



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

1959 · 50 · 2009

SECOND SECTION

CASE OF VINČIĆ and OTHERS v. SERBIA

(Application nos. 44698/06, 44700/06, 44722/06, 44725/06, 49388/06, 50034/06, 694/07, 757/07, 758/07, 3326/07, 3330/07, 5062/07, 8130/07, 9143/07, 9262/07, 9986/07, 11197/07, 11711/07, 13995/07, 14022/07, 20378/07, 20379/07, 20380/07, 20515/07, 23971/07, 50608/07, 50617/07, 4022/08, 4021/08, 29758/07 and 45249/07)

JUDGMENT

STRASBOURG

1 December 2009

FINAL

02/03/2010

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

In the case of Vinčić and Others v. Serbia,

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

Françoise Tulkens, *President*,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

Sally Dollé, *Section Registrar*,

Having deliberated in private on 10 November 2009,

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

PROCEDURE

1. The case originated in thirty-one separate applications (nos. 44698/06, 44700/06, 44722/06, 44725/06, 49388/06, 50034/06, 694/07, 757/07, 758/07, 3326/07, 3330/07, 5062/07, 8130/07, 9143/07, 9262/07, 9986/07, 11197/07, 11711/07, 13995/07, 14022/07, 20378/07, 20379/07, 20380/07, 20515/07, 23971/07, 50608/07, 50617/07, 4022/08, 4021/08, 29758/07 and 45249/07) lodged with the Court against Serbia, under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), by Ms Aleksandra Vinčić and 30 others (“the applicants”; see paragraph 5 below) on 26 October 2006, 27 October 2006, 27 October 2006, 27 October 2006, 4 December 2006, 6 December 2006, 18 December 2006, 21 December 2006, 21 December 2006, 11 January 2007, 11 January 2007, 15 January 2007, 2 February 2007, 6 February 2007, 30 January 2007, 19 February 2007, 1 March 2007, 8 March 2007, 21 March 2007, 20 March 2007, 4 May 2007, 4 May 2007, 4 May 2007, 4 May 2007, 28 May 2007, 15 November 2007, 30 October 2007, 28 December 2007, 28 December 2007, 4 July 2007 and 8 October 2007, respectively.

2. The applicants were represented before the Court by Mr J. Kosić, a lawyer practising in Belgrade, and the Government of Serbia (“the Government”) were represented by their Agent, Mr S. Carić.

3. The applicants complained about the flagrantly inconsistent case-law of the District Court (*Okružni sud*) in Belgrade concerning the payment of the same employment-related benefit.

4. On 24 September 2008 and 14 October 2008 the Court decided to communicate the applications to the Government. Applying Article 29 § 3

of the Convention, it also decided to rule on their admissibility and merits at the same time.

THE FACTS

5. The applicants, Ms Aleksandra Vinčić (“the first applicant”), Mr Damir Matić (“the second applicant”), Ms Dušica Obradović (“the third applicant”), Mr Aleksandar Kržić (“the fourth applicant”), Mr Ljubomir Božić (“the fifth applicant”), Mr Zoran Radonjić (“the sixth applicant”), Ms Ljiljana Savić (“the seventh applicant”), Ms Aleksandra Rosić (“the eighth applicant”), Mr Jovo Grbić (“the ninth applicant”), Mr Mirko Maljković (“the tenth applicant”), Mr Milan Vukelić (“the eleventh applicant”), Mr Jovan Milić (“the twelfth applicant”), Mr Jovan Jovanović (“the thirteenth applicant”), Mr Milutin Jovanović (“the fourteenth applicant”), Mr Nenad Jovanović (“the fifteenth applicant”), Mr Zoran Korica (“the sixteenth applicant”), Ms Dara Đorđević Halapir (“the seventeenth applicant”), Ms Vera Vasović (“the eighteenth applicant”), Mr Drago Tumbas (“the nineteenth applicant”), Mr Dobrivoje Dunjić (“the twentieth applicant”), Mr Svetozar Munćan (“the twenty-first applicant”), Mr Rade Savić (“the twenty-second applicant”), Mr Dragan Udović (“the twenty-third applicant”), Mr Milutin Milunov (“the twenty-fourth applicant”), Mr Predrag Stamenović (“the twenty-fifth applicant”), Mr Zoran Babić (“the twenty-sixth applicant”), Mr Slobodan Pejić (“the twenty-seventh applicant”), Mr Mirko Novaković (“the twenty-eighth applicant”), Mr Radoje Đukić (“the twenty-ninth applicant”), Mr Zoran Živković (“the thirtieth applicant”) and Mr Miodrag Lopičić (“the thirty-first applicant”) are all Serbian nationals.

I. THE CIRCUMSTANCES OF THE CASE

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

7. The applicants were all members of the Independent Union of Aviation Engineers of Serbia (*Samostalni sindikat inženjera vazduhoplovstva Srbije*).

8. Following a strike, on 28 November 2004 their union and their employer, JAT Airways, concluded an agreement whereby the latter accepted to pay all union members a certain benefit while the former promised to discontinue the strike and refrain from any legal action.

9. On 29 November 2004 the Director General of JAT Airways, a public corporation founded by the respondent State, ordered that the necessary calculations be made and the payment of the benefit be effected immediately.

10. Since this decision would appear not to have been implemented, on 7 February 2005 the applicants, as part of a group of 151 persons, filed a single civil claim against JAT Airways with the Fourth Municipal Court (*Četvrti opštinski sud*) in Belgrade, seeking payment of the benefit in question (ranging from several hundred up to approximately one thousand Euros, “EUR”, respectively).

11. The total number of plaintiffs subsequently dropped to 140. The Fourth Municipal Court thereafter decided to separate the proceedings for each of the remaining plaintiffs, and ordered them to re-submit their individual claims. The plaintiffs, including the applicants, complied.

12. Certain applicants were successful before the Fourth Municipal Court; others were not. However, all the applicants were unsuccessful at second-instance before the District Court in Belgrade whose decisions they received on the following dates:

- the first applicant on 27 September 2006;
- the second applicant on 13 July 2006;
- the third and fourth applicants on 13 September 2006;
- the fifth applicant on 17 November 2006;
- the sixth applicant on 10 November 2006;
- the seventh applicant on 4 December 2006;
- the eighth applicant on 5 December 2006;
- the ninth applicant on 28 November 2006;
- the tenth applicant on 14 December 2006;
- the eleventh applicant on 20 November 2006;
- the twelfth applicant on 8 December 2006;
- the thirteenth applicant on 7 December 2006;
- the fourteenth applicant on 21 December 2006;
- the fifteenth applicant on 21 August 2006;
- the sixteenth applicant on 26 December 2006;
- the seventeenth applicant on 7 February 2007;
- the eighteenth applicant on 5 January 2007;
- the nineteenth and twentieth applicants on 5 February 2007;
- the twenty-first and twenty-fifth applicants on 7 March 2007;
- the twenty-second applicant on 1 March 2007;
- the twenty-third applicant on 28 March 2007;
- the twenty-fourth applicant on 11 April 2007;
- the twenty-sixth applicant on 5 October 2007;
- the twenty-seventh applicant on 3 September 2007;
- the twenty-eighth applicant on 5 September 2007;
- the twenty-ninth applicant on 19 October 2007;
- the thirtieth applicant on 13 June 2007; and
- the thirty-first applicant on 3 September 2007.

13. In its reasoning in the applicants' cases, the District Court held, *inter alia*, that the Director General of JAT Airways had not been authorised to

grant payment of the benefit at issue in the absence of an explicit governmental authorisation.

14. In another 23 separate cases, for the same reasons, the District Court also ruled against the plaintiffs.

15. However, in at least 17 other judgments, rendered between 31 May 2006 and 5 December 2007, the District Court decided in favour of the applicants' colleagues, notwithstanding the fact that their claims were based on the same facts and concerned identical legal issues. In its reasoning in these other cases, the District Court explained, *inter alia*, that JAT Airways had had to comply with the agreement of 28 November 2004, as well as the decision of its Director General of 29 November 2004.

16. On 27 September 2006 the District Court adopted a "legal opinion" (*pravno shvatanje*) affirming the reasoning described at paragraph 13 above.

17. On 21 November 2006 the applicants filed a request urging the Fourth Municipal Court to proceed in accordance with Article 176 of the Civil Procedure Act 2004 (see paragraph 39 below), that is to seek guidance from the Supreme Court (*Vrhovni sud Srbije*) on how to deal with a large number of cases, including their own, wherein the District Court had already ruled inconsistently.

18. On 27 February 2007 the Supreme Court rejected the Fourth Municipal Court's request made to this effect on 10 January 2007. In so doing, it noted, *inter alia*, that Article 176 was inapplicable because in a number of cases at issue the District Court had already ruled as the final instance, and stressed that it was up to the said court to harmonise its own case-law.

19. On 17 July 2008 the Constitutional Court (*Ustavni sud Srbije*) rejected the motion for abstract review (*inicijativa za ocenu zakonitosti*) filed by JAT Airways, requesting to have the agreement of 28 November 2004 and the Director General's decision of 29 November 2004 declared unlawful. The court explained that it had no jurisdiction *ratione materiae* given that the impugned documents could not be qualified as general acts (*opšti akti*) within the meaning of Article 167 § 1 of the Constitution (see paragraph 24 below).

20. In the meantime, JAT Airways lodged several separate counterclaims against the applicants, seeking that the said agreement and the Director General's decision be declared null and void. Ultimately, however, all of these claims would appear to have been rejected on various procedural grounds.

21. Dozens of separate cases such as the applicants' seem to be still pending at first or second instance.

II. RELEVANT DOMESTIC LAW

A. The Constitution of the Republic of Serbia 1990 (Ustav Republike Srbije; published in the Official Gazette of the Republic of Serbia - OG RS - no. 1/90)

22. Article 22 § 1 of the Constitution provided, *inter alia*, that everyone “shall be entitled to the equal protection of his or her rights in a suit before a court of law”.

23. This Constitution was repealed in November 2006, which is when the new Constitution, published in OG RS no. 98/06, entered into force.

B. The Constitution of the Republic of Serbia 2006 (Ustav Republike Srbije; published in OG RS no. 98/06)

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

Article 32 § 1

“Everyone shall have the right to ... [a fair hearing before a] ... tribunal ... [in the determination] ... of his [or her] rights and obligations ...”

Article 167 § 1

The Constitutional Court shall decide about:

...

5. the compliance of general acts [*opštih akata*] adopted by organisations exercising delegated public powers ... with the Constitution and the laws.

Article 170

“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.”

Article 172 §§ 1, 2 and 3

“The Constitutional Court shall have fifteen judges who shall be elected or appointed for a period of nine years.

Five judges of the Constitutional Court shall be elected by the National Assembly, another five shall be appointed by the President of the Republic, and another five shall be appointed at the general session of the Supreme Court of Cassation...

The National Assembly shall elect five judges of the Constitutional Court from among ten candidates proposed by the President of the Republic, the President of the Republic shall appoint five judges of the Constitutional Court from among ten candidates proposed by the National Assembly, and the general session of the Supreme Court of Cassation shall appoint five judges from among ten candidates proposed at the general session by the High Judicial Council and the State Prosecutors' Council."

Article 175 § 1

"The Constitutional Court shall adjudicate by the majority of votes cast by all judges of the Constitutional Court."

C. Constitutional Act on the Implementation of the Constitution of the Republic of Serbia (Ustavni zakon za sprovođenje Ustava Republike Srbije; published in OG RS no. 98/06)

25. In accordance with Article 9 § 3 the Constitutional Court shall be deemed constituted when two thirds of the total number of judges have been elected or appointed.

D. Constitutional Court Act (Zakon o Ustavnom sudu; published in OG RS no. 109/07)

26. 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 10 § 1

"The Constitutional Court shall have its Rules of Procedure ... which shall regulate, in greater detail, the organisation ... [and the functioning of the Constitutional Court] ... as well as the proceedings ... [before it] ..."

Article 27 §§ 1 and 2

"... [T]he Constitutional Court shall have a Registry.

The organisation, the tasks, and the functioning of the Registry shall be regulated, in greater detail, by ... the Constitutional Court."

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.”

Article 113 §§ 2 and 3

“A constitutional appeal may also be lodged against ... [the individual decision or action in question] ... if this decision ... [has been adopted] ... or this action has been undertaken between the date of promulgation of the Constitution and the date of entry into force of this Act.”

... [In this case a constitutional appeal may be lodged] ... within thirty days as of the date of entry into force of this Act”

Article 116

“The Constitutional Court shall, within ninety days as of the date of entry into force of this Act, adopt its Rules of Procedure and ... [further regulate the organisation and functioning of its Registry] ...”

The Minister of Justice shall, within ninety days as of the date of entry into force of this Act ... [regulate the composition and the operation of the Commission for Compensation] ...”

E. Rules of Procedure adopted by the Constitutional Court (Poslovnik o radu Ustavnog suda; published in OG RS nos. 24/08 and 27/08)

27. These Rules, *inter alia*, contain the necessary details as regards the processing of appeals lodged with the Constitutional Court.

F. Entry into force of the above legislation

28. The new Constitution of the Republic of Serbia and the Constitutional Act on its implementation were both promulgated in November 2006.

29. By 24 November 2007 two thirds of the total number of Constitutional Court judges had been elected or appointed (see paragraph 25 above).

30. The Constitutional Court Act entered into force on 6 December 2007.

31. The Rules of Procedure of the Constitutional Court, published in OG RS no. 24/08, entered into force on 15 March 2008. Minor textual corrections thereof were published in OG RS no. 27/08 of 17 March 2008.

G. The case-law of the Constitutional Court and the Commission for Compensation

32. By 9 July 2009 the Constitutional Court had considered several hundred appeals alleging individual human rights violations, and had found breaches in dozens of cases concerning, *inter alia*, access to court, detention, length of proceedings, and various procedural fairness issues (see http://www.ustavni.sud.sr.gov.yu/sudska_praksa/uzalbe.php).

33. The first decisions on the merits of the appellants' complaints, including the very first decision establishing a violation of the Constitution, had been adopted on 10 July 2008 (*ibid.*), and were published in OG RS no. 74/08 of 7 August 2008.

34. Where appropriate, the Constitutional Court had, in a number of cases, quashed decisions adopted by the lower courts, as well as the Supreme Court, ordered that the excessively protracted judicial proceedings be concluded as soon as possible, and held that financial compensation for the damage suffered by the appellant had been warranted.

35. By 26 May 2009 the Commission for Compensation had awarded damages in at least 4 cases where the Constitutional Court had already found a violation and held that adequate compensation was called for.

H. Civil Procedure Act 2004 (Zakon o parničnom postupku; published in OG RS no. 125/04)

36. Article 2 § 1 provides, *inter alia*, that all parties shall be entitled to the equal protection of their rights.

37. Article 12 provides that when a court's decision in a pending suit rests on the prior resolution of a preliminary legal issue, the court itself may rule on this issue, as well as the main claim, unless the relevant legislation provides otherwise. The court's decision as regards the preliminary issue, however, shall only be legally binding in respect of the ongoing judicial proceedings.

38. Article 149 provides, *inter alia*, that, in principle, legal costs and expenses shall be divided proportionately between the parties, based on the measure of their success in the proceedings. Should a party lose the case entirely, that party shall be obliged to pay all the legal costs and expenses incurred.

39. Article 176 provides that when there are many cases pending at first instance raising the same preliminary legal issue, the court of first instance shall, either *ex officio* or at one of the parties' requests, be entitled to institute separate proceedings before the Supreme Court, petitioning the latter to resolve the issue in question. The lawsuits pending at first instance shall be stayed in the meantime.

40. Articles 3 § 3, 413, 415, 417 and 418 provide that the Public Prosecutor shall, *ex officio* or in response to a party's specific proposal, within a period of three months, have the right to lodge a Request for the Protection of Legality against a final civil court decision, should it transpire that the decision in question was “based on the parties' unlawful dispositions” (*nedozvoljeno raspolaganje stranaka*), i.e. those undertaken in breach of the “binding provisions of domestic law, public order or the rules of morality” (*prinudni propisi, javni poredak i pravila morala*). Should the Public Prosecutor refuse to lodge a request of this sort, the party who had urged him to do so shall, within thirty days, have the right to file its own Request for the Protection of Legality with the Supreme Court.

41. Article 422.8 provides that a case which has been concluded by means of a final court decision may be re-opened, at the interested party's request, if the preliminary legal issue, within the meaning of Article 12 of this Act, was subsequently resolved in a different manner by the competent State body. Article 422.10 further provides that a case may be re-opened if the European Court of Human Rights has in the meantime rendered a judgment in respect of Serbia concerning the same or a similar legal issue.

42. This Act entered into force in February 2005, thereby repealing the Civil Procedure Act 1977.

THE LAW

I. JOINDER OF THE APPLICATIONS

43. 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 ARTICLES 6 § 1, 13 AND 14 OF THE CONVENTION

44. The applicants relied on Articles 6 § 1, 13 and 14 of the Convention. In substance, however, they complained about the rejection of their own claims by the District Court in Belgrade, at final instance, based on the “erroneous application of the relevant domestic legislation”, and the same court's simultaneous acceptance of identical claims filed by their colleagues.

45. The relevant provisions of the said Articles read as follows:

Article 6 § 1

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

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

A. Admissibility*1. The parties' arguments*

46. The Government maintained that the applicants had not exhausted all effective domestic remedies within the meaning of Article 35 § 1 of the Convention. Primarily, in their appeals lodged against the judgments adopted at first instance, the applicants should have contested the decision to separate the proceedings in question and requested that their claims be examined jointly and consistently. Secondly, the applicants should have filed a request under Article 176 of the Civil Procedure Act 2004 much earlier (see paragraphs 17, 18 and 39 above), whilst their cases were still pending at first instance. Thirdly, the parties could have lodged a Request for the Protection of Legality (see paragraph 40 above). In particular, although the applicants might not have had a “legal interest” in claiming that the agreement and decision at issue had been “based on the parties' unlawful dispositions” (see paragraphs 8, 9 and 40), JAT Airways should have done so. Indeed, the latter had also failed to make use of several other remedies. Fourthly, the applicants should have brought a separate civil suit, requesting that the said agreement and decision be confirmed as legally valid, even in the absence of a governmental authorisation to this effect. In the meantime, the applicants' original suits could have been stayed pending the outcome of this case and ultimately, upon its conclusion, resolved consistently (see paragraph 37 above). In the alternative, had the applicants' original suits already been concluded, they could have used this judgment to request the re-opening of their cases (see paragraph 41 above). Finally, given the date of promulgation of the “new Constitution”, except for the

first, second, third, and fifteenth applicants, all remaining applicants should have lodged an appeal with the Constitutional Court (see paragraph 28 above).

47. The applicants maintained that they had exhausted all effective domestic remedies, adding that the constitutional appeal had not been effective at the relevant time.

2. *The Court's assessment*

48. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system, thus dispensing States from answering before the Court for their acts before they have had an opportunity to put matters right through their own legal system. The burden of proof is on the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and in practice at the relevant time; that is to say, that the remedy was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see, *inter alia*, *T. v. the United Kingdom* [GC], no. 24724/94, § 55, 16 December 1999).

49. The Court notes that the application of the “exhaustion rule” must also make due allowance for the context. Accordingly, it has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism (see the *Akdivar and Others v. Turkey* judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1211, § 69). Further, an effective domestic remedy must form a part of the normal process of redress and cannot be of a discretionary character. The applicant must, therefore, be able to initiate the proceedings directly, without having to rely on the benevolence of a State body (see, *inter alia*, *Lepojić v. Serbia*, no. 13909/05, § 53, 6 November 2007). Finally, where there are several effective remedies available, it is for the applicant to select which remedy to pursue in order to comply with the requirements of Article 35 § 1 of the Convention (see *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, p. 12, § 23).

50. Turning to the present case, the Court observes that the Fourth Municipal Court's decision to separate the single lawsuit brought by the applicants and the other plaintiffs jointly into a number of parallel sets of proceedings had been of a procedural nature and, as such, of no bearing on the ultimate determination of the applicants' claims on their merits. In any event, the applicants had only become aware of the final outcome of their

civil suits upon receipt of the decisions rendered by the District Court at second instance. The applicants had further had “no *right* under law” to request directly the preliminary consideration of their claims by the Supreme Court in accordance with Article 176 of the Civil Procedure Act (see paragraph 39 above), no “legal interest”, as admitted by the Government themselves (see paragraph 46 above), to file a Request for the Protection of Legality with the same court, and certainly no obligation to bring a separate civil suit concerning the same underlying issue. It follows, therefore, that none of these remedies can be considered effective.

51. Finally, as regards legal systems which provide constitutional protection for fundamental human rights and freedoms, such as the one in Serbia, the Court recalls that it is incumbent on the aggrieved individual to test the extent of that protection (see, *inter alia*, *Mirazović v. Bosnia and Hercegovina* (dec.), no. 13628/03, 16 May 2006). With this in mind, given the power of the Serbian Constitutional Court (see paragraph 26 above, in particular Articles 7 § 1, 82 §§ 1 and 2, 83 § 1, 89 §§ 2 and 3 of the Constitutional Court Act), as evidenced through its case-law (see paragraphs 32-34 above), as well as the competence of the Commission for Compensation (see paragraphs 26 and 35 above, in particular Articles 89 § 3 and 90 of the Constitutional Court Act quoted in paragraph 26), the Court is of the opinion that a constitutional appeal should, in principle, be considered as an effective domestic remedy within the meaning of Article 35 § 1 of the Convention in respect of all applications introduced as of 7 August 2008, that being the date when the Constitutional Court's first decisions on the merits of the said appeals had been published in the respondent State's Official Gazette (see paragraph 33 above; see also, *mutatis mutandis*, *Pikić v. Croatia*, no. 16552/02, §§ 24, 25 and 29, 18 January 2005). In the present case, however, since all applicants had filed their applications with the Court before that date and because the issue of whether domestic remedies have been exhausted is normally determined by reference to the date when the application was lodged, the Court considers that the applicants had indeed had no obligation to exhaust this particular avenue of redress before turning to Strasbourg (see *Cvetković v. Serbia*, no. 17271/04, § 41, 10 June 2008).

52. In view of the above and it being understood that any remedies which JAT Airways could possibly have made use of are irrelevant, the Court finds that the applicants' complaints cannot be declared inadmissible for non-exhaustion of domestic remedies under Article 35 § 1 of the Convention. Accordingly, the Government's objection in this respect must be dismissed.

53. The Court further considers that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and finds no other ground to declare them inadmissible. The complaints must therefore be declared admissible.

B. Merits

54. The Government maintained that there had been no violation of the Convention and argued that the correct decision, pursuant to the relevant domestic law, was indeed to rule against the applicants (see paragraph 16 above). They further noted that judicial precedent was not a binding source of law in Serbia, and emphasised that the domestic courts were independent in their work. Lastly, the Government pointed out that the inconsistency alleged by the applicants concerned the merits of their claims only, rather than any procedural issue, and did not involve the Supreme Court's case-law nor did it relate to any prior systemic and/or grave injustice.

55. The applicants reaffirmed their complaints.

56. The Court notes that whilst certain divergences in interpretation could be accepted as an inherent trait of any judicial system which, just like the Serbian one, is based on a network of trial and appeal courts with authority over a certain territory, in the cases at hand the conflicting interpretations stemmed from the same jurisdiction, i.e. the District Court in Belgrade as the court of last resort in the matter (see, *mutatis mutandis*, *Tudor Tudor v. Romania*, no. 21911/03, § 29, 24 March 2009), and involved the inconsistent adjudication of claims brought by many persons in identical situations even after the adoption of the District Court's "opinion" of 27 September 2006 (see paragraph 16 above). Since these conflicts were not institutionally resolved, all this created a state of continued uncertainty, which in turn must have reduced the public's confidence in the judiciary, such confidence, clearly, being one of the essential components of a State based on the rule of law. The Court therefore, without deeming it appropriate to pronounce as to what the actual outcome of the applicants' lawsuits should have been (see, *mutatis mutandis*, *Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999- I), considers that the judicial uncertainty in question has in itself deprived them of a fair hearing before the District Court in Belgrade. There has consequently been a violation of Article 6 § 1 on this account (see, *mutatis mutandis*, *Tudor Tudor v. Romania*, cited above, § 32, 24 March 2009).

57. Having regard to this finding of a violation, the Court considers that it is not necessary to examine whether, in this case, there has also been a violation of Articles 13 and 14 taken together with Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Tudor Tudor v. Romania*, cited above, § 33).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. Article 41 of the Convention provides:

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

A. Damage

59. The applicants requested that the State be ordered to pay, from its own funds, the respective sums sought in their suits brought against JAT Airways.

60. The Government contested those claims.

61. Having regard to the violation found in the present case and its reasons for so doing (see paragraph 56 above, particularly the reference to the outcome of the applicants' suits), as well as in view of the provisions of Article 422.10 of the Civil Procedure Act 2004 (see paragraph 41 above), the Court considers that the applicants' claims must be rejected.

B. Costs and expenses

62. Each applicant also claimed the costs and expenses incurred in the domestic proceedings, another EUR 280 each for the application giving rise to the proceedings before the Court, as well as a total of approximately EUR 1,400 in Serbian Dinars for the submission of their joint written observations and the related translation costs.

63. The Government contested those claims.

64. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were also reasonable as to their quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award each applicant EUR 300 for their costs and expenses incurred in connection with their Strasbourg case (see, *mutatis mutandis*, *R. Kačapor and Others v. Serbia*, nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06, §§ 130-135, 15 January 2008).

65. As regards the costs and expenses incurred domestically, the Court is of the opinion that they must be rejected given the provisions of Articles 422.10 and 149 of the Civil Procedure Act 2004 (see paragraphs 41 and 38 above, in that order).

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that it is not necessary to examine separately the applicants' complaints under Articles 13 and 14 taken together with Article 6 § 1 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay each applicant, within three months as of the date on which this judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 300 (three hundred euros) for the costs and expenses incurred before the Court, which sum is to be converted into the respondent State's national currency at the rate applicable on the date of settlement, plus any tax that may be chargeable to the applicants;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 1 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President