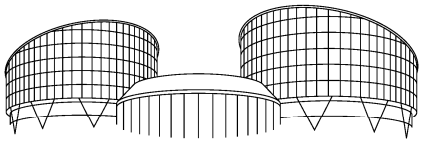

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KIISA v. ESTONIA

(Applications nos. 16587/10 and 34304/11)

JUDGMENT

STRASBOURG

13 March 2014

This judgment is final but it may be subject to editorial revision.

In the case of Kiisa v. Estonia,

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

Khanlar Hajiyev, *President,*
Julia Laffranque,
Erik Møse, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 18 February 2014,

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

PROCEDURE

1. The case originated in two applications (nos. 16587/10 and 34304/11) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ñthe Conventionò) by two Estonian nationals, Ms Karin Kiisa (ñthe first applicantò) and Mr Aare Kiisa (ñthe second applicantò), on 4 March 2010 and 31 May 2011 respectively.

2. The first applicant was represented before the Court by Mr R. Nõu, a lawyer practicing in Tallinn, and subsequently by Mr P. Gardner, a lawyer practising in London. The second applicant was represented before the Court by Mr M. Maksing, and subsequently by Mr R. Kuulme, lawyers practising in Tallinn. The Estonian Government (ñthe Governmentò) were represented by their Agent, Ms M. Kuurberg, of the Ministry of Foreign Affairs.

3. On 14 March 2013 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The first applicant was born in 1966 and lives in Tallinn. The second applicant was born in 1964 and lives in Luiste village, Rapla County.

A. Background of the case

5. The applicants were married form 1989 to 2006. The first applicant gave birth to child K. on 20 September 2002. The second applicant was recorded in the civil status records as the father of the child.

6. On 10 October 2003 the first applicant lodged an action for divorce and division of marital property.

B. Proceedings in the civil case no. 2-04-1467

7. On 25 October 2004 the first applicant lodged an action against the second applicant with the Harju County Court (previously named the Tallinn City Court). She sought alimony for their child K.

8. On 11 January 2005 a preliminary hearing was held. Subsequently, the parties submitted evidence and made requests concerning evidence.

9. At a preliminary hearing of 25 April 2005 the first applicant requested adjournment of the hearing as only the second applicantôs representative but not the second applicant himself had appeared.

10. On 27 April 2005 the second applicant filed a separate action to establish that he is not the father of the child K. and to contest the civil status record (civil case no. 2-3307/109, filiation proceedings).

11. On 2 June 2005 the second applicant requested the suspension of the proceedings in the alimony case, referring to the above filiation proceedings. On 9 September 2005 the first applicant submitted that she did not dispute the request for the suspension of the proceedings, although she disproved the submission of the request by the second applicant.

12. On 14 October 2005 the County Court granted the second applicantôs request and suspended the proceedings until the delivery of the judgment in the civil case no. 2-3307/109.

13. In the meantime, on 12 May 2005, in the course of the filiation proceedings, the Harju County Court decided to carry out DNA analyses of the child and the second applicant. The court obliged the first applicant to take the child to an expert to take DNA samples. The first applicant unsuccessfully appealed against this decision. On 31 January 2007 the Supreme Court refused leave to appeal. However, the first applicant did not take the child to analyses. According to the available information, on 10 May 2012 the Harju County Court dismissed the filiation action.

14. In the meantime, on 14 June 2007 the first applicant requested that the proceedings concerning the alimony be resumed. She referred to the Supreme Courtôs recent practice according to which the contestation of the civil status record did not affect the contesting personôs obligation to provide subsistence for the child.

15. On 20 June 2007 the Harju County Court resumed the alimony proceedings and scheduled a hearing for 27 August 2007. The hearing was postponed at the second applicantôs request.

16. On 25 July 2007 the second applicant made a compromise proposal; the time-limit for the first applicantôs reply was extended until 10 October 2007.

17. Between September and November 2007 the parties submitted evidence and opinions and made requests. Among others, the second applicant requested that the proceedings be not resumed and, later, that a hearing be adjourned. The first applicant supplemented her claim.

18. On 23 October 2007 the County Court requested evidence from banks and the Tax and Customs Board and obliged the second applicant to submit documents.

19. On 30 November 2007 a hearing was held.

20. On 11 January 2008 the Harju County Court delivered its judgment. It granted the first applicantôs action in part and ordered the second applicant to pay monthly alimony of 3,000 kroons (EEK) (approximately 192 euros (EUR)) for the child. Both applicants appealed to the Tallinn Court of Appeal.

21. On 9 May 2008 the Tallinn Court of Appeal upheld the County Courtôs judgment. Both applicants challenged the Court of Appealôs judgment before the Supreme Court.

22. On 19 November 2008 the Supreme Court quashed the Court of Appealôs judgment and remitted the case to the appeal court for a new examination.

23. On 21 May 2009 the Tallinn Court of Appeal quashed the Harju County Courtôs judgment of 11 January 2008 and remitted the case for a new examination to the first-instance court. The first applicant appealed considering that the appeal court itself should have decided the case.

24. On 7 September 2009 the Supreme Court refused the first applicant leave to appeal.

25. On 25 January 2010 the first applicant amended her statement of claim, submitted voluminous new evidence and requested application of interim measures.

26. On 8 February 2010 a hearing was held with the participation of the partiesô representatives. The court obliged the parties to appear in person to the next hearing.

27. On 17 February 2010 the County Court adopted at the first applicantôs request an interim measure ordering the second applicant to make monthly alimony payments of EEK 2,175 (EUR 139).

28. On 12 April 2010 the second applicant requested postponement of the hearing scheduled for 14 April 2010 because of an illness of his representative.

29. In April and May 2010 the first applicant supplemented her statement of claim and submitted new evidence. The parties exchanged submissions.

30. On 3 June 2010 a hearing took place with the participation of the applicants.

31. By a judgment of 5 July 2010 the Harju County Court ordered the second applicant to make monthly alimony payments of EEK 5,000 (EUR 320). Both parties appealed.

32. By a judgment of 6 October 2010 the Tallinn Court of Appeal overturned the County Courtôs judgment in respect of the sum of the alimony payments. It set the monthly sum of payments at EEK 3,550 (EUR 227). Both applicants challenged the Court of Appealôs judgment before the Supreme Court.

33. On 26 January 2011 the Supreme Court refused the applicants leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

34. The Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*) provides:

Article 14

ñThe guarantee of rights and freedoms is the duty of the legislative, executive and judicial powers, and of local governments.ò

Article 15

ñ(1) Everyone whose rights and freedoms are violated has the right of recourse to the courts. Everyone has the right, while his or her case is before the court, to petition for any relevant law, other legislation or procedure to be declared unconstitutional.

(2) The courts shall observe the Constitution and shall declare unconstitutional any law, other legislation or procedure which violates the rights and freedoms provided by the Constitution or which is otherwise in conflict with the Constitution.ò

Article 25

ñEveryone has the right to compensation for moral and material damage caused by the unlawful action of any person.ò

35. Article 46 § 4 of the Code of Administrative Court Procedure sets a three-year time-limit for compensation claims filed with an administrative court.

36. By a decision of 30 December 2008 (case no. 3-4-1-12-08) the Constitutional Review Chamber of the Supreme Court dealt with a complaint concerning the length of criminal proceedings. It rejected the complaint, considering that the complainant could have had recourse to another effective remedy. The Supreme Court held:

ñ25. In the examination of [the complainantôs] request for compensation for the damage caused by the violation of fundamental rights, the Chamber agrees with the opinion expressed in the written opinions of the parties to the proceedings that [the complainant] can demand compensation for damage in an administrative court on the bases and pursuant to the procedure established by the State Liability Act.ò

This decision of the Supreme Court is extensively quoted in the case of *Malkov v. Estonia* (no. 31407/07, § 32, 4 February 2010).

37. In a judgment of 22 March 2011 in the case of *Osmjorkin* (no. 3-3-1-85-09) the Supreme Court, sitting in plenary session, held that Article 14 of the Constitution provided for a fundamental right to an effective remedy. Taken together with Article 15 of the Constitution, these provisions provided for a fundamental right to effective judicial proceedings. The right to an effective remedy also encompassed the right to claim that the proceedings took place within a reasonable time. The Supreme Court also made reference to the right to a fair trial within a reasonable time enshrined in Article 6 § 1 of the Convention and to the right to an effective remedy in Article 13 of the Convention. The Supreme Court found that the State Liability Act (*Riigivastutuse seadus*) did not provide for compensation for non-pecuniary damage caused by excessive length of a preliminary investigation in criminal proceedings, declared it unconstitutional in this respect and awarded the complainant a sum of money relying on Article 25 of the Constitution. The Supreme Court further considered that the enactment of a special regulation for compensation for damage arising from criminal proceedings was required (for a more extensive summary of the judgment, see *Raudsepp v. Estonia*, no. 54191/07, §§ 38-42, 8 November 2011).

38. By a decision of 23 May 2011 (unpublished) the Civil Chamber of the Supreme Court decided not to examine an appellantôs appeal in civil case no. 2-04-1159. In respect of a compensation claim concerning excessive length of proceedings made in the appeal the Supreme Court noted that a civil court had no jurisdiction of such matter. Referring to the decision of 30 December 2008 of the Constitutional Review Chamber of the Supreme Court (see paragraph 36 above) and the judgment of 22 March 2011 of the Supreme Courtôs plenary session (see paragraph 37 above), the Civil Chamber explained that a claim for compensation for damage for excessive length of proceedings had to be lodged with an administrative court.

39. By a judgment of 27 February 2012 (case no. 3-10-3326) the Tartu Administrative Court awarded a complainant a sum of money for non-pecuniary damage caused by, *inter alia*, excessive length of criminal proceedings and lengthy application of a preventive measure (obligation not to leave the place of residence). Criminal proceedings against the complainant had already been discontinued because of the length of the proceedings. The Administrative Court referred to Articles 14, 15, 25, 34 and 35 of the Constitution and to the Supreme Courtôs judgment in the case of *Osmjorkin*.

40. By a judgment of 30 November 2012 (case no. 3-11-1108) the Tartu Administrative Court awarded a complainant a sum of money as compensation for the non-pecuniary damage caused by the excessive length

of the criminal proceedings and the obligation not to leave his place of residence. The Administrative Court referred to Articles 14, 25, 34 and 35 of the Constitution and to the Supreme Courtôs judgment in the case of *Osmjorkin* (these administrative court proceedings have been summarised in *Mets v. Estonia* (dec.), no. 38967/10, §§ 14-15, 7 May 2013).

41. By a decision of 8 May 2012 (case no. 3-11-1146) the Tallinn Administrative Court confirmed a compromise agreement between a complainant and the Ministry of Justice. The Ministry agreed to pay the complainant a sum of money in compensation for non-pecuniary damage caused by lengthy criminal proceedings.

THE LAW

I. JOINDER OF THE APPLICATIONS

42. Given that these two applications concern the same domestic proceedings and raise essentially identical issues under the Convention, the Court decides to consider them in a single judgment (Rule 42 § 1 of the Rules of Court).

II. THE GOVERNMENTôS REQUEST FOR THE APPLICATIONS TO BE STRUCK OUT UNDER ARTICLE 37 OF THE CONVENTION

43. After the failure of attempts to reach a friendly settlement, by a letter of 14 June 2013 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by the applications. They acknowledged that in the special circumstances of the present case the length of the domestic proceedings had not fulfilled the requirement of ñreasonable timeò referred to in Article 6 § 1 of the Convention, proposed a payment of a sum of money to the applicants and requested the Court to strike out the applications in accordance with Article 37 of the Convention.

44. By letters of 19 and 29 July 2013, the applicants indicated that they were not satisfied with the terms of the unilateral declaration. The first applicant considered the payment proposed by the Government grossly inadequate and the legislative reforms and court practice referred to by the Government irrelevant. The second applicant also considered the payment proposed by the Government inadequate.

45. The Court recalls that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued. To this end, the Court will examine carefully the

declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; see also *Treial v. Estonia (no. 2)* (dec.), no. 42496/05, 18 March 2008, and *Parfjonov v. Estonia* (dec.), no. 6905/09, 29 January 2013).

46. The Court notes that the Government acknowledged in their unilateral declaration that the length of the domestic proceedings did not fulfil the requirement of ñreasonable timeò referred to in Article 6 § 1 and proposed a payment of a sum of money to the applicants. However, the Court notes that the Governmentôs declaration did not contain such an acknowledgment in respect of the applicantsô second complaint, that under Article 13. That being so, and considering that the complaints under Article 6 § 1 and Article 13 are inseparably linked, the former not being capable of being struck out alone, the Court finds that the Government have failed to establish a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case (see *Missenjov v. Estonia*, no. 43276/06, §§ 25-26, 29 January 2009, and *Untermayer v. Slovakia*, no. 6846/08, §§ 45-46, 9 July 2013).

47. Therefore, the Court rejects the Governmentôs request to strike the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

48. The applicants complained that the length of the civil proceedings had been incompatible with the ñreasonable timeò requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

49. The Court notes that the proceedings in question started on 25 October 2004 and came to the end on 26 January 2011 having thus lasted for six years and three months for three levels of jurisdiction.

A. Admissibility

50. The Government asked the Court to declare the complaint inadmissible because the applicants had failed to exhaust domestic remedies. The Government referred to the recent developments in the domestic case-law (see paragraphs 36, 37, 40 and 41 above) and argued that it was possible to claim compensation for damages from the Ministry of

Justice and, in case no agreement could be reached with the Ministry, the person concerned could have recourse to an administrative court. The fact that there was still little case-law did not mean that the measure was not effective. The Government considered that declaration of inadmissibility of the current application by the Court would contribute to wider use of the existing domestic remedies and would help to reduce the number of similar complaints to the Court in the future.

51. The Court notes that it has found in earlier cases that no effective remedy existed in Estonia for length-of-proceedings complaints (see *Raudsepp*, cited above, §§ 62-66, with other cases referred to therein). The Court further notes that it had recently occasion to deal with a complaint concerning excessive length of proceedings and alleged lack of effective remedies in this respect in the above-cited case of *Mets v. Estonia*. In that case, which concerned excessive length of criminal proceedings, the applicant had recourse to an administrative court and was awarded compensation for non-pecuniary damage. The Court found that the applicant had lost his victim status in respect of his complaint under Article 6 § 1 (see *Mets*, cited above, §§ 27-33, and paragraph 40 above). In respect of the complaint about lack of effective remedies the Court noted that the applicant had at his disposal an effective remedy developed by the practice of the courts, which he made use of, and therefore that complaint was declared inadmissible as being manifestly ill-founded (ibid., §§ 34-37). The Court has also taken note of another example of a case where an administrative court has awarded compensation for excessive length of criminal proceedings (see paragraph 39 above).

52. The Court observes that in the present case the first applicant lodged her application with it on 4 March 2010, that is before the development of the case-law referred to by the Government, notably the Supreme Courtôs judgment of 22 March 2011 in the *Osmjorkin* case and the subsequent cases decided by the administrative courts. Therefore, the Court considers, similarly to its finding in the above-cited case of *Raudsepp*, that the first applicant had no effective remedy for her length-of-proceedings complaint at the time of the lodging of the present application.

53. The Court further observes that the second applicantôs application was lodged with it on 31 May 2011, that is after the Supreme Courtôs judgment of 22 March 2011. Thus, the question arises whether the second applicant was required to have recourse to administrative courts in order to comply with the requirement of exhaustion of domestic remedies. The Court has held that in cases like the present one, where the remedy in question was the result of interpretation by the courts, it takes some time before the public may be considered to be effectively aware of the domestic decision which had established the remedy and the persons concerned be enabled and obliged to use it (see, for example, *Broca and Texier-Micault v. France*, nos. 27928/02 and 31694/02, § 20, 21 October 2003; *Depauw v. Belgium*

(dec.), no. 2115/04, 15 May 2007; *Leandro Da Silva v. Luxembourg*, no. 30273/07, § 50, 11 February 2010; and *Savickas v. Lithuania* (dec.), no. 66365/09, § 86, 15 October 2013). Having regard to the fact that in the present case the domestic proceedings ended before the Supreme Courtôs judgment of 22 March 2011 and that the second applicant lodged his application with the Court merely two months after the Supreme Courtôs judgment, the Court considers that this period of time was too short for the second applicant to be considered to have become aware of the development of the pertinent domestic case-law.

54. The Court reiterates in this connection that the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with it. However, as it has held on many occasions, this rule is subject to exceptions, which may be justified by the particular circumstances of each case (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V, and *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX). In particular, the Court has previously departed from this general rule in cases, for example, against Italy, Croatia and Slovakia concerning remedies against the excessive length of proceedings (see *Brusco*, cited above; *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII; and *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60226/00, 60237/00, 60242/00, 60679/00, 60680/00 and 68563/01, ECHR 2002-IX) and in *İçyer v. Turkey* ((dec.), no. 18888/02, ECHR 2006-I) concerning a new compensation remedy for interference with property (see also *Charzyński v. Poland* (dec.), no. 15212/03, ECHR 2005-V, and *Tadeusz Michalak v. Poland*, no. 24549/03, 1 March 2005). The remedies under consideration in these cases were enacted to redress at a domestic level the Convention grievances of persons whose applications pending before the Court concerned similar issues (see *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04, § 87, ECHR 2010).

55. The Court observes that in a number of such instances the legislation introducing new remedies in respect of excessive length of proceedings contained transitional provisions concerning cases in respect of which applications had already been lodged with this Court (see *Balakchiev and Others v. Bulgaria* (dec.), no. 65187/10, § 22, 18 June 2013; *Turgut and Others v. Turkey* (dec.), no. 4860/09, § 26, 26 March 2013; *Taron v. Germany* (dec.), no. 53126/07, § 27, 29 May 2012; *Fakhretdinov and Others v. Russia* (dec.), nos. 26716/09, 67576/09 and 7698/10, § 16, 23 September 2010; *Vokurka v. the Czech Republic* ((dec.), no. 40552/02, § 11, 16 October 2007; *Grzinčič v. Slovenia*, no. 26867/02, § 48, ECHR 2007-V (extracts); and *Charzyński*, cited above, § 20). The Court has referred in such context to thousands (*Turgut and Others*, § 54, and *Grzinčič*, § 104, both cited above) or hundreds of applications (*Andrášik*

and Others and *Nogolica*, both cited above) or ñmanyò applications (*Ahlskog v. Finland* (dec.), no. 5238/07, § 76, 9 November 2010) filed against the respective countries.

56. The Court notes, however, that there are only few pending cases concerning the excessive length of proceedings lodged against Estonia before the Supreme Courtôs judgment of 22 March 2011 or before the persons concerned must have been considered to have obtained effective knowledge of it (see, in the latter respect, the case-law cited in paragraph 53 above). Having regard to the fact that in the present case the applicants lodged their applications with the Court on 4 March 2010 and 31 May 2011, after the domestic proceedings had lasted for nearly five and over six years, respectively, the fact that the domestic remedy in question was developed by case-law without any specific transitional provisions concerning cases pending before the Strasbourg Court having been enacted and considering the small number of similar cases in respect of the Contracting Party concerned, the Court considers that there are no particular circumstances in this case to justify departing from the general rule that the assessment of whether domestic remedies have been exhausted is carried out with reference to the date on which the application was lodged with the Court (compare, for example, *Parizov v. the former Yugoslav Republic of Macedonia*, no. 14258/03, §§ 45-46, 7 February 2008, and *Eriksson v. Sweden*, no. 60437/08, § 53, 12 April 2012). Consequently, the Court finds that, in the instant case, it could not be required of the applicants to pursue the remedy invoked by the Government. The Governmentôs objection as to the exhaustion of domestic remedies must therefore be dismissed.

57. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

58. The applicants complained about the excessive length of civil proceedings.

59. The Government were of the opinion that the length of the proceedings in the present case had been caused by the applicantsô behaviour and had not been attributable to the courts.

60. The Government pointed out that the only longer pause in the proceedings had occurred when the proceedings had been suspended from 14 October 2005 to 20 June 2007 at the second applicantôs request and with the first applicantôs consent. The proceedings had been resumed when

requested so by the first applicant whereas the second applicant had objected to the resumption. Furthermore, both applicants had repeatedly requested postponement of the hearings; they had also repeatedly submitted new evidence and requests during the proceedings and the first applicant had supplemented her statement of claim on four occasions. The second applicant had to be given an opportunity to reply to the first applicantôs submissions; he had requested extension for doing so.

61. According to the Government, the only delay partly attributable to the authorities had been the five-month break during the second examination of the case by the Court of Appeal after the Supreme Courtôs judgment. However, after the first applicantôs enquiry the Court of Appeal had immediately proceeded with the examination of the case.

62. The Government also pointed out that the case had been examined twice in the court of first instance, three times in the Court of Appeal whereas the Supreme Court had granted the applicants leave to appeal on one occasion. Each court had dealt with the case before it within a reasonable time while the applicants, using their right of appeal on every occasion, had caused the proceedings to extend to six years and three months.

2. The Court's assessment

63. 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, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

64. The Court considers that the civil proceedings in question which concerned the first applicantôs claim for alimony for the applicantsô son were not, as such, complicated. Furthermore, given the subject matter of the dispute, special diligence was necessary in the present case.

65. In respect of the applicantsô conduct, the Court considers that the first applicantôs several amendments to her claims as well as the second applicantôs request for the suspension of the proceedings and the applicantsô requests for adjournment of hearings undoubtedly contributed to the length of the proceedings. The Court further notes that the applicants also made use of their right to appeal against the judgments. However, the Court notes that it has been its constant approach that an applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his or her interests (see, for example, *Kolomiyets v. Russia*, no. 76835/01, § 29, 22 February 2007).

66. As regards the conduct of the authorities, the Court notes that it does not detect any obvious procrastination on the part of the courts in conducting the proceedings. However, remittal of the case for re-

examination usually refers to errors committed by lower courts and the overall length of the proceedings caused by such reasons is in the Courtôs view imputable to the authorities and not the applicants (compare *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

67. Having examined all the materials submitted to it and 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 ñreasonable timeò requirement.

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

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

69. The applicants further complained about the lack of an effective remedy in respect of the excessive length of proceedings under Article 13 which reads as follows:

> ñEveryone 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.ò

A. Admissibility

70. The Court considers that this complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. The complaint must therefore be declared admissible.

B. Merits

71. The applicants complained that there was no effective remedy for their complaint about excessive length of proceedings.

72. The Government argued that it had been open to the applicants to claim compensation for the length of the proceedings (see paragraph 50 above).

73. The Court 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).

74. In the present case, the Court has already found that there was no effective remedy available to the applicants that they would have been required to exhaust (see paragraphs 51 to 56 above). This conclusion also applies in respect of Article 13 of the Convention.

75. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicants could have obtained a ruling upholding their right to have their case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

76. Lastly, the applicants made a number of further complaints about the impugned civil proceedings. The first applicant invoked Articles 1, 3, 6 § 1 and 8 of the Convention and Article 1 of Protocol No. 1 and Article 5 of Protocol No. 7 to the Convention. The second applicant invoked Articles 6 § 1 and 12 of the Convention and Article 1 of Protocol No. 1 to the Convention. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the applications is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. Article 41 of the Convention provides:

> ñIf 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.ò

A. Damage

78. The first applicant claimed EUR 25,461.87 in respect of pecuniary damage (arrears of alimony payment together with interest). She also claimed EUR 9,450 in respect of non-pecuniary damage for the distress and frustration caused by the lengthy proceedings.

79. The second applicant claimed EUR 20,386.92 in respect of pecuniary damage, which consisted of the sums he was obliged to pay according to the judgments made in the domestic civil proceedings. He also claimed EUR 10,000 in respect of non-pecuniary damage for the suffering and distress caused by the excessive length of the proceedings.

80. As regards the first applicantôs claims, the Government argued that the alimony awarded to her by the domestic courts could not be considered as pecuniary damage. They contended that the first applicantôs claims for pecuniary damage had no causal link to the complaint before the Court. The

Government considered that there was no basis for making an award for non-pecuniary damages to the first applicant.

81. As regards the second applicant's claims, the Government contended that his claim in respect of pecuniary damage related to the implementation of the final judgment and had no causal link to the complaint under examination. In respect of non-pecuniary damage, the Government contested the applicant's argument that he had suffered distress during the proceedings. In addition, the Government considered that the claim should have been submitted first to the domestic authorities.

82. The Court does not discern any causal link between the violation found and the pecuniary damage alleged by the applicants; it therefore rejects these claims. On the other hand, the Court accepts that the applicants have suffered some distress and frustration caused by the length of the proceedings. Making its assessment on an equitable basis, the Court awards each of the applicants EUR 1,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

83. The first applicant claimed EUR 13,827.92 for the costs and expenses incurred before the domestic courts and EUR 2,116.69 for those incurred before the Court. She further claimed EUR 26,001.86 for diminished gain expected in the future (*lucrum cessans*) related to the legal costs and submitted that the costs of borrowing to meet the costs and expenses of the domestic proceedings amounted to EUR 8,044.83.

84. The second applicant claimed EUR 6,890.15 for the costs and expenses incurred before the domestic courts (legal costs and fees in the civil proceedings and the bailiff's fee in the enforcement proceedings) and EUR 1,296 for those incurred before the Court.

85. As regards the first applicant's claims, the Government considered that the costs borne and fees paid in the domestic proceedings were not related to the complaint about the length of the proceedings and were therefore irrelevant. They further considered that the first applicant's allegations about borrowing money were unfounded and any such costs unnecessary; moreover, the same amounts were claimed by the first applicant twice. The Government considered that the costs related to the proceedings before the Court were excessive and since the Convention had not been violated in respect of the first applicant, there was no basis for awarding any costs.

86. As regards the second applicant's claims, the Government argued that the costs and fees paid in the domestic proceedings were not related to the length-of-proceedings claim and were therefore irrelevant. The Government also argued that at least part of the invoices concerning legal services were not related to the civil proceedings at hand. Lastly, the

Government considered that since the Convention had not been violated in respect of the second applicant, there was no basis for awarding any costs related to the proceedings before the Court.

87. The Court reiterates that an award under this head may be made only in so far as the costs and expenses were actually and necessarily incurred in order to avoid, or obtain redress for, the violation found and are reasonable as to quantum (see, among other authorities, *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 105, ECHR 2007-IV). Regard being had to the documents in its possession and to its case-law, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the applicants EUR 1,000 each for the proceedings before the Court, plus any tax that may be chargeable to them, under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* the applications;

2. *Declares* the complaints concerning the excessive length of the proceedings and the lack of remedies in that respect admissible and the remainder of the applications inadmissible;

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

4. *Holds* that there has been a violation of Article 13 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay each of the applicants, within three months, the following amounts:
      (i) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicantsô claim for just satisfaction.

Done in English, and notified in writing on 13 March 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President