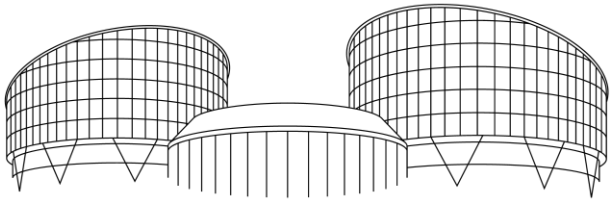

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 16231/07
by Nenad VIDAKOVIĆ
against Serbia

The European Court of Human Rights (Second Section), sitting on 24 May 2011 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 regard to the above application lodged on 27 March 2007,

Having deliberated, decides as follows:

## THE FACTS

1. The applicant, Mr Nenad Vidaković, is a Serbian national who was born in 1956 and lives in Belgrade.

### A. The circumstances of the case

2. The relevant facts of the case, as submitted by the applicant, may be summarised as follows.

*1. The compensation suit concerning the applicant's car*

3. On 21 June 2002 the applicant left his car in a repair shop, in order to have it mended. The mechanic, employed by the said shop, subsequently caused a traffic accident while driving the applicant's vehicle.

4. On 24 September 2002 the applicant therefore filed a claim with the Municipal Court (*Opštinski sud*) in Ivanjica, seeking compensation for the pecuniary damage suffered.

5. On 19 November 2003 the Municipal Court adopted a partial judgment (*delimična presuda*) in the applicant's favour. This judgment subsequently became final.

6. On 19 January 2004 the Municipal Court: (i) ruled against the applicant as regards the remainder of his claim; (ii) ordered him to pay the related litigation costs; and (iii) ordered one of the two respondents to cover the applicant's own litigation costs associated with the partial judgment of 19 November 2003.

7. On 20 April 2004 the District Court (*Okružni sud*) in Užice quashed this judgment's rulings under points (i) and (ii), but upheld its order under point (iii).

8. On 27 October 2005 the Municipal Court ruled partly in favour of the applicant.

9. On 20 June 2006 the District Court quashed this judgment on appeal.

10. On 5 November 2008 the Municipal Court again ruled partly in favour of the applicant. In so doing, it ordered the respondents to pay jointly: (i) 45,154 Serbian Dinars ("RSD") in damages, plus statutory interest as of 20 October 2008; and (ii) RSD 42,377.24 for the litigation costs incurred (i.e. at the time a total of approximately 1,000 Euros, "EUR", plus statutory interest).

11. On 8 February 2010 the High Court (*Viši sud*) in Užice, now acting as the competent court of second instance, upheld this judgment on appeal and it thereby became final. There is nothing in the case file that would suggest that the sums awarded to the applicant have not been paid, and the applicant personally has not raised any objections in this respect.

*2. The decision of the Constitutional Court and the related proceedings thereafter*

12. On 8 January 2008 the applicant lodged an appeal with the Constitutional Court (*Ustavni sud*), complaining about the length of the above civil suit.

13. On 22 December 2009 the Constitutional Court held that the applicant had indeed suffered a breach of his "right to a trial within a reasonable time", and ordered the competent courts to bring the impugned proceedings to a conclusion as soon as possible. The court, additionally, declared that the applicant was entitled to the non-pecuniary damages

sought, in accordance with Article 90 of the Constitutional Court Act (see paragraph 23 below).

14. The applicant seems not to have been served with this decision until 26 February 2010.

15. In early March 2010 the applicant's lawyer filed a request with the Commission for Compensation. In so doing, he relied on the Constitutional Court's decision, and sought RSD 350,000 in compensation (see paragraph 23, Articles 89 and 90, below).

16. On 12 March 2010 the applicant's lawyer filed another submission with the Commission for Compensation, specifying that he had made a mistake in his earlier request. The actual amount requested was instead RSD 3,500,000 (at the time approximately EUR 35,000).

17. On 22 June 2010 the applicant personally claimed a total of RSD 8,033,542 (at the time approximately EUR 77,300) on account of the pecuniary and non-pecuniary damage suffered, but offered, simultaneously, to settle for the said RSD 3,500,000.

18. In September 2010 the applicant filed a claim with the Court of First Instance (*Osnovni sud*) in Požega, specifically its Detached Section (*Sudska jedinica*) in Ivanjica, noting that he had received no response from the Commission for Compensation which was why he was entitled to bring a separate civil suit in this respect (see paragraph 23, Article 90, below). The applicant sought RSD 4,000,000 (at the time approximately EUR 40,000) for the non-pecuniary damage sustained, plus statutory interest.

19. On 14 October 2010 the Commission for Compensation offered to pay the applicant the sum of RSD 50,000 (at the time approximately EUR 500) for the non-pecuniary damage referred to in the Constitutional Court's decision.

20. According to the information contained in the case-file, the applicant refused to accept this amount, deeming it insufficient. The applicant further maintained that the Commission for Compensation had not considered his request earlier since it had apparently experienced some staffing issues.

## B. Relevant domestic law

### 1. *The Constitution of the Republic of Serbia 2006 (Ustav Republike Srbije; published in the Official Gazette of the Republic of Serbia – OG RS – no. 98/06)*

21. Article 32 § 1 provides, *inter alia*, that everyone shall have the right to a fair hearing before a tribunal in the determination of his rights and obligations.

22. Article 170 provides that a "constitutional appeal may be lodged against individual decisions or actions of State bodies or organisations exercising delegated public powers which violate or deny human or

minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been exhausted or have not been prescribed."

### 2. *The Constitutional Court Act (Zakon o Ustavnom sudu; published in OG RS no. 109/07)*

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

**Article 7 § 1**

"The decisions of the Constitutional Court shall be final, enforceable and binding."

**Article 82 §§ 1 and 2**

"A constitutional appeal may be lodged against an individual decision or an action of a State body or an organisation exercising delegated public powers which violates or denies human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies have already been exhausted or have not been prescribed or where the right to their judicial protection has been excluded by law.

A constitutional appeal may be lodged even if all available remedies have not been exhausted in the event of a breach of an applicant's right to a trial within a reasonable time."

**Article 83 § 1**

"A constitutional appeal may be lodged by any individual who believes that any of his or her human or minority rights or freedoms guaranteed by the Constitution has been violated or denied by an individual decision or an action of a State body or an organisation exercising delegated public powers."

**Article 84 § 1**

"A constitutional appeal may be lodged within thirty days of receipt of the individual decision or the date of commission of the actions ... [in question] ..."

**Article 89 §§ 2 and 3**

"When the Constitutional Court finds that an ... individual decision or action has violated or denied a human or minority right or a freedom guaranteed by the Constitution, it shall annul the ... decision in question or ban the continuation of such action or order the implementation of other specific measures as well as the removal of all adverse consequences within a specified period of time.

The decision of the Constitutional Court accepting a constitutional appeal shall constitute a legal basis for requesting compensation or the removal of other adverse consequences before a competent body, in accordance with the law."

**Article 90**

"... [An applicant who has obtained a Constitutional Court decision in his or her favour] .., may lodge a compensation claim with the Commission for Compensation in order to reach an agreement in respect of the amount ... [of compensation to be awarded] ...

> If the Commission for Compensation does not rule favourably in respect of a compensation claim or fails to issue a decision within thirty days from the date of its submission, the applicant may file a civil claim for damages before the competent court. If only partial agreement has been achieved, a civil claim may be filed in respect of the remainder of the amount sought.
>
> The composition and operation of the Commission for Compensation shall be regulated by the Minister of Justice."

# COMPLAINTS

24. The applicant did not rely on a specific provision of the Convention. In substance, however, he complained about the amount of damages awarded in his favour in relation to the incident involving his vehicle, as well as the length of those proceedings.

# THE LAW

25. The Court considers that the applicant's complaints, as described above, fall to be examined under Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

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

## A. As regards the length of the impugned proceedings

26. The Court recalls that an applicant's status as a "victim" within the meaning of Article 34 of the Convention depends on the fact whether the domestic authorities acknowledged, either expressly or in substance, the alleged infringement of the Convention and, if necessary, provided appropriate redress in relation thereto. Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-V; and *Cataldo v. Italy* (dec.), no. 45656/99, 3 June 2004).

27. The Court, in this respect, notes that the Constitutional Court found that the applicant's right to a determination of his claim within a reasonable time had been violated (see paragraph 13 above), thereby acknowledging the breach complained of and, effectively, satisfying the first condition laid down in the Court's case law.

28. The applicant's victim status then depends on whether the redress afforded was adequate and sufficient having regard to just satisfaction as

provided for under Article 41 of the Convention (see *Dubjaková v. Slovakia* (dec.), no. 67299/01, 19 October 2004).

29. In this connection, the Court recalls that in length-of-proceedings cases one of the characteristics of sufficient redress which may remove a litigant's victim status relates to the amount awarded. This amount depends, in particular, on the characteristics and effectiveness of the remedy. Thus, States which, like Serbia, have opted for a remedy designed both to expedite proceedings and afford compensation are free to award amounts which – while being lower than those awarded by the Court – are not unreasonable (see *Cocchiarella v. Italy* [GC], cited above, §§ 96, 97).

30. In the present case, on 22 December 2009 the Constitutional Court, in addition to the said finding of a violation, ordered the competent courts to bring the impugned proceedings to a conclusion as soon as possible, it being understood that the applicant would appear not to have been served with this decision before 26 February 2010 (see paragraphs 13 and 14 above). The Constitutional Court further declared that the applicant was entitled to the non-pecuniary damages sought, in accordance with Article 90 of the Constitutional Court Act (see paragraph 23 above). Finally, on 14 October 2010, less than four months after the applicant had personally finalised his claim before it, the Commission for Compensation offered to pay the sum of RSD 50,000 (at the time approximately EUR 500), but the applicant refused to accept this amount, deeming it insufficient (see paragraphs 17, 19 and 20 above).

31. Turning to the actual sum awarded to the applicant, the Court notes that the compensation granted in the present case is lower compared with the sums awarded for comparable delays in the Court's case-law. It would emphasise, in this respect, the importance of a reasonable amount of just satisfaction being awarded in the domestic system for the remedy in question to be considered as effective under the Convention. Whether the amount awarded may be regarded as reasonable, however, falls to be assessed in the light of all the circumstances of the case. These include not merely the duration of the proceedings in the specific case but the value of the award judged in the light of the standard of living in the State concerned, and the fact that under the national system compensation will in general be awarded and paid more promptly than would be the case if the matter fell to be decided by the Court under Article 41 of the Convention.

32. In the light of the material in the file and having regard to the particular circumstances of the case, including the fact that the Convention entered into force in respect of Serbia on 3 March 2004, the Court considers that the sum awarded to the applicant can be considered sufficient and therefore appropriate redress for the violation suffered. In reaching this conclusion the Court has also had regard to the fact that during the relevant period the applicant's claim had been repeatedly considered at two instances and, crucially, that the impugned proceedings have been concluded within

less than two months following the date of adoption of the Constitutional Court's decision. Finally, there is nothing in the case file that would suggest that the amounts awarded to the applicant in these proceedings have not been paid promptly (see paragraph 11 above).

33. The Court therefore, even assuming that the applicant was not required to pursue his civil suit brought in September 2010 (see paragraph 18 above), is of the opinion that he can no longer claim to be a "victim" within the meaning of Article 34 of the Convention of the alleged violation of his right to a hearing within a reasonable time. It follows that the complaint to this effect is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

34. It is lastly reaffirmed that a constitutional appeal remains, in principle, a remedy to be exhausted, within the meaning of Article 35 § 1 of the Convention, only in respect of applications introduced as of 7 August 2008 (see *Vinčić and Others v. Serbia*, nos. 44698/06 et seq., § 51, 1 December 2009), whilst in respect of all application lodged earlier, such as the application at hand, any redress provided by the Constitutional Court shall be assessed through the prism of whether the applicant can still be considered to be a victim within the meaning of Article 34.

### B. As regards the amount of damages awarded to the applicant in the proceedings concerning his vehicle

35. The Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I; and *Cornelis v. the Netherlands* (dec.), no. 994/03, ECHR 2004-V (extracts)), as it is not a court of appeal – or, as is sometimes said, a "fourth instance" – from these courts (see, among many other authorities, *Kemmache v. France (no. 3)*, 24 November 1994, § 44, Series A no. 296-C; and *Melnychuk v. Ukraine* (dec), no. 28743/03, ECHR 2005-IX).

36. It follows that this part of the application too is manifestly ill-founded and must, as such, be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Stanley Naismith
Registrar

Françoise Tulkens
President