

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

FIRST SECTION

CASE OF FINANZIARIA D'INVESTIMENTO FININVEST S.P.A. AND BERLUSCONI v. ITALY

(Applications nos. 23538/14 and 23554/14)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Principle of legal certainty not infringed by challenge to outcome of dispute resolved by judgment, in context of compensation proceedings brought by third-party intervener against applicant company for damage resulting from bribery of judge who had participated in adoption of that judgment • Challenge to outcome of dispute not based on mere differences of view on matter in dispute, but on compelling reasons justifying departure from *res judicata* principle • Challenge to outcome of dispute not contrary to domestic law • Fair balance struck between applicant company's interests in final decision remaining in effect, third-party intervener's interests in obtaining decision by impartial tribunal and need to ensure proper administration of justice
Art 6 § 1 (civil) • Fair hearing • No flagrant violation of domestic rules on jurisdiction of courts • Jurisdiction *ratione materiae* not overstepped by domestic courts in deciding application for revision • Court of Cassation's findings, on examination of requirement of lodging application for revision, neither arbitrary nor unreasonable
Art 6 § 1 (civil) • Fair hearing • Insufficient reasoning given by Court of Cassation in determining court fees payable by applicant company
Art 1 P1 • Peaceful enjoyment of possessions • No failure by State in obligation to protect applicant company's possessions, nor delivery of arbitrary or manifestly unreasonable decisions in respect of it • Agreement conferring right on applicant company to acquire certain equity interests, and company's assets resulting from that agreement and subsequently forming basis of action for compensation, constituting possessions.
Art 6 § 2 • Presumption of innocence • Domestic decisions in compensation proceedings to establish civil liability not imputing criminal liability to applicant so as to suggest that criminal proceedings should have been determined differently • Close link between civil proceedings arising from third-party intervener's

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compensation claim for damage resulting from bribery of judge, and criminal proceedings against applicant on bribery charges • Art 6 § 2 applicable • Impugned judgments limited to finding of applicant's civil liability

Prepared by the Registry. Does not bind the Court.

STRASBOURG

8 January 2026

FINAL

08/04/2026

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

In the case of Finanziaria d'investimento Fininvest S.p.A. and Berlusconi v. Italy,

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

Ivana Jelić, *President*,
Erik Wennerström,
Raffaele Sabato,
Frédéric Krenc,
Davor Derenčinović,
Alain Chablais,
Anna Adamska-Gallant, *judges*,
and Ilse Freiwirth, *Section Registrar*,

Having regard to:

the applications (nos. 23538/14 and 23554/14) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Italian company, Finanziaria d'investimento Fininvest S.p.A., and an Italian national, Mr Silvio Berlusconi ("the applicants"), on 12 March 2014 and 13 March 2014 respectively;

the decisions to give notice to the Italian Government ("the Government") of the applications;

the observations submitted by the Government and the observations in reply submitted by the applicants;

the comments submitted by CIR S.p.A. – Compagnie Industriali Riunite, which was granted leave by the President of the Section to intervene as a third party in respect of application no. 23538/14;

Having deliberated in private on 18 November 2025,

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

INTRODUCTION

1. Application no. 23538/14 concerns the merits and outcome of civil proceedings brought by the third-party intervener against the applicant company. The third-party intervener was seeking compensation for damage resulting from the bribery of a judge who had participated in the adoption of a decision in a dispute between the two parties. Application no. 23554/14 concerns certain statements made by the domestic courts, in the context of the same civil proceedings, regarding the applicant's liability for bribery.

THE FACTS

2. Finanziaria d'investimento Fininvest S.p.A. ("the applicant company") is a company incorporated under Italian law with its registered office in

Rome. It was represented by Mr A. Saccucci and Mr R. Vaccarella, lawyers practising in Rome, and by Mr E. Fitzgerald, a lawyer practising in London.

3. Silvio Berlusconi ("the applicant") was an Italian national who was born in 1936 and, at the time of lodging the application, lived in Rome. He was represented by Mr R. Vaccarella and Mr A. Saccucci, lawyers practising in Rome.

4. Until 1994 the applicant was the chairman of the board of directors and the legal representative of the applicant company.

5. The applicant died on 12 June 2023. His heirs (whose names are listed in the appendix) expressed their wish to continue the proceedings before the Court. They were additionally represented by Mr G. Perroni, a lawyer practising in Rome.

6. The Government were represented by their Agent, Mr L. D'Ascia, *Avvocato dello Stato*.

I. CORPORATE TRANSACTIONS AND CIVIL DISPUTE BETWEEN SHAREHOLDERS

7. The case originated in a conflict that arose in the late 1980s over the control of the Mondadori group, one of Italy's leading publishing houses.

The group was controlled by the Arnoldo Mondadori Editore Finanziaria S.p.A. holding company ("AMEF"), whose main shareholders included the applicant company, CIR S.p.A. – Compagnie Industriali Riunite ("CIR" or "the third-party intervener") and the F. family.

The applicant company and CIR wished to gain control of AMEF by, among other things, acquiring the F. family's shares.

8. On 21 December 1988 the F. family and CIR entered into an agreement whereby the F. family undertook to transfer its AMEF shares to CIR. However, the F. family then refused to honour that agreement, as it had agreed to sell those same shares to the applicant company in the meantime.

9. CIR therefore sought arbitration on equitable principles. The dispute was assigned to an arbitration board composed of P.R. (appointed by CIR), N.I. (appointed by the F. family) and C.M.P.[1] (appointed by the First President of the Court of Cassation), who acted as Chair. The F. family argued that the 1988 agreement was void because it contained voting agreements that infringed public-policy rules on corporate governance.

10. In an arbitral award of 20 June 1990, the arbitrators found that the voting agreements, which were of limited subject matter and terms, could be regarded as valid according to recent legal theory and case-law. In any event,

[1] C.M.P. was the Advocate-General at the Court of Cassation. At the material time, judges could perform the duties of arbitrator. This practice was subsequently banned by a resolution of the National Legal Service Commission (*Consiglio Superiore della Magistratura* – CSM) on 12 March 1997 (following other industry-specific resolutions). The ban was extended to all judges and prosecutors in the area of public contracts by Law no. 190 of 2012.

they held that the parties had not viewed those agreements as an essential element of the agreement. Thus, in accordance with the rules of contract severability, their invalidity did not render the entire agreement void. They therefore found that the 1988 agreement was valid and that the F. family had an obligation to honour it by transferring their shares to CIR.

11. The F. family appealed against the arbitral award to the Rome Court of Appeal. AMEF's other shareholders, including the applicant company, intervened in the proceedings. The bench of the Court of Appeal was composed of three judges: V.M. (reporting judge), A.V. (president) and G.P.

12. In a judgment deposited in the registry on 24 January 1991 ("the 1991 judgment"), the Rome Court of Appeal allowed the F. family's claims. Specifically, it set aside the arbitral award on the grounds that it had infringed public-policy rules on the invalidity of voting agreements and that the reasoning as to the severability of those clauses from the rest of the 1988 agreement was incoherent and unreasonable. Ruling on the merits, the Court of Appeal found that the 1988 agreement (see paragraph 8 above) was void and that the F. family were not therefore required to honour it.

13. The parties appealed on points of law to the Court of Cassation. While the proceedings were still pending, on 29 April 1991 AMEF's shareholders reached a friendly settlement agreement ("the 1991 agreement"), whereby the applicant company acquired control of the Mondadori group in exchange for control of another corporate group and a balancing payment by CIR of approximately 365 billion lire (188 million euros (EUR)).

14. As a result, CIR waived its right to appeal on points of law and, in a decree of 12 February 1992, the Court of Cassation terminated the proceedings.

II. CRIMINAL PROCEEDINGS FOR BRIBERY

15. On 5 November 1999 the Milan public prosecutor's office requested that the applicant, Judge V.M., C.P. (a lawyer) and other co-accused be committed for trial on charges of bribery in judicial proceedings under Article 319 *ter* of the Criminal Code. They were accused of setting up a bribery scheme to obtain a favourable decision from Judge V.M. in the Mondadori case. The applicant was specifically accused of paying C.P. the sum of 3 billion lire (approximately EUR 1.5 million) out of the current accounts of the applicant company, of which he was the chairman and legal representative at the material time. That sum had then allegedly been used in part to bribe V.M.

16. On 19 June 2000 the Milan preliminary hearings judge discontinued the proceedings against all the co-accused on the grounds that the offence had not been made out (*perchè il fatto non sussiste*). Examining the available evidence, he reconstructed the payments made by the applicant company to C.P. and the other intermediaries and found that if there had been sufficient

evidence of bribery, the applicant's position in the company, his interest in the outcome of the case and his relationship with C.P. would have justified his committal for trial. He held, however, that there were no records of any payments after a certain date and that it was not sufficiently clear that any payment had been made to V.M. The public prosecutor's office appealed.

17. On 12 May 2001 the Milan Court of Appeal, finding that there were sufficient indications of bribery, committed the other co-accused for trial.

As to the applicant, the court reclassified the charges from bribery in judicial proceedings to bribery within the meaning of Article 319 of the Criminal Code, finding that at the material time Article 319 *ter* did not apply to those giving the bribe (see paragraph 71 below). Having regard to the lower penalties for that offence, and taking account of the general mitigating circumstances, it held that the charges against the applicant were time-barred. It therefore discontinued the proceedings.

18. The applicant appealed on points of law to the Court of Cassation, seeking an acquittal on the merits. His action was dismissed on 16 November 2001.

In its reasoning, the Court of Cassation referred to, *inter alia*, the considerations of the preliminary hearings judge as to the applicant's position, which would in principle have justified his committal for trial (see paragraph 16 above). It also found that the Court of Appeal had "positively stated that the evidence gathered during the investigation would have justified committal for trial, but that [that court] had discontinued proceedings after taking account of the general mitigating circumstances, which had led to the charge being declared time-barred".

19. Meanwhile, the other co-accused had been tried in lengthy and complex proceedings, which had largely taken place in conjunction with another case known as the "IMI-SIR case", concerning the bribery of the same judge, V.M.[2]

20. A large amount of evidence was gathered in the course of those proceedings, including the testimony of A.V. and G.P. (the other two judges who had taken part in the adoption of the 1991 judgment – see paragraph 11 above) and the testimony of S.A., who had stated having learned that the applicant regularly made money available to the lawyer C.P. for the purpose of bribing judges.

21. On 29 April 2003 the Milan District Court convicted the co-accused, relying on, *inter alia*, the content of the 1991 judgment which, in its view, contained an obvious anomaly. In particular, the District Court criticised the findings of that judgment in so far as they stated that the reasoning of the

[2] Those proceedings have been the subject matter of four Court decisions: *Acampora v. Italy* (dec.), no. 2072/08, 8 January 2013; *Pacifico v. Italy* (dec.), no. 17995/08, 20 November 2012; *Previti v. Italy* (dec.), no. 1845/08, 12 February 2013; and *Previti v. Italy* (dec.), no. 45291/06, 8 December 2009 (this last decision concerned only the IMI-SIR case).

arbitral award was incomprehensible. The District Court pointed out that, first, that argument had not been raised by the applicant party and, second, that finding was specious and forced.

22. In a judgment of 23 May 2005, the Milan Court of Appeal acquitted the accused. It noted, among other things, that no evidence of the bribery in question could be found in the content of the 1991 judgment, except that which was manifestly arbitrary or unreasonable.

23. In judgment no. 33435 of 5 October 2006, the Court of Cassation quashed the appeal judgment. It found that the Court of Appeal had not duly assessed some indications of the bribery (in particular the anomalies noted in the adoption of the 1991 judgment and the financial transactions made among the co-accused), and remitted the case to the Court of Appeal for a fresh examination. However, it upheld the finding that the 1991 judgment could not be used as evidence of bribery, because the criminal courts could not re-examine the merits of a judicial decision that was not manifestly arbitrary or unreasonable.

In addition to the Mondadori case, judgment no. 33435 of 5 October 2006 also concerned the IMI-SIR case. In that context, the Court of Cassation examined the relationship between a compensation claim and revision (*revocazione*) proceedings. Citing judgment no. 3060 of 1984 (see paragraph 79 below), it held that the two remedies were autonomous. While a revision was necessary in order for a judgment constituting *res judicata* to be set aside and replaced by another, the injured party could also seek compensation before the criminal courts for damage resulting from a judgment tainted by bribery, which would allow that judgment to remain in effect. It therefore held that an action for compensation was not dependent on the initiation of revision proceedings.

24. On 23 February 2007 the Milan Court of Appeal convicted V.M., the lawyer C.P. and the other co-accused of bribery in judicial proceedings. It also ordered them to pay compensation for the damage caused to CIR, specifying that the amount would have to be determined by a civil court. It reiterated the same considerations as in the previous judgments concerning the impossibility of drawing conclusions from the content of the 1991 judgment.

25. In a judgment of 13 July 2007, deposited in the registry on 27 September 2007 (no. 35616), the Court of Cassation upheld that conviction. It also reiterated the considerations to the effect that an action for revision and a claim for compensation were autonomous remedies (see paragraph 23 above).

26. CIR joined the criminal proceedings as a civil party without making any claim against the applicant company. The applicant company was not involved in the criminal proceedings.

III. CIVIL ACTION FOR COMPENSATION

27. On 6 April 2004 CIR brought a civil action for compensation within the meaning of Article 2043 of the Civil Code against the applicant company before the Milan District Court. CIR alleged that at the time of the negotiation of the 1991 agreement, its bargaining power had been significantly weakened by the fact that a corrupt judge had adopted the 1991 judgment, finding in the applicant company's favour. The 1991 agreement had consequently been entered into on unfavourable terms for CIR and had caused it undue loss.

28. The applicant company objected to the admissibility of the claim, arguing that, *inter alia*, the 1991 judgment and the 1991 agreement constituted *res judicata*. It also objected to the claim on the merits.

29. The parties adduced numerous documents in the course of the first-instance proceedings, including the documents initiating and concluding the proceedings before the Rome Court of Appeal (see paragraphs 11 and 12 above).

30. In an order of 27 February 2007, which was not provided to the Court, the Milan District Court ruled on the applicant company's applications for the taking of evidence, granting in particular the request that the two judges, A.V. and G.P., be heard. At a hearing on 25 January 2008, the two witnesses testified as follows, in sum:

(a) A.V. stated that he had carefully examined the procedural documents and had asked G.P. to do likewise. He had asked the reporting judge, V.M., to carry out in-depth research on case-law and legal theory. The entire bench had examined the content of the arbitral award. He had made a point of defining the items to be transposed into the reasoning. He had then checked that all those items were present in the judgment.

(b) G.P. stated that they had all examined the parties' pleadings on appeal and applications to join the proceedings. They had examined all the legal issues raised by the appeal jointly with V.M., whose arguments had convinced him. He did not remember precisely which complex legal issues had been dealt with.

A. First-instance judgment

31. In a judgment of 3 October 2009, the Milan District Court allowed CIR's claim.

32. On the question of admissibility, the District Court found that the 1991 agreement (see paragraph 13 above) did not prevent CIR from seeking compensation by means of an action outside contract law.

33. The District Court also found that the 1991 judgment (see paragraph 12 above) did not preclude the action for compensation from being brought, as it constituted only "formal" and not "substantive" *res judicata*. It further held that the 1991 agreement, which had become the only source of

rules governing the relationship between the parties, henceforth prevailed over that judgment.

34. As to the merits of the claim, the District Court stated at the outset that the criminal judgments could not be used against the applicant company, which had not been involved in the criminal proceedings. Whether bribery had taken place and whether those concerned were liable therefore had to be assessed autonomously. The evidence gathered in the criminal proceedings could be used, but also had to be assessed autonomously.

35. The District Court then noted numerous anomalies in the proceedings leading to the adoption of the 1991 judgment, such as the assignment of the case to V.M. as the reporting judge, the length of time and the manner in which the judgment had been drafted and the fact that information about the content of the decision had been leaked.

36. In addition, the findings of the 1991 judgment were, in the view of the District Court, manifestly erroneous on the merits. According to settled case-law (Court of Cassation judgments no. 2815 of 1987 and no. 4078 of 2003), an arbitral award made on equitable principles could be set aside only if it breached public-policy rules, if it contained no reasoning or if the reasoning was so incoherent that the *ratio decidendi* was incomprehensible. In the present case, although the issue of the validity of the voting agreements was uncertain according to the case-law and legal theory as they stood at the time, the arbitrators had clearly explained why those clauses were severable from the rest of the agreement. Reasoning had therefore been given, was understandable and concerned the interpretation of the wishes of the parties to the agreement, so it should not have been called into question by the Court of Appeal (on this point, the District Court cited Court of Cassation judgments no. 2546 of 1980, no. 1288 of 1989 and no. 11248 of 1997). The District Court therefore held that the Court of Appeal had overstepped its jurisdiction *ratione materiae*.

37. The District Court then examined the causal link between the bribery and the merits of the 1991 judgment, having regard to the fact that it had been adopted by a bench of three judges. It pointed out that V.M. was the reporting judge and that it was common knowledge that any individual in that role had a significant influence over the rest of the bench.

The District Court also examined the statements made by A.V. and G.P. during the criminal and civil proceedings. It concluded that A.V. had studied primarily questions of company law, G.P. had examined the procedural documents and the bench had been persuaded by the reporting judge's proposed solution. It thus found that a discussion had taken place between the judges and had not been merely formal, but that V.M. had steered it towards corporate issues and away from the question of the extension of the Court of Appeal's powers. It therefore held, on the basis of the "balance of probabilities" standard of proof, that V.M. had influenced the outcome of the case.

38. The District Court then examined the evidence gathered in the criminal proceedings concerning the personal and financial ties between the co-accused, and Judge V.M.'s unexplained increase in wealth, which had coincided with the adoption of the 1991 judgment. Those factors, taken together with the anomalies found in the adoption of that judgment, constituted strong, clear and concordant inferences of bribery.

39. In the District Court's view, the applicant company was civilly liable for that bribery not only because the payment had come from its current accounts and it had benefited from the favourable judgment, but also because it was accountable for the conduct of the lawyer C.P. and the applicant.

40. Regarding C.P., who was deemed to be the main organiser of the transaction, the District Court found that he had acted as the applicant company's *de facto* agent, and not only in the context of a work relationship. The applicant company was therefore accountable for his actions under Article 2049 of the Civil Code.

41. As to the applicant, the District Court held that "a joint-stock company was liable under civil law for any acts, including unlawful acts, committed by its legal representative or director in the performance of his or her management duties within that company". It referred to case-law according to which "once the criminal liability of a director in the performance of management duties [had] been established as an incidental matter by the trial court, the company [was] accountable for the civil consequences of the unlawful conduct" (Court of Cassation judgment no. 12951 of 1992).

The District Court then referred to the decisions adopted in respect of the applicant during the criminal proceedings (see paragraphs 16-18 above) and noted that the proceedings against him had been discontinued on the ground that they were time-barred. It drew the following conclusions.

(a) Under Article 129 of the Code of Criminal Procedure, judges were required to discontinue proceedings if the charge was time-barred, unless the defendant's innocence was clear from the case file. In consequence, if the applicant had not been acquitted on the merits, it was because the criminal courts considered that "it was not obvious from the evidence available at the time that the defendant was innocent".

(b) The fact that general mitigating circumstances had been taken into account did not presuppose the commission of the offence, as it had been done solely on the basis of the charge and the evidence available at the preliminary stage of the investigation. A discontinuance of proceedings at that stage therefore precluded any assertion of criminal liability. However, given that the discontinuance decision had been based on the expiry of the limitation period and not on the merits of the case, it did not prevent a finding "as an incidental matter, solely for civil-law and compensation purposes, that Mr Berlusconi had committed the act in question (*ha commesso il fatto de quo*)".

The District Court concluded:

> "It would be wholly unusual if a transfer of some 3 billion lire were ordered and executed, for the purposes of bribery already established, without the '*dominus*' of the company that held the current accounts used for the transfer being aware of that transaction and accepting it.
>
> It must therefore be considered, as an incidental matter and solely for the civil purposes of the present case, that Silvio Berlusconi is jointly liable for the acts of bribery (*corresponsabile della vicenda corruttiva*) in issue. This joint liability logically entails – in accordance with the principle of civil liability of companies for unlawful acts committed by their legal representative or director in the management of the company – the liability of Fininvest itself."

42. The Milan District Court held that it could not be established with certainty what the outcome of the case would have been if the acts of bribery had not been committed, but awarded CIR compensation for the loss of opportunity to obtain a more favourable decision. In order to quantify the damage, it relied mainly on the difference between the terms of the 1991 agreement and those of an agreement proposed by the applicant company on 19 June 1990. It accordingly awarded CIR compensation for pecuniary damage in the amount of approximately EUR 750 million, compensation for non-pecuniary damage in an amount to be determined separately, and a reimbursement of court fees for approximately EUR 2 million.

43. The applicant company appealed.

B. Appeal judgment

44. In a judgment of 9 July 2011, the Milan Court of Appeal upheld most of the first-instance judgment, but reduced the amount of compensation on the basis of, *inter alia*, an expert's report which had been the subject of adversarial argument. The main reasons given for the judgment were as follows.

45. The Court of Appeal first of all upheld the dismissal of the objections that were based on the 1991 agreement and on the fact that the 1991 judgment had become *res judicata* (see paragraphs 32-33 above), for reasons that differed partly from those of the Milan District Court. In particular, it dismissed the objection of *res judicata* on the basis of the difference in subject matter between the two sets of proceedings: the first concerned the validity of an arbitral award and shareholders' agreements, while the second concerned damage caused by the bribery of a judge. It added that CIR was not required to lodge an application for revision, as had already been clarified by the Court of Cassation in judgment no. 3060 of 1984 (see paragraph 79 below).

46. The Court of Appeal then examined the applicant company's objections as to the existence of the bribery in question, confirming the need for an autonomous assessment of the evidence gathered in the criminal

proceedings and upholding the assessment made by the first-instance court. It thus found that the bribery had been sufficiently established, on the basis of the anomalies noted in the adoption of the 1991 judgment (see paragraphs 35 and 38 above).

47. The Court of Appeal also upheld the imputation of liability to the applicant company, addressing such issues as:

(a) the fact that the payment of a large part of the money to V.M. had been linked to the Mondadori case and not to the IMI-SIR case;

(b) the link between the payment of money to the lawyer C.P. and the judgment delivered in the Mondadori case, given that the two events had taken place at approximately the same time, and the absence of a link with any of C.P.'s other professional activities, which had been performed a significant amount of time before or after the payment; for the same reason, the Court of Appeal upheld the rejection of the applications for the taking of evidence concerning his professional activities;

(c) the characterisation of the relationship between C.P. and the applicant company, C.P. having acted as the applicant company's general agent and not in the context of a work relationship.

48. The Court of Appeal also considered it necessary to examine the applicant's conduct, even though C.P.'s role was, in principle, sufficient to impute liability to the applicant company.

The Court of Appeal referred, as the District Court had done, to the case-law on the imputation of liability to companies for the unlawful conduct of their directors, finding that "the company's management body made that company liable for the management acts of the natural person".

It also upheld the District Court's findings as to the discontinuance decision (see paragraph 41 above), noting in addition that the Court of Appeal in the criminal proceedings had taken into account the general mitigating circumstances and that in so doing "it could only be assumed that a criminal offence had been committed by the accused". In any event, that "procedural non-innocence" (*non innocenza processuale*) was not evidence of civil liability, but merely a factor to enable the reasoning. The District Court had therefore correctly held that the discontinuance decision precluded any finding of criminal liability, but did not rule out a finding solely for civil purposes that the offence had been committed.

The Court of Appeal thus reiterated that a large sum of money could not have been transferred without the applicant's awareness and acceptance. As to his knowledge of the purpose of the payment, it was confirmed by other factors such as the considerations set out in the Court of Cassation's judgment of 16 November 2001 concerning the applicant's position and the fact that there were sufficient indications implicating him in the acts of which he was accused (see paragraphs 16 and 18 above), S.A.'s statements (see paragraph 20 above) and the significance of the dispute for the company.

The Court of Appeal therefore concluded that "awareness of the transferred money and participation in the bribery agreement" was a single fact, and that it was wholly improbable, and completely illogical, that anyone would have taken such an initiative without instructions from the applicant. Accordingly:

> "[It was] certain – indeed, anything else would be unimaginable – that the *dominus* of the company in person had encouraged or acquiesced to the criminal act, which had in fact been carried out with his own money and for his own illicit benefit by flesh-and-blood operatives closely linked to him."

49. The Court of Appeal then turned to the causal link between the bribery and the alleged damage and, above all, to V.M.'s influence on the 1991 judgment. Having summarised the applicant company's arguments – which embraced the assessment of A.V.'s and G.P.'s statements in the civil proceedings (see paragraph 37 above) – the Court of Appeal began by stating that bribing a single judge affected the validity of the decision handed down in the proceedings, and that the 1991 judgment should therefore be regarded as void. In any event, it held that the other judges' statements in the criminal proceedings had to be taken into account in examining V.M.'s actual influence on them. Noting, as the first-instance court had done, that A.V. had focused on corporate issues and that G.P.'s statements had been general, the Court of Appeal found that the other members of the bench had been influenced by V.M.

50. There was also the fact, according to the Court of Appeal, that the 1991 judgment was erroneous (see paragraph 36 above). The Court of Appeal found that if the court had been impartial, it would have remained within the limits of its jurisdiction to set aside an arbitral award made on equitable principles, as established by the case-law as it stood at the time (it cited Court of Cassation judgment no. 5637 of 1984, which was endorsed by subsequent judgments and by judgment no. 2815 of 1987). It further held that an impartial court, on noting that the arbitral award had applied public-policy rules in accordance with the case-law as it stood at the time and that it had been amply and comprehensibly reasoned, would have upheld that award.

51. The Court of Appeal added that if the court had been impartial, it would also have declared the applicant company's intervention inadmissible, relying on earlier case-law (Court of Cassation judgments no. 437 of 1962 and no. 1465 of 1988). In any event, it would have held that intervention to be unfounded.

52. As to the compensation, the Court of Appeal, unlike the first-instance court (see paragraph 42 above), found that there had not been a mere loss of opportunity to obtain a favourable decision but that, on the contrary, it had been sufficiently established that had the bribery not been committed, the 1991 judgment would have been in CIR's favour. The Court of Appeal also found that neither the signing of the 1991 agreement – a necessary solution in the business and political context of the time – nor CIR's waiver of its right

to appeal to the Court of Cassation had broken the causal link between the bribery and the alleged damage.

53. However, the Court of Appeal reduced the amount awarded in respect of pecuniary damage. It considered, like the District Court, that the amount of compensation could be determined on the basis of the applicant company's proposed agreement of 19 June 1990 (see paragraph 42 above), but it also relied on an expert's report in order to take into account the changes in the share price between that date and the date of the 1991 agreement. On the basis of that expert's report, as well as other considerations, it awarded CIR approximately EUR 540 million.

54. While taking the view that each party should bear one-quarter of the court fees incurred at the two levels of jurisdiction, the Court of Appeal recalculated those for the first level of jurisdiction and ordered the applicant company to reimburse CIR approximately EUR 8 million for the fees incurred at both levels.

55. The applicant company appealed to the Court of Cassation. In the meantime, on 26 July 2011, it had paid the amounts indicated by the Court of Appeal.

C. Judgment of the Court of Cassation

56. In judgment no. 21255, deposited in the registry on 17 September 2013, the Court of Cassation dismissed the applicant company's appeal with the exception of one ground concerning the amount of compensation. It subsequently reduced the amount calculated by the Court of Appeal.

57. In particular, with regard to CIR's supposed obligation to lodge a prior application for revision and to the fact that the 1991 judgment had *res judicata* effect, it held, firstly, that that judgment did not constitute either formal or substantive *res judicata*. Citing judgment no. 368 of 2000 of the combined divisions (*Sezioni Unite*) of the Court of Cassation (see paragraph 91 below), it held that the signing of the 1991 agreement, which had taken place before the 1991 judgment had become final, had prevented that judgment from becoming *res judicata*. The signing of a friendly settlement agreement would have had that effect regardless of whether the agreement had been transmitted to the domestic courts or had been entered into entirely outside the court proceedings.

58. Secondly, the Court of Cassation held that CIR had had no interest in lodging an application for revision. The disputed shares could no longer be returned and CIR could not have lodged a fresh compensation claim at such an advanced stage of the proceedings.

While, in general, any party injured by a judge's fraudulent practices was required to make use of the specific remedy of a revision, the Court of Cassation held that that party could not be obliged to bring an "unnecessary" action in order to obtain a purely formal outcome. Such an obligation would

be contrary, in particular, to the principle of the effectiveness of judicial protection laid down in the Constitution and in the Convention.

In those circumstances, there would therefore be no obstacle to the injured party bringing an action for compensation, and the court would have the possibility of examining, *incidenter tantum*, whether the judgment resulting from the fraudulent practices was "unfair". That judgment would then become a mere factual element that could give rise to compensation within the meaning of Article 2043 of the Civil Code, while allowing the judgment tainted by bribery to remain in effect.

Such an outcome would also be supported by the provisions of Article 2738 of the Civil Code (see paragraph 98 below), which provided for the possibility for an injured party to bring an action for compensation where it was unable to apply for the revision of a judgment based on perjury.

59. The Court of Cassation also dismissed the ground of appeal contending that CIR should have challenged the 1991 agreement. First, it expressed doubts as to whether an action under contract law could have been brought on the ground that V.M. had accepted a bribe. In any event, it held that CIR had had no interest in bringing such an action, which would have had the effect only of cementing the 1991 judgment. Second, it found, after reviewing the relevant legal theory and case-law, that the circumstances surrounding the negotiation phase of a contract could be relied on in an action for compensation, without it being necessary to seek to have the contract declared void.

60. It then rejected the applicant company's ground of appeal concerning the assessment of witnesses A.V.'s and G.P.'s statements and, in particular, the fact that the Court of Appeal had not examined the statements made in the civil proceedings but only those made in the criminal proceedings, where they had been ordered to maintain the secrecy of deliberations held in private. The Court of Cassation held that the statements had been examined comprehensively, including by an implicit comparison between those made in the civil proceedings and those made in the criminal proceedings, and that the finding that the two judges had been influenced by V.M. had been coherently reasoned and could no longer be challenged before it.

61. As to the ground of appeal concerning the erroneous nature of the 1991 judgment, the Court of Cassation held that the judgment in question essentially concerned questions of fact; its review therefore had to be confined to the reasoning. It then examined the applicant company's criticisms, stating that the appeal judgment had correctly applied the public-policy principles relating to voting agreements, as well as the principles concerning the limits of judicial review of arbitral awards and the impossibility of calling into question the interpretation of contracting parties' intentions regarding the severability of clauses. It also upheld the Court of Appeal's findings as to the inadmissibility of the applicant company's intervention (see paragraph 51 above), having regard to the above-cited case-

law, which had subsequently been endorsed by the combined divisions of the Court of Cassation in judgment no. 12262 of 1998.

It therefore concluded that the appeal judgment had been properly reasoned and that the applicant company's other criticisms concerned factual aspects outside its power of review.

62. The Court of Cassation then examined the ground of appeal concerning the causal link between the bribery and the alleged damage. The applicant company had submitted, *inter alia*, that CIR had contributed to causing the damage in question by waiving its right to appeal to the Court of Cassation and that the judgments on the merits were contradictory because the courts below had stated that that appeal had little prospect of success, while holding that the findings of the 1991 judgment were manifestly erroneous.

Following an extensive digression on the concept of causality, the Court of Cassation found that a causal link had been established between the bribery and the content of the 1991 judgment, as well as between that judgment and the terms of the 1991 agreement. It therefore held that the applicant company's argument based on the waiver of the right to appeal to the Court of Cassation and on the prospect of success of such an appeal was irrelevant. That waiver, which was a condition of the 1991 agreement, had not in any event contributed to causing the damage.

63. The Court of Cassation also upheld the finding that the applicant company should be regarded as liable for C.P.'s conduct. In particular, it found that the characterisation of C.P.'s role as a general agent was correct and sufficiently reasoned.

64. Next, the Court of Cassation held that although C.P.'s liability was sufficient in principle, having regard to the applicant company's claims, it also had to examine the question of the applicant's liability. In that connection, it noted that the Court of Appeal's findings had been based on a notion of common sense – that the head of a family company, who personally and diligently handled its management, had to be aware of the payment of a large amount of money – and on a presumption that he had known the purpose of that payment. Those findings had further been supported by other evidence, such as S.A.'s statements, the discontinuance decision and the economic and political significance of the purpose of the payment. The Court of Cassation reiterated, in particular, the same considerations as those of the Court of Appeal as regards the discontinuance decision (see paragraph 48 above) and concluded as follows:

> "... [T]he overall assessment of such evidence, made solely for the civil purpose of imputing to Fininvest liability for bribery (*la responsabilità del fatto corruttivo*), which was imputable to Dr Berlusconi too, without any subsequent aim of retracing the steps of a criminal trial that has now been concluded with final effect, therefore appears devoid of any logical or legal error and properly reasoned."

According to the Court of Cassation, the Court of Appeal had thus correctly applied the "balance of probabilities" standard of proof in its judgment. However, the reasoning in the judgment had to be corrected, since the lower court had held that it was highly implausible that the applicant had not known the purpose of the payment, and that it was certain that he had incited the criminal act. In fact, such certainty was neither necessary nor possible in the case at hand, as the civil courts had to confine themselves to the standard of the "balance of probabilities".

65. Lastly, the Court of Cassation upheld the finding that the amount of compensation could be determined on the basis of the applicant company's proposed agreement of 19 June 1990. It also rejected most of the applicant company's arguments as to that amount. However, it allowed in part a ground of appeal concerning a portion of the compensation awarded on an equitable basis, reducing the total amount by 15%.

66. As to the court fees, the Court of Cassation found that each party had to bear half of its share of the costs incurred in the proceedings before it on account of the complexity and novelty of the issues dealt with and the fact that it had allowed one of the grounds of appeal. For the remaining half, it ordered the applicant company to pay EUR 900,000 in court fees and EUR 200 in expenses. The apportionment of the fees incurred at the first two levels of jurisdiction was not called into question.

67. On 30 September 2013 CIR reimbursed the applicant company the difference between the amount paid pursuant to the appeal judgment and the amount indicated by the Court of Cassation.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Criminal-law provisions on corruption

68. Article 318 of the Criminal Code, as worded at the material time, punished any public official who received money or any other benefit in order to perform an act falling within his or her duties (*corruzione per un atto d'ufficio*).

69. Article 319 of the Criminal Code punishes any public official who receives money or any other benefit in order to omit or delay the performance of his or her duties, or to perform an act in breach of such duties (*corruzione per un atto contrario ai doveri d'ufficio*).

70. Article 319 *ter* of the Criminal Code punishes bribery, in the forms provided for in Articles 318 and 319 of the same Code, where it is committed with the aim of favouring or disadvantaging a party to judicial proceedings (*corruzione in atti giudiziari*).

71. Under Article 321 of the Criminal Code, the penalties provided for in Articles 318, 319 and – as of the entry into force of Law no. 181 of 1992 – 319 *ter* of the Criminal Code also apply to anyone who gives or promises money or any other benefit to a public official.

B. Provisions and case-law on *res judicata* and revision of judgments

72. Article 324 of the Code of Civil Procedure, entitled "Formal *res judicata*", provides:

> "A decision shall be deemed to constitute *res judicata* where it can no longer be the subject of a review of a conflict of jurisdiction (*regolamento di competenza*), of an ordinary appeal, of an appeal on points of law or of an application for revision for the reasons set out in sub-paragraphs 4 and 5 of Article 395."

73. Article 2909 of the Civil Code, entitled "*Res judicata*" (and commonly known as "substantive *res judicata*"), provides:

> "A finding in a decision that has become *res judicata* shall in all respects produce its effects between the parties, their heirs or their beneficiaries."

74. The Court of Cassation has clarified that the existence of a prior judgment constituting *res judicata* may be established by the domestic courts of their own motion, since the principle of compliance with *res judicata* is not an exclusive right of the parties but corresponds to a public interest in legal certainty and the stability of judicial decisions (Court of Cassation (combined divisions) judgment no. 26482 of 2007).

75. Article 395 of the Code of Civil Procedure provides the cases in which a judgment may be revised. The relevant parts read:

> "Judgments delivered on appeal or where there is only one level of jurisdiction may be challenged by means of an application for revision in the following cases:
>
> ...
>
> (6) if the judgment is the result of fraudulent practices (*dolo*) by the judge, as established by a decision constituting *res judicata*."

76. An application for revision within the meaning of Article 395 § 6 of the Code of Civil Procedure may be lodged against a judgment which has already become *res judicata* (Article 396 of the Code of Civil Procedure). Such applications are considered an extraordinary avenue of redress.

77. An application of this sort must be lodged with the same court that delivered the impugned judgment (Article 398 of the Code of Civil Procedure) within 30 days from the date on which the judgment establishing the fraudulent practices of the judge (Articles 325 and 326 of the Code of Civil Procedure) became final.

78. The court that orders the revision of the impugned judgment ("setting-aside stage"; *fase rescindente*) also rules on the merits of the case ("reconsideration stage"; *fase rescissoria*) and orders, as appropriate, the

restitution of any property awarded on the basis of the original judgment. In particular, Article 402 of the Code of Civil Procedure provides:

> "In the judgment ordering the revision, the court shall rule on the merits of the case and order, as appropriate, the restitution of anything awarded in the original judgment.
>
> If, to rule on the merits of the case, the court considers it necessary to order fresh investigative measures, it shall, by means of a judgment, instruct the impugned judgment to be revised and, by means of a decision, send the parties back before the investigating judge."

79. In judgment no. 3060 of 1984, the Court of Cassation ruled on a compensation claim lodged by a person who had received a payment order based on a forged bill of exchange. The party responsible for forging the bill of exchange had alleged that the payment order had become *res judicata* and that the victim should therefore have applied for its revision. The Court of Cassation rejected that argument, stating that a decision constituting *res judicata* did not prevent a compensation claim from being lodged in criminal proceedings or, following the termination of the criminal proceedings, in civil compensation proceedings. It explained this by adding that the obligation to make good the consequences of the forgery replaced the substantive legal situation created by the final decision based on false evidence.

80. In judgment no. 5682 of 2023, the Court of Cassation, ruling on an action for compensation brought in the context of the IMI-SIR case, reiterated the principle established in judgment no. 21255 of 2013 (see paragraph 58 above), according to which, as a general rule, an application for revision had to be lodged before an action for compensation unless, for an objective reason, it was no longer fit to satisfy the interests of the injured party. The Court of Cassation also held that, within the meaning of Article 402 of the Code of Civil Procedure, any person who had made a payment on the basis of a revised decision was entitled to restitution of that sum (loss sustained), plus any interest accrued as from the date of the application (loss of earnings). On the other hand, that person could not obtain restitution of any loss of earnings incurred between the date of payment and the date of the application for revision, or compensation for non-pecuniary damage, which had to be claimed by means of an action for compensation.

C. Provisions on civil liability and relationship with criminal proceedings

81. Article 2043 of the Civil Code provides:

> "Any intentional or negligent (*doloso o colposo*) act that causes undue damage to others shall oblige the person who committed the act to make good such damage."

The constituent elements of civil liability are therefore the act, the subjective element of intent or negligence, the undue damage, and the causal link between the act and the damage.

82. Under Article 2049 of the Civil Code, employers and principals are accountable for unlawful acts committed by employees and agents.

83. The constituent elements must be established on the basis of the "more probable than not" or "balance of probabilities" standard of proof, as is typical for civil liability.

84. Any legal action in this area is subject to a general limitation period of five years (Article 2947 of the Civil Code), with shorter periods for certain matters.

85. The relevant provisions and case-law concerning the relationship between civil and criminal proceedings were summarised in *Rigolio v. Italy* (no. 20148/09, §§ 52-60, 9 March 2023). In particular, Article 652 of the Code of Criminal Procedure provides that a final criminal acquittal judgment constitutes *res judicata*, for the purposes of subsequent civil proceedings, in respect of a finding that an act did not occur, that the accused did not commit the act or that the act was committed in the performance of a duty or in the exercise of a legitimate power (ibid., § 54).

86. Furthermore, in judgment no. 182 of 2021, the Constitutional Court pointed out that in order to respect the presumption of innocence, a criminal court called upon to rule on civil liability after a discontinuance decision had been handed down should not seek to establish, even as an incidental matter, whether the constituent elements of criminal liability had been made out, but only whether those of civil liability under Article 2043 of the Civil Code had been (ibid., §§ 57-60; see also *Marinoni v. Italy*, no. 27801/12, § 20, 18 November 2021). The same principle was then reiterated in respect of an examination by the civil courts after a discontinuance decision had been handed down in criminal proceedings (see, for example, Court of Cassation judgments no. 2897 of 2024 and no. 30496 of 2022).

D. Case-law on the effects of waivers of the right to appeal on points of law and friendly settlements

87. A waiver of the right to appeal on points of law to the Court of Cassation terminates the proceedings (Articles 390 and 391 of the Code of Civil Procedure).

88. Under Article 338 of the Code of Civil Procedure, the termination of ordinary appeal or revision proceedings results in the impugned judgment becoming *res judicata*, unless its effects were altered by decisions delivered in the course of the terminated proceedings.

89. In judgment no. 2534 of 2003, the Court of Cassation held that the rule laid down in Article 338 of the Code of Civil Procedure was the expression of a general principle, which was also applicable to terminations

of cassation proceedings. Consequently, a waiver of the right to appeal on points of law automatically resulted in the appeal judgment becoming *res judicata*. It added that friendly settlements which had been reached outside the context of the proceedings could not prevent such effect, if the agreement had not been communicated to the Court of Cassation for it to take formal note of. In fact, under Article 338 of the Code of Civil Procedure, only decisions delivered in the course of the terminated proceedings could prevent the operation of *res judicata*.

90. Similarly, the Court of Cassation has held that where the parties reach a friendly settlement without declaring it before the domestic courts, so that the dispute is settled by a judgment constituting *res judicata*, the outcome of the dispute becomes final and cannot be challenged in other proceedings (see, *inter alia*, Court of Cassation judgments no. 3755 of 1989 and no. 20723 of 2007).

91. According to well-established case-law, where the parties reach a friendly settlement and inform the court of that agreement, that court must declare the dispute resolved (Court of Cassation (combined divisions) judgment no. 368 of 2000, with further references). Judgment no. 368 of 2000 further indicates that where the dispute is resolved while the proceedings are pending before the Court of Cassation, that court must declare the appeal on points of law inadmissible for being devoid of interest. In such circumstances, the friendly settlement agreement replaces the rules laid down in the impugned judgment, which does not therefore constitute *res judicata*.

92. Some subsequent judgments have drawn a distinction between situations where the courts find that the dispute has been resolved – which prevents the operation of *res judicata* – and those where one party has waived the right to appeal on points of law – which, on the contrary, does give rise to *res judicata* (Court of Cassation (combined divisions) judgment no. 1048 of 2000, and Court of Cassation judgments no. 3122 of 2003 and no. 4714 of 2006).

E. Provisions and case-law on court fees

93. Prior to 2012 the determination of statutory court fees was governed by Decree no. 127 of 2004 of the Ministry of Justice. For cases involving claims of approximately EUR 5 million or more, the decree provided that the court fees were to be calculated as a percentage of the value of the claim.

94. Those regulations were replaced by Decree no. 140 of 2012 of the Ministry of Justice. That decree set out the specific amounts of court fees for claims of less than EUR 1.5 million. For claims exceeding that amount, Article 11 § 9 of the decree provided as follows:

> "For disputes involving claims in excess of EUR 1,500,000, the court shall take into account the fees provided for in the lower bracket and shall set the fees by applying the criteria laid down in Article 4 §§ 2-5 ..."

The criteria referred to in that provision included the claim amount, the nature and complexity of the case, the quantity, significance and complexity of the issues dealt with, the quality of the service provided and the outcome achieved.

Court fees for proceedings before the Court of Cassation in the lower bracket (claims between EUR 500,000 and EUR 1,500,000) ranged from EUR 10,125 to EUR 33,975, for an average of EUR 20,250.

95. The domestic case-law subsequent to the facts of the case clarified, with regard to the criteria laid down in Decree no. 140 of 2012, that in cases involving claims in excess of EUR 1.5 million, the court was required to give a reasoned decision on the criteria used to determine the costs, indicating the amount provided for in the lower bracket and the factors taken into account in increasing it (see, *inter alia*, Court of Cassation judgments no. 9464 of 2021, no. 5672 of 2021 and no. 5674 of 2021). Where the court departed from the amounts set for a given claim bracket, the increase or decrease always had be explained in a reasoned decision (Court of Cassation judgment no. 12537 of 2019).

96. The new criteria were to apply to proceedings for which, when Decree no. 140 of 2012 entered into force, legal services were still ongoing (Court of Cassation (combined divisions) judgment no. 7937 of 2012), as in the present case.

97. Those regulations were in turn replaced by Decree no. 55 of 2014, which is currently in force but does not apply to the facts of the present case.

F. Other relevant provisions

98. Article 2738 of the Civil Code provides that where one party has sworn an oath, the other party may not prove the contrary or, should that oath be shown to be false, apply for a revision of the judgment. However, in the event of a conviction for perjury, the other party may seek compensation.

II. RELEVANT INTERNATIONAL MATERIALS

99. Within the framework of the Council of Europe, the importance of combating judicial corruption, which is regarded as one of the main threats to the democratic State, has been emphasised in several instruments (see, *inter alia*, Parliamentary Assembly of the Council of Europe (PACE) Resolution 1703 (2010), Recommendation 1896 (2010) and Resolution 2098 (2016) on judicial corruption; Recommendation CM/Rec(2010)12 of the Committee of Ministers to member States on judges: independence, efficiency and responsibilities; the conclusions and recommendations of the Group of States against Corruption (GRECO) report on corruption prevention – members of parliament, judges and prosecutors: conclusions and trends (4th evaluation round); and Opinion No. 21 (2018) of the

Consultative Council of European Judges (CCJE) on preventing corruption among judges (CCJE(2018)3Rev)).

Most notably, PACE Resolution 2098 (2016) affirms that judicial corruption severely impedes the protection of human rights, in particular judicial independence and impartiality, undermines public trust in the judicial process and infringes the principles of legality and legal certainty.

100. Within the broader framework of anti-corruption instruments, the Council of Europe Civil Law Convention on Corruption (opened for signature on 4 November 1999, came into force on 1 November 2003, ETS 174) requires the Contracting Parties to provide for effective remedies for persons who have suffered damage as a result of acts of corruption.

THE LAW

I. JOINDER OF THE APPLICATIONS

101. Noting that the applications originated in the same events (see paragraph 1 above), the Court finds it appropriate to examine them jointly in a single judgment.

II. PRELIMINARY ISSUES

A. *Locus standi* of the applicant's heirs

102. The Court takes note of the applicant's death and of his heirs' wish to continue the application. It also notes that the Government submitted no observations in this regard.

103. Having regard to these heirs' family ties to the applicant, the Court considers that they have a legitimate interest in continuing the proceedings (see, *mutatis mutandis*, *Larrañaga Arando v. Spain* (dec.), nos. 73911/16 and 3 others, § 39, 25 June 2019). For practical reasons, the term "the applicant" will continue to be used in the present judgment to refer to Mr Berlusconi.

B. Admissibility of the third-party intervener's comments

104. The applicant company challenged the admissibility of the third-party intervener's comments. First, it argued that they exceeded the ten-page limit set by the President of the Section. Second, it submitted that they were not drafted in the interest of the proper administration of justice but rather in the interest of the Government, that they added nothing but erroneous and misleading arguments, and that they raised new objections to admissibility and arguments as to just satisfaction.

105. The Court notes that in a letter of 20 July 2023, in accordance with Rule 44 § 5 of the Rules of Court, the President of the Section granted leave

to CIR to submit written comments, subject to a ten-page limit. He set no conditions as to the content of the comments.

106. The Court also notes that under Rule 44 § 5, it is left to the discretion of the President of the Section to decide whether to include in the case file comments that do not satisfy the requisite conditions. In the present case, despite the fact that the ten-page limit had been exceeded, the President allowed CIR's comments to be included in the case file and to be forwarded to the applicant company. As a result, the applicant company may no longer challenge their admissibility.

107. As to the content of the comments in question, the Court notes that CIR intervened as a third party interested in the outcome of the case, and that it therefore naturally submitted comments on the factual and legal aspects of the case as they related to its interest in having the disputed domestic decisions upheld. The Court sees no breach of the rules on third-party intervention (see also the Practice directions on third-party intervention, paragraph 34). Moreover, it remains free to assess the relevance and usefulness of the comments submitted to it in determining the case.

108. The Court therefore dismisses the applicant company's objections in this regard.

C. The Government's preliminary objections

1. Objections concerning application no. 23538/14

109. The Government objected to the admissibility of application no. 23538/14, for the following three reasons. First, there had been no violation of the Convention, so the applicant company could not claim victim status. Second, the applicant company had raised new complaints after lodging the application, and those complaints should be declared inadmissible as being out of time. Third, the applicant company's complaints were of a fourth-instance nature, as it was asking the Court to re-examine the facts of the case and to give a more favourable judgment.

110. The applicant company contested the Government's objections. Regarding the first objection, the applicant company submitted that it did not concern victim status but rather the merits of the case. With regard to the second objection, it observed that the Government had not indicated which new complaints had been lodged out of time in subsequent submissions and that, in any event, it had confined itself to elaborating on its initial complaints. As to the third objection, it pointed out that the mere fact that an issue had already been dealt with by the domestic courts did not automatically mean that the complaint raised before the Court was of a fourth-instance nature; rather, it proved that domestic remedies had been exhausted. The applicant company further submitted that it was not seeking a fresh examination of the questions of fact, but was complaining that the outcome reached by the domestic courts was incompatible with the Convention.

111. The Court considers that the preliminary objections based on the lack of victim status and the fourth-instance nature of the complaints are so closely linked to the substance of the application that they should be joined to the merits.

112. As to the objection concerning the inadmissibility of the new complaints, the Court notes that the Government did not indicate which of the applicant company's allegations allegedly constituted new complaints submitted out of time. In any event, it cannot identify any such complaints in the pleadings submitted after the initial application had been lodged. The Court therefore dismisses this objection.

2. Objections concerning application no. 23554/14

113. The Government disputed the applicant's victim status on the ground that no violation had been committed. Even supposing that the statements made in the first-instance and appeal judgments were problematic (which the Government contested), the Court of Cassation would have remedied the situation.

114. The Government submitted that in any event, since the application had been lodged with the Court outside the six-month time-limit, it was inadmissible in so far as it concerned the decisions handed down at first instance and on appeal. They argued that the time-limit in question had started to run on the date on which each of those decisions had been delivered. As the applicant had not been a party to the proceedings, he had not, according to the Government, had any reason to await the final outcome.

115. The Government added that if, on the other hand, it were to be considered that the time-limit had started to run only on the date on which the Court of Cassation had delivered its judgment – that is, on 17 September 2013 – that would mean that the Court of Cassation could have redressed any breaches committed by the District Court and the Court of Appeal (they cited *Orr v. Norway*, no. 31283/04, § 54, 15 May 2008) and that in consequence, those breaches should no longer be taken into account by the Court. The Government therefore submitted that their objections concerning the lateness of the application and the loss of victim status were alternatives.

116. Lastly, the Government noted that the applicant had submitted several supplementary pleadings, and contended that any complaints raised in those pleadings were out of time.

117. The applicant argued, first, that he could claim to be a victim of the alleged breach because he had been directly concerned by the domestic courts' decisions in issue in the present application, even though he had not been a party to the proceedings. As to the Government's argument concerning the redress of the alleged breach, the applicant asserted that the Court of Cassation, in upholding the lower courts' decisions as to his liability, had actually aggravated the breach, which it had in any event neither acknowledged nor remedied.

118. As to compliance with the six-month time-limit, the applicant conceded that in principle, the Court of Cassation could have remedied the breach by quashing the appeal judgment and remitting the case for a fresh examination. He added that it was only when the Court of Cassation had upheld the appeal judgment and delivered a final decision on 17 September 2013 that he had been able to lodge his application with the Court; had he lodged it before that date, it would have been premature.

119. The Court notes, as a preliminary matter, that application no. 23554/14 stems from the proceedings that ended with the judgment of 17 September 2013.

120. The Court reiterates that as a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Article 35 § 1 cannot be interpreted in a manner which would require an applicant to inform the Court of his or her complaint before his or her position in connection with the matter has been finally settled at the domestic level, otherwise the principle of subsidiarity would be breached (see, among other authorities, *Lekić v. Slovenia* [GC], no. 36480/07, § 65, 11 December 2018). While it is true that in the present case the applicant was not himself a party to the proceedings and could not therefore appeal against the first-instance decision or appeal on points of law, the applicant company (of which he was the legal representative) and CIR were able to challenge the impugned decisions, with the result that the proceedings were still ongoing. The Court of Cassation could have quashed the appeal judgment concerning the applicant's liability or, in any event, expressly set aside its findings (see, for example, *Benghezal v. France*, no. 48045/15, § 36, 24 March 2022, and *A v. Norway* (dec.), no. 65170/14, § 41, 29 May 2018). In these circumstances, the Court cannot criticise the applicant for waiting until the decisions complained of had become final before applying to the Court. It therefore dismisses the Government's objection that part of the application was out of time.

121. As to whether the Court of Cassation did, in fact, remedy the breach and, more generally, the Government's objection concerning the lack of victim status, the Court considers that this matter is closely linked to the substance of the application and should be joined to the merits.

122. Lastly, regarding the objection to the admissibility of new complaints, the Court notes that the Government did not indicate which of the applicant's allegations allegedly constituted new complaints submitted out of time. In any event, it cannot identify any such complaints in the pleadings submitted after the initial application had been lodged. The Court therefore dismisses this objection.

III. ALLEGED VIOLATIONS OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION

123. The applicant company made several complaints under Article 6 of the Convention, as follows. (A) The principle of *res judicata* had been breached, as the 1991 judgment had been challenged outside the legal remedy provided for by law. (B) The case had been assigned to a tribunal that was not established by law, in flagrant violation of the domestic rules on jurisdiction. (C) It had not had access to the Court of Cassation, because a matter of law had been arbitrarily classified as a matter of fact. (D) The domestic courts had been unaware of statements made by two witnesses during the civil proceedings. (E) Liability had been imputed to the applicant company on the basis of the coexistence of presumptions and a breach of the principle of equality of arms. (F) The Court of Cassation's judgment had not contained reasoning as to the applicant company's sixth ground of appeal, concerning the impact on the causal link of CIR's waiver of its right to appeal on points of law. And (G) the Court of Cassation's judgment had also lacked reasoning as to the court fees and the excessive amount thereof.

124. The applicant company relied on Article 6 §§ 1 and 3 (b) and (d) of the Convention. The Court, being master of the characterisation to be given in law to the facts of a case (see, for instance, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018), considers that these complaints should be examined solely from the perspective of Article 6 § 1 of the Convention, under its civil limb. That provision, in so far as relevant, reads as follows:

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

A. The principle of *res judicata*

1. The parties' submissions

(a) The applicant company

125. The applicant company complained that the principle of legal certainty had been breached because in the compensation proceedings brought by CIR, the domestic courts had called into question a final judgment outside the remedy expressly provided for by law for that purpose.

126. While a departure from the principle of *res judicata* was possible where there were substantial and compelling reasons, it had to be granted in accordance with the domestic procedural rules, which also had to be applied in a foreseeable manner.

127. In the instant case, the applicant company acknowledged that the bribery of a judge could justify a departure from the principle of *res judicata* (although it expressed doubts as to the bribery of a single judge on a bench of

three), noting that Article 395 § 6 of the Code of Civil Procedure provided that fraudulent practices by a judge could constitute grounds for an extraordinary revision. However, CIR had not used that remedy, so the 1991 judgment could not be challenged in other contexts. The domestic courts' decision that the content of a final judgment could be challenged in compensation proceedings created, in substance, a new remedy, in an unforeseeable and arbitrary manner and in flagrant violation of domestic law.

128. That approach had been criticised for several reasons by Italian legal writers, who had emphasised the need to make use of the specific remedy of a revision without creating *ad hoc* remedies, which risked weakening the principle of legal certainty. The applicant company accepted that in the present case the domestic courts had been called upon for the first time to rule on the consequences of a judge's fraudulent practices. However, no one had ever doubted that the remedy to be used in such a situation was a revision. In addition, in the parallel proceedings in the IMI-SIR case (see paragraph 19 above), concerning the bribery of the same judge, the party injured by the bribery had lodged an application for revision.

129. The applicant company disputed the domestic courts' arguments, which had been cited by the Government and the third-party intervener, as to why it had not been necessary to lodge an application for revision.

130. As to the argument that the 1991 judgment did not constitute *res judicata* (see paragraph 57 above and paragraphs 139 and 144 below), the applicant company submitted that the opposite was true. CIR had not submitted the 1991 agreement to the Court of Cassation, but had simply waived its right to appeal to that court. In accordance with Article 338 of the Code of Civil Procedure and with well-established case-law, that had resulted in the impugned judgment becoming *res judicata* (the applicant company cited judgment no. 3755 of 1989 – see paragraph 90 above). Furthermore, a private, autonomous initiative such as the 1991 agreement could only govern the relationship between the parties, and not deprive a final judgment of *res judicata* effect.

131. The applicant company added that if the 1991 agreement had replaced the 1991 judgment, then CIR should have sought to have it declared void. In fact, CIR had been aiming to challenge the corporate and financial situation provided for in that agreement, and had brought proceedings seeking to "correct" its content, under the cover of an action outside contract law. The applicant company thus disputed the Court of Cassation's statements to the effect that it was possible to bring an action outside contract law without first challenging the 1991 agreement (see paragraph 59 above), arguing that they were erroneous and contradictory.

132. The applicant company also disputed the argument based on the lack of interest in lodging an application for revision and on the principle of the effectiveness of judicial protection (see paragraph 58 above and paragraphs 139-140 below).

In that connection, CIR had an interest in applying for the revision of the judgment because under Article 402 of the Code of Civil Procedure, the remedy in question would have enabled it to seek restitution of the shares or, failing that, payment of an equivalent sum and compensation for the damage. Any other interpretation of Article 402 of the Code of Civil Procedure would be unreasonable, since restitution of the same assets would often be impossible, meaning that the legislature would have established a useless remedy. Moreover, such an interpretation had been adopted by some legal writers and in the Court of Cassation's judgment no. 5682 of 2023 (see paragraph 80 above).

In any event, according to the case-law of the European Court of Human Rights, if CIR had had doubts as to the effectiveness of an application for revision, it should have lodged one (the applicant company cited, among other authorities, *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009, and *Stoian v. Romania*, no. 33038/04, 8 July 2014).

Regardless, it was in CIR's interest to lodge an application for revision in order to obtain what that remedy was intended to achieve, namely a review of the merits of the 1991 judgment and its potential setting aside. The Court of Cassation, in considering that a revision was unnecessary as there was no possibility of obtaining compensation, had displayed bias on the substantive issue and had asserted a right to restitution for CIR before it had even established that the findings of the 1991 judgment were erroneous.

Moreover, the obligation to protect CIR's interests did not require a new remedy to be created, since there were other avenues available to it. In addition to a revision, CIR could have claimed damages from it in the criminal proceedings or sought to have the 1991 agreement declared void. An action for compensation was not therefore the only solution, but represented a strategic choice on the part of CIR, whose aim had been to avoid the risks involved in an application for revision and to retain, in any event, the benefits obtained in the 1991 agreement.

133. The applicant company further disputed:

(a) the Government's argument based on the difference in subject matter between the two sets of proceedings and on the fact that the 1991 judgment had not been quashed (see paragraph 45 above and paragraph 141 below), emphasising that the erroneous nature of the 1991 judgment was a decisive factor which would have established whether CIR was entitled to compensation, and that the principle of *res judicata* was also infringed where a judgment was not quashed but ceased in substance to exist on account of a subsequent decision;

(b) the analogy with Article 2738 of the Civil Code (see paragraphs 58 and 98 above and paragraph 140 below), which concerned a different, exceptional situation in which the law precluded a revision, because a decision based on perjury no longer served any purpose;

(c) the reference to the Court of Cassation's judgment no. 3060 of 1984 (see paragraphs 45 and 79 above), which concerned a different situation where the damage had flowed directly from the offence, without there being any need to re-examine the merits of the case.

134. Furthermore, the applicant company submitted that the fact that the 1991 judgment had been challenged outside the context of revision proceedings had meant that there had been no setting-aside stage (*fase rescindente*). In the present case, it was not clear that the 1991 judgment should have been set aside. Only one of the three judges had been bribed, and a judge could be bribed to avoid the risk of uncertainty surrounding a judgment, without that resulting in a different decision from that which would have been given had there been no bribery. Article 319 *ter* of the Criminal Code did not distinguish between bribe-taking for acts compatible with the duties of judicial office and that for acts contrary to those duties (see paragraph 70 above). A conviction for bribe-taking therefore had no bearing in that regard. Most of the criminal judgments had stated that the resolution given to the dispute by the 1991 judgment could have been appropriate and that that judgment had been consistent with the case-law and prevailing legal opinion at the time. However, in the compensation proceedings the judges had simply assumed that the findings of the 1991 judgment had been erroneous as a result of the bribery.

135. The applicant company added that the replacement of the specific remedy of a revision by "virtual" proceedings initiated as an incidental matter in the context of the compensation proceedings had undermined the fairness of the proceedings, for the following reasons: (i) the case in question had been assigned to a tribunal that had not been established by law (see the complaint examined under point B below); (ii) it had been impossible to raise matters of law before the Court of Cassation (see the complaint examined under point C below); (iii) a five-year time-limit had been applied instead of the 30-day time-limit for revisions; (iv) the proceedings in question had been conducted in the absence of some of the parties to the original proceedings; (v) the merits of the 1991 judgment had been re-examined without the court which had ruled on the compensation claim having been aware of the procedural records from the original proceedings; and (vi) that re-examination had taken place 20 years later, on the basis of a profoundly changed regulatory and legal framework (the applicant company cited, by way of example, the reference to judgment no. 12262 of 1998 – see paragraph 61 above).

136. Overall, the applicant company submitted that the proceedings in question had therefore amounted to an "appeal in disguise", which had erased the outcome of a dispute by means of a final decision in proceedings that were not provided for by law, thereby undermining the principle of legal certainty.

137. Lastly, the applicant company emphasised the serious consequences it had suffered, as it had been ordered to pay more than EUR 490 million in

compensation in respect of pecuniary damage and EUR 10 million for costs and expenses. Those amounts exceeded the market capitalisation both of the applicant company and of AMEF.

(b) The Government

138. The Government submitted that the applicant company's complaint was manifestly ill-founded. The domestic courts had examined the issue in dispute and had clearly stated that in the circumstances of the case, the fact that CIR had not lodged an application for revision did not prevent it from bringing an action for compensation.

139. The Government essentially repeated the reasons given by the Court of Cassation for holding that there had been no obligation to lodge an application for revision. Thus, the 1991 judgment had not constituted substantive *res judicata*, as the relationship between the parties had been governed by the 1991 agreement (see paragraph 57 above). In addition, CIR had had no interest in having the judgment revised, since the disputed shares no longer existed. As a result, the principle of the effectiveness of judicial protection had made it necessary to examine the content of the 1991 judgment as part of the action for compensation (see paragraph 58 above).

140. As regards, in particular, the lack of interest, the Government emphasised that CIR could not obtain compensation under Article 402 of the Code of Civil Procedure, since that article referred only to the restitution of anything awarded in the original judgment. That interpretation had been confirmed in the Court of Cassation's judgment no. 5682 of 2023 (see paragraph 80 above). It would therefore have been excessively formalistic to require the use of an unnecessary remedy. The Government also referred to the argument based on Article 2738 of the Civil Code (see paragraph 58 above).

141. The Government added that the domestic courts had not quashed the 1991 judgment and that the subject matter of the two sets of proceedings had been different.

142. The Government further pointed out that the domestic courts had not created a new remedy, but had used the general remedy of an action outside contract law in a new context. The purpose of that approach had been to address a novel situation, which had not been dealt with in any prior cases, and could not therefore be regarded as unforeseeable or unreasonable. While some legal writers had criticised the approach taken in the present case, others, on the contrary, had supported it, and it had recently been endorsed in judgment no. 5682 of 2023 (see paragraph 80 above).

(c) The third-party intervener

143. The third-party intervener first submitted that the issues raised by the applicant company were matters of domestic law and were the same as those

examined and rejected by the domestic courts. The complaints in the application were therefore of a fourth-instance nature.

144. The intervener also pointed out that the relationship between it and the applicant company had been governed by the 1991 agreement. Under Italian law, that agreement had replaced the rules laid down in the 1991 judgment, which had not therefore become *res judicata* (it cited the Court of Cassation (combined divisions) judgment no. 368 of 2000). Moreover, it was for the domestic courts to decide whether a domestic decision constituted *res judicata*.

145. Furthermore, CIR asserted that it could not have availed itself of remedies under contract law or of an application for revision for a judgment that did not constitute *res judicata*. In any event, the 1991 judgment had not prevented it from bringing the action provided for in Article 2043 of the Civil Code, which was a general remedy that could be used in all cases of infringement of rights. In the present case, it had not been made use of to quash or amend the 1991 judgment, but to address a different legal issue.

146. Lastly, CIR emphasised that the applicant company had had a fair hearing, without any interference with its ability to defend itself or with the principle of equality of arms.

2. The Court's assessment

(a) Admissibility

147. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

(b) Merits

(i) General principles

148. The right to a fair hearing under Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, *inter alia*, that where the courts have finally determined an issue, their ruling should not be called into question (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, §§ 237-38, 1 December 2020, and *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII). This aspect of legal certainty presupposes respect for the principle of *res judicata*, which, by safeguarding the finality of judgments and the rights of the parties to the domestic proceedings, serves to ensure the stability of the judicial system and contributes to public confidence in the courts (see *Wałęsa v. Poland*, no. 50849/21, § 222, 23 November 2023; *Guðmundur Andri Ástráðsson*, cited above, § 238; and *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 57, 20 October 2011).

149. The Court has examined respect for the principle of *res judicata* primarily in two contexts: where a final judgment has been quashed by a higher court, and where the outcome of a dispute has been challenged in separate court proceedings between the same parties (see *Kooperativ Neptun Servis v. Russia*, no. 40444/17, § 64, 23 November 2021).

150. In the first context, the Court has emphasised that the *res judicata* principle requires that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination (see, among other authorities, *Balan v. the Republic of Moldova (no. 2)*, no. 49016/10, § 27, 29 November 2022; *Tığrak v. Turkey*, no. 70306/10, §§ 48-49, 6 July 2021; and *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX).

151. While the requirements of the principle of legal certainty, and the force of *res judicata*, are not absolute, a departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character, such as the correction of fundamental defects or a miscarriage of justice (see *Guðmundur Andri Ástráðsson*, cited above, § 238, and *Riabykh*, cited above, § 52; see also, more recently, *Gaba v. Albania*, no. 33369/17, § 87, 17 December 2024). The Court has specified that these notions do not lend themselves to precise definition. It has to decide, in each case, to what extent the departure from the principle of legal certainty is justified (see *Sutyazhnik v. Russia*, no. 8269/02, § 35, 23 July 2009).

152. The Court has to assess whether, in a given case, the power to launch and conduct a supervisory review was exercised by the authorities so as to strike, to the maximum extent possible, a fair balance between the interests of the individual and the need to ensure the proper administration of justice (see *Gaba*, cited above, § 86; *Tığrak*, cited above, § 48; and *Treguet v. Russia*, no. 45580/15, § 32, 20 September 2022), which includes the interests of third parties (see *Karen Poghosyan v. Armenia*, no. 62356/09, § 50, 31 March 2016, and *Protsenko v. Russia*, no. 13151/04, § 29, 31 July 2008). The considerations to be taken into account include, in particular, the effect of the reopening and any subsequent proceedings on the applicant's individual situation; whether the reopening resulted from the applicant's own request; the grounds on which the domestic authorities overturned the final judgment; the compliance of the procedure at issue with the requirements of domestic law; the existence and operation of procedural safeguards capable of preventing abuses of that procedure by the domestic authorities; and other pertinent circumstances of the case. In addition, the review must afford all the procedural safeguards of Article 6 § 1 and must ensure the overall fairness of the proceedings (see *Tığrak*, cited above, § 48; *DRAFT - OVA a.s.*

v. Slovakia, no. 72493/10, § 77, 9 June 2015; and *Giuran v. Romania*, no. 24360/04, § 31, ECHR 2011 (extracts)).

153. As to the second context (see paragraph 149 above), the Court has held in a number of cases that even where a judgment has not been quashed, a challenge to the outcome of a dispute by a final judicial decision in separate court proceedings may infringe Article 6 of the Convention in so far as it may render the right to a court illusory and breach the principle of legal certainty (see, among other authorities, *Kooperativ Neptun Servis*, cited above, § 64; *Esertas v. Lithuania*, no. 50208/06, §§ 24-35, 31 May 2012; and *Kehaya and Others v. Bulgaria*, nos. 47797/99 and 68698/01, §§ 62-70, 12 January 2006). In such cases, the Court thus verifies whether the departure from the principle of *res judicata* was justified by compelling reasons, such as the need to correct a fundamental defect (see, for example, *Gražulevičiūtė v. Lithuania*, no. 53176/17, § 82, 14 December 2021; *Vardanyan and Nanushyan v. Armenia*, no. 8001/07, § 70, 27 October 2016; and *Esertas*, cited above, § 28).

(ii) Application of these principles to the present case

154. Having regard to the above general principles and the applicant company's arguments, the Court considers that it must examine the following questions: (i) whether there was a final decision which constituted *res judicata*; (ii) whether that decision was challenged in subsequent proceedings; (iii) whether there were compelling reasons justifying such a challenge; (iv) whether that was done in accordance with the domestic procedural provisions; and (v) whether, more generally, a fair balance was struck between the interests of the individual and the need to ensure the proper administration of justice.

(α) Whether there was a final decision

155. The Court notes that the parties disagree as to whether the 1991 judgment constituted *res judicata*. The applicant company submitted that that judgment had become *res judicata* after CIR had waived its right to appeal on points of law to the Court of Cassation, in accordance with the provisions of Article 338 of the Code of Civil Procedure and the case-law as it stood at the relevant time (see paragraph 130 above). The Government and the third-party intervener, on the other hand, contended that the signing of the 1991 agreement had prevented the 1991 judgment from becoming *res judicata* (see paragraphs 139 and 144 above), making extensive reference to the reasoning in the Court of Cassation's judgment on that point (see paragraph 57 above).

156. The Court reiterates that when referring to the principle of *res judicata*, it requires the domestic decision to be final and binding under domestic law (see, for example, *Ryabykh*, cited above, § 52, and *Tığrak*, cited

above, § 50) and to have determined the merits of the case (see *Kehaya and Others*, cited above, § 68, and *Chengelyan and Others v. Bulgaria*, no. 47405/07, § 34, 21 April 2016; compare, for a case where the decision had not determined the merits of the case, *Peikrishvili and Basiladze v. Georgia* (dec.), no. 53191/10, § 36, 5 February 2019). In ascertaining whether a decision is final, the Court refers to domestic procedural rules (see, for example, *Gaba*, cited above, §§ 80-85, and *Agrokompleks v. Ukraine*, no. 23465/03, § 145, 6 October 2011). While it is primarily for the domestic authorities to interpret and apply those rules (see, among other authorities, *Titan Total Group S.R.L. v. the Republic of Moldova*, no. 61458/08, § 95, 6 July 2021), the Court may reach different findings from them and hold that a domestic judgment must be considered final, particularly where the domestic decisions do not contain sufficient reasons on that point (see, for example, *Gaba*, cited above, §§ 80-85, and *Amirkhanyan v. Armenia*, no. 22343/08, §§ 34-39, 3 December 2015; see also, *mutatis mutandis*, *Kehaya and Others*, cited above, § 68, where the Court found differently from the domestic decisions concerning the scope of *res judicata*).

157. In the present case, it is not in dispute that the 1991 judgment was final, in the sense that it could no longer be the subject of an ordinary appeal; nor that it was formally in force, since it had never been quashed or replaced by another decision (see paragraph 14 above); nor that it produced effects against the applicant company, which had intervened as a third party in the proceedings (see paragraph 11 above). The question is whether or not that judgment was binding as a result of the 1991 agreement.

158. The Court notes that this is a complex issue on which the parties disagree. It also notes that, on this point, the Court of Cassation appears to have departed from the predominant line of case-law, without explaining why (see paragraphs 57 and 89-92 above).

159. The Court does not consider it necessary to reach a final conclusion on this point. Even assuming that the 1991 judgment did constitute *res judicata*, a re-examination of the merits was justified in the circumstances of the case, for the following reasons.

(β) Whether the final decision was challenged

160. The Court reiterates that even where a final judgment has not been quashed, a challenge to the outcome of a dispute in separate proceedings may infringe Article 6 of the Convention (see paragraph 153 above). This principle has been regarded as applicable even where the subject matter of the two sets of proceedings was not identical but concerned the same decisive circumstances (see *Brletić v. Croatia*, no. 42009/10, § 47, 16 January 2014, and *Lady S.R.L. v. the Republic of Moldova*, no. 39804/06, § 29, 23 October 2018).

161. In the instant case, the subject matter of the two sets of proceedings was different. The first set, in which the parties were CIR, the F. family and

the other shareholders (including the applicant company as a third-party intervener), concerned the validity of the arbitral award made in 1990 (see paragraph 11 above). The second concerned the action brought by CIR to obtain compensation for the damage sustained as a result of the bribery of Judge V.M. However, in the second set of proceedings, in order to establish whether CIR had sustained damage as a result of the bribery, it was decisive to demonstrate the existence of a causal link between that bribery and the outcome of the first set of proceedings, which had been unfavourable to CIR. Consequently, the domestic courts examined whether or not the outcome of the dispute as determined by the 1991 judgment was appropriate (see paragraphs 36, 50 and 61 above).

162. The Court therefore finds, contrary to the Government's assertions (see paragraph 141 above), that the impugned judgments challenged the outcome of the dispute as determined by the 1991 judgment.

(γ) Whether there were substantial and compelling reasons

163. The Court notes that in the instant case the challenge to the outcome of the dispute stemmed from an action seeking compensation for the damage caused by the bribery of Judge V.M. (see paragraph 27 above). It also observes that the applicant company accepted that the bribery of judges in general was a compelling circumstance justifying a departure from the principle of *res judicata* (see paragraph 127 above).

164. The Court considers that the bribery of a judge constitutes a compelling circumstance which justifies a challenge to a final decision, even if only one judge on the bench was bribed.

165. In this connection, it reiterates the fundamental importance of the impartiality of judges, without which the courts could not inspire confidence in the public (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 118, ECHR 2005-XIII). It also reiterates its case-law to the effect that the fact that a lack of impartiality concerns only one member of a bench is not decisive, as the secrecy of deliberations makes it impossible to ascertain the actual influence of the judge concerned on that occasion (see *Karrar v. Belgium*, no. 61344/16, § 36, 31 August 2021, and *Morice v. France* [GC], no. 29369/10, § 89, ECHR 2015).

166. In view of these principles, the Court considers that the bribery of a judge, which by definition compromises his or her impartiality, constitutes a fundamental defect in the proceedings, depriving the parties of the possibility of having the case fairly examined by an impartial tribunal (see, *mutatis mutandis*, *Tchitchinadze v. Georgia*, no. 18156/05, § 55, 27 May 2010).

167. The question whether V.M.'s bribery led to the adoption of a judgment with erroneous findings was undoubtedly important, as part of the action brought by CIR, in establishing a causal link between the bribery and the compensation claimed. However, regardless of the answer to that question, the bribery alone of a single judge deprived CIR of the possibility

of obtaining a decision from an impartial tribunal, which justified the challenge to the outcome of the dispute.

168. The Court therefore finds that in the present case the challenge to the outcome of the dispute as determined by the 1991 judgment was not based on mere differences of view on the matter in dispute, but on a compelling reason justifying a departure from the principle of *res judicata*.

(δ) Whether the domestic procedure was followed

169. The Court notes that the applicant company's main argument was based on an alleged violation of domestic law, specifically that the 1991 judgment had been challenged without an application for revision having been lodged (see paragraphs 125-128 above).

170. The Court has repeatedly held that decisions to reopen proceedings must be in accordance with the relevant domestic provisions and that the misuse of such a procedure may be contrary to the Convention. The principle of legal certainty and the rule of law require the Court to be vigilant in this area (see, in addition to the judgments cited in paragraph 152 above, *Sfinx-Impex S.A. v. the Republic of Moldova*, no. 28439/05, § 21, 25 September 2012, and *Popov v. Moldova (no. 2)*, no. 19960/04, § 46, 6 December 2005; see also *Diya 97 v. Ukraine*, no. 19164/04, §§ 47-50, 21 October 2010).

171. However, it is primarily for the national authorities, in particular the courts, to resolve problems of interpretation of domestic legislation (see *Sfinx-Impex S.A.*, cited above, § 21, and *Popov*, cited above, § 47). It is not for the Court to deal with alleged errors of law or fact committed by those courts unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, among other authorities, *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 186, 6 November 2018). Nor is it the Court's task to assess the merits of the legal theory underlying a domestic judgment, or to determine the scope of application of a civil-liability action (see *Gražulevičiūtė*, cited above, § 77).

172. In the present case, the Court notes that the purpose of an application for revision is to have the judgment set aside, to obtain a fresh ruling on the merits of the case and potentially to secure restitution of property (see paragraph 78 above). In the present case, CIR did not avail itself of that procedure, but brought an action for compensation (see paragraph 27 above), during which the merits of the 1991 judgment were re-examined only as an incidental matter in order to establish whether CIR had sustained damage on account of the judge's fraudulent practices. It is undisputed that CIR, in bringing the action for compensation, followed the procedural rules applicable in matters of civil liability. In sum, it chose that remedy not to have the 1991 judgment quashed outside the context of revision proceedings, but to obtain compensation for the damage it had sustained, which was the specific purpose of the remedy. Contrary to the applicant company's assertions (see paragraph 127 above), a new remedy was not therefore

created, but rather a general remedy, provided for in the domestic legal system, was made use of, albeit in a novel situation.

173. In that context, the issue before the Court is whether the challenge, as an incidental matter, to the outcome of the dispute as determined by the 1991 judgment, with no prior application for a revision, breached domestic law.

174. It is common ground between the parties that this issue had never been dealt with by the domestic courts before the present case (see paragraphs 128 and 142 above). Having regard to the parties' submissions, the Court notes that this was a complex issue of domestic law, for which there was no obvious solution at the relevant time. In these circumstances, the Court will confine itself to examining whether, in the light of the applicant company's objections, the decision reached by the Court of Cassation was sufficiently reasoned and was not arbitrary or manifestly erroneous.

175. In this connection, it notes that the Court of Cassation ruled in the present case that CIR had not been obliged to lodge an application for revision, for two alternative reasons: the 1991 judgment did not constitute *res judicata*, and CIR had no interest in lodging such an application (see paragraphs 57 and 58 above). It is not necessary to examine the first argument (see paragraphs 158-159 above), since the second was supported by ample reasoning with regard to domestic law.

176. In particular, the Court of Cassation, faced with a novel situation, adopted an interpretation of domestic law intended to ensure effective protection of CIR's substantive interests and to avoid requiring it to use a legal remedy which, in the circumstances of the case, could not have led to compensation for the damage.

177. The applicant company sought to show that that interpretation was arbitrary and erroneous (see paragraphs 132-133 above). However, the Court of Cassation clearly explained why the revision remedy was ineffective. Specifically, it found that quashing the 1991 judgment formally alone did not address CIR's substantive interests sufficiently to require that company to use such a remedy. It also found that according to its interpretation of Article 402 of the Code of Civil Procedure, CIR could not have claimed compensation for damage in the revision proceedings, and that a reading of that Article in line with other provisions suggested that where the use of the revision remedy was not possible, an action for compensation had to be made available (see paragraph 58 above). The Court finds nothing arbitrary or unreasonable in those considerations or in the Court of Cassation's interpretation of Article 402 of the Code of Civil Procedure or its reference to Article 2738 of the Civil Code. Moreover, the only judgments which had addressed somewhat similar issues at the relevant time (Court of Cassation judgments no. 3060 of 1984, no. 33435 of 2006 and no. 35616 of 2007 – see paragraphs 79, 23 and 25 respectively above) appeared to reach the same conclusion.

178. The applicant company in substance proposed an alternative interpretation of domestic law (see paragraphs 132-133 above). However, as the Court of Cassation's interpretation was neither arbitrary nor manifestly erroneous, it is not for the Court to call it into question.

179. As to the judgments cited by the applicant company concerning the requirement to use domestic remedies if their effectiveness was in doubt (see paragraph 132 above), the Court finds that they are not relevant, since the issue in the present case is not whether CIR properly exhausted domestic remedies before commencing proceedings before the Court, but whether it was required to lodge an application for revision as part of the remedies provided for in domestic procedural law.

180. The argument that there were other remedies available to CIR (see paragraph 132 above) is also irrelevant, as the possible existence of alternative remedies does not mean that the chosen remedy was used in breach of domestic law.

181. The Court therefore sees no reason to differ from the conclusions of the Court of Cassation as to the conformity with domestic law of an incidental examination of the merits of the 1991 judgment in the compensation proceedings.

182. The same is true of the domestic courts' findings as to the possibility of examining the issue in the context of an action outside contract law without a prior application to have the contract declared void. In this connection too, the applicant company proposed an alternative interpretation of domestic law (see paragraph 131 above) without, however, showing that the domestic courts' interpretation (see paragraph 59 above) was manifestly erroneous or arbitrary.

183. Furthermore, as regards the applicant company's criticism of CIR's procedural strategy (see paragraph 132 above), the Court notes that there was nothing unreasonable about that strategy. CIR considered that it had been injured by Judge V.M.'s bribe-taking and that it had no interest in having the 1991 judgment revised, so it chose to seek compensation for the damage sustained. It did not, however, attempt to circumvent the limits of the revision procedure or to obtain a fresh examination of the case on the basis of a mere difference in views (compare, for example, *Popov*, cited above, § 52, and *Agrokompleks*, cited above, § 151).

184. The Court therefore finds that contrary to the applicant company's arguments, the challenge to the outcome of the dispute in the context of the compensation proceedings did not breach domestic law.

(ε) Whether a fair balance was struck

185. It remains to be determined whether the challenge to the outcome of the dispute struck a fair balance between the applicant company's interests in having a final decision upheld and the need to ensure the proper administration of justice, which included CIR's interests in obtaining a

decision by an impartial tribunal (see paragraph 152 above). In that connection, the applicant company argued that the challenge to the outcome of the dispute outside the context of revision proceedings had limited its defence options and had made it bear an excessive financial burden (see paragraphs 134-137 above).

186. The Court would begin by noting that the challenge to the 1991 judgment was the result of an application lodged by the party injured by the bribery. If the applicant company suffered significant financial consequences, it was as a result of a flawed decision for which the applicant company itself was found to be liable.

187. Furthermore, the Court notes that the applicant company's allegations are based, to a large extent, on the opinion that revision proceedings would have led to a more favourable outcome for it, owing to a more rigorous examination and separate proceedings in the setting-aside and reconsideration stages (see paragraph 134 above). The Court observes, however, that the domestic courts examined the disputed issues, including whether or not the 1991 judgment was appropriate, in a non-arbitrary manner supported by reasoning (see paragraphs 36, 50 and 61 above). It cannot speculate as to the outcome of any application for revision or base a finding of a violation on the assumption that the use of another avenue would have led to a more favourable outcome for the applicant company.

188. In so far as the applicant company complained that the decision reached by the domestic courts had been unforeseeable (see paragraphs 126-127 above), the Court refers to its considerations above as to the fact that the issue at hand was novel and that the Court of Cassation's judgment was reasoned and not arbitrary (see paragraphs 174-178 above). It should also be added that the foreseeability of a procedural rule is generally assessed by the Court in the light of its impact on the possibility of having access to a court and of participating effectively in the proceedings (see, among other authorities, *Andrejeva v. Latvia* [GC], no. 55707/00, § 99, ECHR 2009; *Běleš and Others v. the Czech Republic*, no. 47273/99, § 49, ECHR 2002-IX; *Leoni v. Italy*, no. 43269/98, § 23, 26 October 2000; and *Miragall Escolano and Others v. Spain*, nos. 38366/97 and 9 others, § 33, ECHR 2000-I).

189. In the instant case, the decision reached by the domestic courts was intended to ensure effective protection of CIR's rights without requiring it to bring proceedings that were considered to be ineffective or unnecessarily onerous (see paragraph 58 above). That decision neither restricted the applicant company's access to the domestic courts nor impeded its participation in the proceedings.

190. In this connection, the Court is also not persuaded by the applicant company's contentions that the procedural safeguards to which it was entitled had been curtailed because CIR had brought an action for compensation instead of revision proceedings (see paragraph 135 above).

191. As regards the complaints that the case in issue had been assigned to a tribunal not established by law and that the Court of Cassation had failed to examine a question of law, they were also raised separately and will therefore be examined in more detail below (see points B and C below). In any event, the Court may already observe at this stage that those circumstances did not prevent the applicant company from raising its complaints at several levels of jurisdiction and from challenging the submissions of the opposing party in adversarial proceedings. Nor is there any indication that the proceedings were unfair or resulted in arbitrary outcomes (see *Giuran*, cited above, § 42).

192. As regards the time taken by CIR to bring the action for compensation, the Court does not see why the same time-limit as for an action for revision should have applied, instead of the time-limit specific to that remedy (see paragraph 84 above). In any event, it notes that the time-limit for lodging an application for revision is 30 days from the date on which the judgment establishing the fraudulent practices of the judge became final (see paragraph 77 above) and that CIR brought the action for compensation on 6 April 2004, when the criminal proceedings concerning the bribery charges were still ongoing (the final judgment on the bribery was not delivered until 27 September 2007 – see paragraphs 25 and 27 above). In such circumstances, the applicant company's argument is purely theoretical. The fact that the compensation proceedings were subject to a longer time-limit did not cause any delays, and there is nothing to indicate that CIR had not been diligent (see, *mutatis mutandis*, *Treguet*, cited above, § 34) or that the decision to bring an action for compensation unduly delayed the resolution of the dispute.

193. As regards the fact that all the parties to the original proceedings were not involved in the compensation proceedings, the Court fails to see how that could have limited the applicant company's defence options. Moreover, the judgments delivered in the compensation proceedings have no effect on those parties.

194. As to the question of knowledge of the records and documents from the original hearing, it is apparent from the case file that the main records were made available to the District Court (see paragraph 29 above), and there was nothing to prevent the applicant company from submitting other documents.

195. Lastly, regarding the argument that the issue was determined with final effect in 2013, more than 20 years after the 1991 judgment had been adopted, on the basis of a profoundly changed regulatory and legal framework, the Court acknowledges that the compensation proceedings were particularly lengthy (more than nine years at three levels of jurisdiction – see paragraphs 27 and 56 above). However, the applicant company did not explain why an application for revision would have ensured speedier resolution of the dispute. Furthermore, it does not appear from the domestic decisions that that delay led to a different response to the company-law issues,

which were decided on the basis of case-law as it already stood at the time of the 1991 judgment. When the domestic courts cited subsequent judgments, they were merely reiterating the same principles (see paragraphs 36, 50 and 61 above). The same applies to the only example cited by the applicant company, namely the reference made by the Court of Cassation to judgment no. 12262 of 1998. That judgment not only endorsed earlier case-law but also concerned a subsidiary issue, namely, the admissibility of the applicant company's intervention in the proceedings to challenge the arbitral award, which was in any event held to be unfounded (see paragraph 61 above).

196. Having regard to all the circumstances of the case, the Court thus finds that a fair balance was struck between the interests of the applicant company, the interests of CIR and the need to ensure the proper administration of justice.

(ζ) Conclusion

197. The Court concludes that in the present case, the challenge in the compensation proceedings to the outcome of the dispute as determined by the 1991 judgment did not undermine the principle of legal certainty. There has therefore been no violation of Article 6 § 1 of the Convention in this respect.

198. In view of this conclusion, the Court considers it unnecessary to rule on the Government's preliminary objections (see paragraph 111 above; see also *Kurt v. Austria* [GC], no. 62903/15, § 213, 15 June 2021).

B. The alleged violation of the right to a tribunal established by law

199. The applicant company submitted that the domestic courts had flagrantly violated the legislation on jurisdiction to rule on applications for revision. It argued that under Article 398 of the Code of Civil Procedure (see paragraph 77 above), the Rome Court of Appeal had had exclusive jurisdiction to rule on an application for revision of the 1991 judgment (see paragraph 12 above) and that it was therefore to that court that CIR should have applied, within 30 days from the date on which the decision establishing the fraudulent practices of the judge had become final. Instead, the domestic courts had assigned incidental jurisdiction to determine those issues to another court, which had had a five-year time-limit for the initiation of the action in question. Such an interpretation of the rules on jurisdiction, it alleged, breached Article 6 § 1 of the Convention.

200. The Government submitted that the domestic courts had examined the issue complained of and had found that CIR had no interest in lodging an application for revision. The Government further pointed out that it was, in the first place, for the national courts to interpret domestic rules on jurisdiction, and that the latitude afforded to the Court to call into question their assessment was exceptional and limited to cases of flagrant violations. In the instant case, they argued that there had been no breach, as the domestic

courts had chosen to adopt an interpretation that secured effective protection of CIR's interests.

201. The third-party intervener asserted that the applicant company was speculating about the course of hypothetical revision proceedings, whereas CIR had brought a different action in accordance with the applicable rules.

202. The Court notes that this complaint is intrinsically linked to the previous one and should therefore be declared admissible.

203. The general principles concerning the requirement that a tribunal be established by law were summarised in *Guðmundur Andri Ástráðsson* (cited above, §§ 211-34), where the Court reiterated, *inter alia*, that, in principle, a violation of the legal provisions relating to the competence of a court gave rise to a violation of Article 6 § 1 and that, therefore, it had jurisdiction to examine whether the domestic law had been complied with in that connection. However, it also reiterated that it was, in the first place, for the national courts to interpret the provisions of domestic law, and that it could not question their interpretation unless there had been a flagrant violation of domestic law (ibid., §§ 216-17; see also *Lavents v. Latvia*, no. 58442/00, § 114, 28 November 2002).

204. The Court notes that in the present case, it is not in dispute that the Milan District Court had jurisdiction to hear the action for compensation brought by CIR. The applicant company complained of a breach of the rules on jurisdiction in respect not of that action but of an application for revision. In substance, it argued that the domestic courts, in challenging the 1991 judgment, had overstepped their jurisdiction *ratione materiae* and had ruled *de facto* on an application for revision.

205. The Court does not share this view. CIR did not lodge an application for revision, but an action for compensation. Furthermore, the domestic courts did not order the 1991 judgment to be revised, but examined its content as an incidental matter in order to determine the issue before them in the compensation proceedings. They did not therefore overstep their jurisdiction *ratione materiae* by ruling on an application for revision.

206. Moreover, the issue of whether an application for revision had to be lodged was examined by the domestic courts, and the Court has already found that the Court of Cassation's findings in that regard were neither arbitrary nor unreasonable (see paragraphs 174-178 above).

207. In these circumstances, the Court does not detect any flagrant violation of the domestic rules on the jurisdiction of the courts. There has therefore been no violation of Article 6 of the Convention in this regard.

208. In this connection too, it is unnecessary to rule on the Government's preliminary objections (see paragraph 111 above; see also *Kurt*, cited above, § 213).

C. The right of access to the Court of Cassation

209. The applicant company complained that the Court of Cassation had arbitrarily converted its fifth ground of appeal, concerning a "matter of law" (the conformity of the 1991 judgment with the requirements of domestic law) into a "matter of fact", which could not form the basis of an appeal on points of law. It argued that as a result, the Court of Cassation had not duly examined that fifth ground of appeal, instead confining itself to checking the coherency of the reasoning. The applicant company contended that if the revision procedure been properly followed, it could have put the same questions to the Court of Cassation for breach of the law.

It added that the impossibility of submitting those questions to the Court of Cassation had been all the more serious because the 1991 judgment had been in line with the prevailing case-law at the relevant time, and because some of the criminal judgments and the first-instance judgment of the civil courts had ruled out a manifest breach of company law (see paragraphs 22-24 and 36 above).

Referring to the Court's case-law on access to the courts and, in particular, to the superior courts, and on the duty to conduct a proper examination of the parties' arguments, the applicant company asserted that its access to the Court of Cassation had been restricted in an arbitrary and unforeseeable manner. It submitted that the Court of Cassation had adopted the most restrictive interpretation of the procedural rules, depriving it of the opportunity to put forward it arguments. It specified that it was not complaining about the admissibility criteria for appeals to the Court of Cassation, but about their application in the instant case.

210. The Government pointed out that the right of access to a court was not absolute and that the State enjoyed a certain margin of appreciation in setting the criteria for the admissibility of appeals. They emphasised that in the present case, the applicant company had been able to defend itself at two levels of jurisdiction, namely before the Milan District Court and the Milan Court of Appeal. Furthermore, they submitted that the Court of Cassation had not failed to conduct any review of the appeal judgment, since it had verified whether it had been duly reasoned and had expressly ruled on the validity of the voting agreements and the erroneous nature of the 1991 judgment.

211. The third-party intervener again submitted that the applicant company was speculating about the course of hypothetical revision proceedings, whereas CIR had brought a different action.

212. The general principles on access to a superior court are summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-99, 5 April 2018). Among other things, the Court reiterated that the manner in which Article 6 § 1 applied to courts of appeal or of cassation depended on the special features of the proceedings concerned and account had to be taken of the entirety of the proceedings conducted in the domestic legal order and the court of cassation's

role in them; the conditions of admissibility of an appeal on points of law could be stricter than for an ordinary appeal (ibid., § 82).

213. In the present case, the applicant company alleged, in substance, that the classification of its complaint as a question of fact had unduly restricted its access to the court, because the Court of Cassation had confined itself to reviewing the coherency of the reasoning.

214. The Court notes, however, that while the Court of Cassation did in fact state that its review was limited to the coherency of the reasoning, it nevertheless examined the applicant company's arguments and found that the Court of Appeal had correctly applied domestic law (see paragraph 61 above). That examination, although concise, addressed the substantive issues raised by the applicant company. Furthermore, the applicant company did not clearly identify which arguments that were decisive for the outcome of the case had allegedly not been dealt with in the reasoning of the Court of Cassation's judgment.

215. In these circumstances, the Court considers that the applicant company's access to the Court of Cassation was not unduly restricted on account of the classification given to the ground of appeal. There is therefore no reason to call into question that classification which, in so far as the right of access to a court was respected, is a matter exclusively for domestic law.

216. It follows that this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

D. The assessment of the witnesses' statements

217. The applicant company complained that the statements made by witnesses A.V. and G.P. in the civil proceedings had been disregarded by the domestic courts, which had relied exclusively on the statements made in the criminal proceedings.

Arguing that the two witnesses' statements demonstrated that both judges had fully shared the opinion which had led to the adoption of the 1991 judgment, and that that judgment had not therefore been the result of V.M.'s bribe-taking, the applicant company asserted that those statements had been decisive for the decision. They should therefore have been properly examined.

The applicant company submitted that the Court of Appeal had, on the contrary, relied exclusively on the statements made in the criminal proceedings, emphasising their vague nature, without taking into account the fact that, in that context, the witnesses had been required to respect the secrecy of deliberations held in private. The applicant company argued that the domestic courts' assessment of the evidence had thus been undeniably inaccurate and that the principle of equality of arms had not been respected.

218. The Government contended that this complaint was intended to call into question the domestic courts' assessment of the evidence and was

therefore of a fourth-instance nature. They indicated that the same complaint had been raised before the Court of Cassation, which had rejected it in a duly reasoned decision (see paragraph 60 above). They further pointed out that the courts had applied the "balance of probabilities" standard of proof, in accordance with well-established case-law in civil matters.

The Government added that the decision in question had been informed not only by the statements of those two witnesses, but also by the well-known influence that reporting judges have over the other members of the bench and by the erroneous nature of the 1991 judgment.

Lastly, they pointed out that the domestic courts were not required to give a detailed answer to every argument put forward by the parties.

219. The third-party intervener submitted that the complaint concerned a review of the examination of the facts and evidence. It pointed out that the domestic courts had based their rulings, using the "balance of probabilities" standard, on a number of factors attesting to the effects of the bribery on the 1991 judgment and that their findings could not be called into question before the Court.

220. The Court reiterates that it is not its function to deal with errors of fact or law allegedly made by a national court. Article 6 of the Convention does not lay down any rules on the way in which evidence should be assessed, this being primarily a matter for regulation by national law and the national courts. In principle, issues such as the weight attached by the national courts to particular items of evidence or to findings or assessments submitted to them for consideration are not for the Court to review. The Court should not act as a fourth-instance body and will therefore not question under Article 6 § 1 the national courts' assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015, and *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, § 149, 17 October 2019).

221. It also reiterates that, according to its established case-law, judgments of courts and tribunals should adequately state the reasons on which they are based. However, that obligation cannot be understood as requiring a detailed answer to every argument. Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). That being said, the concept of a fair hearing is underpinned by a need for a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings (see *Ruiz Torija v. Spain*, 9 December 1994, § 30, Series A no. 303-A).

222. In the present case, the Court notes that the Milan District Court made reference to the statements given by the two witnesses not only in the criminal proceedings but also in the civil proceedings, and drew the same conclusions from them. Specifically, it found that although the two witnesses had indeed discussed the case, they had nevertheless been influenced by the

reporting judge V.M. (see paragraph 37 above). It follows that the District Court explicitly examined the statements made in the civil proceedings.

223. The Court of Appeal, meanwhile, first summarised the applicant company's objections, including the arguments about the assessment of the statements made in the civil proceedings, and then found that account had to be taken of the statements made in the criminal proceedings, from which it drew the same conclusions as the District Court (see paragraph 49 above). While it is true that it attached significant weight to the statements made in the criminal proceedings, the Court notes that, as pointed out by the Court of Cassation (see paragraph 60 above), the assessment of those statements appeared to result more from an implicit comparison than from a failure to examine the statements made in the civil proceedings.

224. In any event, the Court is not persuaded that the statements made in the civil proceedings had to be explicitly addressed by the Court of Appeal. Those statements confirmed that A.V. and G.P. had to some extent examined the case, in particular as regards the corporate issues, and that they had been convinced by the outcome proposed by V.M. (see paragraph 30 above). Such circumstances were already apparent from the statements made in the criminal proceedings and had been taken into account by the District Court (see paragraph 37 above). The finding that V.M. had influenced the decision was not based on any disagreement between the judges or any failure on their part to examine the case, but on the fact that V.M. had steered the discussion towards the corporate issues and away from the limits of the Court of Appeal's jurisdiction (see paragraphs 37 and 49 above). The Court is not persuaded by the applicant company's argument that the outcome of the proceedings resulted from a failure to examine the statements made in the civil proceedings.

225. In these circumstances, the Court cannot conclude that the statements made by Judges A.V. and G.P. in the civil proceedings, or the limits imposed on the criminal proceedings, were decisive arguments for the outcome of the proceedings, which had to be explicitly addressed by the Court of Appeal or the Court of Cassation.

226. All things considered, the Court finds that the domestic courts' assessment of the evidence was sufficiently reasoned and was not arbitrary. It follows that this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

E. The use of the coexistence of presumptions and equality of arms

227. Referring to the imputation of civil liability on the basis of the conduct of C.P. and the applicant, the applicant company complained of the use of the coexistence of presumptions, which had allegedly infringed the principles of adversarial proceedings and equality of arms.

The applicant company submitted that the domestic courts had examined its arguments only superficially and had rejected them on the basis of presumptions, which had placed it at a substantial disadvantage *vis-à-vis* the opposing party. It referred, in particular, to the reasoning in the domestic decisions on three points: (i) the classification of the relationship between it and C.P. acting as its general agent; (ii) the incoherence of the finding that it had paid the sum in question to V.M., whereas the same sum had been in issue in the IMI-SIR case; and (iii) the finding that the applicant could not have been unaware of the payment in question and its unlawful purpose. On those points, the civil courts had essentially aligned their findings with those of the criminal courts, which had been adopted even though the applicant company had not been involved in the criminal proceedings. Those courts had therefore either failed to examine those questions properly, or had examined them arbitrarily.

The difficulty of challenging the presumptions in question had allegedly been compounded by the rejection of the applicant company's applications for the taking of evidence, for example concerning C.P.'s professional activities. In all, the applicant company submitted that the domestic courts had imputed civil liability to it without basing their findings on a proper re-examination of the evidence, but instead merely referring to the findings of the criminal courts.

228. The Government, for their part, asserted that the civil courts, while examining the same factual circumstances as those in the criminal proceedings, had assessed them autonomously. They emphasised, in particular, the different standards of proof in civil and criminal matters.

They further noted that the argument based on C.P.'s role had been clearly and coherently reasoned and would have been sufficient in itself to justify the applicant company's liability. They observed, however, that the domestic courts had also examined the applicant's conduct, finding that he had been aware of the bribery on the basis of several factors and of the "balance of probabilities" standard of proof.

229. The third-party intervener submitted that the standard of proof for civil liability had been correctly applied and that the domestic decisions had not been based on the coexistence of presumptions but on a notion of common sense. It further asserted that the Court could not re-examine the merits of the case.

230. The Court notes that with this complaint, the applicant company is essentially seeking a reassessment of the merits of the domestic decisions. It reiterates that it should not act as a fourth-instance body and will therefore not question under Article 6 § 1 the national courts' assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable (see, among other authorities, *De Tommaso v. Italy* [GC], no. 43395/09, § 170, 23 February 2017).

231. In so far as the applicant company alleged that the domestic courts had addressed certain issues only superficially, the Court would simply note that the domestic decisions are duly reasoned with regard to those issues and do not appear manifestly arbitrary. Furthermore, the argument that the domestic courts merely referred to the criminal courts' assessment of the evidence is unfounded. The domestic courts, while using evidence gathered in the criminal proceedings, did in fact assess it autonomously, and the applicant company had the opportunity to challenge it (see paragraphs 34, 38-42, 46-48 and 63-64 above).

232. As to the alleged violation of the principle of equality of arms, the Court reiterates that the proceedings must be considered as a whole (see, among other authorities, *Regner v. the Czech Republic* [GC], no. 35289/11, § 151, 19 September 2017). It also reiterates that presumptions of law or fact operate in every legal system and clearly are not prohibited by the Convention in principle, but litigants must, however, enjoy effective protection by the courts (see *Lady S.R.L.*, cited above, § 27, and *Bongiorno and Others v. Italy*, no. 4514/07, § 48, 5 January 2010). Furthermore, the civil limb of Article 6 § 1 does not regulate issues relating to the burden of proof, which are essentially a matter for domestic law (see *Lady S.R.L.*, cited above, § 27).

In the present case, the presumptions relied on by the domestic courts, particularly the presumption that the director of a company had to be aware of a significant payment (see, for example, paragraphs 41 and 48 above), were not unqualified presumptions but arguments that, together with others, served as the basis of the domestic decisions, which the applicant company was free to challenge.

233. Lastly, as regards the rejection of the applicant company's applications for the taking of evidence, the Court notes that the applicant company's complaint is quite general in nature and that the order rejecting those applications was not provided to the Court (see paragraph 30 above). The only specific reference made by the applicant company in this connection was to the rejection of its requests for witnesses to be heard in relation to C.P.'s professional activities. On that matter, the Court of Appeal gave a reasoned decision, finding that the professional activities in question were not relevant since they took place a significant amount of time before or after the payments in question (see paragraph 47 above). It is for the national courts to assess the relevance of proposed evidence (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 198, ECHR 2012), and the Court does not find that that rejection was arbitrary or, in itself, deprived the applicant company of a fair hearing.

234. In these circumstances, the Court considers that the manner in which evidence was taken and assessed in the present case did not place the applicant company at a substantial disadvantage *vis-à-vis* its opponent (see, for instance, *Regner*, cited above, § 146, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 46, Series A no. 301-B).

235. The Court therefore rejects this complaint as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

F. The failure to examine the sixth ground of appeal on points of law

236. The applicant company complained that the Court of Cassation had failed to examine its sixth ground of appeal, according to which CIR, by waiving its right to appeal on points of law against the 1991 judgment, had contributed to causing the damage in question. It submitted that the Court of Cassation's decision in that respect was contradictory, because if the findings of the 1991 judgment had been so manifestly erroneous, CIR would probably have been successful in an appeal to that court. However, it pointed out that the Court of Cassation had merely stated that CIR had not challenged the 1991 agreement; it had not ruled on the effect that CIR's waiver of it right to appeal on points of law had had on the causal link.

237. The Government and the third-party intervener referred to the reasoning in the Court of Cassation's judgment (see paragraph 62 above), which they considered to be sufficiently developed on that point.

238. The Court notes that the Court of Cassation dealt extensively and thoroughly with the question of the causal link and, in the light of its considerations, explained why the applicant company's arguments based on the waiver of the right to appeal on points of law and the prospects of such an appeal's success were irrelevant and why that waiver had not, in any event, contributed to causing the damage (see paragraph 62 above).

239. The Court therefore finds that contrary to the applicant company's assertions, the Court of Cassation did examine its argument and dismissed it.

240. This complaint must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

G. The court fees

1. The parties' submissions

241. The applicant company complained that insufficient reasoning had been given in determining the court fees for the proceedings before the Court of Cassation. It submitted that the Court of Cassation had merely stated that each party had to bear half of its share of the costs incurred in the proceedings before it, but had not explained how it had determined the remaining half that the applicant company had been ordered to pay, amounting to EUR 900,200 (see paragraph 66 above). The applicant company further submitted that according to the criteria set out in the applicable legislation, the amount of court fees to be paid could not exceed EUR 220,000.

242. The applicant company pointed out that according to the Court's case-law, reasons had to be given for any order to pay court fees, in particular where the amount was large and where the grounds of appeal were not

arbitrary or unreasonable (it cited, in particular, *Francesco Quattrone v. Italy*, no. 13431/07, §§ 38-44, 26 November 2013).

243. The applicant company added that the order to pay such a large amount – in addition to the order to reimburse the costs incurred at the other two levels of jurisdiction, which amounted to more than EUR 8 million – had infringed its right of access to a court and the principle of equality of arms.

244. The applicant company submitted that in the circumstances of the case, its grounds of appeal had not been arbitrary, and that the Court of Cassation had allowed one of them and had considerably altered the reasoning of the appeal judgment for the remainder of the grounds. It asserted that the Court of Cassation had nevertheless not specified the criteria used to determine the fees and had left unchanged the order to reimburse the costs incurred at the first two levels of jurisdiction, of which only a quarter was to be borne by each party.

245. The Government pointed out that the Court of Cassation had justified its decision to order each party to bear half of its share of the court fees by citing the complexity of the case, the novelty of the issues raised and the fact that one of the grounds of appeal had been allowed. Furthermore, the Government indicated that the amount of those fees had been based on the high value of the claim in issue – the criterion for determining statutory court fees – and the economic and political significance of the case.

246. As to the allegation that the Court of Cassation had not called into question the order to pay the court fees incurred at first instance and on appeal, the Government submitted that there had been no reason to do so, given that most of the grounds of appeal had been dismissed and that there had been no specific ground of appeal in that regard.

247. The Government asserted that the reference to *Francesco Quattrone* (cited above) was irrelevant because, in that case, the amount of the court fees related to a right directly conferred by the Convention.

248. The third-party intervener submitted, for its part, that the applicant company had had the financial resources to cover the court fees and that those fees had been justified on the basis of the value of the claim.

2. The Court's assessment

(a) Admissibility

249. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

(b) Merits

250. The Court has previously held that the obligation to give reasons for judicial decisions (see paragraph 221 above) also applies to orders to pay costs and expenses (see *Francesco Quattrone*, cited above, § 44).

251. In the instant case, the Court of Cassation referred to the novelty and complexity of the matter and to the fact that one of the grounds of appeal had been allowed in justifying its decision that each party should bear half of its share of the court fees. The Court therefore discerns no lack of reasoning in this regard.

252. As to the alleged lack of reasoning in respect of the costs incurred at first instance and on appeal, the Court shares the Government's view that in the absence of a specific ground of appeal, the Court of Cassation, which had also dismissed most of the appeal, was not required to give explicit reasoning on that point. In this regard, the Court thus finds no shortcomings on the part of the domestic courts.

253. However, the Court of Cassation did not provide any explanation as to how it went about determining the amount of the fees borne by the applicant company for the proceedings before it.

254. The Court takes note of the Government's argument that the amount of the fees was calculated on the basis of the value of the claim and the significance of the case. However, the applicable legislation at the relevant time provided that in cases involving claims in excess of EUR 1.5 million, the court had to take into account the amount of the fees provided for by law in the lower bracket and, where appropriate, increase that amount in the light of the value of the claim and the significance and complexity of the case (see paragraph 94 above).

255. In these circumstances, the Court considers that it was for the Court of Cassation to explain what criteria it had used to come to the amount of EUR 900,200. The Court takes note of the fact that the value of the claim in the present case far exceeded the amount in the lower bracket. However, the Government's arguments, which are based rather generally on the significance of the case and the value of the claim (see paragraph 245 above) cannot remedy the Court of Cassation's failure to provide any reasoning. Such lack of reasoning makes it impossible to ascertain whether the Court of Cassation reasonably determined the amount of the fees in question, especially since those fees significantly exceeded the amount set in the lower bracket (see paragraph 94 above). Moreover, the Court notes that this finding is in substance consistent with the guidance contained in the relevant domestic case-law (see paragraph 95 above).

256. The Court concludes that the Court of Cassation's judgment did not contain sufficient reasoning on this point. It is not therefore necessary to examine the remainder of the applicant company's complaint concerning the restrictions on its right of access to a court due to the amount of the fees.

257. The Court accordingly dismisses the Government's preliminary objections (see paragraph 111 above) and finds that there has been a violation of Article 6 § 1 as regards the determination of the court fees.

IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

258. The applicant company complained of a violation of its right to the protection of its possessions on account of the compensation it had been ordered to pay, which it considered arbitrary, contrary to its right to a fair hearing and, in any event, disproportionate. It relied on Article 1 of Protocol No. 1, taken alone and in conjunction with Article 13 of the Convention.

259. The Court, being master of the characterisation to be given in law to the facts of a case (see, for instance, *Radomilja and Others*, cited above, § 126), considers that these complaints should be examined solely from the perspective of Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> ..."

A. The parties' submissions

1. The applicant company

260. The applicant company complained that the State had failed to fulfil its positive obligations to protect its possessions. It further alleged an interference with its legitimate expectation that the financial situation established by the 1991 judgment and the 1991 agreement would be preserved.

261. The applicant company stated that it had been the owner of property on the basis of the financial situation established by the 1991 judgment and the 1991 agreement. The decisions handed down in the civil proceedings brought by CIR, which had severely affected its financial situation, had amounted to an interference with the peaceful enjoyment of its possessions, in breach of the procedural obligations provided for in Article 1 of Protocol No. 1.

262. First, the applicant company contended that that breach was due to the violation of its right to a fair hearing – as complained of above under Article 6 of the Convention –, which had given rise to manifestly unreasonable and arbitrary decisions and had created a state of constant uncertainty as to its financial situation.

263. The applicant company added, in reply to the Government's submissions, that the interference could not be justified by the requirement that it make good the damage caused by its unlawful conduct, because it too had a legitimate expectation that (a) its financial situation not be called into question outside the legal avenues provided for by law and (b) the content of the 1991 judgment be upheld in any event.

264. Second, the applicant company alleged that the interference was not provided for by law and was disproportionate, for three reasons: (i) it called into question a financial situation established by a final judgment that had not been revised and a friendly settlement agreement that had not been declared void; (ii) it imputed liability to the applicant company, in view of the conduct of C.P. and the applicant, which had been established on the basis of presumptions and of mere references to the decisions delivered in the criminal proceedings; and (iii) it set the amount of the damage on the basis of a proposed agreement of uncertain origin, with no regard to the market value of AMEF's shares. On this last point, the applicant company also pointed out that the amount in question was, in any event, excessive in relation to its resources and had caused it financial difficulties. All things considered, it argued that the damages it had been ordered to pay had therefore been disproportionate to the aim pursued by the compensation action, namely, the rectification of a judgment handed down with the involvement of a corrupt judge.

2. The Government

265. The Government contended that the complaint raised, in substance, the same issues as those already examined under Article 6 of the Convention. Accordingly, they referred back to their earlier observations.

266. In particular, they pointed out that the domestic courts had not called into question the effects of the 1991 judgment or those of the 1991 agreement, but had merely stated that the underlying events had caused damage to CIR, thus entitling it to compensation. The proceedings had been conducted in accordance with domestic law, before an independent and impartial court, and in compliance with the principles of adversarial proceedings and equality of arms. The decisions rendered by the domestic courts had been neither unreasonable nor arbitrary.

267. Furthermore, the Government asserted that no legitimate expectation could derive from unlawful conduct. On the contrary, such conduct conferred a right to compensation on the party which had sustained the damage.

3. The third-party intervener

268. The third-party intervener argued that this complaint was inadmissible *ratione materiae*, since it did not concern the revision of the 1991 judgment or the voiding of the 1991 agreement, but an action for compensation. The impugned decisions had established the applicant company's liability and had therefore given rise to a fresh obligation to make good the damage, without adversely affecting any previously existing financial situation or legitimate expectations. In any event, the issue was not the imputation of liability on account of the actions of third parties, but whether the applicant company was itself civilly liable.

B. The Court's assessment

1. Admissibility

269. The Court notes that the applicant company considered itself to be the owner of property protected by Article 1 of Protocol No. 1 on the basis of the *res judicata* effect of the 1991 judgment, and of the 1991 agreement.

270. With regard to the 1991 judgment, the Court has repeatedly held that the existence of an asset or a debt confirmed by a final judgment constitutes a possession within the meaning of Article 1 of Protocol No. 1 (see, for example, *Brumărescu*, cited above, § 70, and *DRAFT – OVA a.s.*, cited above, § 91). In the present case, the 1991 judgment had set aside the arbitral award, had declared the 1988 agreement void and had dismissed CIR's application to have it enforced (see paragraph 12 above). While it was certainly in the applicant company's interest to have that judgment upheld, since it had enabled it to acquire control of the Mondadori group (see paragraph 13 above), the judgment had neither confirmed the applicant company's ownership of any property nor transferred any such property to it. The Court considers that a judicial decision is not, in itself and irrespective of any property-related content, a possession. In these circumstances, the applicant company may not rely on a right to the protection of the 1991 judgment for the purposes of Article 1 of Protocol No. 1.

271. The Court accepts, however, that the 1991 agreement, which conferred on the applicant company the right to acquire certain equity interests, was a possession within the meaning of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Asito v. Moldova*, no. 40663/98, § 60, 8 November 2005, and *Ceni v. Italy*, no. 25376/06, § 43, 4 February 2014). It also accepts that the company's assets as they stood as a result of that agreement, and subsequently forming the basis of an action for compensation, constituted possessions.

272. The Court does not therefore share the third-party intervener's view that the complaint is incompatible *ratione materiae* with the Article in question. It further notes that this complaint is intrinsically linked to the applicant company's first complaint under Article 6 § 1 of the Convention. It must therefore be declared admissible.

2. Merits

273. The Court notes that the applicant company's complaint does not concern the deprivation of property by the State or any other form of property regulation imposed by public authorities. The loss of property complained of by the applicant company arose from a private-law dispute between it and CIR. The role of the State was limited to providing, through its court system, a framework for the assessment of their civil rights and obligations.

274. In this connection, the Court reiterates that the mere fact that a dispute between private parties is determined by a court does not in and of itself engage the responsibility of the State under Article 1 of Protocol No. 1, even if it results in the loss of certain possessions (see *Aydin and Others v. Türkiye* (dec.), no. 23721/11, § 71, 16 May 2023, and *Theo National Construct S.R.L. v. the Republic of Moldova*, no. 72783/11, § 69, 11 October 2022, with further references). The State may be held responsible for damage caused by a decision that is contrary to domestic law, arbitrary or manifestly unreasonable. However, the Court's jurisdiction to verify that domestic law has been correctly interpreted and applied is limited and it is not its function to take the place of the national courts, its role being rather to ensure that the decisions of those courts are not flawed by arbitrariness or otherwise manifestly unreasonable (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 83, ECHR 2007-I; *Theo National Construct S.R.L.*, cited above, § 70; and *Zagrebačka banka d.d. v. Croatia*, no. 39544/05, § 250, 12 December 2013).

275. The Court also reiterates that under the positive obligations stemming from Article 1 of Protocol No. 1, States are under an obligation to afford the parties to a conflict judicial procedures that offer the necessary procedural guarantees and therefore enable the domestic courts and tribunals to adjudicate effectively and fairly any disputes between private individuals (see *Aydin and Others*, cited above, §§ 71-72; *Theo National Construct S.R.L.*, cited above, § 69; and *Zagrebačka banka d.d.*, cited above, § 267).

276. In the present case, the applicant company for the most part repeated the same arguments submitted under Article 6 § 1 of the Convention. The Court therefore refers to its findings above to the effect that in the present case, the national courts acted in accordance with domestic law, giving reasons for their decisions (see, in general, the Court's considerations on the complaints raised under Article 6; see, in particular, paragraphs 174-178, 182 and 231 above). Thus, their assessment of the merits of the dispute was not flawed by arbitrariness or manifest unreasonableness contrary to Article 1 of Protocol No. 1. The Court also refers to its findings as to respect for procedural safeguards and the principle of equality of arms (see, in particular, paragraph 234 above).

277. The only violation found under Article 6 § 1 of the Convention concerns the lack of reasoning as regards the determination of the court fees (see paragraphs 253-257 above). However, the Court notes that this violation does not concern the merits of the case and thus did not have a direct influence on the financial situation created by the 1991 agreement – a circumstance complained of by the applicant company under Article 1 of Protocol No. 1. Moreover, the Court considers that the violation it found of Article 6 § 1 is not sufficient to entail that the outcome of the case was arbitrary or that the State failed to fulfil its positive obligations to protect the applicant company's

possessions (see, *mutatis mutandis*, *Freitag v. Germany*, no. 71440/01, § 55, 19 July 2007).

278. Lastly, as regards the applicant company's allegations concerning the amount of the damage, the Court notes that the domestic decisions, which were based, *inter alia*, on an expert's report, were duly reasoned in this regard, and finds nothing arbitrary in the decision to determine the amount of damage on the basis of a prior proposed agreement (see paragraphs 42, 53 and 65 above). Moreover, the Court notes that that amount was determined on the basis of an assessment of the damage sustained by CIR as a result of the unlawful act attributed to the applicant company. It therefore considers that its impact on the applicant company's financial situation is irrelevant.

279. Having regard to these circumstances, the Court cannot find that the State failed in its obligation to protect the applicant company's possessions or that it delivered arbitrary or manifestly unreasonable decisions in its respect.

280. Accordingly, there has been no violation of Article 1 of Protocol No. 1 to the Convention, and it is unnecessary to rule on the Government's preliminary objections (see paragraph 111 above; see also *Kurt*, cited above, § 213).

V. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

281. The applicant alleged that the principle of the presumption of innocence had been infringed. In that regard, he complained that the civil courts had imputed liability to him for the acts of bribery, even though the criminal proceedings against him had been discontinued. He relied on Article 6 § 2 of the Convention, which reads as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. Admissibility

1. The parties' submissions

282. The Government disputed the applicability of the second aspect of Article 6 § 2, arguing that several factors indicated that there was no sufficient link between the two sets of proceedings. They submitted that the civil courts had not stated that the applicant was criminally liable. They further contended that the two sets of proceedings had been independent of each other, given that the civil courts had assessed the facts and the evidence autonomously, that the parties had been different and that, under domestic law, the findings of the criminal courts were not binding on the civil courts. Lastly, they asserted that the standards of proof used had been different, as were the constituent elements of the two types of liability.

283. The applicant, on the other hand, contended that there was a clear link between the two sets of proceedings. He alleged that the issues submitted to the civil courts were a consequence and the concomitant of the criminal proceedings, as the courts had had to examine, *inter alia*, the same acts of bribery and the applicant's liability. He asserted that they had even relied on the evidence gathered during the criminal proceedings.

284. The applicant added that the mere fact that he had not been a party to the civil proceedings was not sufficient to exclude that link. He pointed out that the Court had in the past adopted a non-formalistic approach to the issue, and observed that a link was established if two sets of proceedings concerned the same substantive issue, even where the facts did not line up exactly (he cited, in particular, *Melo Tadeu v. Portugal*, no. 27785/10, § 50, 23 October 2014). In the instant case, the substantive issue, namely the applicant's liability for the acts of bribery, was the same as that previously examined in the criminal proceedings – as the Government had acknowledged, moreover. The applicant further stated that he had been the applicant company's representative at the material time and had still been a shareholder when the domestic proceedings had been conducted, meaning that he had had a substantial interest in the outcome of the civil action, which had had the potential to harm his reputation and his financial interests.

2. The Court's assessment

285. Article 6 § 2 safeguards the right to be "presumed innocent until proved guilty according to law". In the context of a criminal trial, it acts as a procedural guarantee, imposing requirements in respect of, *inter alia*, the burden of proof; legal presumptions of fact and law; the privilege against self-incrimination; pre-trial publicity; and premature expressions, by the trial court or by other public officials, of a defendant's guilt (see *Allen v. the United Kingdom* [GC], no. 25424/09, § 93, ECHR 2013, and the cases cited therein, and *Nealon and Hallam v. the United Kingdom* [GC], nos. 32483/19 and 35049/19, § 101, 11 June 2024).

286. However, in keeping with the need to ensure that the right guaranteed by Article 6 § 2 is practical and effective, the presumption of innocence also has another aspect. Its general aim, in this second aspect, is to protect individuals who have been acquitted of a criminal charge, or in respect of whom criminal proceedings have been discontinued, from being treated by public officials and authorities as though they are in fact guilty of the offence charged (see *Allen*, cited above, § 94, and *Nealon and Hallam*, cited above, § 108). In these cases, the presumption of innocence has already operated, through the application of the various requirements inherent in the procedural guarantee it affords, to prevent an unfair criminal conviction being imposed. Without protection to ensure respect for the acquittal or the discontinuance decision in any other proceedings, the fair-trial guarantees of Article 6 § 2 could risk becoming theoretical and illusory. What is also at stake once the

criminal proceedings have concluded is the person's reputation and the way in which that person is perceived by the public. To a certain extent, the protection afforded under Article 6 § 2 in this respect may overlap with the protection afforded by Article 8 (see, for instance, *Zollmann v. the United Kingdom* (dec.), no. 62902/00, ECHR 2003-XII, and *Taliadorou and Stylianou v. Cyprus*, nos. 39627/05 and 39631/05, §§ 27 and 56-59, 16 October 2008).

287. Whenever the question of the applicability of Article 6 § 2 arises in the context of subsequent proceedings, the applicant must demonstrate the existence of a link between the concluded criminal proceedings and the subsequent proceedings. Such a link is likely to be present, for example, where the subsequent proceedings require examination of the outcome of the prior criminal proceedings and, in particular, where they oblige the court to analyse the criminal judgment, to engage in a review or evaluation of the evidence in the criminal file, to assess the applicant's participation in some or all of the events leading to the criminal charge, or to comment on the subsisting indications of the applicant's possible guilt (see *Allen*, cited above, § 104; see also *Nealon and Hallam*, cited above, § 122).

288. The Court must therefore ascertain whether the proceedings before the civil courts – which did not in themselves give rise to a criminal charge against the applicant – had a link to the criminal proceedings that was such as to justify the application of Article 6 § 2 of the Convention.

289. The Court has in the past been called upon to consider the application of this Article to civil proceedings concerning a compensation claim lodged by a victim in respect of the same facts as those that gave rise to a criminal charge (see, for instance, *Vella v. Malta*, no. 69122/10, § 42, 11 February 2014, with further references, and the cases cited in *Nealon and Hallam*, cited above, § 153).

290. In the present case, the Court notes that the civil proceedings were the result of a compensation claim lodged by CIR, an alleged victim of the bribery that had been in issue in the criminal proceedings.

291. It also observes that even though their assessments were autonomous, the civil courts took into account the outcome of the criminal proceedings and relied heavily on the evidence gathered in that context (see *U.Y. v. Türkiye*, no. 58073/17, § 33, 10 October 2023; *Rigolio v. Italy*, no. 20148/09, § 88, 9 March 2023; and *Ilias Papageorgiou v. Greece*, no. 44101/13, § 40, 10 December 2020). Furthermore, the domestic courts determined – albeit as an incidental matter – the applicant's liability by examining exactly the same facts as those that had given rise to the criminal charge against him (see, *mutatis mutandis*, *Diamantopoulos v. Greece* (dec.), no. 68144/13, § 28, 8 March 2022).

292. The Court considers that these circumstances are sufficient to establish that there was a close link between the two sets of proceedings and

that this complaint therefore falls within the scope of Article 6 § 2 of the Convention.

293. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

294. The applicant complained that the civil courts had considered him to be liable for the acts of bribery even though he had not been convicted in the criminal proceedings. While, in principle, an acquittal or a discontinuance decision in criminal proceedings did not preclude the establishment of civil liability on the basis of the same facts as those underlying the criminal proceedings, the domestic courts in the present case had not limited themselves to examining the same facts in order to establish civil liability, but had gone beyond that limit and had, in substance, imputed criminal liability to him. That had been done in breach of the provisions of domestic law and of the Convention with respect to the use of presumptions, in the course of proceedings in which he had not been involved, and had, above all, infringed his right to be presumed innocent.

295. Pointing to the general principles on the second aspect of the presumption of innocence, the applicant submitted that three judgments of the Court in particular displayed similar characteristics as those in the present case: *Farzaliyev v. Azerbaijan* (no. 29620/07, 28 May 2020), *Agapov v. Russia* (no. 52464/15, 6 October 2020) and *Pasquini v. San Marino (no. 2)* (no. 23349/17, 20 October 2020). In those judgments, the Court had found a violation on the basis of the use of a discontinuance decision (in some cases without the applicant having had an opportunity to defend himself), of the language used, of the fact that the assessment had overstepped what was strictly necessary for civil purposes, and of the failure by the domestic courts to take the requisite care to protect the applicants' reputation.

296. In the present case, the applicant complained, first, of the domestic courts' use of the discontinuance decisions as an indication of his liability. The civil courts had concluded in his "procedural non-innocence", finding that the criminal courts had applied the mitigating circumstances because they were of the opinion that he was guilty, thus suggesting that his case had been discontinued solely on account of statutory limitation.

Domestic law did not require any finding of liability in order for proceedings to be discontinued, and that could not therefore constitute an indication of liability. Moreover, the use of similar arguments, based on a decision to discontinue criminal proceedings, had previously been criticised

by the Court (the applicant cited *Teodor v. Romania*, no. 46878/06, §§ 43-45, 4 June 2013; *Paraponiaris v. Greece*, no. 42132/06, § 33, 25 September 2008; *Peltereau-Villeneuve v. Switzerland*, no. 60101/09, §§ 8 and 34, 28 October 2014; and *Pasquini*, cited above, § 56).

In addition, in the applicant's case, the Court of Appeal had issued a discontinuance decision on account of statutory limitation, whereas the preliminary hearings judge had discontinued the proceedings on the grounds that the offence had not been made out. In any event, the Court of Appeal had applied the statute of limitations at the preliminary-investigation stage, on the basis of an incomplete evidential framework and with his having had no opportunity to defend himself during the hearing. Nor had he been able to defend himself in the civil proceedings, in which he had not been involved.

Second, the applicant complained that the civil courts had based their decisions on exactly the same facts as those already disputed in the criminal proceedings and had reused the evidence examined in those proceedings, "without qualification or reservation" and without adding any new elements.

297. As to the language used by the domestic courts, the applicant alleged that it was specific to the realm of criminal law. In particular, he criticised

(a) the District Court's assertion that he "had committed the act in question", the finding of his "awareness and acceptance" of the payment to C.P. for the purpose of bribery, and the statement that he was "jointly liable for the acts of bribery" (see paragraph 41 above);

(b) the Court of Appeal's statement that "it could only be assumed that a criminal offence had been committed by the accused" and the assertions concerning his "participation in the bribery agreement" by means of "unequivocal instructions" (see paragraph 48 above); and

(c) the Court of Cassation's assertion "imputing liability ... for bribery" also to the applicant, who had "encouraged or acquiesced to the criminal act, which had in fact been carried out with his own money and for his own illicit benefit by flesh-and-blood operatives closely linked to him" (see paragraphs 48 and 64 above).

The applicant also complained of the domestic courts' references to his awareness and acceptance of the bribery – terms typically used in relation to the concept of intent in criminal matters. The fact that the subjective rather than merely the physical element of bribery had been established, and intent had been found despite mere negligence sufficing in civil matters, were indicative of the imputation of criminal liability.

298. The applicant added that such remarks could not be described as mere "unfortunate expressions" and that the formulation of reservations was not sufficient to rule out a violation, given that the courts had unequivocally expressed the opinion that he was liable (he contrasted his case with *Müller v. Germany*, no. 54963/08, §§ 48-52, 27 March 2014; *A.L. v. Germany*, no. 72758/01, § 38, 28 April 2005; and *Reeves v. Norway* (dec.), no. 4248/02,

8 July 2004 – none of which concerned statements made directly in the judgments of the domestic courts).

299. The applicant also contested the Government's argument based on the requirement to give reasons for domestic decisions, submitting that there was no conflict between that requirement and respect for the presumption of innocence.

300. The applicant further noted that those assertions had not been invalidated by the Court of Cassation, which had not quashed the previous decisions and had corrected them on a marginal point, without making any finding as to an infringement of the presumption of innocence.

301. In addition, the applicant alleged that in the present case it had not been necessary to establish his liability, because C.P.'s conduct had already been sufficient to impute liability to the applicant company. The damage to his reputation had therefore been unjustified and disproportionate.

302. Lastly, the applicant emphasised that the damage to his reputation had had serious consequences for him as a result of the civil courts' failure to take the requisite care. Moreover, the courts had been aware of the impact of their decisions, given that during the proceedings the applicant had been Prime Minister and subsequently leader of the opposition.

Those decisions had been widely interpreted as establishing his criminal liability, as could clearly be seen from the media coverage. Furthermore, the Italian and European banking authorities had stated, in decisions taken on the basis of the impugned judgments, that the applicant had been considered criminally liable for the bribery and they had therefore obliged him to reduce his interest in a financial institution.

303. In conclusion, the applicant, emphasising the shift both in the Court's case-law and in the European consensus towards greater protection for the presumption of innocence, submitted that the civil courts had infringed his right in that regard by unequivocally attributing criminal liability to him.

(b) The Government

304. The Government pointed out that once a discontinuance decision had been adopted, it was still possible to determine the defendant's civil liability. The domestic courts in the present case therefore had to strike a delicate balance between the requirement to give reasons for their decision on CIR's compensation claim and the need not to impute criminal liability to the applicant. Having regard to the language used by the domestic courts and the context of the proceedings, no criminal liability had been imputed to the applicant.

305. The Government emphasised that the impugned judgments did not in any way state that the applicant was criminally liable. On the contrary, it was specified several times in those judgments that the examination had solely concerned his civil liability. In rulings where the Court had found such reservations to be insufficient, the domestic courts had unequivocally stated

that the applicant was criminally liable, which had not been the case in the matter at hand.

306. As regards the discontinuance decisions, the Government submitted that they had not been used to indicate criminal liability. Rather, they had served, in accordance with domestic law, to establish that a finding of criminal liability was no longer possible but that in the absence of an acquittal on the merits, a finding of civil liability for the same facts remained possible.

Furthermore, the discontinuance decisions had not been decisive to the outcome of the proceedings, as the domestic courts had based their rulings on an autonomous assessment of the facts and on several items of evidence. As to the applicant's allegation concerning the use of the coexistence of presumptions, it was factually incorrect and, in any event, irrelevant to the complaint under examination.

307. Regarding the language used, the Government pointed out that the domestic courts had shown care in their choice of words. For example, they had avoided using expressions such as "criminal offence" and "criminal liability", which could, on the contrary, be found in the rulings relating to the applicant company. Instead, the courts had used neutral expressions such as "fact", "unlawful" and "acts of bribery", always specifying that the examination was being carried out "as an incidental matter and solely for civil purposes". The same was true of the references to his "awareness and acceptance", which were more specific to the civil sphere and which, in any event, related to intent, a defining feature not only of criminal liability but also of civil liability. In that connection, the mere fact that the finding had been based on the same underlying facts was not sufficient to conclude that there had been an infringement of the presumption of innocence.

308. The Government further submitted that the passages complained of by the applicant had to be read in a broader context, which served to rule out any imputation of criminal liability. That was particularly true of the assertion that the criminal courts had "assumed that a criminal offence had been committed", which, taken alone, might indeed appear unfortunate. However, that statement had immediately been put into context by the Court of Appeal, which had expressly ruled out the possibility of using it as evidence of civil liability (and especially, therefore, of criminal liability).

309. The Government added that where the language used gave rise to doubts, other factors made it possible to rule out in infringement, such as the fact that the matter was examined in separate proceedings, after the close of the criminal proceedings and before a different court; the autonomous assessment of the evidence; and the use of the standard of proof characteristic of civil liability. In the present case, not only had the language used by the civil courts respected the presumption of innocence and contained no explicit affirmation of the applicant's guilt, but all the additional factors mentioned above had also been present.

310. In addition, the Government emphasised that the Court of Cassation had clearly stated that the finding of the applicant's liability had been based on the balance-of-probabilities standard, since certainty was not required in civil cases. It had not therefore asserted that had it not been for the statute of limitations, the applicant would certainly have been convicted. The Court of Cassation had thus made it perfectly clear that it was assessing civil liability.

311. The Government also stated that even assuming that an infringement had been committed by the District Court or the Court of Appeal, it would have been remedied by the Court of Cassation's judgment. In that connection, an infringement could be remedied not only by quashing the impugned judgment, but also by correcting the reasoning, especially where the applicant was not, in any event, directly concerned by the operative provisions of the decision.

312. As to the applicant's allegations concerning his inability to defend himself, the Government submitted that the second aspect of the presumption of innocence did not entail an obligation to involve in the proceedings any person whose conduct was examined as an incidental matter. In the present case, the applicant had not been directly concerned by the outcome of the proceedings, so there had been no obligation to involve him in them. Moreover, the applicant could have sought leave to intervene in the civil proceedings.

313. The Government also disputed the applicant's allegation that it had not been necessary to establish his liability. A judgment had to address all the issues raised, on the basis of the principle of correspondence between the claim and the decision, and in the present case CIR had relied among other things on the applicant's liability. In addition, it was important to base a decision on several grounds, in the event that one of them was set aside on appeal. As to the judgments of the Court of Appeal and the Court of Cassation, the examination of the issue had been justified on the basis of the grounds of appeal and the grounds of appeal on points of law submitted by the parties.

314. Lastly, the Government submitted that the State could not be held responsible for the media's erroneous interpretation of the judicial decisions. The applicant should have first lodged a complaint against the publications in question and only subsequently, if necessary, applied to the Court. As to the decisions of the banking authorities, they had been based mainly on other criminal proceedings and would thus have been issued even in the absence of the impugned decisions. In any event, the applicant should have complained about the banking authorities' decisions, which imputed criminal liability to him, and not about those of the civil courts.

2. The Court's assessment

(a) General principles

315. In *Nealon and Hallam* (cited above, § 153) the Grand Chamber summarised the Court's case-law concerning the application of the second aspect of the presumption of innocence to cases involving civil compensation claims lodged by victims, as follows:

> "153. Likewise, as regards cases involving civil compensation claims lodged by victims, the Court's position continues to be that, regardless of whether the criminal proceedings ended in a discontinuance or an acquittal, exoneration from criminal liability ought to be respected in the civil compensation proceedings, but should not preclude the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict burden of proof, provided that the national decision on compensation does not contain a statement imputing criminal liability to the respondent party. In such cases the applicants have generally complained about specific wording in a decision that raised doubts as to their innocence. While this does not mirror precisely the applicants' complaints in the present case, the following rulings are nevertheless noteworthy.
>
> (i) In *Pasquini (No. 2)* (cited above) and *Farzaliyev* (cited above) the Court considered the imposition of civil liability to pay compensation after criminal proceedings were discontinued as time-barred. In both cases the impugned reasoning was found to be incompatible with Article 6 § 2 of the Convention. In *Pasquini (No. 2)* (cited above) that was because the competent court had established unequivocally that the applicant's actions had amounted to the criminal acts of which he had been charged and that he had committed those acts with deliberate intent, whereas in *Farzaliyev* (cited above) it was because the reasoning reflected an opinion that a criminal offence had been committed and that the applicant was guilty of that offence.
>
> (ii) In contrast, in *Fleischner* (cited above), in which the Court considered civil liability to pay compensation after criminal proceedings had been discontinued, no violation of Article 6 § 2 of the Convention was found as the language used by the domestic courts could not reasonably have been read as imputing criminal liability to the applicant. Although certain aspects of the conditions for civil liability overlapped with those establishing criminal liability, the civil courts had to determine the compensation claim on the basis of tort law in a different legal framework from that of the criminal proceedings.
>
> (iii) In *N.A. v. Norway* (cited above), *Ilias Papageorgiou* (cited above), *Marinoni v. Italy* (no. 27801/12, 18 November 2021), and *Benghezal v. France* (no. 48045/15, 24 March 2022) the Court considered the imposition of civil liability to pay compensation to the victim following an acquittal of criminal charges arising in relation to the same facts. In these cases it found that the reasoning on compensation did not involve the imputation of criminal guilt and that there was no breach of Article 6 § 2. On the other hand, in *Cleve v. Germany* (no. 48144/09, 15 January 2015), the Court held that the reasoning of the Regional Court had amounted to a finding that the applicant was guilty of the offences with which he was charged."

316. The Court then stated that regardless of the nature of the subsequent linked proceedings, and regardless of whether the criminal proceedings ended in an acquittal or a discontinuance, the decisions and reasoning of the domestic courts or other authorities in those subsequent linked proceedings,

when considered as a whole, and in the context of the exercise which they are required by domestic law to undertake, will violate Article 6 § 2 of the Convention in its second aspect if they amounted to the imputation of criminal liability to the applicant. To impute criminal liability to a person is to reflect an opinion that he or she is guilty to the criminal standard of the commission of a criminal offence, thereby suggesting that the criminal proceedings should have been determined differently (see *Nealon and Hallam*, cited above, § 168, and the cases cited therein).

317. This approach reflects the fact that at national level judges may be required, outside the context of a criminal charge, to sit in cases arising out of the same facts as a previous criminal charge which did not result in a conviction. The protection afforded by Article 6 § 2 in its second aspect should not be interpreted in such a way as to preclude national courts in subsequent proceedings – in which they are exercising a different function to that of the criminal judge, in accordance with the relevant provisions of domestic law – from engaging with the same facts as were decided in the previous criminal proceedings, provided that in doing so they do not impute criminal liability to the person concerned. A person who was acquitted or in respect of whom criminal proceedings were discontinued will remain subject to the ordinary application of domestic rules as to evidence and the standard of proof outside criminal trials (ibid., § 169).

318. The Court further reiterates that in cases concerning compliance with the presumption of innocence, the language used by the decision-maker will be of critical importance in assessing the compatibility of the decision and its reasoning with Article 6 § 2 (compare *Allen*, cited above, § 126, with further references). Regard must be had, in this respect, to the nature and context of the particular proceedings in which the impugned statements were made. The Court must determine the true sense of the impugned statements, having regard to the particular circumstances in which they were made (compare *Petyo Petkov v. Bulgaria*, no. 32130/03, § 90, 7 January 2010). Depending on the circumstances, even the use of some unfortunate language may thus be found not to be in breach of Article 6 § 2 (compare *Englert v. Germany*, 25 August 1987, §§ 39 and 41, Series A no. 123; *Allen*, cited above, § 126; and *Cleve v. Germany*, no. 48144/09, §§ 54-55, 15 January 2015).

319. It emerges from the above examination of the Court's case-law that in examining the compliance of a statement or decision with Article 6 § 2, it is decisive to have regard to the nature and context of the proceedings in which the statement was made or the decision was adopted (see *Bikas v. Germany*, no. 76607/13, § 47, 25 January 2018).

(b) Application of these principles to the present case

320. In determining whether the domestic courts confined themselves to examining the same facts that had given rise to the criminal proceedings in order to establish civil liability or whether, on the contrary, they overstepped

those bounds and imputed criminal liability to the applicant, the Court must therefore have regard to the nature and context of the civil compensation proceedings. It must also take into account the language used.

321. As regards the nature and context of the proceedings, the Court notes that they were compensation proceedings aimed at establishing the applicant company's civil, and not criminal, liability.

322. In that context, the domestic courts considered it necessary to examine the applicant's conduct on the basis of case-law concerning a company's liability for the unlawful conduct of its director (see paragraphs 41 and 48 above). While that case-law makes explicit reference to the establishment of criminal liability, it was relied on by the domestic courts to support the more general assertion that a company may be held liable for the unlawful conduct – be it civil or criminal – of its director (see, in particular, paragraph 48 above). Furthermore, those considerations were merely an introduction setting out a general principle and were not at that stage directly attributed to the conduct of the applicant, who, moreover, made no complaint in that regard. The Court therefore finds that those references to criminal liability did not alter the general context of the case or the nature of the proceedings, which sought to establish civil liability.

323. As to the applicant's allegation that it was not necessary to establish his criminal liability, because C.P.'s conduct was sufficient to impute civil liability to the applicant company (see paragraph 301 above), the Court, having regard to the arguments raised by the parties to the domestic proceedings, as well as to the significance and impact of the case, finds nothing objectionable in the domestic courts' decision to base their findings on two alternative grounds, in so far as that did not violate the applicant's Convention rights.

324. The context of the proceedings was also characterised by the fact that they followed a decision to discontinue the criminal proceedings against the applicant – a decision to which the civil judgments refer on several occasions. The Court considers, however, that contrary to the applicant's allegations (see paragraph 296 above), the civil courts' use of the discontinuance decisions did not clearly reflect an opinion that the applicant was criminally liable, and thus did not suggest that the criminal proceedings should have been determined differently (see *Nealon and Hallam*, cited above, § 168).

325. In this connection, it should be noted that the District Court made reference to the issuance of a discontinuance decision in order to establish that an examination of criminal liability was no longer possible but that an examination of civil liability was (see paragraph 41 above). The Court considers that although the District Court stated that on the basis of the evidence available at the preliminary-investigation stage, the applicant had not been found innocent, it explicitly specified that it had done so in order to conclude that his conduct could be examined as a matter of civil law, and not to call into question the outcome of the criminal proceedings. The Court notes

that under Italian law, after a discontinuance decision has been issued, the civil courts may examine whether the constituent elements of civil liability have been made out (see paragraph 86 above; see also *Marinoni*, cited above, § 20). It therefore notes that the District Court's statement was limited to reflecting the application of that procedural rule, and that at no time did that court use the discontinuance decision as evidence of the applicant's liability or suggest that the criminal proceedings should have been determined differently (ibid.).

326. As regards the judgments on appeal and on points of law, the domestic courts referred to the discontinuance decisions on two occasions.

327. First, in addition to the District Court's considerations, the Court of Appeal noted that the criminal courts, having applied mitigating circumstances, had necessarily "assumed that a criminal offence had been committed by the accused" (see paragraphs 48 and 64 above). The Court of Appeal could have refrained from making such a statement, which was not indispensable for the decision. However, in expressing it, the civil court was not voicing its own opinion as to the applicant's liability. Above all, the statement was immediately put into context by its use for the sole purpose of confirming the possibility of examining the case in civil proceedings (see paragraph 48 above). In other words, that statement was not used to establish the applicant's civil or criminal liability (see *Rigolio*, cited above, § 123; contrast *Machalický v. the Czech Republic*, no. 42760/16, §§ 57-60, 10 October 2024).

328. Second, the Court of Appeal and the Court of Cassation cited the judgment of 16 November 2001 (see paragraph 18 above) – which had upheld the discontinuance decision in respect of the applicant – as one of the factors establishing that the applicant had been aware of the purpose of the payment (see paragraphs 48 and 64 above). However, neither the civil courts nor the judgment of 16 November 2001 to which they referred stated that the applicant was criminally liable. They merely noted that the evidence available at the investigation stage, and in particular the applicant's position in the company, would have justified committing him for trial. In the Court's view, such a reference at most expressed suspicions, which are compatible with the presumption of innocence, and not an opinion as to the applicant's criminal liability (see *Nealon and Hallam*, cited above, §§ 157-69, and *Gravier v. France*, no. 49904/21, § 34, 4 July 2024). Furthermore, the reference to the 2001 judgment was neither the only factor nor a decisive one in establishing civil liability (compare *Teodor*, cited above, §§ 41 and 45, and *Agapov*, cited above, § 43).

329. Furthermore, the civil nature of the proceedings in question is clear from the fact that the domestic courts, and in particular the Court of Cassation (which corrected the reasoning of the Court of Appeal's judgment with regard to the standard of proof to be used in civil proceedings – see paragraph 64 *in fine*), applied the substantive and procedural rules governing civil liability.

They thus established the constituent elements of civil liability, which differ in part from those of criminal liability, and used the standard of proof of the balance of probabilities (see paragraphs 81 and 83 above). In the Court's view, this confirms that the domestic courts, having regard to the nature and context of the civil proceedings in question, did not reflect an opinion that the applicant was guilty to the criminal standard of the commission of a criminal offence (see *Nealon and Hallam*, cited above, § 168).

330. Turning to the language used by the domestic courts, the Court observes that most of the expressions challenged by the applicant (see paragraph 297 above) are used without distinction in the spheres of both civil and criminal liability. Expressions such as "bribery" or "the bribery agreement" describe the acts of which the applicant was accused, without any specific connotations (see, for example, *Rigolio*, cited above, § 117; *Ilias Papageorgiou*, cited above, § 54; and *Fleischner v. Germany*, no. 61985/12, § 63, 3 October 2019). The same applies to the concepts of "awareness and acceptance" which, in relation to the concept of intent, may refer to a constituent element of both civil and criminal liability. In the instant case, the civil courts were called upon to establish the constituent elements of civil liability, including the physical act of bribery and the subjective element of intent or negligence (see paragraph 81 above). In this connection, the Court has previously specified that the mere fact that a finding of civil liability is based on the same objective and subjective constituent elements as those of a criminal offence does not in itself entail a violation of Article 6 § 2, provided that that finding is not accompanied by assertions suggesting the imputation of criminal liability (see, for example, *Marinoni*, cited above, § 58, and *Fleischner*, cited above, §§ 63 and 67).

331. Terms specific to the criminal sphere are to be found only – in addition to the reference to the discontinuance decision already examined above (see paragraph 327) – in the assertion that the applicant had "encouraged or acquiesced to the criminal act" (see paragraphs 48 and 64 above). However, such an assertion must be read in conjunction with the fact that, in the meantime, the other participants in the bribery scheme had been criminally convicted in a final judgment. It does not in any way indicate that the applicant himself was liable for a criminal offence. The Court therefore finds that this expression, like the preceding one, does not convey an unequivocal imputation of criminal liability suggesting that the criminal proceedings should have been determined differently (see *Nealon and Hallam*, cited above, § 168).

332. The Court also notes that the domestic courts were careful to specify on several occasions that their assessment was aimed solely at establishing civil liability. Where domestic decisions did not contain an unequivocal assertion of criminal liability, but only a few unfortunate expressions which might be misunderstood, clarifications as to the nature and purpose of the proceedings could help to dispel any doubts (see, *mutatis mutandis*, *Reeves*

v. Norway (dec.), no. 4248/02, 7 July 2004, and *Cosovan v. the Republic of Moldova (no. 2)*, no. 36013/13, §§ 35-36, 8 October 2024).

333. The Court accordingly considers that the present case is to be distinguished from those cited by the applicant (see paragraph 295 above), in which it found a violation on the basis of statements that had clearly and unequivocally imputed criminal liability to the applicants concerned.

334. In view of the foregoing, the Court finds that the domestic decisions did not impute criminal liability to the applicant and thereby suggest that the criminal proceedings should have been determined differently.

335. This finding is not altered by the applicant's argument that he was unable to defend himself in the criminal and civil proceedings (see paragraph 296 above). Regarding the criminal proceedings, the Court notes that the fact that the discontinuance decision was issued before the hearing, in which the applicant did not therefore take part, is irrelevant since no criminal liability was imputed to him. As to the fact that he was not a party to the civil proceedings, the Court accepts that in so far as the statements made by the civil courts could have damaged his reputation, it would have been conceivable for him to have had the opportunity to challenge them, for example in order to have any ambiguous language removed. However, the Government asserted that the applicant could have intervened voluntarily in the proceedings – which the applicant did not dispute. The Court also shares the Government's view that the domestic courts are not obliged, whenever they examine the conduct of a third party as an incidental matter, to order that he or she be joined to the proceedings.

336. Lastly, with regard to the consequences of the impugned judgments (see paragraph 302 above), the Court has just found that those judgments merely established the applicant's civil liability. In this connection, the Court does not consider that it can draw any conclusions from the interpretation made of the domestic judgments by the media or other authorities. If the media or those authorities imputed criminal liability to the applicant despite the absence of a conviction, the applicant should have lodged a complaint first with the domestic courts and then, if necessary, with the Court.

337. In view of the foregoing, the Court finds that there has been no violation of Article 6 § 2 of the Convention.

338. It is therefore unnecessary to rule on the Government's preliminary objections (see paragraph 121 above; see also *Kurt*, cited above, § 213).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

339. 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."

340. The applicant company, while emphasising that it had sustained considerable pecuniary and non-pecuniary damage and had had to pay a significant amount for the proceedings before the domestic courts and before the Court, submitted that the question of just satisfaction was not ready for decision. It pointed out that the Court could not speculate as to what the outcome of the proceedings would have been in the absence of the alleged violations, and that the reopening of the proceedings was therefore the most appropriate means of redressing any violation found. It asserted that the domestic legal system afforded it the possibility of reopening the proceedings, on the basis of Article 391 *quater* of the Code of Civil Procedure.

Specifying that it did not waive its right to just satisfaction, it therefore asked the Court to reserve this question and to fix the further procedure, within the meaning of Rule 75 § 1 of the Rules of Court, following the conclusion of domestic proceedings.

341. The Government submitted that no award could be made to the applicant company in the absence of a claim for just satisfaction. Furthermore, they argued that Article 391 *quater* of the Code of Civil Procedure was not applicable in the present case, since it provided for the reopening of proceedings only if the violation found by the Court concerned a right to a personal status (*diritto di stato*) and if the compensation awarded by the Court was not sufficient to make good the violation. In the present case, they contended, the application did not concern a personal status, and financial compensation was possible. In any event, they disputed the applicant company's statements concerning the damage sustained.

342. The third-party intervener asserted that Article 391 *quater* was not applicable in the instant case. It also pointed out that the Court could not order the reopening of domestic proceedings, submitting that it should first attempt to award just satisfaction.

343. The Court has found a violation of Article 6 § 1 of the Convention on account of the lack of reasoning in the Court of Cassation's judgment on the determination of the court fees (see paragraphs 253-257 above). While it is true that in some cases, a violation consisting in a failure to give reasons as to costs and expenses may give rise to an award of just satisfaction (see *Francesco Quattrone*, cited above, § 92), the Court considers that in the circumstances of the present case, it cannot speculate as to the reasonableness or unreasonableness of the court fees decided.

344. However, the Court considers that this does not require it to reserve the question of just satisfaction pending the outcome of any reopening of the domestic proceedings.

345. Indeed, although the possibility of reopening proceedings may be taken into account in the award of just satisfaction (see *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, § 406, 26 September 2023), the Court does not generally reserve this question pending the outcome of such reopening.

346. In addition, in the present case, the possibility of requesting a reopening of the proceedings under Article 391 *quater* of the Code of Civil Procedure is in dispute between the parties. The Court considers that the applicability of that provision will be a matter for assessment, if appropriate, by the domestic courts, having regard to domestic law and to the particular circumstances of the case. It is for the national authorities and not the Court to settle this question (see, *mutatis mutandis*, *Merahi and Delahaye v. France*, no. 38288/15, § 95, 20 September 2022, and *Beuze v. Belgium* [GC], no. 71409/10, § 200, 9 November 2018).

347. Nor does a disagreement between the parties as to the possibility of reopening the case require the Court to reserve the question of just satisfaction (see, for instance, *S.C. Britanic World S.R.L. v. Romania*, no. 8602/09, §§ 52-55, 26 April 2016).

348. The Court therefore finds that neither the applicant company's submission that the domestic proceedings could be reopened, nor the doubts as to the real possibility of such a reopening, require it to reserve the question of just satisfaction, which is in fact ready for decision.

349. This finding is unaffected by the applicant company's decision not to submit a claim at this stage. The Court reiterates that under Rule 60 of the Rules of Court, an applicant must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of his or her observations on the merits. If the applicant fails to comply with these requirements the Court may reject the claims in whole or in part.

350. In the present case, the applicant company made no specific claim, either in respect of pecuniary or non-pecuniary damage or in respect of costs and expenses, asserting that it could have the proceedings reopened and potentially return to the issue after the close of domestic proceedings. The Court considers that merely reserving just satisfaction claims for a potential later stage of the proceedings does not amount to a "claim" within the meaning of Rule 60. In addition, a request to reserve the question of just satisfaction within the meaning of Rule 75 § 1 cannot justify the fact that no claim has been submitted within the prescribed time-limit, even in the alternative.

351. In these circumstances, the Court finds that no award should be made to the applicant company.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join the applications;

2. *Holds*, unanimously, that the applicant's heirs have standing to continue the present proceedings in his stead;

3. *Decides*, unanimously, to dismiss the preliminary objections that some of the complaints were out of time;

4. *Decides*, unanimously, to join to the merits the preliminary objections concerning the applicant company's and the applicant's lack of victim status and the fourth-instance nature of the complaints in respect of the applicant company, *dismisses* them in so far as they concern the applicant company's complaint under Article 6 of the Convention as to the lack of reasoning with regard to the court fees for the proceedings before the Court of Cassation and *decides* that it is unnecessary to rule on them in so far as they concern the other complaints;

5. *Declares*, unanimously, the applicant company's complaints under Article 6 of the Convention admissible as regards respect for the principle of *res judicata*, the right to a tribunal established by law and the lack of reasoning with regard to the court fees for the proceedings before the Court of Cassation, and the remainder of the complaints inadmissible;

6. *Holds*, unanimously, that there has been no violation of Article 6 § 1 of the Convention as regards respect for the principle of *res judicata* and the right to a tribunal established by law;

7. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention on account of the lack of reasoning with regard to the court fees for the proceedings before the Court of Cassation;

8. *Declares*, unanimously, the applicant company's complaint under Article 1 of Protocol No. 1 to the Convention admissible;

9. *Holds*, unanimously, that there has been no violation of Article 1 of Protocol No. 1 to the Convention;

10. *Declares*, unanimously, the applicant's complaint under Article 6 § 2 of the Convention admissible;

11. *Holds*, by six votes to one, that there has been no violation of Article 6 § 2 of the Convention;

12. *Dismisses*, unanimously, the applicant company's request to reserve the question of just satisfaction.

Done in French, and notified in writing on 8 January 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Ivana Jelić President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Adamska-Gallant is annexed to this judgment.

PARTLY DISSENTING OPINION OF JUDGE ADAMSKA-GALLANT

I agreed with my distinguished colleagues on almost all aspects of the operative part of the judgment, with one notable exception: their finding that there had been no violation of Article 6 § 2 of the Convention. In my view, the specific circumstances of the present case demanded a different conclusion, prompting me to vote differently on point 11.

I fully accept that, as emphasised in *Ringvold v. Norway* (no. 34964/97, ECHR 2003-II) and reaffirmed in subsequent cases, Article 6 § 2 cannot be interpreted as giving a criminal acquittal the undesirable effect of pre-empting the victim's possibilities of claiming compensation under civil law. Such an interpretation would amount to an arbitrary and disproportionate limitation on the right of access to a court under Article 6 § 1 of the Convention. It would also confer an unfair advantage on people acquitted of a criminal offence but potentially liable under the lower civil standard of proof, enabling them to evade responsibility for their actions. This broad interpretation finds no support in the wording of Article 6 § 2 or in any common ground in the national legal systems of the Contracting States. On the contrary, it is well established that an acquittal does not preclude the determination of civil liability arising from the same facts.

The present case was distinguishable in a material respect from other cases heard under Article 6 § 2 – a circumstance which was not, in my view, given sufficient weight. Following the discontinuation of the criminal proceedings against the applicant on account of statutory limitation, the victim company (CIR) pursued a claim for damages, not against the applicant personally, but against the applicant company (Fininvest S.p.A.), in which the applicant held shares. Importantly, the applicant was not a party to those civil proceedings and therefore had no procedural opportunity to safeguard his own interests. This feature distinguished the present case from those in which the Court had previously examined alleged violations of Article 6 § 2 of the Convention. In those cases, the applicants had been directly involved in both stages: first as defendants in the criminal proceedings, and subsequently as parties to civil proceedings arising from the same facts after an acquittal or termination of the criminal case. In the present case, that procedural nexus was absent.

The applicant's absence from the civil proceedings was particularly significant given that the courts at all levels deemed it necessary to examine his conduct and role. They found that limiting their analysis to C.P. (who had been convicted of bribery) would not suffice (see paragraphs 41, 48 and 64 of the judgment). Notably, in its final judgment, the Court of Cassation concluded that even though C.P.'s liability was in principle sufficient, the claims advanced by the victim company required an assessment of the applicant's liability. This determination was made without affording the

applicant any opportunity to participate, underscoring the need to reassess whether the guarantees enshrined in Article 6 § 2 were respected.

I also had doubts as to whether the language used when referring to the applicant's involvement in activities that ultimately resulted in civil damages being awarded to the victim company remained within the permissible limits. As the Court emphasised in *Allen v. the United Kingdom* ([GC], no. 25424/09, § 126, ECHR 2013), the language used by the decision-maker is of critical importance in assessing the compatibility of a decision and its reasoning with Article 6 § 2 of the Convention.

While it is true that all statements concerning bribery were formally qualified as relevant only for the purposes of the civil proceedings, the wording used could easily be understood as imputing criminal liability to the applicant, a perception that was reinforced by the media coverage of the civil judgment. Even the Government acknowledged in its observations that some of the expressions used in the judgment might have indeed been "unfortunate" (see paragraph 308).

Taken together, the applicant's lack of participation in the civil proceedings and the repeated judicial statements regarding his alleged involvement in bribery, even though accompanied by disclaimers that they were made "as an incidental matter and solely for civil purposes", led me to conclude that his right under Article 6 § 2 had been violated.

APPENDIX

Heirs of	Name
Silvio Berlusconi Died in 2023	Barbara Berlusconi Born in 1984
	Eleonora Berlusconi Born in 1986
	Luigi Berlusconi Born in 1988
	Marina Elvira Berlusconi Born in1966
	Pier Silvio Berlusconi Born in1969