accompanying the adoption of each new constitution.

Six constitutions were declared during the first phase of constitutionalism; three were promulgated under the Ottoman Empire, and three were proclaimed following Serbia's independence in 1878 after the Berlin Congress. The first Serbian Constitution, also known as the Sretenjski Constitution, was adopted in 1835, when Serbia was granted the special status of internal autonomy within the Ottoman Empire and established internal governance under this special status. Despite its brief implementation, it remains an important symbol of Serbia's aspiration for independence and modernisation, and represents the first written constitutional document that included provisions on human rights.[3] Chapter 11 of this Constitution declared 23 articles on the so-called rights and liberties of citizens – although it failed to include a guarantee of traditional political rights[4] – including the right to a fair trial, the right to property, freedom of movement and residence, the inviolability of the home, and the

[2] Marković, 2009, pp. 91-147; Simović and Petrov, 2018, pp.61-83; Petrov, 2022, pp. 73-86.
[3] On the importance of the Sretenje Constitution and its similarities with *Magna Carta Libertatum*, see Avramović, 2010, pp. 37-65.
[4] Petrov, 2022, p. 75.

right to choose one's occupation. Equal protection under the law and before courts was also guaranteed, as was the *ne bis in idem* principle.

Adopted in 1838, the second Serbian Constitution – also known as the Turkish Constitution – established the fundamental requirements for the autonomous status of the Serbian vassal principality.[5] The 14 articles of this Constitution, which guaranteed the right to appeal, freedom of trade, freedom of religion, inviolability of property, protection from unjustified prosecution and harassment, and the declaration of the principle of individual criminal responsibility, regulated human rights in a more "limited" manner. [6]

The Viceroy's Constitution of 1869, the third Serbian Constitution,[7] lacked the human rights provisions that were essential "to obtain a free citizen".[8] One significant achievement was the first-ever guarantee of freedom of expression. However, rights and freedoms could be restricted by law, and suspended in the event of an immediate threat to public safety.

The declaration of independence at the 1878 Berlin Congress marked the beginning of the Kingdom of Serbia's constitutionalism, which resulted in significant progress in the domain of human rights. Three constitutional texts were adopted between the Berlin Congress, the end of the Serbian Kingdom, and the establishment of the first Yugoslav state (the Kingdom of Serbs, Croats and Slovenes). The first was the Kingdom of Serbia's 1888 Constitution, popularly referred to as the Radical Constitution.[9] This modern constitution included provisions on basic human rights in significantly greater depth than earlier ones and established all rights and freedoms as directly applicable based on the Constitution. Notably, in addition to the well-known individual and civil rights, it also introduced the first political rights such as the freedom of the press, freedom of assembly, and freedom of association. The April Constitution of 1901[10] and the Parliamentary

[5] For more on the Turkish Constitution, see Radojević, 2010b, pp. 411-426.
[6] Ibid, p. 421.
[7] For more on the Namesnički/Viceroy's Constitution, see Radojević, 2010a, pp. 457-486 and Krstić-Mistridželović, 2018, pp. 267-286.
[8] Marković, 2009, p. 99.
[9] [Online]. Available at: https://ius.bg.ac.rs/wp-content/uploads/2020/11/USTAV-KRALjEVINE-SRBIJE-1888.pdf (Accessed: 16 December 2025).
[10] [Online]. Available at: https://www.uzzpro.gov.rs/doc/biblioteka/digitalna-biblioteka/1901-ustav-kraljevine-srbije.pdf (Accessed: 16 December 2025) and Pavlović, 2013, p. 513.

Constitution of 1903,[11] the two subsequent constitutions of the Kingdom of Serbia, did not introduce any significant improvements concerning the recognition and protection of human rights.

After the First World War, when the Kingdom of Serbia was incorporated into the newly formed Kingdom of Serbs, Croats and Slovenes in 1918 (the Kingdom of Yugoslavia from 1929), Serbia continued to safeguard human rights within this first Yugoslav state.[12] The Vidovdan Constitution of 1921,[13] the first constitution of the Kingdom of Serbs, Croats, and Slovenes, proclaimed generally recognised civil and political rights; nevertheless it guaranteed them only in accordance with the law – that is, subject to potential restrictions prescribed by law.[14] The document was innovative in its acknowledgement of fundamental socioeconomic rights and duties in a separated section[15]; however, they were reserved for the legislator's discretion rather than being applied directly in accordance with the Constitution.[16]

Following the constitutional crisis, the 1931 Constitution was adopted. It formally remained in force until 1946, when the monarchy was overthrown and Serbia became part of the newly established second Yugoslav communist state. The 1931 Constitution included individual or civil and political rights and freedoms that were earlier known and protected; nevertheless, it provided fewer social and economic rights compared to the 1921 Constitution.

After the Second World War, Serbia became one of the six republics of the newly established second (communist) Yugoslav federative state, where human rights continued to be recognised within both the republican and federal constitutions.[17] The first constitution of this newly established

[11] [Online]. Available at: https://projuris.org/wp-content/uploads/2022/09/Ustav-Kraljevine-Srbije-1903.pdf (Accessed: 16 December 2025).

[12] From 1918 until 1941, the Yugoslav state was a unitary state; from 1943 until 1992, it was a federal state, see Marković, 2009, p. 99.

[13] [Online]. Available at: https://radnici.ba/wp-content/uploads/2018/04/Ustav-kraljevine-SHS_Vidovdanski-ustav-1921.pdf (Accessed: 16 December 2025).

[14] For more on the Vidovdan Constitution, see Jevtić, 1988.

[15] Simović and Petrov, 2018, p. 96.

[16] Marković, 2009, p. 115; Petrov, 2022, p. 82.

[17] When federal constitutions were approved during the Second Yugoslavia, Serbia's republican constitutions were also adopted concurrently, namely, the People's Republic of Serbia Constitution from 1947, the Socialist Republic of Serbia Constitution from 1963, the Socialist Republic of Serbia Constitution from 1974, and the Republic of Serbia Constitution from 1990. This paper examines the protection of human rights guaranteed by

state, the 1946 Constitution of the Federative People's Republic of Yugoslavia,[18] reflected the accomplishments of the socialist revolution; legislation was strongly influenced by the 1936 Soviet Constitution, as indicated by its limited list of recognised human rights.[19]

The next Yugoslav Constitution, adopted in 1963,[20] consolidated the idea of socialist self-government; the principle of self-government permeated the entire Constitution.[21] Its legacy was an extensive list of social and economic rights, centred on the working class's freedom from all forms of exploitation and arbitrariness, and social self-government and solidarity. A second important contribution of this Constitution was the establishment of federal and republican constitutional courts, and the creation of the first mechanism for the protection of individual human rights.[22]

The 1974 federal Constitution[23] recognised previously guaranteed rights and freedoms of "men and citizens",[24] particularly social and economic rights. All rights and freedoms were subject to the interests of other individuals and by the constitutionally specified socialist community interests. Freedom of scientific, cultural and artistic creativity was proclaimed, and the protection and improvement of the environment was introduced. Some provisions of this Constitution regarding the status of the federal unit are often considered a key factor in the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY).[25] After the collapse of the second Yugoslav state, the remaining two federal republics, Serbia and Montenegro, created the so-called third Yugoslav state, which had two constitutional documents – that of 1992 and 2003.[26]

Yugoslavia's federal constitutions because of Serbia's status as a federative unit within Second Yugoslavia and the power granted to the federal state. Moreover, federative units' constitutions had to conform with the federal constitution.

[18] [Online]. Available at: https://www.pfsa.unsa.ba/pf/wp-content/uploads/2019/05/Ustav-SFRJ-iz-1963.pdf (Accessed: 16 December 2025).

[19] Simović and Petrov, 2018, p. 72.

[20] [Online]. Available at: https://www.pfsa.unsa.ba/pf/wp-content/uploads/2019/05/Ustav-SFRJ-iz-1963.pdf (Accessed: 16 December 2025).

[21] Petrov, 2022, p. 84.

[22] Ibid, p. 84.

[23] [Online]. Available at: https://www.worldstatesmen.org/Yugoslavia-Constitution1974.pdf (Accessed: 16 December 2025).

[24] Chapter III.

[25] Simović and Petrov, 2018, p. 75

[26] First was 1992 Constitution of the Federative Republic of Yugoslavia, and second was 2003 Charter of the State Union of Serbia and Montenegro.

Concurrently, in 1990, the Constitution of the Republic of Serbia was adopted. This document marked a "most significant qualitative shift" in the domain of human rights protection.[27] The importance of this Constitution is reflected in the extensive list of guaranteed rights, and the quality of the guarantees. The catalogue of guaranteed rights "was realistic"[28] and included all internationally recognised civil and political rights and freedoms, as well as economic and social rights.

Finally, after the dissolution of the State Union, the current Serbian Constitution of 2006 was adopted. It expanded on the prior Constitution to generate the most comprehensive list of guaranteed rights and freedoms.[29] This Constitution also strengthened the protection of rights by giving a special constitutional status to the previously established institution of the Ombudsman,[30] and introduced an effective mechanism for the direct protection of human rights – a constitution appeal before the Constitutional Court.

2. The Council of Europe and Republic of Serbia

Despite being among the founding members of the United Nations,[31] Yugoslavia's relationship with the Council of Europe (CoE) was far more complicated, and the country joined the CoE much later. Although the CoE was conceived as a regional European organisation that would gather all European countries around common goals – democracy, the protection of human rights, and the rule of law[32] – for years, the "doors of the Council of Europe"[33] remained closed to many European nations, including Yugoslavia, of which Serbia was a part. The cooperation and relationship between Yugoslavia and the CoE went through several phases across many

[27] Simović and Petrov, 2018, p. 78.
[28] Petrov, 2022, p. 87.
[29] Simović and Zekvica, 2023, p. 252.
[30] Law on the Protector of Citizens was adopted in 2005 (Official Gazette, no. 79/05, 54/07) and became a constitutional institution with the 2006 Constitution.
[31] The Democratic Federal Yugoslavia was one of the founding members of the United Nations in 1945. Following the dissolution of Yugoslavia, Serbia (then known as the Federal Republic of Yugoslavia) reapplied for membership and was admitted to the UN in 2000.
[32] The Statute of the CoE. [Online]. Available at: https://rm.coe.int/1680306052 (Accessed: 16 December 2025).
[33] Milikić, 2014, p. 279.

years, nearly from the organisation's founding until Yugoslavia's (i.e., Serbia and Montenegro's) admission in 2003.

During the first phase, which lasted from 1949 to 1960, the CoE established its first, "somewhat tentative"[34] connection with the Yugoslav leadership and attempted to bring the then-communist state ideologically closer to the organisation founded on Western values. Yugoslavia was mentioned positively in CoE reports, and the organisation was mentioned in speeches and addresses by Yugoslav officials; yet, no formal requests for admission were submitted.[35] Across the second phase, which lasted from 1961 until 1970, relations generally weakened, as the Yugoslav foreign policy remained committed to the Non-Aligned Movement.[36] Relations improved after the events of 1968,[37] and the CoE provided access to Eastern European nations with more liberal systems of government such as Yugoslavia, which embraced the invitation to cooperate and establish relationships at the intergovernmental level on non-political issues.[38] In the next phase, between 1971 and 1980, relations developed progressively, and it is particularly significant that in 1977, Yugoslavia became the first country in Eastern Europe to join three CoE conventions as a non-member.[39] In the following decade, Yugoslavia received special status within the Parliamentary Assembly (PACE) of the CoE, ratified the European Cultural Convention (ETS No. 018)[40] and in 1990, requested full membership in the organisation.[41] However, the 1991 disintegration of the

[34] Ibid, p. 280.
[35] Ibid, 2014, pp. 119-266.
[36] Milikić, 2017, pp. 17-115.
[37] The Warsaw Pact countries – the Soviet Union, Bulgaria, East Germany, Hungary, and Poland –invaded Czechoslovakia on 20 August 1968, in order to stop the reforms leading to political liberalization.
[38] See Milikić, 2017, p. 112.
[39] The European Convention on the Equivalence of Diplomas leading to Admission to Universities (ETS No. 015), the European Convention on the Equivalence of Periods of University Study (ETS No. 021) and the European Convention on the Academic Recognition of University Qualifications (ETS No. 032). [Online]. Available at: https://www.coe.int/en/web/conventions/by-member-states-of-the-council-of-europe?module=treaty-detail&treatynum=021 and https://www.coe.int/en/web/conventions/by-member-states-of-the-council-of-europe?module=treaty-detail&treatynum=032 (Accessed: 16 December 2025).
[40] [Online]. Available at: https://www.coe.int/en/web/conventions/by-member-states-of-the-council-of-europe?module=treaty-detail&treatynum=018 (Accessed: 16 December 2025).
[41] Milikić, 2012, pp. 21-111.

state and the Yugoslav conflict ultimately halted the membership process. After 2000, when Serbia and Montenegro were formed as a new State Union and the political scene in Serbia shifted, the admission process to the CoE resumed.[42] After a long period of variable cooperation and interaction with the CoE, the State Union[43] – at the time comprising Serbia and Montenegro – became a full member of the organisation on 26 March 2003. However, after a referendum on independence was held in Montenegro three years later, Serbia's Parliament declared the country's restoration to independence. The State Union ceased to exist, and Serbia remained a full member of the CoE as a legitimate successor to the State Union.

By joining the organisation, Serbia accepted the Statute of the CoE and simultaneously acceded to the European Convention for the Protection of Human Rights and Fundamental Freedoms – the most important document on human rights in Europe – and all additional protocols. Moreover, Serbia has signed and ratified numerous additional CoE treaties since joining the organisation, including the European Convention on Extradition (ETS No. 024), the European Convention on Mutual Assistance in Criminal Matters (ETS No. 030), the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS No. 051), European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (ETS No. 082), the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (ETS No. 105), the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), the Convention on the Transfer of Sentenced Persons (ETS No. 112), the European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), the Framework Convention for the Protection of National Minorities (ETS No. 157), the European Social Charter (revised) (ETS No. 163), Council of Europe Convention on the Prevention of Terrorism (CETS No. 196), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201),

[42] Ibid, pp. 111-161.
[43] The State Union of Serbia and Montenegro existed from 4 February 2003 to 5 June 2006.

and the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210).[44]

3. Position of the ECHR and practice of the ECtHR in the legal system of the Republic of Serbia[45]

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR or Convention) was signed by the State Union of Serbia and Montenegro on 3 April 2003, ratified on 26 December 2003, and entered into force with respect to Serbia on 3 March 2004. As a member of the State Union, Serbia included the ECHR in its legal framework. In line with Article 60 of the Constitutional Charter,[46] Serbia, as the legitimate successor to the State Union after its dissolution, acquired membership in the CoE and the ECHR, which raised the "issue of the constitutional legal importance of the European Convention within the constitutional system of the Republic of Serbia".[47]

There is no legal obligation to incorporate the Convention into the domestic legal system, and Contracting States retain the discretion to determine its place and status in their national legal systems.[48] According to Article 1 of the Convention, and the general obligation of the State to respect and secure human rights, the substance of the rights and freedoms outlined in the Convention must be secured, in some form, under the domestic legal order for everyone within the jurisdiction of the Contracting States.[49] Another positive obligation of the Contracting States, under Article 13 of the ECHR, is to guarantee the availability of an effective remedy at

[44] For the list of all CoE Conventions signed and ratified by Serbia, see, [Online]. Available at: https://www.coe.int/en/web/conventions/by-member-states-of-the-council-of-europe?module=treaties-full-list-signature&CodePays=SAM&CodeSignatureEnum=&DateStatus=&CodeMatieres= (Accessed: 16 December 2025).

[45] Some of the points from the author's previously published article are used in the Chapter 3; see Plavšić, 2019.

[46] [Online]. Available at: http://demo.paragraf.rs/demo/combined/Old/t/t2005_06/t06_0210.htm (Accessed: 16 December 2025).

[47] Nastić, 2009, p. 499.

[48] Ibid, p. 503.

[49] *Case of Lithgow and others v. UK*, App. Nos. 9006/80; 9262/81; 9263/81; 9265/81; 9266/81; 9313/81; 9405/81, 8 July 1986, § 205.

the domestic level – a national mechanism for the protection of human rights. The protection provided by Article 13 does not go so far as to require any particular form of remedy, since the Contracting States are being afforded a margin of discretion in conforming to their obligations under this provision.[50]

The 2006 Serbian Constitution does not specifically mention the Convention; however, the ECHR's status, place, and function within the Serbian constitutional legal system are implicitly regulated by general constitutional rules governing the status and position of all ratified international treaties. Several constitutional provisions are relevant in this regard.[51]

The Serbian Constitution is clearly based on the monistic principle,[52] and the Convention – as the most important and, certainly, the most effective international instrument on human rights – is an integral part of the Serbian legal system and directly applicable.[53] The Convention is situated between the Constitution and laws –placed directly under the Constitution but with greater legal authority than laws[54] – and national authorities interpret the Constitution to avoid inconsistencies between national and international rules.[55] The Serbian Constitution also emphasises the direct application of ratified international treaties by the courts, indicating that courts must base their decisions on the Constitution, laws, and ratified international treaties.[56] This means that Serbian courts are empowered to

[50] *Case of Budayeva and Others v. Russia*, App. Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, 20 March 2008, § 190.

[51] [Online]. Available at: https://www.paragraf.rs/propisi/constitution-of-the-republic-of-serbia.html (Accessed: 16 December 2025).

[52] Krstić, 2016, pp. 89- 93.

[53] Plavšić, 2019, p. 2. Article 16 para 2 of the Constitution stipulates that ratified international treaties are an integral part of the legal order of the Republic of Serbia and are, therefore, directly applicable and must be in accordance with the Constitution. Article 18 para 2 of the Constitution further states that the Constitution shall guarantee, and as such, directly implement human rights guaranteed by ratified international treaties.

[54]Krstić and Marinković, 2016, p. 261. Article 194 of the Constitution declares that ratified international treaties shall not contradict the Constitution, which is the highest domestic legal act, and that law and other general acts must not contradict ratified international treaties.

[55] European Commission for democracy through law, Opinion on the Constitution of Serbia, Strasbourg, March 19, 2007, point 17. [Online]. Available at: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)004-e (Accessed: 16 December 2025).

[56] Article 142 para 2 of the Constitution.

interpret and apply the Convention in the same manner as the European Court of Human Rights (the ECtHR or the Court).

Regarding the protection of human rights in Serbia, the primary responsibility lies with the "regular" courts,[57] since Article 22 of the Constitution explicitly guarantees everyone the right to judicial protection, and the right to have the consequences of the violation removed. In addition to judicial protection, the Constitutional Court of Serbia provides constitutional-level protection of individual rights and freedoms through the constitutional appeal.[58] Notably, according to the legal position of the Constitutional Court, it protects human rights guaranteed both by the Constitution and the ECHR.[59] Given this stance and the previously discussed hierarchy of legal norms, the ECHR is fundamentally recognised as having a quasi-constitutional status in Serbia.[60]

The Constitution also sets out how the principles and case-law of the ECtHR are to be interpreted and applied by the Serbian courts and other state authorities. It stipulates that human rights provisions shall be interpreted in a way that promotes values of a democratic society, pursuant to valid international human rights standards and the case-law of international institutions that supervise their implementation, including the ECtHR.[61] Therefore, when determining the scope and content of human rights guaranteed by both the Constitution and the Convention, Serbian courts and other state authorities can rely on the well-established case-law and general approach of Strasbourg Court as a useful and authoritative tool.[62]

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[57] The term "regular" refers to courts of general and special jurisdiction.

[58] Article 170 of the Constitution provides that a constitutional appeal may be lodged against individual general acts or actions performed by state bodies or organizations exercising delegated public powers that violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been applied or not specified.
According to Article 22 para 3 of the Constitution, besides the judicial and constitutional protection of individual rights, the citizens have the right to address international institutions to protect their constitutional rights and freedom, including the ECHR.

[59] See the opinion of the Constitutional Court, adopted at the sessions on 30 October 2008 and 2 April 2009, [Online]. Available at: http://www.ustavni.sud.rs/page/view/163-100890/stavovi-suda. (Accessed: 16 December 2025).

[60] Krstić and Marinković, 2016, p. 262.

[61] Article 18 para 3 of the Constitution.

[62] Plavšić, 2019, p. 2., see Krstić and Marinković, 2016, p. 260., see Tubić, 2017, p. 79.

The Convention itself addresses how the ECtHR rulings and case-law generally affect domestic law and the practice of national courts. According to Article 46 of the Convention, the High Contracting Parties agree to abide by the Court's final ruling in any case to which they are parties; the judgments are then sent to the Committee of Ministers of the CoE (CM) to supervise its execution. This indicates that the judgments of the ECtHR have *inter partes* effect, and that the ECtHR's expressed views and conclusions in a specific judgment are legally binding for the parties in that particular case.

However, there are clear indications that the Court's case law has a broader *erga omes* effect and influences other member states beyond the parties to a specific case. This conclusion derives from the Court itself, which has stated that 'while the Court is not formally bound to follow its previous judgments, it is in the interests of legal certainty, foreseeability and equality before the law that it should not depart, without good reason, from precedents laid down in previous cases'.[63] The ECtHR has emphasised that its decisions serve to not only resolve individual dispute but also to clarify, protect, and develop the principles introduced by the Convention, thereby contributing to the fulfilment of the obligations accepted by states upon acceding to the Convention.[64]

Additionally, the declarations adopted during the Interlaken process[65] of reforming the Convention system underline the need for better, more

[63] *Case of Christine Goodwin v. UK* (GC), App. No. 28957/95, 20 September 2002, § 74,
[64] *Case of Ireland v. UK*, App. No. 5310/71, 20 March 2018, § 154.
[65]Five ministerial conferences and other events have been organized as part of the Interlaken process to modify the Convention system, with the goal of ensuring improved implementation of the Convention at the national level. The conference was first held in February 2010 in Interlaken, then in April 2011 in Izmir, in April 2012 in Brighton, and in March 2015 in Brussels. In April 2018, the last conference took place in Copenhagen. Following each of these conferences, declarations comprising recommendations and measures that member states ought to implement domestically were adopted. On 16 and 17 May 2023, Reykjavík hosted the CoE Summit of Heads of State and Government, and the Reykjavík Declaration was adopted.
[Online]. Available at:
https://www.echr.coe.int/Documents/2010_Interlaken_FinalDeclaration_ENG.pdf
https://www.echr.coe.int/Documents/2011_Izmir_FinalDeclaration_ENG.pdf
https://www.echr.coe.int/Documents/2012_Brighton_FinalDeclaration_ENG.pdf
https://www.echr.coe.int/Documents/Brussels_Declaration_ENG.pdf
https://www.echr.coe.int/Documents/Copenhagen_Declaration_ENG.pdf
https://rm.coe.int/4th-summit-of-heads-of-state-and-government-of-the-council-of-europe/1680ab40c1 (Accessed: 16 December 2025).

sustainable implementation of the Court's general positions and case-law by member states. These declarations emphasised the need for each member state to raise awareness among national authorities about the ECHR standards and to ensure their implementation, particularly by taking into account judgments identifying violations committed in situations involving similar legal or systemic problems.[66] They also reaffirmed that national authorities, especially courts, are the first guardians of human rights in legal systems in accordance with the principle of subsidiarity, and must to ensure the full, effective, and immediate application of the Convention in light of ECtHR case-law.

> Therefore, the courts and other state authorities in Serbia can obtain a clear roadmap and an indication of how the Court in Strasburg would treat the same or substantially similar case, by studying the views and the case-law of the ECtHR, not only in cases against Serbia but also against other member states. Due to the enhanced level of quality, efficiency, and equal protection of rights provided by the Convention system, domestic courts and other competent authorities have an obligation to analyse, respect, and ultimately apply the case-law of the ECtHR – first and foremost in favour of citizens. This also serves a practical function, as it reduces or eliminates the likelihood of a negative outcome before the ECtHR and Serbia's "conviction" before that Court.[67]

[66] In addition to these declarations, PACE of the CoE adopted a special resolution on the execution of judgments of the Court, wherein it expressed the view that the principle of solidarity implies that the case-law of the Court forms part of the Convention, thus extending the legally binding force of the Convention *erga omnes* (to all the other parties). This means that the states parties not only have to execute the judgments of the Court but also have to take into consideration the possible implications of judgments pronounced in other cases for their own legal system and practice. Resolution 1226 (2000) Execution of judgments of the European Court of Human Rights, point 3. [Online]. Available at: https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=16834&lang=en (Accessed: 16 December 2025).

[67] Plavšić, 2019, p. 5.

4. Landmark cases of the ECtHR regarding Serbia and the impact of its case-law on the domestic legal system

For more than twenty years, all natural or legal persons in Serbia have been able to access the Convention system for the protection of rights by filing complaints. In this time, Serbia consistently ranked among the top ten countries in the overall number of applications lodged.[68] Although this may at first imply that people endorse the protection provided by the Strasbourg Court, it also draws attention to an allegedly inadequate domestic system for the protection of human rights. This conclusion may be considered too narrow, as the data on the total number of filed applications alone may fail to produce findings that are meaningful and capable of improving the domestic system for the protection of human rights. The overall number of applications, when examined alongside other factors such as the content and nature of submitted complaints, outcome of the Court's proceedings, execution of the Court's judgment, and evaluation of the effectiveness of domestic remedies may contribute to the improvement of the domestic legal system. Consequently, it is useful to examine landmark cases and the potential influence they may have had on national legislation, domestic case-law, and harmonisation with ECtHR case-law[69]. The next section analyses cases that the author considers noteworthy. The selection of cases is based on the following criteria – the Court's direct or indirect indication regarding general measures, the potential influence these cases may have had on the law-making process and on harmonisation of domestic case-law with that of the ECtHR.[70]

[68] On day 31 December 2023, Serbia was at 9th place, with 1550 pending application and overall 2.2% of all pending application, [Online]. Available at: https://www.echr.coe.int/statistical-reports (Accessed: 16 December 2025).

[69] According to HUDOC, on 30 September 2024, the Court decided in total on 1220 cases related to Serbia, including friendly settlement decisions and those on unilateral declarations. There were 258 judgments delivered – two by the Grand Chamber, 141 by the Chamber, and 115 by the Committee.

[70] Because of this study's limited scope, landmark cases are provided in the text and other notable cases are referenced in the footnotes.

4.1. Non-enforcement or delayed enforcement of domestic judicial decisions given in the applicants' favour against socially- or state-owned companies – Kačapor group of cases

The case of *Kačapor and others v. Serbia*[71] generated one of the most important groups of cases for Serbia.[72] In the *Kačapor*, the ECtHR delivered its first ruling on the issue of non-enforcement or delayed enforcement of domestic judicial decisions rendered in the applicants' favour against socially or state-owned companies (so-called SOENT cases).[73] Socially-owned companies and "social capital" are relicts of the former Yugoslav brand of communism and "self-management".[74]

The facts of the *Kačapor* are as follows: six applicants who were, at that time, employed by a "socially-owned company", were all "placed" on "compulsory" paid leave by their employer. Since the employer did not pay them benefits during this leave, they initiated civil proceedings wherein they obtained judgments in their favour. Subsequently, they filed requests for the enforcement of these judgments against their former employer, seeking payment of the awarded compensation for the period of paid leave and contributions for pension and disability insurance. Insolvency proceedings were later initiated against the former employer and debtor, and the applicants' claims were accepted. The applicants complained under Article 6§1 of the Convention about the State's failure to enforce the final judgments rendered in their favour. They also claimed that the State had infringed their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 of the Convention.

At the admissibility stage, the ECtHR examined compatibility *ratione personae*, namely, it addressed the legal position of the debtor, a socially-owned company, and whether the State was liable for the debtor's outstanding obligations. After analysing the legal position of the socially-owned company, which predominantly comprised social capital, the Court concluded that the debtor, despite being a separate legal entity, did not enjoy "sufficient institutional and operational independence from the State" to absolve the latter of its responsibility under the Convention. Consequently,

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[71] *Case of Kačapor and others v. Serbia*, App. Nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06, 15 January 2008.
[72] Plavšić, 2020, pp. 3-18.
[73] The cases of debts of so-called socially owned companies.
[74] *Case of Kačapor and others v. Serbia*, §§ 71-76.

the Court found that the applicants' complaints were compatible *ratione personae* with the Convention.[75]

At the merits stage, the Court examined whether the delay in executing the applicants' judgments interfered with their rights and whether the State had taken all the necessary steps to enforce the final judgments by ensuring the effective participation of its entire apparatus. The Court reiterated the relevant general principles and, applying them to the specific circumstances, concluded that the Serbian authorities had failed to take the necessary measures to enforce the judgments in question, thereby violating Article 6§1 of the Convention.[76] Regarding the complaint under Article 1 of Protocol No. 1, the Court concluded that the State's failure to enforce the final judgments constituted an interference with the applicants' right to the peaceful enjoyment of their possessions, and that this interference was not justified in the specific circumstances of the case. In *Kačapor*, the Court decided on how to eliminate the negative consequences and provide just satisfaction to all applicants for their violated rights. Specifically, the Court found the Serbian State responsible for the debts of social-owned companies and for failing to enforce the domestic judgments, and ordered the Republic of Serbia to pay, from its own funds, the amounts awarded in the final domestic decisions.[77]

Over the years, the Court has frequently addressed this type of cases regarding Serbia[78]; these cases illustrate the ongoing dialog between the ECtHR and the Serbian authorities, notably the Constitutional Court, which is presented below.[79]

The legal views adopted by the Court in *Kačapor* generated well-established case law (WECL)[80] that has been applied in all subsequent similar cases concerning Serbia, with further elaboration.[81] Although the

[75] Ibid, §§ 92-99.
[76] Ibid, §§ 106-116.
[77] The Court also awarded different sums for the non-pecuniary damage suffered because of the impugned non-enforcement, § 129.
[78] See HUDOC EXEC status of execution of so called *Kačapor* group of cases: https://hudoc.exec.coe.int/ (Accessed: 16 December 2025).
[79] Plavšić, 2019, p. 15.
[80] Following the Convention system reforms, the Committee decided most of these cases as WECL cases. These judgments are automatically final and have abbreviated reasoning with reference to the landmark judgment, most often the *Kačapor* judgment.
[81] For example, in *Vlahović v. Serbia*, App. No. 42619/04, 16 December 2008, §§ 74-77 and 81, the Court elaborated that Serbia has consistently been held responsible for the non-enforcement of the judgments rendered against companies predominantly comprised of

Court never explicitly indicated any general measures, it examined whether an effective domestic legal remedy existed in Serbia for these type of cases.[82] In *Vinčić and others against Serbia*[83], for the first time, the ECtHR declared that a constitutional appeal was, in principle, an effective domestic remedy for all applications introduced as of 7 August 2008,[84] including SOENT cases. This meant that anyone intending to submit an application to the ECtHR after this date had to first seek protection of his or her rights before the Constitutional Court.

The Court later re-examined its position on constitutional appeals[85] it found that constitutional appeal was not an effective remedy for this group of cases. However, once the Serbian Constitutional Court fully harmonised its approach with the ECtHR's case-law regarding the non-enforcement of

socially-owned capital regardless of whether such companies were in the process of liquidation or reorganization. In *Sekulić and Kučević v. Serbia*, App. No. 28686/06, 15 January 2014, §53 the Court emphasized that the same conclusion applies, *a fortiori*, in respect of the companies where there has been a subsequent change in their respective capital share structure resulting in the predominance of the State-owned and socially-owned capital. In *Marinković v. Serbia*, App. No. 5353/11, 22 January 2014, §39, the Court found that the State is directly liable for the debts of State-controlled companies irrespective of the fact whether the company at one point operated as a private entity. Furthermore, 'the fact that the State sold a large part of its share in the company it owned to a private person could not release the State from its obligation to honour a judgment debt which had arisen before the shares were sold. If the State transfers such an obligation to a new owner of the shares, the State must ensure that the new owner complies with the requirements'. In *Case of Kin-Stib and Majkić v. Serbia*, App. No. 12312/05, 4 October 2010; *Case of Brani and Jugokoka v. Serbia*, App. No. 60336/08, 5 November 2013; *Case of Majs Eksport-Import v. Serbia*, App. No. 35327/09, 5 November 2013; and *Case of Broyler DOO v. Serbia*, App. No. 48499/08, 26 November 2013, the Court found that the Serbian State directly liable for the State-controlled companies' commercial debts.

[82] Plavšić, 2020, pp. 11-12.

[83] *Case of Vinčić and others v. Serbia*, App. nos. 44698/06…, 1 December 2009, § 51.

[84] The date on which the Constitutional Court's first decisions on the merits of the said appeals were published in the respondent State's Official Gazette.

[85] In decision *Milunović and Čekrlić v. Serbia*, App. Nos. 3716/09 and 38051/09, 17 May 2011, since the Constitutional Court had failed to order the payment of the pecuniary damages, the Court declared that a constitutional appeal was inefficient domestic legal remedy for these type of cases. This "opened" direct paths to the Strasbourg Court, without submitting a constitutional appeal. Subsequently, the Constitutional Court reacted to this "signal" from Strasbourg and harmonised its case-law with that of the ECtHR. In two latter decisions, *Case of Marinković v. Serbia*, App. No. 5353/11, 29 January 2013 and *Case of Ferizović v. Serbia*, App. No. 65713/13, 26 November 2013, the Court acknowledged that the Serbian Constitutional Court had fully harmonized its approach with the Court's case-law.

judgments against socially- or State-owned companies, the ECtHR acknowledged this effort and "awarded" the Serbian Constitutional Court by declaring the constitutional appeal as an effective domestic remedy. Since the Constitutional Court began effectively fulfilling its role at the national level as a protector of individual rights in accordance with the principle of subsidiarity, the number of these cases, and the overall number of cases brought against Serbia, significantly decreased.[86]

However, in the years following the adoption of the Law on the Protection of the Right to a Trial within a Reasonable Time in 2015, which introduced new domestic remedies,[87] the number of similar applications before the ECtHR began to rise again, indicating potential ineffectiveness of both the constitutional appeal and the newly created remedies. Since the Court neither declared the constitutional appeal or the new remedies ineffective, nor indicated any general measure under Article 46 of the Convention, the Committee of Ministers (CM) had to "step in" and issue several decisions in the supervision process. These CM decisions emphasised the longstanding complexity of the problem and insisted on the implementation of general measures.[88]

Following this clear message from the CM, Serbia adopted Amendments to the 2015 Law in October 2023. These changes transferred the exclusive competence for SOENT cases from ordinary courts to the Constitutional Court. Before 2015, only the Constitutional Court had jurisdiction over these cases and was considered effective by the ECtHR. This renewed strategy – wherein the Constitutional Court is once again the sole authority for SOENT cases – has been recognised as a positive step. This revision of the national mechanisms for protecting individual rights through legislative change and strategic reform represents a clear example of ongoing efforts by Serbian authorities to maintain and enhance the functionality of the existing legal system. It aimed to provide effective

[86] Plavšić, 2019, p. 13. In the supervision of the execution of this group of cases, the Committee of Ministers of the CoE delivered numerous decisions and emphasized the effectiveness of a constitutional appeal. Action plans and CM decisions available at: https://hudoc.exec.coe.int/ (Accessed: 16 December 2025).

[87] Request for acceleration of proceedings, appeal and action for fair redress.

[88] See DH decision from the 1451st meeting, 6-8 December 2022, reference document CM/Notes/1483/H46-35

protection of Convention rights in SOENT cases before national authorities, namely the Constitutional Court.[89]

4.2. The Grand Chamber cases

Till date, the Strasburg Court has delivered two Grand Chamber cases concerning of Serbia – *Ališić and Others v. Slovenia and Serbia*[90] and *Vučković and others against Serbia.*[91] Both represent landmark cases that have had a significant impact on the domestic legal system.

4.2.1. Repayment of the applicant's "old" foreign currency savings – Ališić and Others v. Slovenia and Serbia

The *Ališić* case was the first pilot judgment regarding Serbia,[92] and is linked to the dissolution of former Yugoslavia (SFRY). Before the disintegration of the SFRY, the applicant, Mr. Šahdanović, had deposited foreign currency in the Tuzla branch, located in Bosnia and Herzegovina, of Investbanka, a Serbian bank. According to the material in the Court's possession, on 3 January 2002, the balance in the applicant's accounts at the Tuzla branch of Investbanka was DEM 63,880, 4 Austrian schillings, and 73 USD. Following the fall of the SFRY in 1991–1992, these bank accounts remained "frozen" and became so-called "old" foreign currency savings. Although some SFRY successor states have agreed to pay specific amounts

[89]All this has been recognized by the Committee of Ministers. See DH decision from the 1483rd meeting, 5-7 December 2023 (DH), reference document CM/Notes/1483/H46-35.
In the so-called *Jevremović* group of cases, the Court often considered Article 6 of the Convention, either by itself or in conjunction with Article 13. This group of cases concerned violations of the applicants' right to a fair trial on account of the excessive length of different types of judicial proceedings – civil, family-related and commercial – pending between 1984 and 2019 (violations of Article 6 § 1). Some of these cases also concerned the lack of an effective remedy under domestic law at the time of the applicants' complaints about the length of the proceedings (violations of Article 13). Over the years, in the process of executing these judgments, Serbian authorities introduced a number of measures envisaged to expedite judicial proceedings, reduce pending backlog cases, improve the efficiency of justice, and improve the effectiveness of domestic remedies. See more on HUDOC EXEC: https://hudoc.exec.coe.int/ (Accessed: 16 December 2025).

[90] *Case of Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], App No. 60642/08, 16 July 2014.

[91] *Case of Vučković and others against Serbia*, judgment (preliminary objection), 2014.

[92] The facts of the case regarding Slovenia (or other states), including its obligation under this judgment will not be discussed in this paper.

in these particular circumstances, each successor state adopted its own legal regime regarding those accounts. However, the applicant in the Serbian case was not allowed to withdraw his savings.

The applicant complained under the Convention as to his inability to access the aforementioned bank accounts and withdraw his foreign currency savings. The applicant claimed a breach of his property rights, taken alone and in conjunction with the prohibition of discrimination, and a violation of his right to an effective legal remedy.

In examining the case, the Court underlined that the foreign-currency deposits forming the subject matter of the applicant's complaints did constitute "possessions" within the meaning of Article 1 of Protocol No. 1, and that this Article was applicable. The Court further ruled on compliance with Article 1 of Protocol No. 1, and applied the proportionality test. First, the Court concluded that the applicant's inability to withdraw his savings, at least since the dissolution of the SFRY, had a legal basis in domestic law. The Court accepted that the principle of a "legitimate aim" was also respected, since, following the dissolution of the SFRY and the subsequent armed conflicts, the respondent States had to take measures to protect their respective banking systems and national economies. The Court also noted that Investbanka has remained liable for "old" foreign currency savings in its Bosnian-Herzegovinian branches under domestic law and courts practice since the dissolution of the SFRY. Next, the Court examined whether Serbia was responsible for the failure of Investbanka to repay its debt to the applicant, and after analysing ownership, and institutional and operational independence from the State, concluded that there were sufficient grounds to deem Serbia responsible for Investbanka's debt to Mr. Šahdanović. Finally, the Court examined whether there was any valid reason for the Serbian State's failure to repay the applicant for so many years. Although certain delays in repayment could be justified in exceptional circumstances, and despite the respondent State's wide margin of appreciation in this area, the Court determined that the applicant's continued inability to freely dispose of his savings for over twenty years was disproportionate, and thus in violation of Article 1 of Protocol No. 1.[93] In addition, the applicant did not have an effective remedy at his disposal; the Court found this to be a breach of Article 13.

Since the violations found by the Court affect thousands of people, the pilot judgment procedure for this systemic and structural problem was

[93] Ališić, §§ 109-125.

triggered. The Court indicated that it was necessary to adopt general measures at the national level. The ECtHR decided that Serbia must make all necessary arrangements, including legislative amendments, to allow Mr. Šahdanović and all others in his position to recover their "old" foreign-currency savings under the same conditions as Serbian citizens who held such savings in the domestic branches of Serbian banks.[94] The Court highlighted that the applicant and all others in his position must comply with the requirements of any verification procedure set by the Serbian State. However, the Court emphasised that no claim should be rejected solely due to a lack of original contracts or bankbooks, provided that the persons concerned can substantiate their claims by other means and that all verification decisions are subject to judicial review. Finally, the Court decided to postpone the examination of similar cases involving Serbia for one year, in order to allow the adoption of the *lex specialis* at the national level.

Concurrent to the delayed process of executing this judgment, Serbia undertook a major law-making process and, almost a year and a half after the indicated deadline, adopted the so called *Ališić* Implementation Act.[95] Under this Law, Serbia introduced a repayment scheme for the deposits held by citizens of SFRY successor states in Serbian banks.[96] Parliament amended the Law in 2019 to address certain outstanding issues that had arisen during the verification procedure, particularly the need to obtain reliable data on savings previously used in the privatisation process in Bosnia and Herzegovina.

In *Muratović* decision,[97] the ECtHR evaluated the *Ališić* Implementation Act from the perspective of the criteria set out in the *Ališić* pilot judgment. The Court noted that the repayment conditions were essentially the same as those applied to Serbian nationals in the initial repayment scheme, and considering the respondent State's wide margin of appreciation, that the *Ališić* Implementation Act, in principle, fulfilled the

[94] Ibid, §§ 144-160.
[95] Zakon o regulisanju javnog duga Republike Srbije po osnovu neisplaćene devizne štednje građana položene kod banaka čije je sedište na teritoriji Republike Srbije i njihovim filijalama na teritorijama bivših republika SFRJ, "Official gazette RS", no. 108/16, 113/17, 52/19 and 144/20.
[96] See status of the execution of this judgment, Action Report and CM decisions on HUDOC EXEC: https://hudoc.exec.coe.int (Accessed: 16 December 2025).
[97] *Case of Muratović v. Serbia* (dec.), App. No. 41698/06, 21 March 2017.

criterion of equal repayment conditions.[98] Regarding the second and third criteria set out in the pilot judgment (lack of original contracts or bankbooks and judicial review) the Court noted that those who no longer have original contracts or bankbooks may pursue civil proceedings to prove the existence and amount of their claims, and that all verification decisions are subject to judicial review. Thus, the *Ališić* Implementation Act fulfilled these two criteria.[99] Finally, the Court declared the remainder of the applications pending before it inadmissible and referred them back to Serbia for examination under the repayment scheme introduced by the *Ališić* Implementation Act.[100]

The *Ališić* Implementation Act and its repayment scheme were effectively applied at the domestic level. According to the statistics provided by the Serbian Government in its Action Report, the majority of cases were resolved positively in Serbia, and repayment was ordered for 75% of the amounts claimed.[101] The Committee of Ministers closed this case for further examination after evaluating the measures taken by the Serbian authorities and acknowledging the good practice demonstrated by the domestic legislative and judicial authorities.[102]

4.2.2. The subsidiarity principle and applicants' obligation to raise complaints before domestic courts and comply with the national laws – Vučković and others against Serbia

Vučković and others against Serbia[103] is the second Grand Chamber case regarding Serbia, and dealt with complaints under Article 1 of Protocol No.1 and Article 14 of the Convention. This judgment had a significant impact on both the domestic legal system and the ECtHR, as more than 3,000 applications were pending before the Court raising the same issue at the

[98] Ibid, §10.
[99] Ibid, §11.
[100] Following *Ališić* pilot judgment and introduction at the domestic level a repayment scheme to all persons in a similar situation, the Court found that it is justified to apply the exception to the principle on exhaustion of domestic remedies.
[101] See the Action Report of Serbia on HUDOC EXEC: https://hudoc.exec.coe.int/ (Accessed: 16 December 2025).
[102] Resolution CM/ResDH(2020)184 on the execution of the judgments of the ECHR in case *Ališić and Others against Serbia*, reference document, CM/Notes/1377bis/H46-34.
[103] *Case of Vučković and Others v. Serbia* (preliminary objections) [GC], App. Nos. 17153/11, 17157/11, 17160/11 et al, 25 March 2014.

time of the Grand Chamber judgment delivery. The case highlights the importance of the proper use of domestic remedies and the subsidiary role of the Convention protection system.

The facts of the case are as follows: the applicants were former Yugoslav army reservists who claimed entitlement to *per diem* allowances for military service performed in 1999. The Serbian Government initially rejected the claims; however, after negotiations in 2008, decided to pay allowances to those reservists who lived in "underdeveloped" municipalities. Since the applicants did not qualify for payment because they were not residents in the specified municipalities, they filed a civil lawsuit for payment, alleging that the terms of the 2008 agreement were discriminatory. However, their claims were rejected at both first instance and on appeal as being time-barred. Meanwhile, other reservists' claims that had not been ruled as time-barred were upheld by courts throughout Serbia in a number of related cases decided between 2002 and early March 2009. The applicants contested the applicability of the statutory limitation period in their cases by filing a constitutional appeal with the Constitutional Court. Although the Constitutional Court ruled in their favour with regard to their complaints of judicial inconsistency in the application of the limitation period, it indirectly rejected their compensation claims.

Finally, the applicants complained to the ECtHR of discrimination in the payment of *per diem* allowances after the 2008 agreement, invoking Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1. In the Chamber judgment, the Court found a violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1.[104] Since the Serbian Government argued that the applicants had not exhausted domestic remedies, as they had failed to raise the issue of alleged discrimination before the Constitutional Court, the case was referred to the Grand Chamber.

In addressing the objection regarding non-exhaustion of domestic remedies (specifically, the appropriate use of a constitutional appeal), the Grand Chamber observed that, although the applicants had used this remedy, they had not complied with the relevant national legal rules, which is one of the requirements to satisfy the exhaustion rule under Article 35 of the Convention. Specially, they had challenged the civil courts' interpretation of the rules on statutory limitation before the Constitutional

[104] *Case of Vučković and others v. Serbia*, App. Nos. 17153/11, 17157/11, 17160/11, 28 August 2012.

Court; however, they had not raised their discrimination complaint, either expressly or in substance. The Court further emphasised the subsidiary principle, stating that there were 'not any special reasons for dispensing the applicants from the requirement to exhaust domestic remedies in accordance with the applicable rules and procedure of domestic law. On the contrary, had the applicants complied with this requirement, it would have given the domestic courts that opportunity which the rule of exhaustion of domestic remedies is designed to afford States, namely to determine the issue of compatibility of the impugned national measures, or omissions to act, with the Convention and, should the applicants nonetheless have pursued their complaint before the European Court, this Court would have had the benefit of the views of the national courts. Thus, the applicants failed to take appropriate steps to enable the national courts to fulfil their fundamental role in the Convention protection system, that of the European Court being subsidiary to theirs.'[105] Consequently, the Court found that although the civil and constitutional remedies had been sufficient and available to provide redress in respect of the applicants' discrimination complaint, they had failed to exhaust these remedies.

4.3. The 'missing babies' case – Zorica Jovanović against Serbia

The case of *Zorica Jovanović against Serbia*[106] concerns complaints under Article 8 of the Convention and the right to respect for family life. It is most likely the most delicate and complex issue regarding Serbia, affecting hundreds of parents of "missing babies".

In 1983, the applicant gave birth to a baby boy in a state-run hospital. She was told that her infant had passed away three days later, on the day of her discharge. The applicant and her family never received the baby's remains, nor were they told when and where her son was supposedly buried. No indication was given as to the cause of death, and the death was not registered in the municipal records. Later, after several reports in the media about other similar cases, the applicant's husband filed a criminal complaint; however, it was rejected in October 2003 without consideration. The applicant complained before the Court regarding the respondent State's continued failure to provide her with any information about the real fate of her son. She further suspected that her son might still be alive, having been unlawfully given up for adoption.

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[105] *Case of Vučković and Others v. Serbia* (preliminary objections) [GC], § 90.
[106] *Case of Zorica Jovanović v. Serbia*, App. No. 21794/08, 26 March 2013.

The Court acknowledged that under Article 8 of the Convention, there might be additional positive obligations inherent in this provision, extending to, *inter alia*, the effectiveness of any investigative procedures relating to one's family life. In other words, a State's positive obligations under Article 3 of the Convention to account for the whereabouts and fate of missing persons were broadly applicable, *mutatis mutandis*, to the specific context of positive obligations under Article 8 in this instance.[107]

Taking into account the specific circumstances of the case, the Court noted that the applicant still had no credible information as to what had happened to her son, his body had never been transferred to her or her family, and the cause of death was never determined nor officially recorded. The outcome of the criminal complaint procedure and the absence of any explanation were also taken into consideration by the Court. The ECtHR observed that the Serbian authorities themselves had, on various occasions, acknowledged serious shortcomings in the legislation and procedures concerning the death of newborn babies in hospitals, and that the parents had legitimate concerns and were entitled to know the truth about their children's fate. Nevertheless, despite several official initiatives, the conclusion of the domestic working group was that no changes were necessary to already amended legislation, except with regard to the collection and use of medical data. The Court noted that this only improved the future situation and effectively offered nothing for parents such as the applicant whose ordeal was in the past. The Court concluded that the applicant had suffered a continuing violation of her right to respect for her family life on account of the respondent State's continuing failure to provide her with credible information as to the fate of her son.[108]

This judgment is noteworthy as the Court indicated that general measures were required under Article 46 of the Convention. Specifically, given the significant number of potential applicants, the Court ordered the respondent State to take appropriate measures within a year, preferably by means of a *lex specialis*, to secure the establishment of a mechanism aimed at providing individual redress to all parents in such a situation or one sufficiently similar to the applicant's. The mechanism was to be supervised by an independent body with adequate powers, capable of providing credible answers regarding the fate of each missing child and affording

[107] Ibid, §§69,70.
[108] Ibid, §§71-75.

adequate compensation. The Court decide to adjourn all similar applications already pending before the Court for the one-year period.[109]

The CM supervised the implementation of this judgment in the enhanced procedure, and even issued several interim resolutions urging the Serbian authorities to establish an effective fact-finding mechanism, stressing the importance of the timely and effective execution of this judgment.[110] In the extremely challenging and complex process of its execution, Serbia conducted extensive legislative work and, more than five years after the Court's deadline, in February 2020, adopted a *lex specialis*, aimed at introducing an independent investigative mechanism to provide individual redress to all parents of "missing babies".[111] The *Zorica Jovanović Implementation Act* introduced a two-track fact-finding system, first providing individual redress to parents of "missing babies" through courts, and second establishing an independent investigation mechanism ("Missing Babies Fact-Finding Commission") to establish the fate of the 'missing babies'. After the adoption of the *lex specialis*, the CM[112] expressed great satisfaction that the Serbian Parliament had adopted the law setting up an independent investigative mechanism; however, since there were – and still are – some outstanding issues, the CM invited the authorities to continue providing comprehensive information on its implementation and functioning.[113]

Parallel with the CM's activities, the Court rendered strike-out decisions in several cases[114] concerning the alleged disappearance of newborn children and the authorities' failure to provide credible answers regarding their fate. The ECtHR noted that the applicants themselves had opted to make use of the new legal framework put in place under the *Zorica*

[109] Ibid, §§ 92, 93.

[110] See status of the execution of *Zorica Jovanović* judgment on HUDOC EXEC: https://hudoc.exec.coe.int (Accessed: 16 December 2025).

[111] Zakon o utvrđivanju činjenica o statusu novorođene dece za koju se sumnja da su nestala iz porodilišta u Republici Srbiji, "Official Gazette", no. 18/20.

[112] See CM decision adopted at 1369th meeting, 3-5 March 2020 (DH), reference document CM/Notes/1369/H46-30.

[113] The outstanding issue in the execution of this judgment remained the DNA database and the adoption of legislative amendments aimed at introducing a dedicated DNA database for the purpose of facilitating truth finding in the cases of "missing babies".

[114] *Case of Mik and Jovanović v. Serbia*, App. No. 9291/14, 23 March 2021, §52; *Case of Radmila Ilić and 7 Others v. Serbia* (dec.), App. No. 33902/08, 6 July 2021, § 6; *Case of Radina Savković and Miroljub Savković v. Serbia* (dec), App. No. 9864/15, 7 September 2021, § 6.

Jovanović Implementation Act.[115] After having analysed the *lex specialis*, the Court concluded that there were no particular reasons related to the respect for human rights that would require it to continue examining of these cases.

The complexity and sensitivity of this case could, to a degree, justify the delay in setting up an effective independent investigative mechanism to determine the whereabouts of the "missing babies". However, the sensitivity of the issue made it necessary for the Serbian authorities to prioritise the prompt and appropriate execution of this judgment that posed considerable challenges at the time.

4.4. Unlawful suspension of payment by the Serbian Pensions Fund of pensions earned in the Autonomous Province of Kosovo and Metohija for more than a decade – Grudić against Serbia

The *Grudić* judgment[116] dealt with property rights and the suspension of pension payment to insured persons in the Autonomous Province of Kosovo and Metohija (KiM). The KiM Branch Office of the Serbian Pensions Fund had granted the applicants, two Serbian nationals, disability pensions. They had regularly received their pensions until June 1999 and January 2000 respectively, when the monthly payments stopped without any explanation. In May 2004 and March 2005, the Fund formally decided to suspend payments from the dates of the last payments on the grounds that KiM was now under international administration. In 2006, the first-instance court annulled the Fund's decisions after noting that they did not refer to the relevant law. The Fund's subsequent appeals were rejected by the Supreme Court. In 2008, the Fund suspended the proceedings brought by the applicants for the resumption of pension payments until the entire issue was

[115] Other interesting Article 8 cases, and the right to protection of private and family life are connected to authorities' failure to fulfil their positive obligations due to the non-enforcement of custody decisions in respect of the applicant's two children (*Case of Milovanović v. Serbia*, App. No. 56065/10, 8 October 2019); the disproportionate interference in three policemen's private life due to their dismissal following the initiation of criminal proceedings against them, and unfair civil proceedings concerning their dismissal resulting in arbitrary judicial decisions (*Case of Milojević and others v. Serbia*, App. No. 43519/07, 12 January 2016); the exclusion from a final hearing in proceedings resulting in partial deprivation of the applicant's legal capacity and denial of access to a court in proceedings concerning its restoration as well as disproportionate interference with private life due to the partial deprivation of legal capacity (*Case of Salontaji-Drobnjak v. Serbia*, App. No. 36500/05, 13 October 2009).

[116] *Case of Grudić v. Serbia*, App. No. 31925/08, 17 April 2012.

resolved between the Serbian authorities and the international administration in KiM. The applicants complained about not receiving their disability pensions for more than a decade, and the Court examined the case under Article 1 of Protocol No. 1.

The ECtHR found that the suspension the applicants' pensions had not been in accordance with the relevant domestic law. Specifically, the impugned suspensions were based on the 2003 and 2004 Opinions of the competent ministries, which stated, *inter alia*, that the pension system in Serbia was based on the concept of "ongoing financing". These Opinions asserted that those who had already received the Fund's pensions in KiM could not anticipate continuing to receive them going forward, as the Serbian authorities were unable to collect any pension insurance contributions in these regions as of 1999. In addition, there was no evidence that these Opinions had ever been published in the Official Gazette of the Republic of Serbia. The Constitutional Court's case-law regarding the legal nature of such opinions – which indicates they are merely intended to facilitate the implementation of legislation – was central to the Court's determination of whether the suspension of property rights was lawful. Moreover, the Supreme Court noted that one's recognised right to a pension may only be restricted on the basis of Article 110 of the Pensions and Disability Insurance Act and that recognised pension rights could not depend on whether or not current pension insurance contributions can be collected in a given territory.[117]

Since the Court recognised a large number of potential applicants, it gave an indication under Article 46 of the Convention for the adoption of general measures. Namely, the Court ordered the Serbian authorities 'to take all appropriate measures to ensure that the competent Serbian authorities implement the relevant laws in order to secure payment of the pensions and arrears in question. It is understood that certain reasonable and speedy factual and/or administrative verification procedures may be necessary in this regard.'[118]

The process of executing the *Grudić* judgment started with a 2013 public call to all eligible persons, which was published in several newspapers in Serbia and KiM, as well as on the website of the Serbian Pensions Fund, inviting them to apply for the resumption of pension payment earned in KiM. According to the Action Report on the execution of

[117] Ibid, §§ 79, 80.
[118] Ibid, § 90.

the *Grudić* judgment, the Serbian authorities received 8,238 applications of which 1,295 contained the required documents. Incomplete documents were received in the remaining 6,943 cases. A total of 1,244 applications were rejected on the ground that the applicants were receiving pensions in KiM – under the applicable legislative requirement, a pension recipient entitled to two or more pensions in Serbian territory may only exercise the right to one pension. In the *Grudić* case, the applicants had not received the so-called "Kosovo pensions", hence their legal circumstances differed from those in the rejected cases. Regarding judicial review, the applicants had the option to initiate administrative proceedings and file a lawsuit with the Administrative Court. Thereafter, refusals to re-establish pension payments had a well-established legislative basis in domestic law and could be effectively challenged in court, including through a constitutional appeal before the Constitutional Court. Furthermore, in response to the Court's findings in the *Grudić* case, the Constitutional Court developed a consistent body of the Convention-compliant case-law in similar pension related cases.[119]

In addition to the CM supervision, the ECtHR also examined the implementation of the Court's orders from the *Grudić* judgment. Namely, in the *Skenderi and others* decision,[120] the Court declared most of the applications inadmissible for non-exhaustion of domestic remedies, since the applicants had not used the constitutional appeal. Specifically, unlike the applicants in *Grudić*, the second, third, fourth and fifth applicants all lodged their applications with the Court after 7 August 2008, and were thus required to exhaust the constitutional appeal procedure.[121] Regarding the first applicant in the *Skenderi* case, the Court rejected the application concerning her claim for payment of her accrued pension between November 1998 and March 2003, which had been rejected based on the Obligations Act, providing for a three-year prescription period. The Court noted that this three-year prescription period – an issue that did not arise in *Grudić* – was envisaged in the Obligations Act and thus lawful. It also pursued a legitimate aim, and there was no arbitrariness in the application of the said time limit, nor was there any evidence that the three-year period was disproportionately short in the specific circumstances of the present

[119] See Action Report in *Grudić* case on HUDOC EXEC: https://hudoc.exec.coe.int/ (Accessed: 16 December 2025).
[120] *Case of Skenderi and others v. Serbia* (dec), App. No. 15090/08, 4 July 2017.
[121] Ibid, §109.

case. Lastly, as of September 2013, the Fund resumed payment of the first applicant's pension *pro futuro*.[122]

4.5. Other important cases

Finally, a number of other noteworthy cases had an impact on the domestic legal system, although the Court did not make indications under Article 46 of the Convention regarding general measures. The following section summarises some of these cases.

4.5.1. Prohibition of discrimination cases

The Court examined a few cases under Article 1 of Protocol No. 12 regarding the general prohibition of discrimination, among which the case of *Negovanović and others*[123] is discussed. The applicants in the *Negovanović and others* case are blind chess players who won a number of medals for Yugoslavia between 1961 and 1992, as part of the national team. They complained that the Serbian authorities had discriminated against them by denying them certain financial awards provided under the 2006 Decree, such as a lifetime monthly cash benefit and a one-time cash payment, unlike all other athletes and chess players, including those sighted or disabled. Their discrimination lawsuits were dismissed by the domestic courts. The Court preformed a non-discriminatory test under Article 1 of Protocol No. 12 and concluded that there was no objective and reasonable justification for the differential treatment of the applicants merely on the basis of their disability.[124]

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[122] According to the Action report in the *Grudić* case, no similar application had been communicated to the Government apart from *Skenderi and Others*, wherein the Court rendered a non-admissibility decision (p.27). Consequently, the CM adopted the Final Resolution and closed this case for further supervision; see Resolution CM/ResDH(2017)427, adopted by the CM on 7 December 2017 at the 1302nd meeting of the Ministers' Deputies.

[123] *Negovanović and others v. Serbia*, App. Nos. 29907/16, 25 January 2022.

[124] In *Paun Jovanović v. Serbia*, App. No. 394/15, 7 February 2023, the Court found a violation of this Article due to the judge's unjustified conduct that prevented the applicant – a lawyer – from using the Ijekavian variant of the Serbian language and enabled the use of the Ekavian, despite the official status of both variants being equal. Additionally, the Court found a violation of Article 6 due to the Constitutional Court's inadequate reasoning for rejecting the applicant's appeal. The Court also considered alleged discrimination under Article 14 in *Popović and others v. Serbia*, App. Nos. 26944/13, 30 June 2020, and found

4.5.2. An effective investigation into ill-treatment cases

Cases under Article 3 of the Convention regarding Serbia mainly concerned complaints about ineffective investigations or the lack of investigation into the allegations of ill-treatment by police officers; these cases fall under the so-called *Stanimirović* group,[125] wherein the Court found a violation of Article 3 of the Convention. Because of these rulings, numerous extensive domestic measures have been put into effect, all with the aim of preventing ill treatment by the police and conducting an effective investigation into such cases.[126]

A particularly specific case under Article 3 of the Convention is the case of *Milanović v. Serbia*[127]. The applicant, a member of the Hare Krishna religious community in Serbia, was attacked on several occasions in 2001, 2005, 2006 and 2007. The attacks were reported to the police and the applicant claimed that members of a far-right extremist group might have committed them. While the police questioned witnesses and several potential suspects, they were never able to identify any of the attackers or obtain more information on the extremist group they allegedly belonged to. Despite the numerous steps taken by the domestic authorities and the significant challenges they encountered during the investigation, the Court found that they had not taken all reasonable measures to conduct an adequate investigation and to prevent the applicant's repeated ill-treatment by unknown persons and thus established a violation of Article 3. The Court

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no violation since disability benefits for civilian recipients were not discriminatory in compared to military beneficiaries.

[125] *Case of Stanimirović v Serbia*, App. No. 26088/06, 18 October 2011; *Case of Almaši v. Serbia*, App. No. 21388/15, 8 October 2019; *Case of Zličić v. Serbia,* App. No. 73313/17, 26 January 2021; *Case of Stevan Petrović v. Serbia*, App. No. 6097/16, 20 April 2021.

[126] See Status of execution of *Stanimirović* group on HUDOC EXEC https://hudoc.exec.coe.int/.

For example, the Chief Public Prosecutor in 2017 issued the Methodology for Investigating Cases of Ill-Treatment by the Police and in March 2024, the Supreme Public Prosecutor issued a General Mandatory Instruction providing that a contact person (a prosecutor) would be assigned in all basic public prosecutor's offices to handle criminal cases involving the offences of Extortion of Confession, and Ill-treatment and Torture. Since there are some outstanding issues, the CM urged Serbian authorities to deliver a firm message of "zero tolerance" towards ill-treatment by police agents, and to take more resolute action against this serious and long-standing problem.

[127] *Milanović v. Serbia*, App. No. 44614/07, 14 December 2010.

also found a violation of Article 14 in conjunction with Article 3, since this was a racially motivated ill-treatment case – the domestic authorities had an additional duty to investigate whether religious hatred or prejudice may have contributed to the events, even in cases where private individuals were the perpetrators of the ill-treatment. The Serbian authorities failed to fulfil this obligation.[128]

4.5.3. Detention cases

Several Article 5 cases and violations of the right to liberty are worth addressing. Over the years, the Court examined different aspects of Article 5 and the guarantees it enshrines.[129] In the case of *Kovač v. Serbia*,[130] the Court found a violation of the applicant's right to liberty on account of the failure of the domestic courts to hear him personally when considering the extension of his pre-trial detention, which lasted throughout the entire period of the judicial investigation, and was not in conformity with the "reasonable interval" requirement established in the Court's case-law.[131] The case of *Radonjić and Romić v. Serbia*[132] concerned the detention on remand for almost three and a half years of two former secret police officers suspected of murdering a well-known Serbian journalist and newspaper publisher. It also concerned the length of the proceedings before the Constitutional Court to review their detention. The Court found a violation of Article 5§3 since the competent courts did not give relevant and sufficient reasons when ordering the applicants' pre-trial detention. The ECtHR also found a violation of Article 5§4 on account of the failure of the Constitutional Court to comply with the requirement of "speediness" when deciding on the applicants' complaint challenging the lawfulness of their

[128] In the execution of this judgment, Serbia carried out legislative amendments. Namely, the Criminal Code was amended in 2012 to introduce the offence of hate crime and hatred as a motivation, including religious hatred as aggravating circumstance. Furthermore, in 2017, the Chief Public Prosecutor issued Guidelines for Prosecution of Hate Crimes and in 2018, adopted a binding instruction for all public prosecutor's offices to determine a contact person for hate crimes to increase effectiveness and uniformity of the public prosecutors' conduct in such cases. See Action Report on *Milanović* case on HUDOC EXEC: https://hudoc.exec.coe.int (Accessed: 16 December 2025).

[129] Regarding the status of execution of these judgments, see HUDOC EXEC: https://hudoc.exec.coe.int (Accessed: 16 December 2025).

[130] *Case of Kovač v. Serbia*, App. No. 6673/12, 18 January 2022.

[131] Similarly, in *Case of Novaković v. Serbia*, App. No. 6682/12, 1 February 2022.

[132] *Case of Radonjić and Romić v. Serbia*, App. No. 43674/16, 4 April 2023.

detention. In the *Mitrović* case,[133] the Court examined a detention based on a decision rendered by the Republic of Serbian Krajina, an internationally unrecognised self-proclaimed entity established on the territory of the Republic of Croatia during the wars in the former Yugoslavia. The Court found a violation of Article 5§1 since the applicant was detained on the basis of a non-domestic decision that had not been recognised domestically; thus, the detention lacked a legal foundation in domestic law, and the Article 5§1 requirement of lawfulness was not fulfilled.[134]

5. Conclusion

According to the Serbian Constitution, the ECHR and the case-law of the ECtHR are an integral part of the constitutional legal system, implying that all national authorities, including courts and the Constitutional Court, are empowered to make decisions by directly interpreting and applying the Convention in a way that is consistent with the ECtHR. Yet, the total number of cases before the Court regarding Serbia could indicate that the interpretation of the Convention and "use" of the ECtHR's case-law by domestic courts and other authorities has not always been sufficient or effective. On the other hand, it may suggest that unsatisfied citizens simply have more faith in the Convention system.

Most cases and violations before the ECtHR regarding Serbia originate from four or five categories of the same type with systemic and structural human rights problems,[135] wherein the Court's or CM indications under Article 46 of the Convention have been fruitful and the additional introduction of general measures by Serbian authorities have provided effective protection of individual rights at the domestic level for future

[133] *Case of Mitrović v. Serbia*, App. No. 52142/12, 21 March 2017.

[134] See also the *Vrenčev* group of cases (*Vrenčev v. Serbia*, App. No. 2361/05, 23 September 2008; *Đermanović v. Serbia*, App. No. 48497/06, 23 May 2010; *Grujović v. Serbia*, 2015; *Milošević v. Serbia*, App. No. 31320/05, 28 July 2009); *Purić and R.B. v. Serbia*, App. No. 27929/10, 15 October 2019) regarding protection of rights in detention under Article 5 of the Convention. The Court examined several questions: excessive length of detention in police custody; failure to consider any alternative for detention on remand; unlawfulness of detention on remand, which was regularly extended on the ground of risk of absconding without subsequent verification whether these grounds remained valid at the advanced stage of the proceedings; lack of speedy review of detention orders before the Supreme Court and the absence of an oral hearing before it; and lack of an enforceable right to compensation for unlawful detention.

[135] e.g., *Kačapor* group, *Ališić* case, *Zorica Jovanović* case, *Grudić* case.

cases. The adoption of these general measures has usually been the result of a major law-making process and of the harmonisation of the domestic courts' case-law with that of the ECtHR, which demonstrates how the principle of shared responsibility functions. This is evident from the analyses of the Serbian landmark cases. In addition, a long-standing constitutional complaint, in general, has been the effective legal remedy for the protection of human rights.

All the efforts made by the Serbian authorities have been visible; however, they always come after the Court's findings of violations, indicating some potential difficulties in the preventive national protection system and the responsibilities that the Serbian state has under Article 1 of the Convention. While there is a constitutional basis for the bolder use of the Convention's tools by the Serbian authorities, for more effective national implementation of the Convention, it is important to implement awareness-raising activities in all fields. In the words of the Copenhagen Declaration, 'encouraging rights-holders and decision makers at the national level to take the lead in upholding Convention standards will increase ownership of and support for human rights'.[136] Thus, timely harmonisation of draft legislation with the Convention; improvement of effective domestic remedies for alleged violations of the Convention rights, particularly in situations of serious systemic or structural issues; and the full, effective and prompt execution of the ECtHR judgments are, and must remain, the main guiding principle for all Serbian authorities in providing effective enjoyment of human rights and, in case of violation, effective protection of.

[136] [Online]. Available at: https://rm.coe.int/copenhagen-declaration/16807b915c, p. 10 (Accessed: 16 December 2025).

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