



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

THIRD SECTION

CASE OF ALTIUS INSURANCE LTD v. CYPRUS

(Application no. 41151/20)

JUDGMENT

Art 6 § 1 (civil) • Reasonable time • Excessive length of proceedings
Art 13 (+ Art 6 § 1) • Lack of effective remedy • Domestic judicial practice
separating examination of length claims by level of jurisdiction at odds with
Court's approach to examining overall length of proceedings

STRASBOURG

24 October 2023

FINAL

19/02/2024

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Altius Insurance Ltd v. Cyprus,

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

Pere Pastor Vilanova, *President*,
Jolien Schukking,
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd, *judges*,

and Olga Chernisova, *Deputy Section Registrar*,

Having regard to:

the application (no. 41151/20) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Altius Insurance Ltd (“the applicant company”), on 8 September 2020;

the decision to give notice to the Cypriot Government (“the Government”) of the complaints under Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 concerning the length of the domestic civil proceedings;

the parties’ observations;

Having deliberated in private on 5 September and 26 September 2023,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The case concerns the length of civil proceedings and the effectiveness of domestic remedies in this regard.

THE FACTS

2. The applicant company is a limited liability company incorporated under Cypriot law, with its registered office in Nicosia. It was represented by Mr A. Demetriades, a lawyer practising in Nicosia.

3. The Government were represented by their Agent, Mr George L. Savvides, Attorney General of the Republic of Cyprus.

4. The facts of the case may be summarised as follows.

I. PROCEEDINGS FOR BREACH OF CONTRACT

A. Civil action no. 4099/2004 before the Nicosia District Court

5. On 6 May 2004 the company P.I.C. lodged a civil action against the applicant company with the Nicosia District Court for breach of contract.

6. Between 21 May and 21 June 2004, the parties submitted their statements of case.

7. Between 2 July 2004 and 27 January 2005 the case was listed for directions several times, either at P.I.C.'s request or by decision of the court.

8. In the meantime, on 10 January and 21 February 2005 respectively the applicant company and P.I.C. filed an application for the disclosure of documents. From then until 4 May 2005 the court applied the relevant procedures, ordering the parties in turn to produce the necessary documents.

9. On 31 May 2005 the hearing of the case was postponed because P.I.C.'s lawyer withdrew from the case. It was listed for directions on 16 September 2005.

10. On 2 September 2005 P.I.C. filed an *ex parte* interim application for a freezing order in respect of the applicant company's assets. Various procedural steps were undertaken by both parties. On 24 February 2006 the court dismissed the interim application.

11. On 11 April 2006 the court fixed a hearing date of 16 November 2006 for the main proceedings, a date which was later postponed by the court until 10 May 2007.

12. Between 10 May 2007 and 30 January 2008 the court adjourned the hearing twice following requests to that effect by P.I.C.

13. On 30 January 2008 the court adjourned the hearing by mutual agreement between the parties and the case was listed for directions on 6 February 2008. On that date, the hearing was adjourned for unknown reasons and the case was listed for directions on 5 March 2008.

14. In the meantime, on 27 February 2008 the applicant company filed an application to amend its defence and counterclaim and the application was listed for a hearing on 5 March 2008. On 12 March the court allowed the aforementioned application and ordered the applicant company to file the amended documents within fifteen days. On 21 March 2008 the applicant company filed its amended defence and counterclaim. On 23 April 2008 P.I.C. filed its reply and amended defence to the counterclaim. The case was listed for directions on 19 June 2008. On that date, the court scheduled the case to be heard on 11 and 12 November 2008.

15. On 11 November 2008 the applicant company applied for an adjournment to allow the parties to draw up a document containing the agreed facts. On the same date, P.I.C.'s lawyer informed the court that they would be unable to attend the hearing on 12 November 2008 and asked for it to be adjourned. The court allowed the parties' requests, informing them that it

would assign a relatively early date for the hearing considering the delays that had already occurred in the case up to that date. The court listed the case for directions on 3 December 2008.

16. On 3 December 2008 the applicant company asked for the case to be postponed owing to a bereavement. The court listed the case for directions on 7 January 2009.

17. On 7 January 2009 the applicant company informed the court that it was ready to proceed with the trial. P.I.C. asked the court to schedule the case for a hearing. The court scheduled the case for a hearing on 10 April 2009 and listed the case for directions on 3 February 2009 to allow the parties, in the meantime, to examine the possibility of narrowing the issues in dispute.

18. On 3 February 2009 the parties informed the court that there were no further undisputed facts.

19. On 10 April 2009 P.I.C. applied for an adjournment. The applicant company's lawyer expressed his disagreement, explaining that his client had been affected by the fact that the case had been adjourned multiple times by P.I.C. The court acknowledged the effect of the adjournments on the applicant company but, considering all the relevant factors, decided to allow the adjournment and scheduled the case for a hearing on 22 and 23 September 2009.

20. On 22 September 2009 the first hearing took place. This was followed by hearings on 23 September 2009; 5 and 9 October 2009; 6 and 17 November 2009; 12, 14 and 18 January 2010; 23 February 2010; and 18 March and 14 June 2010.

21. The case was adjourned twice at the request of the applicant company, first from 23 October to 6 November 2009 and then from 12 to 18 March 2010.

22. The case was also adjourned on two other occasions at P.I.C.'s request, first from 4 December 2009 to 12 January 2010 and then from 21 January to 3 February 2010.

23. On 14 June 2010, when the hearing was concluded, the applicant company's lawyer requested a three-week extension to file his final submissions. The court instructed the parties to do so by 17 September 2010. On that date, the applicant company's lawyer requested a further extension. The court rescheduled the case for final submissions on 27 September 2010.

24. On 27 September 2010 the parties filed their final submissions in writing and the court reserved judgment.

25. On 6 December 2010 the court delivered its judgment and dismissed the case. Legal costs and expenses were awarded to the applicant company.

B. Civil appeal no. 28/2011 before the Supreme Court

26. On 17 January 2011 P.I.C. lodged an appeal with the Supreme Court, challenging the judgment of the Nicosia District Court.

27. On 23 November 2011 the appeal was listed for directions and the Supreme Court instructed the parties to file the outline of their arguments.

28. On 5 January and 16 February 2012 respectively P.I.C. and the applicant company filed the outline of their arguments.

29. On 18 October 2016 the hearing of the appeal began and concluded on that date. The Supreme Court reserved judgment.

30. On 20 December 2017 the Supreme Court delivered its judgment, allowing the appeal and reversing the Nicosia District Court's judgment by two votes to one. The applicant company was ordered to pay 1,823,767 euros (EUR) in damages, plus legal costs and expenses.

31. On 9 January 2018 the Supreme Court's judgment was amended to include statutory interest from 6 May 2004, the date on which civil action no. 4099/2004 was filed. It was calculated at EUR 1,350,000.

32. The applicant company unsuccessfully challenged the imposition of that interest. Eventually, on 19 January, 21 March and 16 April 2018 respectively it paid the following amounts: EUR 1,823,767 to P.I.C. for the judgment debt, EUR 50,000 to P.I.C.'s lawyers in legal costs, and EUR 1,350,000 to P.I.C. corresponding to the interest due.

II. PROCEEDINGS UNDER LAW 2(I)/2010

33. On 19 November 2018, relying on Law 2(I)/2010, the applicant company filed a civil action (no. 2/2018) against the Attorney General with the Supreme Court complaining about the overall length of the domestic proceedings (cases nos. 4099/2004 and 28/2011). It claimed, *inter alia*, that the first-instance proceedings had lasted approximately seventy-nine months, while the appeal proceedings had lasted eighty-three months. Given that the reasonable time for concluding the first-instance and appeal proceedings had been three years for each (thirty-six months), the applicant company claimed that the first-instance proceedings had been delayed by forty-three months, while the appeal proceedings had been delayed by forty-seven months. The applicant company claimed EUR 362,812.50 (corresponding to forty-three months out of one hundred and sixty-two) and EUR 396,562.50 (corresponding to forty-seven months out of one hundred and sixty-two) in respect of pecuniary damage for the statutory interest it had had to pay because of the delays in the first-instance and appeal proceedings. It also made a claim in respect of non-pecuniary damage for the alleged uncertainty it had suffered while the proceedings were pending. It claimed EUR 415,353 for the alleged delay in civil action no. 4099/2004 and EUR 800,551 for the alleged delay in appeal no. 28/2011.

The applicant company further supported in its written pleadings, with reference to case-law of the European Court of Human Rights, that the Supreme Court should abstain from its established case-law (see paragraph 41 below) and examine the delays which occurred at the domestic

proceedings as a whole. The applicant company challenged the Supreme Court's approach and maintained that in the present case the Supreme Court had the possibility of taking into account the delay which occurred at first instance arguing that the pecuniary damage it had sustained had only materialised upon appeal. The applicant company specifically claimed that had the Supreme Court failed to consider the delay before the first instance court, it would be deprived of an effective remedy as required by Article 13 of the Convention, as the damage it had sustained had been caused due to the retroactive application of the legal interest from the day of the filing of civil claim no. 4099/2004.

34. On 15 July 2020 the Supreme Court delivered its judgment.

First, it rejected as inadmissible the complaints concerning civil action no. 4099/2004, finding that a separate action should have been filed within a year from the delivery of the judgment of the first-instance court as, according to the court, Law 2(I)/2010 separated the examination of claims regarding the length of first-instance and appeal proceedings. As regards the separate stages of actions brought under Law 2(I)/2010, the court stated, *inter alia*, as follows:

“As stated on appeal in *Application no. 1/2018, Zia and others, 9.9.2019*, in which a similar matter was examined:

There are two ways of making a claim under the Law:

(a) **By filing a civil action**, if the case has been concluded by a final judgment (*εάν η υπόθεση περατώθηκε με τελεσίδικη απόφαση*). This is true whether it is a final judgment of the District Court or a final judgment of the Supreme Court (*τελεσίδικη απόφαση Ανωτάτου Δικαστηρίου*). As we previously mentioned with reference to *Kaoula v. The Attorney General, civil case no. 1/2017, 4.7.2018* and previous case-law, the term ‘final’ has the meaning of a final judgment without it being connected to the right of appeal (*ο όρος τελεσίδικη απόφαση έχει την έννοια της τελικής απόφασης χωρίς να συναρτάται με το δικαίωμα έφεσης*).

In fact, if the claim falls under this provision of the Law, it should be raised within one year from the date of conclusion of the case by a final judgment. Similarly, the president of the District Court has jurisdiction to hear such claims ... when it is a concluded final judgment. If the claim concerns a concluded appeal, the jurisdiction [to hear the case] belongs to three members of the Supreme Court (with the specifications set out in the Law).

(b) **By filing an application**. Claims concerning a non-concluded case, which precisely is not considered finalised (in the above sense of a final judgment), may be raised this way, it being noted that there is no deadline for such claims ...

The structure and philosophy of the Law as it appears from a unified reading of the aforementioned sections, and in the light of the considerations in *Dimitriou v. Attorney-General of the Republic, application no. 2/13, 27.3.2014*, cannot lead to any other reasonable interpretation, as suggested by the applicant's lawyer. A clear distinction is made between the remedies and their conditions, on the one hand in a District Court or Supreme Court case, following a final judgment, in which only a civil action can be lodged, and on the other hand, in a case which has not been concluded as above, in which the action is filed in the form of an originating

application, with a separate context always between the first-instance and the appellate jurisdiction.

...These are independent claims concerning compensation for delays [in] first-instance and appeal [proceedings] and this is not related to the content of the first decision...As a result, the court can consider as relevant time and related claims or testimony, those that are included in time in the context of the appeal only ...

In our opinion, the claim that the claimant was not aware of its damages after the conclusion of the proceedings, as raised by [its lawyer], is irrelevant. The law is clear and each party must proceed based on its existing data.”

35. As regards the applicant company’s claim concerning the length of the appeal proceedings, the court held as follows:

“Considering the overall period from the filing of the appeal (17.1.2011) to the issuance of the decision (20.12.2017), almost [seven] years must be considered an unreasonable time. In the circumstances of this particular case, the appeal would have to be heard and a decision delivered within a period of up to three years. During the rest of the time, there was a breach. It is a not particularly complicated case, at least in its legal aspects, and the parties did not contribute with their actions or omissions to the delay. Despite the existence of a minority decision, the whole process could have been concluded within [three] years.

We will agree with Mr. Demetriades that the research of the Council of Europe CEPEJ (European Judicial Systems – Efficiency and Quality of Justice CEPEJ STUDIES no. 26 of 2018) is indicative of the average length of civil proceedings. Table 5.8. [on] page 250 presents the time for completing civil and commercial cases at first instance [namely five hundred and thirteen days at first instance in 2010] and Table 5.17 [on] page 264 presents the time for completing civil and commercial cases on appeal [namely one thousand one hundred and ninety-four days in 2010 and three hundred and forty in 2012].

Mr. Demetriades is also correct in his observation that it is not entirely the responsibility of the judicial authorities but generally of the State, which ought to furnish the judicial authorities with the means for the short adjudication of cases. It is not necessary to enter into statistics and numbers of pending appeals. The volume of cases is well known, and counsel sets out the facts correctly.

...On the basis of the above, the appeal was heard in breach of the reasonable time [requirement] by approximately [four] years and the claimant is entitled to general damages in this respect. We certainly have no doubt that the claimant as a company may be the victim of a violation of an individual right, in this case the [right to a hearing within a] reasonable time.

...”

36. As regards the applicant company’s claim in respect of pecuniary damage, the court held:

“...The [applicant company’s claim in respect of pecuniary damage] ignores the fact that since the [applicant company] was not liable for the above amount on account of the first-instance decision, legally owed nothing and had therefore been in a position to possess the aforementioned amount of interest for its own benefit or accrue interest on it by way of deposits or otherwise. This amount cannot therefore be recovered as actual damages.

The issue should be given a more rational approach than that proposed by the [applicant company]. The appeal was registered on 17.1.2011 and had the appeal decision been delivered in January 2014, the [applicant company] could not have maintained any complaint regarding the appeal process. But what was the consequence of the fact that the judgment on appeal was not delivered in January 2014, but three years and eleven months later, on 20.12.2017? The appeal judgment, regardless of when it was delivered, would have had the same content, namely the award against the [applicant company] of the amount of EUR 1,823,767 plus statutory interest from 6.5.2004 when the action was registered. The result of the delay complained of by the [applicant company] was that instead of being asked to pay the amount plus interest in January 2014, it was asked to pay it in December 2017. On the one hand, [the applicant company] received extra time of [forty-seven] months, but on the other hand, [it] was charged statutory interest on the amount of EUR 1,823,767 for a period of [forty-seven] months, from January 2014 to December 2017. [The applicant company] calculated this amount as EUR 396,562.50, which we accept as correct.

In order to determine [the applicant company's] pecuniary loss, the extra time [it] received as a benefit should be quantified in money and deducted from the amount of EUR 396,562.50, to determine whether there is a remaining balance. No such testimony has been offered and therefore no pecuniary loss has been demonstrated."

37. Lastly, in making the assessment for its award for damages, the court considered that the above issue should be considered in the framework of general damages, not strictly pecuniary damage, for the overall inconvenience caused while waiting for a decision. The court agreed that the uncertainty as to the debt constituted an element that should be taken into account, especially bearing in mind the level of the amounts and the nature of the applicant company's activities as an insurance company. Guided by the principles of the Court in *Comingersoll S.A. v. Portugal* ([GC], no. 35382/97, § 29, ECHR 2000-IV) and making an overall assessment, the Supreme Court awarded the applicant company EUR 5,000 plus interest from the date on which the claim was filed, as well as costs.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. The Courts of Justice Law (Law no. 14/1960, as amended)

38. Section 33(2) currently provides as follows:

Section 33 - Interest on debts ... and decisions

"(1) ...

(2) Each decision, including the part thereof relating to legal costs, unless otherwise provided for in subsection (1), shall, subject to the provisions of subsection (4), bear interest at 5.5% per annum from the date of registration of the civil action, or with respect to pending civil actions, from the date of entry into force of the Courts (Amendment) (No. 2) Law of 2008, until final repayment of the debt:

It is understood that the court may, when appropriate, award interest:

(a) in the full amount awarded in the decision, for only part of the period between the date of registration of the civil action and the date of the decision, or

(b) in respect of only part of the amount awarded in the decision, for all or only part of the period between the date of registration of the civil action and the date of the decision: ...”

39. The Courts (Amendment) (No. 2) Law of 2008, mentioned in section 33 above, changed the statutory interest rate from 8% to 5.5% per annum.

B. Law on Effective Remedies for Violations of the Right to a Determination of Civil Rights and Obligations within a Reasonable Time (Law 2(I)/2010)

40. The relevant provisions of Law 2(I)/2010 are set out in detail in *Panayi v. Cyprus* ((dec.), no. 46370/09, 23 September 2010). For the purposes of the present case, the following sections are set out:

Preamble

“Whereas Article 6 § 1 of the European Convention on Human Rights and Article 30 § 2 of the Constitution of the Republic of Cyprus provide for the right to a determination of civil rights and obligations within a reasonable time,

And whereas in a number of individual cases against Cyprus the European Court of Human Rights found violations of Article 6 § 1 of the Convention on the grounds that the civil rights and obligations of the applicants in civil cases and appeals had not been determined by the Cypriot courts within a reasonable time as required by the above-mentioned Article and also found a violation of Article 13 on the grounds that there were no effective remedies in the Republic as required by Article 13 regarding the applicants’ allegations of a violation of the requirement under Article 6 § 1,

And whereas the Republic’s obligation under Article 46 of the Convention to comply with the aforementioned judgments of the European Court of Human Rights is under the supervision of the Committee of Ministers of the Council of Europe and requires the adoption of measures preventing future violations such as those found by the Court in the above-mentioned individual applications,

And whereas a number of individual cases against the Republic are pending before the European Court of Human Rights for violations of Article 6 § 1 and [Article] 13 of the Convention regarding determination of the applicants’ civil rights and obligations in civil cases and appeals,

And whereas the Republic is bound by Article 1 of the Convention to secure the rights of the Convention, including the right to effective domestic remedies for a violation of the right to a determination of civil rights and obligations within a reasonable time ...”

Section 4 - Actionable right

“The right to a determination of civil rights and obligations within a reasonable time in a case to which this Law applies is actionable, and anyone who alleges that he or she is a victim of a violation of that right may have recourse to the court with jurisdiction by

way of an action against the Republic, by virtue of this Law, seeking the remedies for the violation provided for in this Law.”

Section 5 – Bringing an action for violation of the right

“(1) An action under section 4 may be brought for violation of the right in a case concluded by a final court judgment concerning a violation of the right at any stage of the case, including that of the execution of a court judgment, irrespective of whether responsibility for the violation at the execution stage rests on the judicial or any other authorities of the Republic. The action shall be brought within one year of the date of conclusion of the case by a final court judgment or the date of execution, as the case may be, unless the court considers that, in the circumstances of the case, it was not reasonably possible to bring the action within the above period ...”

Section 6 - Court with jurisdiction to examine an action for violation of the right

“(1) Notwithstanding the provisions of any other law, the court with jurisdiction under this Law to examine and determine an action under sections 4 and 5 for a violation of the right to a determination of civil rights or obligations within a reasonable time in cases concluded by a final judgment are:

(a) in relation to district court cases, the administrative president of any district court who, in a case in which, according to the action, the claimant’s right to determination of his civil rights or obligations within a reasonable time has been violated, did not exercise duties in the court in which the case was pending and did not participate at any stage of its examination, or if there is no administrative president who did not exercise duties in the court in which the case was pending and did not participate at any stage of its examination, the immediately senior president of the district court or any other judge satisfying the above whom the Supreme Court may wish to designate.

(b) in relation to Supreme Court cases, [any] three judges of the Supreme Court [whom it] may wish to designate.

(2) The judgment of the court with jurisdiction under subsection (1)(b) is final and not subject to appeal.”

Section 7 - Right to an examination of allegations of a violation of right in pending cases

“(1) Without prejudice to the right to bring an action under sections 4 and 5, a person who is a party to a pending case to which this Law applies has the right, at any stage of the proceedings whilst the case is pending, to have recourse to the legal remedies provided under subsection (2) in relation to the claim that his right to determination of his civil rights or obligations within a reasonable time has been violated.

(2) For the purposes of subsection (1), a party who alleges that there has been a violation of his right to determination of his civil rights or obligations within a reasonable time in a pending district court or Supreme Court case may, at any stage of those proceedings, have recourse by bringing an originating application against the Republic in the court with jurisdiction under section 8 for examination of the claim and the provision of remedies for the violation provided for in this Law, and for ... a decision on these matters.

...

(4) No proceedings in a pending case shall be suspended or postponed because of an application made under this section or pending the conclusion of its examination.

...

Section 8 - Court with jurisdiction to examine an issue of violation of the right in a pending case

“(1) Notwithstanding the provisions of any other law, the court with jurisdiction to examine and determine a claim and to grant remedies in an originating application under section 7 is:

(a) in relation to a district court case pending at that stage before a district court, the administrative president of any district court who did not exercise duties at the court in which the case was pending and did not participate at any stage of its examination, or if there is no administrative president who did not exercise duties in the court in question and did not participate at any stage of its examination, the immediately senior president of the district court or any other judge satisfying the above [whom] the Supreme Court may wish to designate.

(b) in relation to a district court case pending at that stage before the Supreme Court or to a Supreme Court case pending before that court at any stage, [any] three judges of the Supreme Court [whom it] may wish to designate;

[It shall be understood] that by virtue of this [subsection], [only] judges of the Supreme Court who did not participate at any stage of the case shall be appointed.

(2) The judgment of the court with jurisdiction under subsection (1)(b) is final and not subject to appeal.”

Section 9 - Delivery of judgments

“In an action under sections 4 and 5 and in an originating application under sections 7 and 8, the court with jurisdiction shall give judgment at the conclusion of the examination of the action or the application, as the case may be, or in the event that it reserves judgment, shall deliver it without delay.”

Section 11 – Factors taken into account

“The court, in deciding whether the right of the claimant or applicant to determination within a reasonable time of his civil rights or obligations in an action under sections 4 and 5 and in an originating application under sections 7 and 8 has been violated, shall take into account:

...

(g) any other factors taken into account by the European Court of Human Rights as relevant to the matter in issue as they arise from its relevant case-law on the subject.”

Section 12 - Remedies in actions and originating applications for violation of the right

“Where in an action under sections 4 and 5 or in an application under sections 7 and 8 the court considers that the right of the claimant or applicant to a determination of his civil rights or obligations within a reasonable time has been violated, the claimant or applicant is entitled to:

(a) compensation for any pecuniary damage, loss, costs and expenses proven to have been sustained as a result of the violation;

(b) compensation for non-pecuniary damage or injury suffered as a result of the violation;

(c) to legal costs proven to have been incurred as a result of the violation.

(2) In order to ascertain the damage sustained as a result of the violation as set forth in subsection (1) and assess and award the compensation under subsection (1), the court shall take into account the criteria and factors taken into account for this purpose by the European Court of Human Rights as can be determined from its case-law in similar cases of a violation of Article 6 § 1 of the Convention and the amounts of compensation awarded by [it] in similar cases.”

Section 14 - Directions by the Supreme Court to expedite proceedings in pending cases in which a violation of the right has been found

“(1) Where in an application under sections 7 and 8 the court decides, pursuant to this Law, that there has been a violation in a pending case of the applicant’s right to determination of his civil rights or obligations within a reasonable time, [it] shall immediately refer its judgment to the Supreme Court.

(2) If the case in respect of which the competent court delivered its judgment and referred it to the Supreme Court under subsection (1) is still pending, the Supreme Court shall issue such directions as it considers necessary under the circumstances to expedite the procedure in the pending case in order to prevent any continued delay or further delays and avoid the possibility of a continued violation or further violations of the rights of any party in the pending case;

[It shall be understood] that no judge or judges of the Supreme Court who participated at any stage of the examination of the pending case shall participate in the issuing of directions.

(3) Directions under subsection (1) may include, amongst other things:

(a) the immediate setting down of the pending case for directions before the court or for trial

(b) the filing of pleadings which have not yet have been filed within the deadlines specified in the directions,

(c) the preparation of minutes;

(d) the approval of any costs awarded;

(e) the hearing of the case or any interim applications as a priority;

(f) the processing of any interim application procedures or of other interim procedures as a priority,

(g) the delivery of a reserved judgment in the case or in an interim application,

(h) the processing, as a priority, of the procedures for execution of a judgment given in the case by the judicial authorities, to the extent that those authorities are involved.

(4) Directions under subsection (3) are given to expedite the procedure in a pending case irrespective of whether the relevant referred judgment has been given in accordance with [section 8(1)(a)], and/or has been appealed against by the Attorney General.”

C. Relevant domestic case-law concerning Law 2(I)/2010

1. Supreme Court decisions

41. The first judgment of the Supreme Court delivered in relation to the application of Law 2(I)/2010 was the case of *Dimitriou v. the Attorney General* (no. 2/2013, 27 March 2014). The claimant filed an originating application (*πρωτογενή αίτηση*) under Law 2(I)/2010 with the Supreme Court complaining of delays in his civil action before the Nicosia District Court and in the then pending appeal before the Supreme Court. The Supreme Court held that his application would only be examined in relation to the alleged delay in the pending appeal proceedings. According to the court, Law 2(1)/2010 made a clear distinction between district court cases and cases before appellate courts or the Supreme Court in general. The Supreme Court held, *inter alia*, as follows:

“In cases where the proceedings were concluded by a final judgment, a civil action can be filed under sections 4 and 5 of the Law. It seems that in the Law there is a separate jurisdiction for this kind of action. Section 6(1)(a) states that in relation to district court cases, the competent court to hear the action is the administrative president (or most senior president of the district court). On the other hand, section 6(1)(b) states that in relation to cases before the Supreme Court, the competent court to hear the action is a court composed of three Supreme Court judges. Section 5 concerns actions that have been concluded by final judgments ... However, nowhere in the law is there a clear and explicit provision that the pending proceedings also concern an action filed with the district court for which an appeal is pending. The Law does not provide that the determination of civil rights concerns the entire [district court and appeal] proceedings.”

As to the merits, the Supreme Court held that four years had lapsed since the commencement of the appeal proceedings, which were still pending. In this connection, the court found a violation of the right to a fair trial within a reasonable time and awarded the claimant EUR 1,500 in respect of non-pecuniary damage. At the same time, it forwarded the judgment to the registry of the Supreme Court to bring the judgment to the attention of the Supreme Court in accordance with section 14(2) of Law 2(I)/2010.

42. In civil action *Kaoullas and Kaoullas v. Attorney General* (no. 1/2017, 4 July 2018), the claimants filed an action with the Supreme Court under Law 2(I)/2010 complaining of a delay in civil appeal no. 77/12, which they later withdrew. The Supreme Court examined whether the withdrawal of the appeal could be held to mean that the appeal had “been concluded with a final court judgment” as required by section 5 of Law 2(I)/2010. In determining the meaning of “final court judgment”, the Supreme Court referred to an extract from the judgment of *Huntly (Marchioness) v. Gaskell* [1905] 2 Ch. (CA) 656, 667 of the Court of Appeal of England and Wales, which stated:

“When the word ‘final’ is used as I think it is in some authorities with reference to judgments, that does not mean, I apprehend, a judgment which is not open to appeal, but merely ‘final’ as opposed to ‘interlocutory’. A judgment is, in my opinion, not the

less estopped between the parties to the action because it may be reversed on appeal to the House of Lords.”

As a result, the Supreme Court held that the withdrawal and dismissal of the appeal could not mean that there was a “final court judgment” in which a civil right or obligation had been determined, given that the withdrawal of the appeal had brought the proceedings to an end without determination. The Supreme Court dismissed the claimants’ claim on the grounds that they had no actionable right under the law.

43. In *Zia v. The Attorney General* (application no. 1/2018, 9 September 2019), the claimant filed an originating application complaining about the length of pending appeal proceedings and of a delay in the concluded first-instance proceedings. The Supreme Court dismissed the claim concerning the delay at first instance and only examined the claim concerning the delay in the determination of the pending appeal proceedings (see the Supreme Court’s reasoning in paragraph 34 above). The court considered that there had been an unjustifiably long period of inactivity while the appeal had been pending and awarded the claimant EUR 2,500 for non-pecuniary damage. It also forwarded the judgment to the registry of the Supreme Court to bring the judgment to the attention of the Supreme Court in accordance with section 14(2) of Law 2(I)/2010.

44. In *Maria Prokopiou v. Attorney General* (civil appeal no. 364/2010, 2 December 2015), the Supreme Court upheld the District Court’s finding that there had been no violation of the appellant’s rights under Article 6 of the Convention given that she had contributed to the delay.

45. In *Marios Eliades and Others v. Attorney General* (civil action no. 1/2014, 31 May 2016), the claimants filed an action under Law 2(I)/2010 alleging that there had been a delay in the determination of appeal no. 319/08. The Supreme Court held that there had been no delay in the determination of the civil appeal, having regard to the complexity of the case and the claimants’ conduct.

46. In *M.D. Cyprus Soya Ltd v. Attorney General* (civil action no. 1/2018, 25 February 2019), the Supreme Court held that there had been a delay in the determination of a review appeal that had been pending for three and a half years, and that this delay was not attributable to the claimant. It awarded the claimant EUR 1,500 in respect of non-pecuniary damage.

2. District court decisions

47. In *Parisinou and Others v. Attorney General* (application no. 379/2014), the claimants relied on Law 2(I)/2010 in relation to the non-execution of a court order within a reasonable time for approximately two years. Each claimant was awarded EUR 500 for non-pecuniary damage, plus EUR 750 jointly for costs and expenses.

48. In *C.S.G. Neokleous Brothers v. Attorney General* (originating application no. 264/2018, 19 March 2019), the claimants invoked Law 2(I)/2010 in relation to the excessive length of pending proceedings. They were awarded EUR 2,000 for non-pecuniary damage and the court ordered the registrar to forward the judgment to the registry of the Supreme Court in accordance with section 14(1) of Law 2(I)/2010.

49. In *Prime Insurance Company Ltd v. Attorney General* (civil action no. 5497/13, 27 October 2021), the claimant claimed compensation in respect of non-pecuniary damage and pecuniary damage for a breach of its right to a fair trial within a reasonable time. As regards pecuniary damage, it claimed EUR 12,965 plus the VAT it had had to pay in legal expenses owing to the re-hearing of the civil proceedings, as well as EUR 20,000 for the interest it had had to pay because of the re-trial and the delay in its conclusion. The relevant district court awarded the claimant EUR 2,500 in respect of non-pecuniary damage, plus EUR 12,965 plus VAT for pecuniary damage. The court dismissed the claimant's claim for EUR 20,000 on the grounds that it had not provided any evidence concerning the alleged claim. Lastly, the court noted:

“I could not fail to notice with sadness as a conclusion, that while this civil action is based on the breach of the right to the determination of civil rights and obligations within a reasonable time, the civil action was concluded in over eight years, namely more than the time for the civil proceedings which constitute the basis [of the claim]. It was filed on 28.8.2013 and a judgment was delivered on 27.10.2021. There is more than an imperative need to resolve the issue of delays in the hearing of cases and I agree with the reference in the case of *Altius* (above) that the State must furnish the judiciary with the means for a speedy hearing of cases.”

II. OTHER RELEVANT MATERIAL

A. Report on the Supreme Court - On the operational needs of the courts and other related issues (Erotocritou Report 2016)

50. A committee appointed by the Supreme Court and chaired by Judge George Erotocritou issued a report in June 2016 on the operational needs of the courts in Cyprus and related matters highlighting gaps and problems encountered in the administration of justice, identifying the various needs of the courts and making recommendations. Similar reports had been issued in 1989 and 2012 respectively by Supreme Court Judges Pikis and Kramvis, documenting problems in the courts system in Cyprus.

51. The 2016 report highlighted, among other issues, that one of the biggest problems facing the courts in Cyprus were delays. Borrowing from the 2016 EU Justice Scoreboard report issued by the European Commission, the report noted, *inter alia*, that:

“Despite the points made in the Pikis (1989) and Kramvis (2012) Reports, most recommendations unfortunately did not materialize, for various reasons, with the tragic

result that Cyprus is now amongst the member states at the bottom of the list in the European Commission's Report 'The 2016 EU Justice Scoreboard' with regard to the efficiency of justice. We note that the 'Scoreboard' is considered the most reliable indicator in Europe regarding the effectiveness of the judicial system and the administration of justice in each Member State of the EU.

Below are several indicators of the Report which show the current tragic situation of the judicial system in Cyprus. For example, Cyprus holds the last position regarding the time needed for case determination ..."

52. As regards cases before the Supreme Court, the report noted, in so far as relevant, as follows:

"...But in view of the rapid increase in the number of appeals, these limited reforms have proved insufficient to prevent the gradual increase in the time required to dispose of an appeal, which currently stands at five years for civil appeals and 1-2 years for criminal appeals."

53. The report made various recommendations to assist the courts in accelerating the administration of justice. These included increasing the number of judges and staff, establishing specialist courts, introducing modern technology in courts and judicial training. The report also recommended a more in-depth review of the Cypriot court system by engaging the services of experts.

B. Functional Review of the Courts System of Cyprus 2018

54. In the course of cooperation between the European Union, the Council of Europe and the Cypriot authorities, a functional review report of the courts system of Cyprus was issued in 2018.

55. The report addressed, *inter alia*, the problem of backlogs in Cyprus and the consequent serious delays in cases before the courts according to figures provided by the Cypriot authorities. According to those figures, by the end of 2010 the Supreme Court's backlog consisted of 1,869 cases, by the end of 2013 the backlog had reached 2,821 cases, and by the end of 2016 there was a backlog of 4,318 cases.

56. Analysing the aforementioned information, the report noted:

"the number of new appeals filed year on year has increased from 851 in 2010 to 1,213 in 2016. By the end of 2016, 435 more appeals were pending compared to the start of that year. In other words, whereas the average waiting time for the trial of an appeal was 5.8 years at the start of 2017, by the end of the year it was 6.3 years. Thus, the waiting time for the trial of appeals is increasing steadily."

57. The report made a series of recommendations for tackling, *inter alia*, the backlog of cases at district court and Supreme Court level. Various initiatives to adopt these recommendations have taken place.

C. Report of the Audit Office of the Republic of Cyprus 2022

58. On 10 January 2022 the Audit Office of the Republic of Cyprus issued a report entitled “Audit of the Judicial Service”. The report contained figures concerning the number of civil cases pending before the four district courts between 2017 and 2019. The figures concerning the Nicosia District Court outlined in the report are as follows. By the end of 2017 the backlog consisted of 15,959 cases, by the end of 2018 it had reached 15,203 cases, and by the end of 2019 it had 15,950 cases.

59. The report made no recommendations, stating that the issue fell within the competence of the Supreme Court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION

60. The applicant company complained that it had not had a fair trial on account of the Supreme Court’s decision to declare the complaint concerning the length of the proceedings in civil action no. 4099/2004 inadmissible, which had led to the proceedings being fragmented. It further complained about that court’s decision to dismiss its claim in respect of pecuniary damage without adequate reasoning. Lastly, it complained that the length of the civil proceedings for breach of contract (see paragraphs 5-30 above) had been incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention, which 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 ...”

61. In addition, the applicant company complained that it had not had an effective domestic remedy at its disposal for the alleged violation of Article 6 § 1. It relied on Article 13 of the Convention, which reads as follows:

“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.”

62. The Court considers the first part of the applicant company’s complaint concerning the fairness of the proceedings to constitute part of its complaint concerning the length of the proceedings and the effectiveness of the remedies available in that regard, and therefore does not consider it appropriate to make a separate assessment of that complaint.

63. The period to be taken into consideration began on 6 May 2004 with the lodging of civil action no. 4099/2004 and ended on 20 December 2017

with the Supreme Court’s appeal judgment no. 28/2011. It thus lasted over thirteen years and seven months.

A. Admissibility

1. The parties’ submissions

64. The Government argued that the applicant company had failed to exhaust domestic remedies for the following reasons.

First, according to the Government, the applicant company should have first filed a civil action under Law 2(I)/2010 with the Nicosia District Court within one year from the delivery of the judgment in civil action no. 4099/2004 (by 6 December 2011) to complain of delays in the first-instance proceedings.

Secondly, while civil appeal no. 28/2011 had been pending, the applicant company should have asked for the appeal proceedings to be expedited “in order to conclusively know the outcome of the appeal and whether it had sustained any alleged pecuniary damage, which it wished to claim”. According to the Government, the civil appeal proceedings could have been expedited in two ways:

(a) by means of a letter to the Supreme Court, which would have considered whether the request had merit – a practice often resorted to by lawyers, according to the Government. The Government argued that given the facts of the case and the case-law of the domestic courts in relation to the interpretation of Law 2(I)/2010, the Supreme Court would have been likely to accept a request to expedite civil appeal no. 28/2011. In support of this argument, they provided the Court with a letter from the registry of the Supreme Court confirming that such a practice existed, even though no statistical data had been available concerning this;

(b) by means of an originating application under sections 7 and 8 of Law 2(I)/2010, which could have led the Supreme Court to issue an order to expedite the appeal proceedings based on section 14(2) of Law 2(I)/2010. The remedy in sections 7 and 8 of Law 2(I)/2010 could also have been used, according to the Government, to expedite the proceedings at first instance in civil action no. 4099/2004.

(c) Thirdly, once the Supreme Court had delivered its judgment in civil appeal no. 28/2011, the applicant company could have applied to the Nicosia District Court to have its pending claim under Law 2(I)/2010 amended to include the pecuniary damage allegedly suffered as a result of the length of the proceedings in civil action no. 4099/2004.

65. The Government further argued that the applicant company had lost its victim status as the Supreme Court had acknowledged the delay in the appeal proceedings and found a violation of the applicant company’s right to a hearing within a reasonable time. They further argued that the amounts awarded by the Supreme Court had been sufficient and in accordance with

the Court's case-law, and had furthermore been promptly paid to the applicant company. As regards pecuniary damage, the Government argued that the applicant company had failed to provide evidence of alleged damage and, referring to *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, § 203, ECHR 2006-V), stated that, in any event, the domestic courts were in a better position to determine the existence and quantum.

66. The applicant company disagreed. With regard to the first objection in particular, it argued that the procedure suggested by the Government was theoretical, overcomplicated, unreasonable and ineffective. It further argued that their suggestion to request to expedite the proceedings was not supported by data indicating a success rate for such requests and was only based on their assumption that the Supreme Court would have been "likely to accept" such a request or that it was customary for lawyers to use this practice. In addition, the applicant company claimed that the overall approach suggested by the Government would have been arbitrary, obliging persons who at the conclusion of the first instance proceedings had not incurred substantial loss to proceed with unnecessary legal procedures. The applicant company argued that the actual prejudice to its rights had been caused by the Supreme Court's decision ordering the imposition of statutory interest from the beginning of the first-instance proceedings. As such, its obligations had been exacerbated on account of the delay that had occurred at both instances. In any event, according to the applicant company, it would have been unreasonable to expect it to file a new action with the District Court for compensation in respect of pecuniary damage that had materialised almost seven years after the first-instance decision.

2. The Court's assessment

67. In the Court's view, the issue of non-exhaustion of domestic remedies and the question of whether the applicant company has been deprived of its status as a victim within the meaning of Article 34 of the Convention are closely linked to the merits of its complaint that it did not have an effective remedy at its disposal for the alleged violation of its right to a trial within a reasonable time. The Court therefore finds it necessary to join the Government's objections to the merits of the complaint under Article 13 of the Convention (see, for example, *FIL LLC v. Armenia*, no. 18526/13, § 44, 31 January 2019, and *Ommer v. Germany (no. 1)*, no. 10597/03, § 50, 13 November 2008).

68. As a result, the Court considers that the applicant company's complaints concerning the alleged breach of its right to a fair trial, the allegedly excessive length of the proceedings and lack of an effective domestic remedy are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other grounds for declaring them inadmissible have been established. They must therefore be declared admissible.

B. Merits

1. *Exhaustion of domestic remedies, victim status and alleged violation of Article 13 of the Convention*

(a) The parties' submissions

69. The applicant company argued, under Article 13 of the Convention, that it had not had an effective remedy at its disposal because of the way in which Law 2(I)/2010 had been interpreted and applied. First, according to the applicant company, the Law had not achieved its aim of providing, in a speedy manner, effective remedies for any delays in the determination of civil rights and obligations. Its use in its twelve years of existence had been limited, because it had not resolved the issue of delays in the Cypriot courts. In support of its claims, the applicant company referred to reports by the Audit Office (see paragraph 58 above) and the European Commission for the Efficiency of Justice (CEPEJ) (see paragraph 35 above) and various publications in the Cypriot press. Secondly, according to the applicant company, the fact that claims for delay relating to first-instance and appeal proceedings were examined separately made the aforementioned Law inherently problematic and contrary to the Convention. Thirdly, in the applicant company's case this separation had created an additional problem as Law 2(I)/2010 made no provision for cases where the damage or losses only materialised in the appeal proceedings but related to the entire length of proceedings. This, according to the applicant company, affected the adequacy of damages paid under Law 2(I)/2010. In addition, it claimed that, in any event, the aforementioned Law was ineffective as the domestic courts had never awarded compensation for pecuniary damage under it.

70. The Government averred that the fact that the Law required a claimant to lodge a claim for just satisfaction at each level of jurisdiction did not render it ineffective. They argued that the present case was distinguishable from *Božić v. Croatia* (no. 22457/02, 29 June 2006). Instead, they argued that like in the case of *Bako v. Slovakia* ((dec.), 60227/00, 15 March 2005), the domestic law (namely Law 2(I)/2010) was capable of covering all stages of the proceedings complained of, without excluding certain stages from the review, and provided for the award of damages covering the overall length of proceedings, despite the requirement that claims be lodged separately at each level of jurisdiction. In reply to the applicant company's argument that the domestic courts had never awarded compensation for pecuniary damage under Law 2(I)/2010, the Government referred to *Prime Insurance Company Ltd v. Attorney General* (civil action no. 5497/13, 27 October 2021) (see paragraph 49 above). Thus, according to the Government, Law 2(I)/2010 offered a level of protection for the applicant company's rights comparable to that provided by the Court under the Convention. Moreover, the State had not exceeded the wider margin of appreciation afforded to it when

introducing a compensatory remedy in a manner consistent with its own legal system and traditions.

(b) The Court's assessment

71. The relevant principles relating to the application of Article 13 of the Convention to complaints of a violation of the right to a hearing within a reasonable time are set out in a number of judgments (see, among other authorities, *Bara and Kola v. Albania*, nos. 43391/18 and 17766/19, § 105, 12 October 2021; *McFarlane v. Ireland* [GC], no. 31333/06, § 108, 10 September 2010; *Sürmeli v. Germany* [GC], no. 75529/01, §§ 97-101, ECHR 2006-VII; *Scordino (no. 1)*, cited above, §§ 182-89; and *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

72. The Court reiterates, in particular, that remedies available to an individual at domestic level for raising a complaint about the length of proceedings are “effective” within the meaning of Article 13 of the Convention if they can be used to expedite the proceedings before the national courts or provide the individual with adequate redress for delays that have already occurred (see *Sürmeli*, cited above, § 99, and *Techniki Olympiaki A.E. v. Greece* (dec.), no. 40547/10, § 29, 1 October 2013). Where a domestic legal system has made provision for bringing an action against the State, such an action must remain an effective, sufficient and accessible remedy in respect of the excessive length of judicial proceedings. Its sufficiency may be affected by excessive delays and depend on the level of compensation (see *Bara and Kola*, cited above, § 105).

73. Having regard to the duration of the proceedings (see paragraph 63 above), the Court considers, without anticipating the examination of whether the “reasonable time” requirement in Article 6 § 1 of the Convention was complied with, that the applicant company’s complaint is *prima facie* “arguable” (see, *mutatis mutandis*, *Vlad and Others v. Romania*, nos. 40756/06 and 2 others, § 113, 26 November 2013).

74. The Court will examine, first, the Government’s submission that the applicant company could have applied to the Supreme Court by means of a letter to have the civil appeal proceedings expedited (see paragraph 64 above, part (a)). It notes in this regard that the Government have not provided any successful examples of such practice. According to the letter from the registry of the Supreme Court provided to this Court by the Government, there are no statistics available concerning the aforementioned practice. In addition, no information has been provided as regards the precise procedures established to process such applications, including the criteria to be applied by the Supreme Court in rejecting or allowing such applications. In view of the above, the aforementioned procedure cannot be considered an effective remedy within the meaning of Article 13 of the Convention which ought to have been exhausted by the applicant company. The Government’s objection under this head must therefore be dismissed.

75. Turning to the remedies introduced by Law 2(I)/2010 and the Government's objection that the applicant company failed to make proper use of them, the Court notes as follows. The Court held in the case of *Panayi* (cited above) that the remedies provided under Law 2(I)/2010 were in principle capable of both preventing the continuation of the alleged violation of the right to a hearing without undue delay and of providing adequate redress for any violation that had already occurred. The Court considered that, at the time, there was no reason to doubt the effectiveness of the new remedy and required the applicant to have recourse to it. The Court noted, however, that its position could be subject to review in the future and that the burden of proof as to the effectiveness of the remedies in practice remained with the Cypriot Government.

76. The applicant company has not disputed, and at this time the Court therefore has no reason to doubt, that actions for compensation under Law 2(I)/2010 are heard within a reasonable time, that compensation is paid promptly and that the rules regarding legal costs do not place an excessive burden on litigants (see, *mutatis mutandis*, *Marshall and Others v. Malta*, no. 79177/16, § 82, 11 February 2020). Rather, its arguments have focused on three aspects. First, the effectiveness of Law 2(I)/2010 in expediting proceedings or preventing their protraction. Secondly, the procedural rules governing an action for compensation and, more specifically, the issue of separating claims for compensation by level of jurisdiction. Thirdly, the level of compensation awarded in the applicant company's case because of this separation and the alleged failure of the domestic courts to have ever awarded compensation for pecuniary damage under the aforementioned Law.

77. As regards the first argument raised by the applicant company, the Court notes that it is directly connected to the Government's objection that the applicant could have expedited the proceedings by means of an application under sections 7 and 8 of Law 2(I)/2010 (see paragraph 64, part (b)). In this regard, the Court notes that despite the Government's claims, the examples provided focus on the compensatory rather than the acceleratory nature of those provisions (see paragraphs 41, 43 and 48 above). Specifically, those examples only indicate that the claimants in those cases were able to obtain compensation for non-pecuniary damage for the delays in the pending proceedings and that the decisions were forwarded to the registry of the Supreme Court so that they could be put before the Supreme Court in accordance with section 14(2) of Law 2(I)/2010. No information has been provided as regards the subsequent directions issued by the Supreme Court on that basis, whether they were taken promptly and whether they indeed led to the proceedings actually being expedited or prevented them from becoming unreasonably long. In the absence of any information from the Government in this regard, and taking into account the delays and backlog of pending cases before the domestic courts (see paragraphs 35, 49, 52 and 55 above) as complained of by the applicant company, the Court considers that the

Government have failed to discharge their burden of proving that the aforementioned remedy has produced results not only *de jure* but also *de facto* (see, *mutatis mutandis*, *Bara and Kola*, cited above, § 107). This limb of the Government's preliminary objection therefore cannot be upheld and must be dismissed.

78. The Court also dismisses the Government's objection that the applicant company ought to have filed a civil action under Law 2(I)/2010 with the District Court by 6 December 2011, in the meantime requested to expedite the appeal proceedings and then, at the end of the appeal proceedings, applied to the District Court to have its claim in respect of pecuniary damage under the civil action amended (see paragraph 64 above). The Government have not provided any similar successful examples. In addition, the Court notes that at the end of the first-instance proceedings, the applicant company had not been liable to pay P.I.C. damages plus legal interest as the first instance decision had been in favour of the applicant company. In any event, the procedure suggested by the Government would have been an excessively burdensome, leading to the multiplication of judicial proceedings. It would have also meant that the civil action under Law 2(I)/2010 would have been postponed in anticipation of the appeal judgment, contrary to the very nature of proceedings under that Law, which needed to be dealt with expeditiously. The Court notes in this regard that the purpose of Law 2(I)/2010 has been to eliminate delays and protect claimants' rights in a way similar to the Convention (see paragraph 40 above), not to create a remedy that would discourage claimants from lodging an application.

79. The Government's objection above is linked to the second argument raised by the applicant company concerning the separation of claims for delays in proceedings by levels of jurisdiction. The Court notes that the way Law 2(I)/2010 has been interpreted and applied by the domestic courts in practice leads to a division of the examination of the length of first-instance and appeal proceedings (see paragraphs 34, 41, and 43 above). The present case can be distinguished from *Bako* (cited above) as in that case, while the Constitutional Court's decision was structured to make a separate assessment of each of the individual stages (before the district and regional courts), it was capable of covering all stages of the proceedings complained of, taking into account their overall length. In contrast, according to the domestic practice developed by the courts in Cyprus, applicants are required to address each court separately (first-instance and second-instance) within a year from each court's "final" decision – within the meaning given to this term by the domestic courts (see paragraph 42 above) – although proceedings may continue on appeal, with no possibility for either court to undertake a review regarding their overall length. Such separation is at odds with the Court's approach to examining the overall length of proceedings. In this context, the Court would emphasise the specific nature of the problem of lengthy proceedings, in that it does not consist of a series of static events but rather

of one progressively developing occurrence, the gravity of which progressively increases over time (see *Balogh and Others v. Slovakia*, no. 35142/15, § 58, 31 August 2018). It is reiterated that a remedy available to a litigant at domestic level for raising a complaint about the length of proceedings is “effective” within the meaning of Article 13 and Article 35 § 1 of the Convention, only if it is capable of covering all stages of the proceedings complained of and thus, in the same way as a decision given by the Court, of taking into account their overall length (see, among others, *Kirinčić and Others v. Croatia*, no. 31386/17, § 110, 30 July 2020; *Lukenda v. Slovenia*, no. 23032/02, § 79, ECHR 2005-X; *Koumoutsea and Others v. Greece*, no 56625/00, § 17, 6 March 2003).

80. In the applicant company’s case, the separation of the proceedings by level of jurisdiction created an additional particularity affecting the calculation of compensation, according to the applicant company’s third argument. In this connection, the Court notes that section 12(1)(a) of Law 2(I)/2010 provides that any pecuniary damage proved to have been sustained as a result of a violation of the right to a fair trial within a reasonable time must be compensated and that, under section 12(1)(b), non-pecuniary damage must also be compensated. The Government have provided one example where the domestic courts awarded compensation for pecuniary damage to claimants under Law 2(I)/2010 (see paragraph 49 above). The Court therefore dismisses the applicant company’s general claim that the domestic courts have never awarded compensation for pecuniary damage under Law 2(I)/2010. The Court reiterates that, as a general rule, the domestic courts are in a better position to determine the existence and quantum of pecuniary damage (see *Scordino (no.1)*, cited above, § 203), and that there is a strong but rebuttable presumption that non-pecuniary damage will be occasioned by excessively lengthy proceedings (*ibid.*, § 204). Nonetheless, in the particular circumstances of the present case, the Court cannot ignore that because of the separation of the proceedings the Supreme Court was precluded from examining the applicant company’s claim and allegations in respect of pecuniary and non-pecuniary damage together, limiting its assessment only to the appeal proceedings. As a result, the EUR 5,000 awarded to the applicant company by the Supreme Court concerned only the delays in the appeal proceedings.

81. The Court notes in this connection that the EUR 5,000 awarded in the present case is significantly lower than the amounts awarded for comparable delays in other cases (compare, for example, *Waldner v. Cyprus*, no. 38775/02, §§ 28 and 46, 19 January 2006, where the Court awarded the two applicants EUR 12,000 each in respect of non-pecuniary damage for proceedings which lasted over thirteen years at three levels of jurisdiction, and *Gregoriou v. Cyprus*, no. 62242/00, §§ 40 and 48, 25 March 2003, where the Court awarded EUR 10,000 in respect of non-pecuniary damage for proceedings lasting a little over fourteen years at three levels of

jurisdiction). As such, the applicant company cannot be considered to have received reparation for the damage caused comparable to just satisfaction as provided for under Article 41 of the Convention, which would in any event require a calculation based on the entire duration of the proceedings.

82. In view of the above, the Court is not satisfied that the protection of a person's rights under the Law 2(I)/2010 as interpreted and applied by the domestic courts is comparable with that which the Court can provide under the Convention (see, *mutatis mutandis*, *Bako*, cited above).

83. The Court reiterates that a decision or measure favourable to an applicant is not, in principle, sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, among many authorities, *Scordino (no. 1)*, cited above, § 180). The Court notes that the acknowledgment of a violation by the Supreme Court in the present case was only partial and limited to the delays in the appeal proceedings, and that the compensation awarded was not sufficient in the circumstances, as stated above. As neither the first nor second conditions have been fulfilled, the Court considers that the applicant company can still claim to be a "victim" of a breach of the reasonable time requirement. It follows that the Government's objection that the applicant company is no longer a "victim" for the purposes of Article 34 of the Convention must also be dismissed.

84. Having examined the facts in the light of the information provided by the parties and the aforementioned practice and having regard to its case-law on the subject, the Court considers that there has been a violation of Article 13 of the Convention in conjunction with Article 6 § 1.

2. Article 6 § 1 of the Convention

(a) The parties' submissions

85. The applicant company argued that there had been an excessive delay in the domestic proceedings, which had lasted thirteen and a half years at two levels of jurisdiction.

86. The Government did not disagree. They argued, however, that while this time had been objectively long, it had not in itself been unreasonable, given the many interim applications lodged at first instance, the procedural and substantive complexity of the case and the applicant company's applications for adjournment.

(b) The Court's assessment

87. The Court refers to the general principles for assessing the reasonableness of the length of proceedings as set out in *Bara and Kola* (cited above, § 63).

88. The Court considers that the civil proceedings in the applicant company's case, which lasted over thirteen years and seven months seem, at first glance, to have been unreasonably lengthy, and there appear to be no exceptional circumstances justifying their overall length (see, *mutatis mutandis*, *Glavinić and Marković v. Croatia*, nos. 11388/15 and 25605/15, § 79, 30 July 2020).

89. The case relating to breach of contract did not raise exceptionally complex issues of law. Even if the first-instance proceedings may have been complex from a procedural view on account of the number of interim applications made, this alone cannot justify their overall length. The few delays attributable to the applicant company on account of applications to adjourn the first-instance proceedings (paragraphs 13, 15, 16 and 21 above) cannot be regarded as a significant factor justifying their length.

90. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that, in the instant case, the length of the proceedings was excessive and failed to meet the "reasonable time" requirement (see *Hunguest Zrt v. Hungary*, no. 66209/10, § 17, 30 August 2016).

91. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

92. The applicant company complained that as a result of the length of the proceedings, it had been required to pay excessive amounts of statutory interest, in violation of its rights under Article 1 of Protocol No. 1.

93. However, having considered the facts of the case, the parties' submissions and its findings under Article 6 § 1 of the Convention, the Court considers that it has examined the main legal question raised in the present application and it is not necessary to provide a separate ruling on this complaint (see, *mutatis mutandis*, *Paweł Gładkowski v. Poland*, no. 24216/06, §§ 87-88, 29 June 2010, with further references).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. 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

95. The applicant company claimed 1,215,904 euros (EUR) in respect of non-pecuniary damage. It submitted that as a result of the delays and anticipated risks, it could not make investments to promote and develop its work, which had led to losses. The applicant company further claimed EUR 759,375 in respect of pecuniary damage, representing the additional statutory interest it had had to pay on account of the delays. It reiterated the claims for damages made before the domestic courts (see paragraph 33 above).

96. The Government contested these claims. As to the applicant company's claim in respect of non-pecuniary damage, they considered the total amount of EUR 5,000 awarded by the Supreme Court (see paragraph 37 above) to have been sufficient, proportionate and fair in the circumstances. As to the applicant company's claim in respect of pecuniary damage, they reiterated the Supreme Court's findings (see paragraph 36 above), arguing that unlike the applicant company in *Hunguest Zrt* (cited above), it had been able to use, invest, deposit and earn interest on the amount which it had subsequently been ordered to pay in statutory interest. As such, the Government argued that there was no causal link between the violation found and the pecuniary damage alleged.

97. In any event, the Government argued that the applicant company's calculations were incorrect. In their view, if the Court were to accept the applicant company's arguments, then the correct amounts for pecuniary damage concerning civil action no. 4099/2004 would be EUR 358,333.33 (representing a forty-three month delay out of the overall one hundred and sixty-two months of proceedings) and EUR 391,666.66 concerning civil appeal no. 28/2011 (representing a forty-two month delay out of the overall one hundred and sixty-two months of proceedings).

98. The Court reiterates its conclusion that the duration of the proceedings was excessive. With respect to pecuniary damage, it agrees with the Government that the present case can be differentiated from *Hunguest Zrt* (cited above), as the applicant company in the present case was able to use, invest and possibly earn interest on the amount which it was subsequently ordered to pay in statutory interest while the proceedings were pending. The Court cannot speculate on the difference between the benefits the applicant company could have obtained over the years during which that amount was available to it and the statutory interest it was eventually required to pay. In these circumstances, the Court discerns no quantified pecuniary damage. It therefore rejects the applicant company's claim under this head.

99. With respect to non-pecuniary damage, the Court notes that the length of the proceedings (which lasted over thirteen and a half years) may reasonably be considered to have caused the applicant company considerable inconvenience and prolonged uncertainty. Nonetheless, it considers its claim

under this head excessive, particularly given the fact that it has already been awarded EUR 5,000 by the Supreme Court (see, *mutatis mutandis*, *Scordino* (no. 1), cited above, §§ 269-70).

100. Having regard to the circumstances of the present case, the Court considers that, in the absence of an effective domestic remedy, it would have awarded the applicant company EUR 16,600. It notes that it was awarded EUR 5,000, which is approximately 30% of what the Court would have awarded it. The Court considers such awards for non-pecuniary damage unreasonable, taking into account at the same time its findings on the effectiveness of Law 2(I)/2010 in practice. Making an overall assessment of the relevant considerations on the basis of the material available to it, the Court finds that the applicant company should be awarded a total of EUR 11,600 in compensation for the non-pecuniary damage sustained as a result of the violations of Articles 6 § 1 and 13 of the Convention.

B. Costs and expenses

101. The applicant company also claimed EUR 6,908 for the costs and expenses incurred before the domestic courts and EUR 15,250 for those incurred before the Court.

102. The Government contested these amounts as excessive and unreasonable as to quantum.

103. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings as the Supreme Court has already awarded costs in the applicant company's favour in civil claim no. 2/2018 (see paragraph 37 above). However, it finds it reasonable to award EUR 15,250 for the proceedings before the Court, plus any tax that may be chargeable to the applicant company.

FOR THESE REASONS, THE COURT,

1. *Joins*, unanimously, to the merits the Government's preliminary objections concerning non-exhaustion of domestic remedies and the loss of the applicant company's victim status and *dismisses* them;
2. *Declares*, unanimously, the complaints under Articles 6 § 1 and 13 of the Convention admissible;
3. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*, unanimously, that there has been a violation of Article 13 in conjunction with Article 6 § 1 of the Convention;
5. *Holds*, unanimously, that there is no need to examine the complaint under Article 1 of Protocol No. 1 to the Convention;
6. *Holds*, by four votes to three, that it discerns no quantified pecuniary damage and dismisses the applicant company's claim under this head;
7. *Holds*, unanimously,
 - (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 11,600 (eleven thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 15,250 (fifteen thousand two hundred and fifty euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses;
 - (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;
8. *Dismisses*, by four votes to three, the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 24 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernisova
Deputy Registrar

Pere Pastor Vilanova
President

ALTIUS INSURANCE LTD v. CYPRUS JUDGMENT

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) Joint partly dissenting opinion of Judges Serghides and Pastor Vilanova;
- (b) Partly dissenting opinion of Judge Ktistakis.

P.P.V.
O.C.

JOINT PARTLY DISSENTING OPINION OF JUDGES SERGHIDES
AND PASTOR VILANOVA

1. The case concerns the length of civil proceedings and the effectiveness of domestic remedies in this regard (see paragraph 1 of the judgment); the applicant company alleged a violation of Articles 6 and 13 of the Convention. The applicant company also complained that, as a result of these lengthy proceedings, it had suffered pecuniary and non-pecuniary damage. The judgment has unanimously found a violation of Article 13 of the Convention in conjunction with Article 6 § 1 of the Convention, as well as a violation of Article 6 taken alone. The Court has found a violation of Article 13 read in conjunction with Article 6 § 1, which was the main issue before it, because the Supreme Court's interpretation and application of sections 5 and 6 of the relevant law, namely, Law 2(I)/2010, breached the right to an effective remedy read in conjunction with the right to a fair trial, and in particular the latter's guarantee of a "reasonable time". This interpretation and application by the Supreme Court led to a situation where examination of the length of proceedings, which lasted over 13 years and 7 months, was separated into first-instance and appeal stages, because of the failure to follow the Court's approach of examining the overall length of proceedings.

The Court has also unanimously awarded the applicant company a monetary sum in respect of non-pecuniary damage, but has held, by 4 votes to 3, that it discerns no quantified pecuniary damage and has dismissed the applicant company's claim under this head.

2. We voted in favour of points 1-5 and 7 of the operative provisions of the judgment and our only dissent concerns the majority's decision not to award the applicant company pecuniary damage.

Hence, we have voted against points 6 and 8 of the operative provisions.

3. While we agree with paragraph 98 of the judgment, reiterating that the duration of the proceedings was excessive, we also consider it obvious that owing to this delay in the proceedings, a large amount of statutory interest became due and had to be paid by the applicant company. We consider not only that the unreasonable delay in the proceedings was the common denominator between the pecuniary damage and the violations found, but we also discern a clear causal link between the alleged pecuniary damage and the violations found by the Court, with no intermediary or indirect steps between them.

4. Though it may be argued, as the judgment and the Government do, that the present case can be differentiated from *Hunguest Zrt v. Hungary* (no. 66209/10, 30 August 2016), the important fact remains that the applicant company had to pay more statutory interest than it would have been required to pay had the proceedings been concluded within a reasonable time. In this connection, it is to be noted that the applicant company owed nothing to P.I.C. until the Supreme Court's judgment reversing the Nicosia District Court's

judgment. Just satisfaction in respect of pecuniary damage can be awarded in so far as the damage arises from a violation found, and this is so in the present case. Even were we to accept that it would be fairer to deduct “the benefits the applicant company could have obtained over the years during which that amount was available to it and the statutory interest it was eventually required to pay” (see paragraph 98 of the judgment), and although it would be difficult to estimate any alleged benefits, these facts alone do not permit the Court to refrain from making any award at all in respect of pecuniary damage.

5. Provided that a clear causal link is established between the damage claimed and the violation alleged, the failure to award the applicant company a sum in respect of pecuniary damage arising from the violation of its rights, under the erroneous assumption that there no quantified damage can be discerned, amounts, in our view, to rendering the protection of its rights illusory and fictitious. This runs counter to the Court’s case-law to the effect that the protection of human rights must be practical and effective and not theoretical and illusory, as required by the principle of effectiveness which is inherent in the Convention (see, *inter alia*, *Artico v. Italy*, 13 May 1980, §§ 33 and 47-48, Series A no. 37).

6. Based on the above considerations, and in contrast to the approach adopted by the majority, the proposed approach would render protection of the rights in question practical and effective with regard to just satisfaction. In our view, it is not sufficient for protection of the rights concerned to be practical and effective only in terms of finding substantive violations, without at the same time compensating the applicant company for the pecuniary damage which it sustained as a result of these same substantive violations.

7. In conclusion, we would award the applicant company a monetary sum in respect of the pecuniary damage sustained. Being in the minority, however, there is no need for us to specify the amount, which we would determine having regard, *inter alia*, to the Government’s well-reasoned method of calculation, outlined in paragraph 97 of the judgment.

PARTLY DISSENTING OPINION OF JUDGE KTISTAKIS

1. I voted against points 6 and 8 of the operative provisions. My only dissent concerns the majority’s decision not to award the applicant company pecuniary damage.

2. The Court has already recognised that an applicant may have suffered, as a result of an unreasonable delay in proceedings contrary to Article 6 § 1 of the Convention, a loss of opportunity justifying the award of just satisfaction in respect of pecuniary damage (see *Martins Moreira v. Portugal*, 26 October 1988, § 65, Series A no. 143; *Pammel v. Germany*, 1 July 1997, §§ 77 and 78, *Reports of Judgments and Decisions* 1997-IV; *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 9 others, § 79, ECHR 1999-VII; *Varipati v. Greece*, no. 38459/97, § 36, 26 October 1999; *Tsingour v. Greece*, no. 40437/98, § 28, 6 July 2000; *Michailidou and Others v. Greece*, no. 21091/07, § 22, 12 March 2009; and *Tabouret v. France*, no. 43078/15, § 146, 12 May 2022).

3. I agree with the majority that the present case can be differentiated from the *Hunguest Zrt v. Hungary* judgment (see paragraph 98 of the present judgment) but only on the ground that a specific sum was awarded in that case “*for pecuniary damage sustained in respect of the violation of Article 1 of Protocol No. 1 to the Convention*”, as expressly stated in the operative part of the relevant judgment (see *Hunguest Zrt v. Hungary* (just satisfaction), no. 66209/10, 16 January 2018, point 1(a)(i) of the operative provisions), and not on the basis of Article 6 § 1 of the Convention, as the majority considered in the present case.

4. Instead, I believe that the very recent *Tabouret* judgment (cited above) is applicable in the present case. In *Tabouret* it was unanimously held that the delay in the judicial proceedings had caused pecuniary damage to the applicant, and the Court correctly determined that “*la requérante a subi une perte de chance d’éviter l’aggravation de ce déficit de fonds clients du fait de l’écoulement du temps lié à la durée excessive de la procédure*” (see *Tabouret*, § 158). The subject matter of the pecuniary damage is similar, in that both the applicant in the *Tabouret* judgment (who entered into an agreement with a court bailiff to take over his office) and the applicant insurance company in the present case are engaged in commercial transactions, where delays in the judicial proceedings to resolve the respective disputes had a direct impact on the course of business. In particular, the latter claimed that, as a result of the delays and anticipated risks, it had been unable to invest in promoting and developing its business, which had resulted in losses. It also complained about the statutory interest it had been required to pay as a result of the delays (see paragraph 95 of the judgment).

5. In response to the above allegations, the majority in the present case replied that “*the applicant company in the present case was able to use, invest and possibly earn interest on the amount which it was subsequently ordered to pay in statutory interest during the pendency of the proceedings*” (see paragraph 98 of the judgment). This answer overlooks the fundamental fact that commercial companies, especially insurances companies, are not simply savers who measure the annual return on the interest on their deposits. By their nature, they operate in a constantly changing commercial and competitive environment and seek by every possible means to have any debts paid off quickly, so that they can move on to their next business venture with greater certainty. These arguments were accepted in the *Tabouret* judgment but, in the present case, the majority disregarded them without convincing reasoning.

6. In conclusion, in my view, the Court in the present case should have followed the only relevant case-law, namely *Tabouret v. France*, and, in consequence thereof, should have awarded a lump sum in respect of pecuniary and non-pecuniary damage.