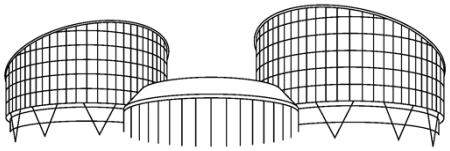

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF IRODOTOU v. CYPRUS

(Application no. 16783/20)

JUDGMENT

Art 6 (criminal) • Reasonable time • Excessive length of private criminal proceedings against the applicant discontinued by a decision of the Attorney General (*nolle prosequi*) Art 13 (+ Art 6 § 1) • Lack of an effective remedy

STRASBOURG

23 May 2023

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

In the case of Irodotou v. Cyprus,

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

Pere Pastor Vilanova*, President*,
Georgios A. Serghides,
Yonko Grozev,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd,
Oddný Mjöll Arnardóttir*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 16783/20) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Cypriot national, Mr Marios Irodotou ("the applicant"), on 23 March 2020;

the decision to give notice to the Cypriot Government ("the Government") of the complaints concerning the length of private criminal proceedings under Article 6 § 1 of the Convention and the alleged absence of an effective domestic remedy under Article 13 of the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 2 May 2023,

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

INTRODUCTION

1. The application concerns the length of private criminal proceedings which were ended by the Attorney General's decision to discontinue the proceedings, and the alleged absence of an effective remedy in that connection.

THE FACTS

2. The applicant was born in 1964 and lives in Paphos. He was represented by Mr K. Manolis, a lawyer practising in Paphos.

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

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

5. On 18 June 2013 the District Court of Paphos (the District Court), in its judgment in civil case no. 3594/12, ordered the applicant to pay the Cooperative Credit Company of Geroskipou and East Paphos 300 euros (EUR) monthly, starting from 1 September 2013 and continuing until such a

time as the debt mentioned in that judgment, plus interest, would be paid off ("the court order").

6. On 2 March 2015 a private prosecution was brought against the applicant by Paphos Cooperative Savings Bank Ltd (case no. 1312/15) before the District Court for his failure to pay instalments due under the court order between 1 September 2013 and 1 January 2015.

7. On 3 April 2015 the case was notified to the applicant for the first time for a reply to the charges. He entered a non-guilty plea and the case was set for a hearing on 5 November 2015.

8. From 5 November 2015 to 22 March 2017 the hearing of the case was adjourned on four occasions, mainly on account of the District Court's lack of time to start the hearing of the case.

9. On 28 September 2017 counsel for the prosecution lodged a change of name notification with the registrar of the District Court of Paphos informing the court that the Paphos Cooperative Savings Bank Ltd had transferred its assets and liabilities to Cooperative Central Bank Ltd, with the relevant agreement coming into force on 1 July 2017. Additionally, counsel for the prosecution explained that the latter company had been renamed as Cyprus Cooperative Bank Ltd as of 24 July 2017.

10. On 6 November 2017 the court again adjourned a hearing of the case for lack of time to deal with it.

11. On 29 March 2018 the case was postponed at the applicant's request for health-related reasons.

12. On 14 September 2018 counsel for the prosecution lodged a second change of name notification with the registrar of the court informing the court that the name of the prosecution had changed from Cyprus Cooperative Bank Ltd to Cooperative Asset Management Company Ltd as of 3 September 2018.

13. On 24 September 2018 a hearing of the case was postponed due to the absence of a witness for the prosecution.

14. On 15 November 2018 the applicant questioned whether the company could bring the prosecution as a legal entity capable of operating as a credit institution, and as such argued that no counsel could appear or act on its behalf, and that the criminal proceedings could not continue. The prosecution sought an adjournment, which the court granted. It rescheduled the case for a hearing on 15 January 2019.

15. On 15 January 2019 the hearing was adjourned upon the request of both parties to exchange relevant documents for the case.

16. On 26 March 2019 the hearing was adjourned upon the request of both parties to submit to the court a list of facts which were not in dispute between them.

17. On 24 May 2019 the District Court adjourned the hearing; the parties did not object.

18. By letter of 5 September 2019 counsel for the prosecution applied to the Attorney General for the discontinuance of the criminal case, explaining

that due to various mergers which the credit institution had undergone, an issue arose as to whether a criminal prosecution could be initiated by a non-existent prosecutor. The issue was being examined by the Supreme Court and a decision had been pending. Counsel for the prosecution further explained that in a different criminal case with similar facts, the court had acquitted the defendant prima facie at the pre-trial stage. Consequently, counsel for the prosecution considered that the continuation of the criminal case no longer served a purpose and a possible dismissal of the case by the District Court could adversely affect the rights of the credit institution as established after the merger in a future prosecution in relation to the unpaid instalments due from the applicant.

19. On 13 September 2019 the prosecution applied to the court seeking a postponement of the hearing, informing the court of its application to the Attorney General.

20. On 23 September 2019 the Attorney General ordered the discontinuance of the case against the applicant by granting a *nolle prosequi*.

21. On 2 October 2019 the District Court informed the parties that on account of the Attorney General's decision the criminal case was to be discontinued and the applicant discharged.

22. The applicant attempted to challenge the said decision by arguing, *inter alia*, that he had not been consulted by the Attorney General on the matter; that he had raised a similar issue with the court on 15 November 2018 but the case had been subject to multiple adjournments due to the court's lack of time and the issue had remained open; that he could not submit a claim in respect of the losses and expenses which he had suffered; that he had been treated unfairly as he had been appearing before the court for four and a half years and for the previous two years he had been paying eight euro stamps in connection with his counsel's appearance in court.

23. The court repeated that the discontinuance of the case constituted an exclusive constitutional power of the Attorney General which was not subject to judicial review and no further judicial discretion could be exercised by the court, either in substance, or in terms of procedure as far as costs were concerned. The case was closed without an order for costs against the applicant.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CONSTITUTION OF CYPRUS

24. Article 30 § 2 of the Constitution provides, where relevant, as follows:

> "In the determination of ... any criminal charge against him, every person is entitled to a ... hearing within a reasonable time ..."

25. Article 113 § 2 of the Constitution provides:

> "The Attorney General of the Republic shall have power, exercisable at his discretion in the public interest, to institute, conduct, take over and continue or discontinue any proceedings for an offence against any person in the Republic. Such power may be exercised by him in person or by officers subordinate to him acting under and in accordance with his instructions."

II. CRIMINAL PROCEDURE LAW, CAP. 155

26. Section 154(1) provides as follows, in so far as relevant:

> "In any criminal proceedings and at any stage thereof before judgment the Attorney General may enter a *nolle prosequi*, either by stating in Court or informing the Court in writing that the Republic intends that the proceedings shall not continue and thereupon the accused shall be at once discharged in respect of the charge or information for which the *nolle prosequi* is entered."

III. RELEVANT DOMESTIC CASE-LAW

A. Case-law concerning the dismissal of a criminal case on account of the length of proceedings

27. In the case of *Efstathiou v. Police* (1990) 2 A.A.D. 294 the Supreme Court, on appeal, acquitted a previously convicted defendant on account of the length of the first instance criminal proceedings which it considered to have been excessive. The Supreme Court held that a violation of rights which were safeguarded by Article 30 § 2 of the Constitution rendered the criminal proceedings void in their entirety.

28. In the case of *Attorney General v. Menelaou* (2004) 2 A.A.D. 223 the Supreme Court, on appeal, noted that criminal proceedings could be discontinued on the ground of a breach of a defendant's right to a fair trial within a reasonable time in accordance with the Convention, but only when the existence of a fair trial was no longer possible or, for some convincing reason, the continuation of the trial against the defendant would be unfair. It further reiterated that the dismissal of a case was not the only and exclusive remedy available in such situations. Rather, a breach of a defendant's right to a fair trial might lead to the reduction of the defendant's sentence at the sentencing hearing.

29. In the private criminal case of *Limassol Prefect v. Malai*, criminal case no. 13421/20, 1 November 2021, the first instance criminal court decided to dismiss the case and acquit the defendants by reason of a breach of their constitutional right to a fair trial on account of the length of proceedings before the case was heard, while in *See You Travel Limited v. Christodoulide*, private criminal case no. 1353/16, 25 June 2021, and *Christoudias Clearing Co. Ltd v. S.G. Stavrinou Trading Ltd*, private criminal case no. 907/18, 26 January 2022, the first instance criminal courts dismissed the cases on account of the excessive length of the proceedings after they had been heard.

B. Case-law on compensation for violations of human rights as submitted by the Government

30. In *Takis Yiallouros v. Evgenios Nicolaou* ([2001] 1 C.L.R. 558), which concerned an alleged violation by another individual of the claimant's right to a private life and correspondence, the Supreme Court, sitting as a full bench, held that claims for human rights violations were actionable rights that could be pursued in the civil courts against those responsible, with a view to recovering from them, *inter alia*, just and reasonable compensation for any damage suffered as a result. The Supreme Court thus confirmed the existence of an obligation to award general damages for breaches of the fundamental human rights and freedoms guaranteed by the Constitution, even when the violation did not constitute a tort in civil law. It pointed out that the provisions of Article 13 of the Convention formed part of the domestic law and safeguarded the right to an effective remedy for a violation of rights guaranteed by the Convention.

31. In *Attorney General v. Andriani Palma and others* (civil appeal no. 44/2013, 19 November 2015) which concerned the State's responsibility to conduct an effective investigation into the death of a missing person the Supreme Court held that the State had violated the right to life of the deceased given that no effective investigation had been conducted in relation to his death and burial. With reference to *Takis Yiallouros,* the Supreme Court acknowledged that the plaintiffs – relatives of the deceased – had been victims of human rights violations and awarded EUR 20,000 to the wife and EUR 10,000 to each of the deceased's daughters in respect of non-pecuniary damage.

32. In *Attorney General v. Vasos Vasileiou as administrator of the estate of the deceased Christofi B. Pashia* (civil appeal no. 381/2010, 26 May 2015), the Supreme Court reversed the first instance court's findings that the State had failed to conduct an effective investigation into the death of the applicants' relative. As such, the Supreme Court considered that no procedural violation of the right to life had taken place.

33. In the case of *Xenofontos and others v. Attorney General* (civil action no. 40/2013, 13 December 2018) which concerned the State's liability for the killing of a civilian due to disproportionate use of force by the police, the District Court noted that the sole cause of action had been the plaintiffs' right to life enshrined in the Constitution. With reference to *Takis Yiallouros* and *Palma*, as well as case-law of this Court, the District Court held that the plaintiffs had been victims of human rights violations, namely Article 2 of the Convention and respectively Article 7 of the Constitution. It awarded each plaintiff EUR 35,000 in respect of non-pecuniary damages because of the said violations.

THE LAW

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

34. The applicant complained that the length of the private criminal proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

35. The applicant further complained that he had not had at his disposal an effective domestic remedy in respect of the alleged violation of Article 6 § 1, in breach of Article 13 of the Convention, which reads as follows:

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

36. The period to be taken into consideration began on 2 March 2015 when the private prosecution was brought against the applicant and ended on 2 October 2019 when the District Court dismissed the case. It thus lasted approximately four years and seven months at one level of jurisdiction.

A. Admissibility

1. The parties' submissions

(a) The Government

37. The Government argued, first, that the applicant had failed to exhaust domestic remedies as he ought to have raised the substance of his complaint with the domestic courts by way of a preliminary objection. That, according to the Government, might have led to the discontinuance of the case as the Supreme Court of Cyprus had recognised on one previous occasion (see paragraph 27 above) that a breach of the right to a fair trial within a reasonable time rendered the criminal procedure void in its entirety, and had acquitted a previously convicted defendant. According to the Government, even though the courts had adopted a different approach in recent years and had been more reluctant to acquit defendants by reason of a breach of their right to a fair trial pursuant to Article 6 § 1 of the Convention, that possibility remained nonetheless, as confirmed by recent case-law (see paragraphs 28 and 29 above). Instead, the Government submitted, the applicant had argued in vague terms that he had been deprived of his constitutional right to a fair trial; he had merely mentioned in brief that he had been appearing before the District Court for four and a half years, without explaining how that had affected his rights. The Government further pointed out that the complaint concerning the

delay had only been raised in a general manner after the Attorney General's decision to discontinue the criminal case, by which time it was already too late given that the proceedings had already been discontinued and the applicant discharged.

38. The Government argued, second, that the applicant could no longer claim to be a victim of a violation of his right to a fair trial within a reasonable time under Article 6 § 1 of the Convention as the proceedings against him had been discontinued and thus the outcome of the case had been in his favour. In any event, the applicant could not be regarded as having sustained major costs or trouble because the hearing of the criminal case had never commenced; he had only appeared before the District Court on fourteen occasions for formalities in the four and a half years of the proceedings.

39. The Government argued, third, that the applicant had suffered no significant disadvantage as the hearing of the case had not commenced, thus he had sustained no stress or major costs. The applicant had merely appeared before the District Court for various formalities, while the court had neither determined the charges against him, nor imposed a penalty or fine. In addition, the case had not entailed any major question of principle of personal importance to the applicant. Moreover, the offences with which he had been charged entailed a maximum sentence of a fine of up to EUR 5,000, meaning that, unlike in other cases involving serious criminal offences with the possibility of imprisonment, the applicant could not reasonably be considered as having experienced any significant insecurity or uncertainty regarding his fate pending the proceedings. The Government further argued that even if it were to be accepted that the applicant had sustained a loss of a financial nature as regards legal costs and court expenses, those sums had not surpassed EUR 2,000 and could not therefore be regarded as a significant disadvantage. Lastly, the Government noted that the applicant had benefited from the *nolle prosequi* and his insistence on challenging the said decision had been unreasonable as there had been no guarantee that the outcome of a potential hearing of the case would be in his favour.

(b) The applicant

40. The applicant argued that the fact that the case against him had been dismissed had not deprived him of his victim status. For four and a half years he had sustained humiliation and expenses for which the prosecution should have compensated him.

41. The applicant denied not having exhausted domestic remedies. He claimed that he had had no effective remedy at his disposal and in any event no hearing had taken place during which he could have raised the issue of the delay. On 2 October 2019 his lawyer had explicitly mentioned to the trial court that the proceedings had lasted for four and a half years and applied for legal expenses to be awarded in that regard, but the court had dismissed his

claims as it had no jurisdiction to make any award following the Attorney General's decision.

42. Lastly, the applicant argued that, irrespective of the severity of the offences with which he had been charged, he had been required to appear periodically before the District Court for four and a half years while waiting for his case to be heard and had felt humiliation owing to his being an accused for so long without being afforded a trial or even a chance to challenge the *nolle prosequi*. He had suffered from frustration and insecurity on account of the excessive length of the proceedings and the absence of an effective remedy in that regard. In addition, the applicant argued that he had suffered an additional financial disadvantage as he had had to pay legal fees each time his lawyer had appeared in court, which had come to a total of EUR 2,421.65, including 19% VAT, and which he had not been able to claim from the prosecution because of the Attorney General's decision to enter a *nolle prosequi*.

2. The Court's assessment

43. In the Court's view, the issue of whether the applicant has been deprived of his status as a victim within the meaning of Article 34 of the Convention, together with the question whether he suffered a "significant disadvantage" within the meaning of Article 35 § 3 (b) of the Convention as a result of the alleged violation, are closely linked to the questions raised in his complaint under Article 6 § 1 of the Convention about the length of the proceedings. It therefore joins those issues to the merits of the application (see, for example, *Ommer v. Germany (no. 1)*, no. 10597/03, § 50, 13 November 2008).

44. Similarly, the Court considers that the issue of non-exhaustion of domestic remedies in this case is closely linked to the merits of the applicant's complaint that he did not have at his disposal an effective remedy regarding the alleged violation of his right to a trial within a reasonable time. The Court therefore finds it necessary to join the Government's objections to the merits of the complaint under Article 13 of the Convention (see, for example, *FIL LLC v. Armenia*, no. 18526/13, § 44, 31 January 2019).

45. The Court further considers that the applicant's complaints concerning the allegedly excessive length of the proceedings and the lack of an effective domestic remedy are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Exhaustion of domestic remedies and alleged violation of Article 13 of the Convention

(a) The parties' submissions

46. The applicant repeated the arguments he had already submitted in response to the Government's preliminary objection of non-exhaustion of domestic remedies (see paragraph 41 above). He further argued that, unlike cases concerning delays before the civil courts where a remedy already exists, namely the Law Providing for Effective Remedies for Exceeding the Reasonable Time Requirement for the Determination of Civil Rights and Obligations (Law 2(I)/2010), no similar remedy exists concerning the excessive length of criminal proceedings. The said law excludes criminal cases and had he lodged a civil action under that law, his action would have been dismissed.

47. The Government repeated the arguments they had already submitted in relation to their preliminary objection of non-exhaustion of domestic remedies (see paragraph 38 above), maintaining that the applicant ought to have raised his complaint concerning the length of the proceedings by way of a preliminary objection to the hearing of the criminal case on account of the delay. The Government further argued that the applicant could have lodged a civil action for the alleged violation of Article 6 § 1 of the Convention following the discontinuance of the criminal case relying on *Takis Yiallouros v. Evgenios Nikolaou* (civil action no. 9931, 8 May 2001) (see paragraph 30 above). The Government further argued, with examples from domestic case-law (see paragraphs 31-33 above) that had the applicant proved a violation of his right to a fair trial on account of the "unreasonableness" of the length of the criminal case, he could potentially have been awarded damages.

(b) The Court's assessment

48. The Court reiterates the general principles as to the requirements of an effective remedy for the length of criminal proceedings under Article 13 of the Convention, as laid down in *McFarlane v. Ireland* [GC], no. 31333/06, § 108, 10 September 2010. It further reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). The effect of Article 13 is to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. The scope of the Contracting States' obligation under Article 13 varies depending on the nature of the applicant's complaint. However, the remedy required by Article 13 must be "effective" in practice as well as in law (see *Fil LLC,* cited above, § 46). Similarly, the State claiming

the existence of effective and sufficient remedies has to satisfy the Court that the remedies available to the applicant were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006 II, and *Paksas v. Lithuania* [GC], no. 34932/04, § 75, ECHR 2011 (extracts)). In determining whether a remedy meets the criteria of availability and effectiveness, regard must be had to the particular circumstances of the individual case. The position taken by the domestic courts must be sufficiently consolidated in the national legal order (see, for example, *Guseva v. Bulgaria*, no. 6987/07, § 47, 17 February 2015).

49. The Court considers, without anticipating the examination of whether the "reasonable time" requirement in Article 6 § 1 of the Convention was complied with, that the applicant's complaint is prima facie "arguable", having regard to the duration of the proceedings which lasted approximately four years and seven months at one level of jurisdiction, with no substantive hearing having taken place during that time. He was therefore entitled to an effective remedy in that regard (see, *mutatis mutandis*, *Vlad and Others v. Romania*, nos. 40756/06 and 2 others, § 113, 26 November 2013).

50. The Court will turn, first, to the Government's submission that the applicant ought to have raised his complaint concerning the length of the proceedings by way of a preliminary objection to the hearing as that could have led to the dismissal of the criminal case against him and his acquittal on account of the delay. In this regard the Court notes that by the Government's own admission, the domestic courts have in recent years been more reluctant to acquit defendants by reason of a breach of their right to a fair trial on account of the length of proceedings pursuant to Article 6 § 1 of the Convention (see paragraph 37 above). That is also evidenced by the fact that the only Supreme Court judgment relied on by the Government as an illustration of the remedy's effectiveness was *Efstathiou v. Police*, which dates back to 1990, while the most recent Supreme Court judgment provided by the Government, namely *Attorney General v. Menelaou*, was dated 2004 and illustrated the courts' current approach of being more reluctant to acquit defendants on account of the length of proceedings. The Court further disagrees with the Government's assertion that the applicant had not raised the complaint in a proper manner since he ought to have done so more explicitly and prior to the Attorney General's decision to discontinue the proceedings. The applicant raised the complaint in substance on 2 October 2019 when he had been informed that the proceedings would be terminated (see paragraph 22 above).

51. As regards the assertion that the applicant ought to have raised his complaint prior to the Attorney General's decision, the Court notes that in only one of the three first-instance cases provided by the Government, namely *Limassol Prefect v. Malai* (see paragraph 29 above), did the first instance

court acquit a defendant prior to the commencement of the hearing of the case. Moreover, apart from the Supreme Court's judgment in *Attorney General v. Menelaou* (see paragraphs 28 and 50 above), it appears from the case of *Georgiadis v. Cyprus,* no. 50516/99, 14 May 2002, when the applicant raised a preliminary objection concerning the length of the proceedings prior to the beginning of the hearing, the District Court dismissed the objection stating that the issue of the delay could only be examined after the completion of the hearing as a matter to be taken into account at the sentencing stage (ibid, § 20). Therefore, the Government have not shown that had the applicant raised the complaint earlier, the court would in fact have examined it at that stage, let alone that the applicant would have had reasonable prospects of success, on account of the domestic courts' general reluctance to acquit defendants on that basis. The Court cannot therefore conclude that the said remedy could be used specifically in relation to the breach alleged. In such circumstances the State has not discharged the onus placed on it to demonstrate that the remedy is an effective one, sufficiently certain, and normally available both in theory and in practice with reasonable prospects of success.

52. The Court will now turn to the Government's second submission that the applicant could have brought a civil action for the alleged violation of Article 6 § 1 of the Convention following the discontinuance of the criminal case. In that regard, the Court notes that although the case of *Takis Yiallouros v. Evgenios Nicolaou* and subsequent developments illustrated the possibility of recourse before the domestic courts in connection with allegations concerning violations of rights protected under the Constitution of Cyprus and the Convention, it does not indicate whether the applicant in the present case could in reality have obtained relief – either preventive or compensatory – by having such recourse regarding his complaint about the length of proceedings. The Government have not made reference to specific, established case-law on the availability, within reasonable time, of adequate damages for delays already sustained or their consequences in private criminal cases which are terminated by the Attorney General, or on the possibility of such an action being preventative of further delay (see *Kudła,* cited above, § 159, and, *mutatis mutandis, Gavrielides v. Cyprus*, no. 15940/02, § 51, 1 June 2006). Rather, the case-law referred to by the Government concerned compensation, after judicial proceedings that lasted several years, for a breach of the right to life, or of the right to respect for private life, rights which are not in dispute in the present case.

53. In those circumstances, the Court dismisses the Government's objection as to the non-exhaustion of domestic remedies and concludes that the Government have failed to show that, at the relevant time, an effective domestic remedy was available to the applicant in respect of the length of the private criminal proceedings against him.

54. There has accordingly been a breach of Article 13 of the Convention.

2. Article 6 § 1 of the Convention

(a) The parties' submissions

55. The applicant contended that the delay in the proceedings had been attributable solely to the District Court, which had not had time to hear the case, and to the prosecution. His application to postpone the proceedings on 29 March 2018 for health-related reasons had been the only delay attributable to him and that had been insignificant compared to the overall delay in the proceedings which had been caused by the court. On 24 September 2018 the District Court could have forced the prosecution to begin the trial considering that the prosecution ought to have been ready for trial on that day with at least one witness. As regards the adjournment of 15 November 2018, he had not been at fault for the prosecution's failure to speedily decide on the course of action to follow concerning cases pending under the original name of the credit institution. The applicant further argued that the general requirements of fairness contained in Article 6 of the Convention applied to all criminal proceedings irrespective of the type of offence at issue.

56. The Government acknowledged that the court had contributed to the delay in hearing the criminal case by adjourning scheduled hearings on various occasions between 5 November 2015 and 29 March 2018, but argued that the applicant and the prosecution had also been responsible for a part of the delay (see paragraphs 11, 13, 14, 15, 16 and 19 above). The Government further argued that the State had not been at fault for delays caused by the prosecution as it had been a private prosecution and the District Court had had no actual or practical means of proceeding with the hearing of the case in those circumstances. The Government stressed that the applicant had been accused of a minor offence which did not attract a sentence of imprisonment but only a small fine and as such nothing particularly significant had been at stake for him. The case had not merited priority treatment given its relatively trivial nature and the circumstances had not been such as to entitle the applicant to "special diligence" on the part of the competent authorities. The Government contended that, as the applicant had never been at risk of imprisonment and had experienced an overall "smooth procedure", the length of the proceedings could not be considered to have been unreasonable in the light of the particular circumstances of the criminal case in question.

(b) The Court's assessment

57. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II, and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

58. First, the nature of the case, concerning an alleged failure to pay instalments pursuant to a court order, was not complex, nor did the Government argue that it was.

59. Second, while the adjournment of 29 March 2018 was due to the applicant, and the adjournments of 15 January 2019 and 26 March 2019 were by the parties' mutual agreement (see paragraphs 11, 15 and 16 above), on the whole there were no major delays attributable to the applicant.

60. Third, as regards the adjournment of 24 September 2018 on account of the absence of the witness for the prosecution, the Court considers that that delay was not attributable to the applicant and that it was for the trial court to discipline the prosecution (see *Lamazhyk v. Russia*, no. 20571/04, § 116, 30 July 2009, and *Sidorenko v. Russia*, no. 4459/03, § 34, 8 March 2007). In addition, the delay caused between 5 November 2015 and 29 March 2018 was attributable, by the Government's own admission, to the domestic court. In that regard the Court emphasises that during that period of two years, four months and six days, no substantial activity took place before the District Court and the Government have not provided an explanation for this inaction. The proceedings were subsequently postponed for an additional three months and twenty days between 24 May 2019 and 13 September 2019. No explanations have been given by the Government in that connection either.

61. Fourth, as regards what was at stake for the applicant, the Court cannot regard the lengthy periods of unexplained inactivity as "reasonable" on account solely of the fact that he had not been at risk of imprisonment. The Court cannot ignore in that connection the fact that, throughout the approximately four years and seven months for which the proceedings lasted, no substantive hearing had taken place, nor had the applicant's preliminary objection concerning the prosecution's standing been considered. Throughout the proceedings the applicant was represented by a lawyer, resulting in legal expenses which he has not had the possibility of recovering as a result of the dismissal of the case based on the *nolle prosequi*.

62. Similarly, the Court cannot agree with the Government's argument that the applicant has not suffered any significant disadvantage. While it is true that the offences with which he was charged were not particularly severe and did not bear a sentence of imprisonment, they did carry a financial penalty of up to EUR 5,000. At the same time, had the applicant been found guilty he would also have been liable to pay the amounts due between 1 September 2013 and 1 January 2015 (see paragraph 6 above). Nor can it be excluded that the prolonged criminal proceedings kept him in a state of uncertainty as to the ultimate verdict on the accusations against him. It is reiterated that the right to have one's case heard by a court within a reasonable time once the judicial process has been set in motion, especially in criminal proceedings, is based on the need to ensure that accused persons do not have to remain too long in a state of uncertainty as to the outcome of the proceedings against them (see, *Kart v. Turkey* [GC], no. 8917/05, § 68, ECHR 2009 (extracts)).

In this connection, the Court notes that even though the criminal proceedings against the applicant had been dismissed, a dismissal on account of a *nolle prosequi* cannot be equated with an acquittal. On the contrary, in this case the *nolle prosequi* secured the right of the credit institution – as established after the merger – to pursue a future prosecution against the applicant for the allegedly unpaid instalments, and thus created further uncertainty about the possibility of fresh criminal proceedings concerning the same charges. Thus, the Court considers that the importance of the case for the applicant should not be underestimated and accordingly, rejects the Government's objection that the applicant has not suffered any significant disadvantage.

63. In this connection, the Court takes the view that the applicant has not lost his status as a victim of a breach of the reasonable time requirement. The District Court discontinued the proceedings not on account of their length, but rather as the automatic consequence of the Attorney General's instructions. The applicant's complaint concerning the length of the criminal proceedings has not been resolved at the domestic level because the discontinuance of the proceedings was not directly connected with the length of the proceedings and cannot therefore be considered, either directly or by implication, as a recognition of a violation of Article 6 § 1 or as reparation for the damage allegedly caused to the applicant by the length of the proceedings (see, for example, *Mahmut Aslan v. Turkey*, no. 74507/01, § 14, 2 October 2007; *Eckle v. Germany*, 15 July 1982, § 94, Series A no. 51; and *Byrn v. Denmark*, no. 13156/87, Commission decision of 1 July 1992, Decisions and Reports 73, p. 5). Accordingly, the Government's objection under this head should be rejected.

64. In view of the above, and having examined all the material submitted to it, the Court has not found any fact or argument capable of justifying the overall length of the proceedings at the national level. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

65. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. Article 41 of the Convention provides:

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

A. Damage

67. The applicant claimed 2,421.65 euros (EUR) in respect of pecuniary damage corresponding to the money he had paid in legal expenses to his lawyer, plus EUR 5,000 in respect of non-pecuniary damage.

68. The Government disputed those claims, considering them to be excessive and unsubstantiated. They also submitted that there was no direct link between the violations alleged and the pecuniary and non-pecuniary damage alleged.

69. The Court does not discern a causal link between the violation found and the pecuniary damage alleged as the legal fees had been incurred for the applicant's representation before the District Court. In any event, the Court cannot speculate, in the absence of relevant information substantiating the applicant's claim, as to what percentage of the amount claimed in respect of pecuniary damage had been caused on account of the delay in the domestic proceedings. The Court therefore rejects this aspect of the claim.

70. However, the Court considers that the applicant undeniably sustained non-pecuniary damage on account of the violations found. Ruling on an equitable basis, as required by Article 41 of the Convention, the Court finds it reasonable and equitable to award the applicant EUR 4,200 under this head.

B. Costs and expenses

71. The applicant also claimed EUR 3,000 in respect of the costs and expenses incurred before this Court.

72. The Government disputed the amount claimed, considering it excessive. They also pointed out that the applicant's lawyers had not provided any documents substantiating that claim.

73. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in respect of the proceedings before the Court.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's preliminary objections concerning non-exhaustion of domestic remedies, the loss of the applicant's victim status and the absence of significant disadvantage and *dismisses* them;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 13 in conjunction with Article 6 § 1 of the Convention;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,200 (four thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 May 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Pere Pastor Vilanova President