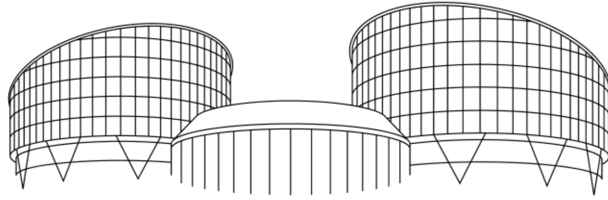

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

# CASE OF DOBRIĆ v. SERBIA

*(Applications nos. 2611/07 and 15276/07)*

JUDGMENT

STRASBOURG

21 June 2011

Request for referral to the Grand Chamber pending

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

**In the case of Dobrić v. Serbia,**

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

Françoise Tulkens, *President,*
David Thór Björgvinsson,
Dragoljub Popović,
Giorgio Malinverni,
András Sajó,
Guido Raimondi,
Paulo Pinto de Albuquerque, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 31 May 2011,

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

# PROCEDURE

1. The case originated in two applications (nos. 2611/07 and 15276/07) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Serbian nationals, Mr Zdravko Dobrić ("the first applicant") and Mr Miladin Dobrić ("the second applicant"), on 8 January 2007 and 3 April 2007 respectively.

2. The first applicant was represented by Mr N. Jankulov, a lawyer practising in Novi Sad. The second applicant was represented by Mr D. Ukropina, also a lawyer practising in Novi Sad. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. The applicants alleged that they had been denied access to the Supreme Court in a situation where, according to the relevant domestic legislation, they had clearly had the right to file an appeal on points of law therewith.

4. On 5 May 2010 the President of the Second Section decided to give notice of the applications to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (former Article 29 § 3).

# THE FACTS

5. The applicants were born in 1932 and 1934 respectively. The first applicant lives in Mala Moštanica, Serbia, while the second applicant lives in Clamart, France.

## I. THE CIRCUMSTANCES OF THE CASE

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

7. On 30 January 1986 S.K. filed a real estate claim against the applicants with the Municipal Court in Novi Sad. The value of the dispute (*vrednost spora*) stated by the plaintiff was 4,000,000 "old dinars".

8. Following a remittal and a redenomination of the Serbian currency, on 14 December 1998 the Municipal Court ruled in favour of the applicants and noted that the value of the dispute was now 50,000 "new dinars".

9. Following two remittals, on 28 September 2001 and 17 June 2004 respectively, the Municipal Court twice ruled in favour of the applicants, and on both occasions reaffirmed that the value of the dispute was 50,000 new dinars.

10. On 13 January 2005 the District Court accepted the appeal filed by the plaintiff and, in so doing, ruled partly in his favour.

11. The applicants, who were represented by legal counsel, thereafter filed an appeal on points of law (*revizija*).

12. On 14 June 2006 the Supreme Court, however, rejected this appeal, stating that the applicants were not entitled to lodge it given that the value of the dispute in question was below 15,000 new dinars, the applicable statutory threshold. In particular, the court acknowledged that the parties had agreed, on 19 November 1998, that the value of the dispute should be 50,000 new dinars, but observed that there was no separate Municipal Court's decision to this effect in the case file. Therefore, the relevant amount was the 4,000,000 old dinars, as stated in the plaintiff's original claim, which was clearly less than the 15,000 new dinars threshold under the relevant civil procedure rules (see paragraphs 20 and 21 below). Lastly, implicitly relying on its Opinion of 22 May 2001, the Supreme Court noted that the Government's Decree of 24 January 1994 had provided that until 22 July 1994 both old and new dinars would be valid legal tender based on the ratio that one new dinar was worth twelve thousand old dinars. The "plaintiff" himself, however, had "not amended the value of the dispute in new dinars" by 22 July 1994 (see paragraph 19 below).

13. The applicants were served with the Supreme Court's decision on 13 October 2006.

## II. RELEVANT DOMESTIC LAW AND JURISPRUDENCE

### A. The Civil Procedure Act 1977 (*Zakon o parničnom postupku*; published in the Official Gazette of the Socialist Federal Republic of Yugoslavia – OG SFRY – nos. 4/77, 36/77, 6/80, 36/80, 43/82, 72/82, 69/82, 58/84, 74/87, 57/89, 20/90, 27/90, 35/91 and the Official Gazette of the Federal Republic of Yugoslavia - OG FRY – nos. 27/92, 31/93, 24/94, 12/98 and 15/98)

14. Article 382 § 3 provides that an appeal on points of law (*revizija*) is "not admissible" in pecuniary lawsuits where the value of the dispute, as indicated by the plaintiff in his or her claim, does "not exceed 15,000 ... [new] dinars", this threshold having been introduced in 1998.

15. However, Article 40 provides, *inter alia*, that, should the value of the dispute stated by the plaintiff be "obviously too high or too low", the court itself shall resolve the issue. This must be done, at the latest, at the preliminary hearing or, if one is not held, before the beginning of the main hearing at first instance.

16. Articles 190 §§ 1 and 2 and 191 § 1 provide that a civil claim may, with the consent of the parties, be amended/increased until the conclusion of the main hearing at first instance.

17. Article 392 provides, *inter alia*, that the Supreme Court shall reject any and all appeals on points of law which it deems inadmissible.

18. Lastly, Articles 383 and 394-397 provide, *inter alia*, that the Supreme Court shall, should it accept an appeal on points of law lodged by one of the parties concerned, have the power to overturn the impugned judgment or quash it and order a retrial before the lower courts.

### B. Opinion of the Supreme Court's Civil Division of 22 May 2001 concerning the procedural ramifications of the redenomination of the Serbian currency

19. The Supreme Court opined that where an appeal on points of law would have been available according to the rules in force at the time when the civil claim had been brought, but where, following the redenomination, the value of the dispute in question clearly remained below the threshold of 15,000 new dinars, an appeal on points of law could not be filed. If the parties, however, agreed to amend the value of their dispute so as to raise it above the said threshold by 22 July 1994, at the latest, an appeal on points of law would be admissible (*Pravno shvatanje utvrđeno na sednici Građanskog odeljenja Vrhovnog suda Srbije od 22. maja 2001. godine*, published in the Supreme Court's Bulletin no. 1/02).

### C. The Amendments to the Civil Procedure Act of 2002 (published in OG FRY no. 3/02)

20. Articles 16 § 3 increased the minimum requirement for an appeal on points of law from 15,000 new dinars to 300,000 new dinars, but specified that, in respect of all suits brought earlier, the applicable amount would still be 15,000 new dinars.

### D. The Civil Procedure Act 2004 (*Zakon o parničnom postupku*; published in the Official Gazette of the Republic of Serbia – OG RS – no. 125/04)

21. The Civil Procedure Act 2004 entered into force on 23 February 2005, thereby repealing the Civil Procedure Act 1977. Article 491 § 4 of the former, however, provides that in all cases which were brought before that date the applicable legislation, as regards an appeal on points of law, shall be the legislation which was in force prior to 23 February 2005.

### E. The Courts Organisation Act (Zakon o uređenju sudova; published in OG RS nos. 63/01, 42/02, 27/03, 29/04, 101/05 and 46/06)

22. Article 40 §§ 2 and 3 provides, *inter alia*, that a meeting of a division (*sednica odeljenja*) of the Supreme Court shall be held if there is an issue as regards the consistency of its case-law. Any opinions (*pravna shvatanja*) adopted thereupon shall be binding for all panels (*veća*) of the division in question.

# THE LAW

## I. JOINDER OF THE APPLICATIONS

23. The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their similar factual and legal background.

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

24. The applicants complained, under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto, that they had been denied access to the Supreme Court in the determination of their civil rights and obligations.

25. Being the master of the characterisation to be given in law to the facts of any case before it, the Court considers that the above complaints fall to be examined under Articles 6 § 1 of the Convention only (see *Akdeniz v. Turkey*, no. 25165/94, § 88, 31 May 2005, and *García Manibardo v. Spain*, no. 38695/97, § 36, ECHR 2000-II).

This provision, in its relevant part, reads as follows:

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

### A. As regards the Government's request for a strike out

26. The Government maintained that the second applicant's written pleadings following the communication of his case had been belated, which is why his application should be struck out in accordance with Article 37 § 1 of the Convention.

27. The Court notes that it may indeed, on the basis of the said provision and at any stage of the proceedings decide to "strike an application out of its list of cases where the circumstances lead to the conclusion that: (a) the applicant does not intend to pursue his application; (b) the matter has been resolved; or (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application". The Court, however, "shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires".

28. It is further recalled that each party is responsible for ensuring that written pleadings are delivered to the Court's Registry in time. A time-limit may be extended on a party's request, but a failure to comply therewith may result in the exclusion of the pleading from the case file. For the purposes of observing the time-limit, the material date is the certified date of dispatch of the document or, if there is none, the actual date of receipt at the Registry (see Rule 38 of the Rules of Court of 1 June 2010 and paragraphs 18, 19 and 23 of the Practice Direction on Written Pleadings issued by the President of the Court on Court on 1 November 2003, as amended on 10 December 2007).

29. Turning to the present case, it is noted that on 22 November 2010 the President of the Section agreed, upon the second applicant's request, to extend the time allowed for submission of his observations on the admissibility and merits of his application, as well as his claims for just satisfaction under Article 41 of the Convention. The new time-limit was accordingly 22 December 2010. The second applicant complied with this instruction as regards the Serbian language version of his observations which were sent to the Registry by fax and surface mail on 22 December 2010 (the latter being confirmed by a certified date of dispatch on the

envelope). The English language translation of the second applicant's observations, however, was sent to the Registry by fax and surface mail on 17 and 18 January 2011 respectively.

30. In view of the above, the Court is of the opinion that it would be formalistic to exclude the second applicant's impugned written pleadings from the case file as belated, whilst the entire situation is certainly outside of the scope of Article 37 § 1 (a) and (b) of the Convention and cannot either warrant the conclusion that "it is no longer justified to continue the examination of the application" under Article 37 § 1 (c). The Government's objection must therefore be dismissed.

### B. Admissibility

#### *1. Compatibility ratione temporis*

31. In the Court's view, although the Government have not raised an objection as to the Court's competence *ratione temporis*, this issue nevertheless calls for its consideration (see, *mutatis mutandis*, *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III).

32. The Court observes in this regard that, in accordance with the generally accepted principles of international law, a Contracting Party is only bound by the Convention in respect of events occurring after its entry into force. It further notes that Serbia ratified the Convention on 3 March 2004 and that some of the events referred to in the applications in the present case had indeed taken place before that date. The Court shall therefore have jurisdiction *ratione temporis* to examine the applicants' complaints in so far as they concern events as of 3 March 2004. It shall nevertheless, for reasons of context, also take into account any and all relevant events prior to that date (see, *mutatis mutandis*, *Salontaji-Drobnjak v. Serbia*, no. 36500/05, § 110, 13 October 2009).

#### *2. The six-month time-limit*

33. The Government submitted that the second applicant's complaint was filed out of time, i.e. more than six months after 13 October 2006 which was when he had received the Supreme Court's decision.

34. The second applicant maintained that he had complied with the time-limit provided for in Article 35 § 1 of the Convention.

35. Article 35 § 1 of the Convention, in so far as relevant, provides that "[t]he Court may only deal with the matter ... within a period of six months from the date on which the final decision was taken."

36. The Court reiterates that according to its case-law the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written

judgment in cases where the applicant is entitled, pursuant to domestic law, to be served *ex officio* with a written copy of the final domestic decision, irrespective of whether that judgment was previously delivered orally (see *Worm v. Austria*, judgment of 29 August 1997, § 33, *Reports of Judgments and Decisions* 1997-V; and *Venkadajalasarma v. the Netherlands* (dec.), no. 58510/00, 9 July 2002).

37. In accordance with the established practice of the Convention organs, the Court normally considers the date of the introduction of an application to be the date of the first communication indicating an intention to lodge an application and giving some indication as to the nature of the application. Such first communication will interrupt the running of the six-month period.

38. In the absence of explanations of an interval, of at least several days, between the date on which the initial submission was written and the date on which it was posted, the latter is to be considered the date of introduction of an application (see *Arslan v. Turkey* (dec.), no. 36747/02, decision of 21 November 2002, ECHR 2002-X (extracts)).

39. The purpose of the six-month rule is to promote security of the law, to ensure that cases raising Convention issues are dealt with within a reasonable time and to protect the authorities and other persons concerned from being under uncertainty for a prolonged period of time. As the Court has held, it would be contrary to the spirit and aim of the six-month rule if, by any initial communication, an application could set into motion the proceedings under the Convention and then remain inactive for an unexplained and unlimited length of time. Applicants must therefore pursue their applications with reasonable expedition, after any initial introductory contact (see *P.M. v. the United Kingdom* (dec.), no. 6638/03, 24 August 2004).

40. Turning to the present case, it is noted that by letter of 30 March 2007, which was posted on 3 April 2007 (as confirmed by a certified date of dispatch on its envelope), the second applicant expressed his wish to lodge an application with the Court. In so doing, *inter alia*, he specifically complained about the Supreme Court's refusal to consider his appeal on points of law and referred, by title as well as registration number, to the first applicant's case which concerned the same issue and had already been pending before the Court.

41. On 16 May 2007 the Registry confirmed receipt of the second applicant's letter and asked him to send the completed application form and any necessary supplementary documents to the Court as soon as possible and at the latest "within six months of the date of the present letter".

42. As confirmed by a certified date of dispatch on its envelope, on 4 October 2007 the second applicant posted his duly completed application form to the Registry. The latter was dated 3 October 2007 and accompanied by a separate submission of 3 September 2007 wherein the applicant, *inter*

*alia*, informed the Registry that the domestic judiciary was already aware of the first applicant's case before the Court.

43. On 26 October 2007 the Registry confirmed receipt of the second applicant's correspondence and formally registered his case.

44. In view of the above, the Court notes that following his initial communication the applicant was not "inactive for an unexplained and unlimited length of time". On the contrary, he complied with the Registry's instructions of 16 May 2007, which is why 3 April 2007 should be considered as the date of introduction of his complaint. Since the six-month period started to run on 13 October 2006, the Court concludes that the second applicant's complaint is not out of time for the purposes of Article 35 § 1 of the Convention.

45. The Government objection in this respect must therefore be rejected, the applicable Rules of Court, as well as the relevant provisions contained in the Practice Direction on the Institution of Proceedings, being those of 1 July 2006 and 1 November 2003 respectively (in particular, Rule 47 § 5 of the former and paragraphs 1 and 4 of the latter). The Government's reference to some of the Court's more recent jurisprudence applying subsequent amendments to the said regulations is thus also clearly distinguishable (see, for example, *Kemevuako v. the Netherlands* (dec.), no. 65938/09, 1 June 2010).

#### *3. Conclusion*

46. The Court notes that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other ground. They must therefore be declared admissible.

### C. Merits

#### *1. The parties' submissions*

47. The applicants reaffirmed their complaints. They further noted that the Supreme Court's Opinion of 22 May 2001 was of no relevance in their case since they, together with the plaintiff, had already specified the new value of the dispute on 19 November 1998, i.e. more than two years prior to its adoption. The Supreme Court's Opinions, such as the one here at issue, were merely internal publications meant for distribution among judges, whilst the Civil Procedure Act 1977 was binding, including Articles 190 and 191 thereof. Lastly, the applicants pointed out that the Municipal Court in Novi Sad had itself repeatedly noted that the value of the dispute was 50,000 new dinars, which was well above the statutory threshold for an appeal on points of law at the relevant time.

48. The Government argued that there has been no violation of the Convention. In particular, they endorsed the Supreme Court's reasoning of 14 June 2006, as well as its Opinion of 22 May 2001 on which it had been based. The Government also relied on Article 40 of the Civil Procedure Act 1977, and submitted that the Supreme Court was not bound by the lower courts' mere reference to the amount of 50,000 new dinars as the value of the dispute in question. The amendment of this figure by the parties on 19 November 1998 was not done in a timely manner, and the Supreme Court's Opinion of 22 May 2001 was relevant to the applicants' case since it had been adopted almost five years before they had attempted to lodge their appeal on points of law. Finally, Opinions issued by the Supreme Court were widely distributed to and frequently cited by the legal profession.

*2. The Court's assessment*

49. The Court reiterates at the outset that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, *mutatis mutandis*, the *Brualla Gómez de la Torre v. Spain* judgment of 19 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII, and the *Edificaciones March Gallego S.A. v. Spain* judgment of 19 February 1998, § 33, *Reports* 1998-I).

50. The "right to a court", of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired; specifically, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim pursued (see, among other authorities, *García Manibardo v. Spain*, cited above, § 36).

51. It is also recalled that Article 6 of the Convention does not compel the Contracting States to set up courts of appeal or of cassation. Nevertheless, where such courts exist the guarantees contained in Article 6 must be complied with, *inter alia* by ensuring effective access to the courts so that litigants may obtain a decision relating to their "civil rights and obligations" (see, among other authorities, *García Manibardo v. Spain*, cited above, § 39). The conditions of admissibility of an appeal on points of law, however, may be stricter than for an ordinary appeal (see, among many other authorities, *EM LINIJA D.O.O. v. Croatia* (dec.), no. 27140/03, 22 November 2007).

52. Turning to the present case, the Court notes that the applicants' complaints concern their arguable real estate-related claims brought domestically and, as such, clearly fall within the scope of Article 6 § 1.

53. Further, on 14 June 2006 the Supreme Court rejected the applicants' appeal on points of law as inadmissible given that "the value of their dispute was below 15,000 new dinars", the applicable statutory threshold. The Supreme Court also acknowledged that the parties had agreed, on 19 November 1998, that the value of the dispute should be 50,000 new dinars, but emphasised that there was no separate Municipal Court's decision to this effect in the case file. Therefore, the relevant amount was the 4,000,000 old dinars, as stated in the plaintiff's original claim, which was clearly less than the 15,000 new dinars threshold under the relevant civil procedure rules. The Supreme Court lastly noted that the Government's Decree of 24 January 1994 provided that until 22 July 1994 both old and new dinars would be valid legal tender, but that the "plaintiff" himself had "not amended the value of the dispute in new dinars" by the latter date.

54. In view of the above, it is this Court's opinion that the Supreme Court pursued a legitimate aim and, further, that there was a reasonable relationship of proportionality between the means employed and the aim pursued. In particular, the applicable statutory threshold was not a gratuitous interference with the applicants' right of access. It was, rather, a legitimate and reasonable procedural requirement having regard to the very essence of the Supreme Court's role, i.e. to deal only with matters of the requisite significance. Further, as provided in Article 392 of the Civil Procedure Act 1977, the Supreme Court was fully entitled to reject any appeal on points of law which it deemed inadmissible (see paragraph 17 above). Indeed, as correctly noted by the Government, the Supreme Court was thus not bound by the lower courts' mere reference to the amount of 50,000 new dinars as the value of the dispute in question. Finally, the Supreme Court implicitly based the impugned decision on its prior binding opinion concerning the redenomination of the Serbian currency, including the deadline not complied with by the applicants (see paragraphs 19 and 22 above). In such circumstances, the Court does not find any reason to believe that the Supreme Court's decision in the present case was arbitrary.

55. Accordingly, it finds that there has been no violation of the applicants' right of access to court within the meaning of Article 6 § 1 of the Convention.

## FOR THESE REASONS, THE COURT

1. *Decides* to join the applications unanimously;

2. *Declares* the applications admissible unanimously;

3. *Holds* by five votes to two that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 21 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Judges Popović and Pinto de Albuquerque are annexed to this judgment.

F.T.
S.H.N

# JOINT DISSENTING OPINION OF JUDGES POPOVIĆ AND PINTO DE ALBUQUERQUE

We respectfully disagree with the ruling of the majority in this case for the following reasons.

The applicants complain of an alleged violation of Article 6 § 1 of the Convention. It is their access to a court which is at stake.

The applicants brought an action against a private person at the domestic level, stating the amount of their claim in the national currency valid at that time. A redenomination of the national currency occurred while the proceedings were pending before the domestic courts of law. The applicants did not reformulate their claim in the new currency. The first-instance court delivered two judgments, after remittal, reaffirming the value of the applicants' claim in the new currency. The District Court, in a judgment on appeal, did the same. In each of the three judgments the amount stated by the courts of law was above the threshold required for lodging a second appeal with the Supreme Court, which the applicants eventually did.

The Supreme Court rejected the applicants' second appeal on the grounds that the threshold requirement had not been fulfilled. The Supreme Court's reasoning was based on two arguments: (a) the applicants had never stated their claim in the new currency, and (b) there had been no separate ruling by the lower courts on the amount of the claim.

(a) Although it is true that the applicants never stated the amount of their claim in the newly denominated currency, it is obvious from the case file that there was no need for them to do so. The reason is crystal clear: the decisions taken by the lower courts of their own motion concerning the amount of the claim in the new currency made it unnecessary for the applicants to raise this issue. The lower courts gave three judgments on the applicants' case and in each one the amount awarded was stated, corresponding to the applicants' claim. The amounts were always above the threshold required for lodging a second appeal with the Supreme Court.

(b) Although it is true that there was no separate ruling by the lower courts concerning the amount of the claim, there were no grounds for requiring such a ruling, for several reasons.

(1) The amount of the claim was clearly and repeatedly stated in the lower courts' judgments, meaning that these courts gave this issue due and proper consideration.

(2) There is no provision whatsoever in domestic law requiring a separate ruling on the amount of the claim in a lawsuit when there has been a redenomination of the currency. At the same time the respondent Government failed to provide any case-law which might serve to justify such a requirement. It is therefore obvious that the condition imposed on the applicants for lodging a second appeal was by no means foreseeable.

(3) In the Supreme Court's view it was up to the lower courts to give a separate ruling. The applicants cannot be blamed for an omission on the part of the domestic courts.

The situation we have described above warrants consideration from the standpoint of our Court's case-law. The Court cannot replace the domestic authorities in the assessment of the facts and the application of national law. However, it must be vigilant in ensuring the standards of protection of human rights guaranteed by the Convention and must ascertain whether they have been met in a particular case.

In the case of *Garcia Manibardo v. Spain* (no. 38695/97, § 45, ECHR 2000-II) the Court articulated the principle that a disproportionate hindrance of the right of access to a court is in breach of Article 6 of the Convention. The hindrance faced by the applicants in the present case was disproportionate first and foremost because of its lack of foreseeability. In the absence of a specific legal provision and relevant case-law it was not foreseeable that the Supreme Court would require the lower courts to give a separate ruling on the issue.

In substance, the appropriate ruling on the amount of the claim in the new currency was provided by the lower courts' judgments, but the Supreme Court insisted on requiring a formal and separate ruling. This requirement was even less foreseeable since it did not apply to other cases before the Supreme Court.

Moreover, the separate ruling required by the Supreme Court lay outside the scope of the applicants' action, which clearly makes the hindrance of their right disproportionate.

It is a firm rule in our Court's jurisprudence that access to a court must not be denied by a formalistic application of domestic law. The Court held in *Brualla Gomez De La Torre v. Spain* (19 December 1997, § 32, *Reports of Judgments and Decisions* 1997-VIII) that although it was not for the Court "to express a view on the appropriateness of the domestic courts' choice of policy" it was indeed the Court's task to determine "whether the consequences of that choice [were] in conformity with the Convention". In several other cases the Court concluded that whenever the domestic courts applied a certain admissibility requirement in too formalistic a way, this would amount to a disproportionate restriction of the right of access to a court (see *Stone Court Shipping Company*, *S.A. v. Spain*, no. 55524/00, §§ 36-43, 28 October 2003; *Bulena v. the Czech Republic*, no. 57567/00, § 35, 20 April 2004; *Kadlec and Others v. the Czech Republic*, no. 49478/99, §§ 26-30, 25 May 2004; and *Boulougouras v. Greece*, no. 66294/01, §§ 26-27, 27 May 2004). On another occasion the Commission also stated that the rejection of a petition for review (cassation) violated the right of access if that rejection was the result of an omission on the part of the domestic courts (see *Dimova v. Bulgaria*, no. 31806/96, Commission's report of 21 October 1998). The formalistic requirement of a

separate ruling on the value of the claim, which had already been provided by the lower courts' judgments, deprived the applicants in the present case of the right to lodge a second appeal with the Supreme Court. That is what in our opinion constitutes a violation of Article 6 in this case.

We therefore take the view that the very essence of the applicants' right to a court was impaired.