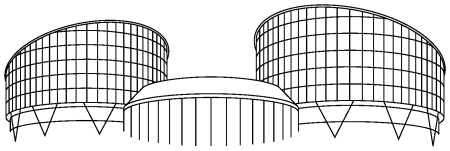

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 40547/10
TECHNIKI OLYMPIAKI A.E.
against Greece

The European Court of Human Rights (First Section), sitting on 1 October 2013 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President*,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having regard to the above application lodged on 23 June 2010,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

FACTS

1. The applicant company, Techniki Olympiaki A.E., is a Greek limited-liability company based in Athens. It was represented before the Court by Mr I. Ktistakis, a lawyer practicing in Athens.

2. The Greek Government ("the Government") were represented by their agent's delegates, Mr V. Kyriazopoulos, Adviser, State Legal Council, and Ms M. Skorila, Legal Assistant, State Legal Council.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant company is a construction firm. On 20 May 1986 it submitted an application to the Thessaloniki Administrative Court of Appeal for judicial review of an administrative decision relating to its payment for works carried out on the Thessaloniki city drainage system.

5. The hearing before that court was initially scheduled for 17 December 1986, on which date the examination of the case was adjourned.

6. On 17 February 1988 the applicant company submitted a request for resumption of proceedings. A fresh hearing was scheduled for 8 June 1988, when it did actually take place. On 29 July 1988 the Administrative Court of Appeal dismissed the applicant company's application (judgment no. 132/1988).

7. On 23 November 1988 the applicant company lodged an appeal on points of law.

8. On 22 January 1996 the Supreme Administrative Court, in judgment no. 286/1996, dismissed the appeal on formal grounds. The judgment mentioned that the applicant company could submit a fresh appeal on points of law within a period of four months.

9. On 8 May 1996 the applicant company lodged a fresh appeal on points of law with the Supreme Administrative Court.

10. Following twenty-five adjournments ordered by the court of its own motion, a hearing was held on 11 October 2010.

11. On 6 February 2012 the Supreme Administrative Court dismissed the appeal on points of law in judgment no. 451/2012, which was finalised and certified as authentic on 20 November 2012.

B. Relevant domestic law and practice

Law no. 4055/2012

(a) Explanatory report on Law no. 4055/2012

12. Law no. 4055/2012 on "fair trial within a reasonable time" came into force on 2 April 2012. The explanatory report on the law refers intensively to the Court's case-law on the length of judicial proceedings. In particular, the report notes that the excessive length of such proceedings is the main cause of findings of violations of the Convention in the Court's case-law. It adds that judicial proceedings which continue for an excessive length of time can also jeopardise the effective exercise of the right of access to a court. Regarding the preventive remedy to expedite proceedings laid down in the Law in question, the report explains that it is geared to bringing the domestic legal system into line with the Court's case-law. With an eye to

guaranteeing the effectiveness of this remedy and avoiding overburdening the courts, the report points out that the legislature opted for a five-year transitional period, during which the requirement to schedule a hearing to be held within twenty-four months after the introduction of legal proceedings will only apply to a certain proportion of the cases included on the relevant court's list of cases, in respect of each day's proceedings.

13. Furthermore, in incorporating the Court's case-law on the "effective remedy" concept within the meaning of Article 13 of the Convention and referring to the pilot judgment in the case of *Vassilios Athanasiou and Others v. Greece* (no. 50973/08, 21 December 2010), the report sets out the reasons for the need to introduce into domestic law a remedy to compensate citizens for unjustified delays in administrative proceedings. In addition to the aim of improving the functioning of administrative justice, the report mentions the large sums which the Greek State has had to pay out to citizens following findings by the Court of violation of Article 6 § 1 of the Convention on the ground of excessive length of proceedings. For example, in 2010 and 2011 the Greek State paid out 4,000,000 euros (EUR) in compensation for delays in judicial proceedings. The report states that the legislature's aim was to back up the preventive remedy with a compensatory remedy, in line with the standards of the Court's case-law, simultaneously guaranteeing the effectiveness of the said remedy and ensuring that the relevant courts are not overburdened. The report mentions here that a claim for compensation can be lodged on completion of proceedings at each level of jurisdiction. Such claims can only concern the specific level of jurisdiction in question, and not any previous levels. The explanatory report stresses that it is not unreasonable, in order to ensure that the claim can be lodged, to require the completion of proceedings at each level of jurisdiction. This requirement averts the risk of superfluous appeals as the appellants retain the right to complain, in respect of each level of jurisdiction, of the length of all the stages of the proceedings – including those which led to an interlocutory decision – on completion of each stage.

14. The report specifies that claims for compensation must be signed by a lawyer in order to ensure that the factual and legal issues are properly set out, thus expediting their analysis. The compulsory examination of the claim, even where the State has omitted to submit its observations to the relevant court, serves the same purpose. Moreover, the judicial decision on the claim must be published within a tight deadline of two months. The explanatory report also points out that the criteria for finding that the length of proceedings has been unreasonable and calculating the corresponding compensation are as set out in the relevant case-law of the Court.

(b) The relevant provisions of Law no. 4055/2012

15. The relevant sections of Law no. 4055/2012 provide:

Section D

Just satisfaction for parties owing to excessive length of administrative proceedings and request to expedite the examination of the claim

Section 53

Persons qualified to claim just satisfaction

"1. With the exception of the State and legal entities which are not non-governmental organisations within the meaning of Article 34 of the European Convention on Human Rights, any party to administrative proceedings may claim just satisfaction on the grounds that the proceedings in question were unjustifiably long and, in particular, that they exceeded the reasonable length required for examining the factual and legal issues arising during the proceedings.

2. Claims for just satisfaction shall be directed against the Greek State, as represented by the Minister of Finance."

Section 54

Jurisdiction within the courts

"1. The following shall have jurisdiction to examine claims for just satisfaction on grounds of excessive length of proceedings:

(a) as regards the Supreme Administrative Court, a member of the Supreme Administrative Court or a legal adviser with the said body,

(b) as regards administrative courts of appeal, a president of an appeal court sitting in the court which adopted the decision in question,

(c) as regards administrative courts, a president of an administrative court sitting in the court which adopted the decision in question.

2. At the beginning of every judicial year the presidents of the divisions of the Supreme Administrative Court shall decide how many days of hearings should be devoted to examining claims for just satisfaction, and shall appoint the competent members and associate members of the Supreme Administrative Court. The same obligation, in terms of deciding the number of days of hearings and assigning cases, is incumbent on the presidents of three-member benches and on judges presiding over administrative appeal courts and administrative courts."

Section 55

Claims for just satisfaction

"1. All claims for just satisfaction must be lodged separately with each level of jurisdiction. They must be lodged within six months of publication of the final decision taken by the court in the proceedings which in the claimant 's view were excessively lengthy. Where the clamant is lodging a claim for just satisfaction with a court on the grounds of the length of proceedings before this same court, he or she cannot claim just satisfaction for the unreasonable length of a set of proceedings at a previous level of jurisdiction.

2. The claim, together with the items of information mentioned in section 56(3) of this Law, shall be submitted to the registry of the court which adopted the impugned

decision. It must comprise the applicant's name and address, as well as his or her email address or the applicant's or his or her representative's e-mail address or telephone or fax number, and must be signed and dated by the person in question. A copy of the claim shall be sent by the applicant to the State Legal Council. If another remedy has already been used in respect of the decision in question, and if the case file has been transmitted to another court, the latter shall transmit copies of the procedural documents to the court responsible for adjudicating on the claim for just satisfaction.

3. The claim shall be signed by a lawyer, whose authority to represent the client is governed by the relevant provisions of Presidential Decree No. 18/1989 and of the Code of Administrative Procedure.

4. The fiscal stamp fee for lodging the claim is 200 euros. This fee may be adjusted under a joint decision of the Minister for Justice, Transparency and Human Rights and the Minister of Finance. The claim shall be declared inadmissible and rejected if the stamp fee is not paid within the time specified in section 56(1) below."

Section 56

Procedure

"1. Where the claim for just satisfaction is lodged with the Supreme Administrative Court, the president of the division which adopted the decision in the impugned proceedings – the length of which gave rise to the claim for just satisfaction – shall sign the decision to appoint a member or associate member of the Supreme Administrative Court to examine the claim. This decision, which must be transmitted to the claimant's representative and the Minister of Finance, shall set out the date of the hearing for the examination of the claim, which hearing must take place within five months of the lodging of the claim. The authorities are required to transmit their observations, accompanied by the requisite case documents, at least fifteen days before the hearing. The claim shall be examined even if the authorities have not transmitted the aforementioned items to the relevant court.

2. Where the claim for just satisfaction is lodged with the administrative court of appeal or the administrative court, the president of the three-member bench or the judge presiding over the court which adopted the decision in the impugned proceedings – the length of which gave rise to the claim for just satisfaction – shall sign the decision appointing, respectively, an administrative court of appeal president or an administrative court president to examine the case. The provisions of the previous subsection shall apply as to the rest.

3. The claimant shall indicate in his or her claim the court which conducted the impugned proceedings, the postponements of hearings ordered at the parties' or the court's initiative and the factual or legal questions arising; the claimant shall also set out his or her observations on the complexity of the case.

4. The Greek State, in reply to the claimant's submissions on the length of proceedings, shall present all the necessary facts relating to his or her conduct during the proceedings, the complexity of the case and any other question germane to the examination of the claim.

5. The decision on the claim for just satisfaction shall be published within two months of the hearing. It is not open to appeal."

Section 57

Criteria for the award of just satisfaction

"1. The competent court shall decide whether the length of the impugned proceedings was reasonable or excessive, taking account, in particular, of the following factors: (a) the conduct of the parties during the proceedings; (b) the complexity of the legal issues raised; (c) the conduct of the relevant State authorities; and (d) what was at stake in the case for the claimant.

2. If the court finds that the length of proceedings was unreasonable and therefore that there was a violation of the right to prompt administration of justice, it shall decide whether the claimant should be afforded just satisfaction and determine the amount of the sum payable. It shall take into account, in particular, the period in excess of the reasonable length of time required for considering the case on the basis of the criteria mentioned in the previous subsection, as well as the compensation afforded the claimant by means of other measures provided for in the relevant legislation, including increasing the sum granted him or her by way of procedural expenses.

3. If the claim for just satisfaction is accepted, the expenses incurred by the claimant for lodging his or her claim and securing representation by a lawyer shall be refunded by the State. The amount of such expenses may not exceed the sum officially charged for lodging an appeal with the Supreme Administrative Court. In the event of rejection of the claim for just satisfaction, the claimant may be required to pay costs to the State of up to – depending on the specific circumstances of the case – five times the amount of the fiscal stamp fee. If the rejected claim is considered manifestly inadmissible or ill-founded, the claimant may be ordered to pay additional charges of up to ten times the amount of the fiscal stamp fee."

Section 58

Enforcement of the decision

"1. The decision to afford just satisfaction shall be enforced in accordance with the provisions on the payment order procedure within six months of its being served on the Minister of Finance. The sum payable in respect of just satisfaction may be paid by means of enforcement proceedings against the State from its private assets. Such enforcement proceedings may be implemented after expiry of the above-mentioned six-month deadline.

2. Collection of the sums needed to award individuals just satisfaction for unreasonable length of proceedings shall be guaranteed under a special State budget head. Where this is not the case, or if the sum earmarked is insufficient or exhausted, the budgetary allocation or transfer procedure shall be implemented in accordance with the relevant domestic provisions."

Section 59

Request to expedite proceedings [before the Supreme Administrative Court]

"A new section 33A entitled 'Request to expedite proceedings' shall be added to Presidential Decree No. 18/1989, providing as follows:

1. Any of the parties may apply for proceedings to be expedited if the hearing is not held within a time-limit of twenty-four months from the lodging of the claim for just satisfaction.

2. The president of the relevant division or his or her replacement shall examine the claim and schedule an earlier date for the hearing, having taken into consideration, *inter alia*, any delays in the proceedings at the different levels of jurisdiction or at previous stages in proceedings, as well as the court's caseload.

3. The request to expedite proceedings may be lodged in respect of claims brought after 16 September 2012, and an early hearing date must be scheduled within a maximum of six months, unless the claimant also contributed to the delay in proceedings. The hearing may only be postponed once, on serious grounds, and must not be scheduled for a date more than three months after the registration of the request to expedite proceedings.

4. For a five-year period starting on 16 September 2012, no hearing dates shall be scheduled within twenty-four months from the lodging of the claim in respect, for each day of hearing, of more than one-third of all the cases included on the relevant court's list of cases. The relevant criteria are those mentioned in the second subsection of this section, as well as the urgency of the case in question."

Section 60

Request to expedite proceedings [before administrative appeal courts and administrative courts]

"After Article 127 of the Code of Administrative Procedure a new Article 127A shall be added entitled 'request to expedite proceedings", providing as follows:

1. Any of the parties may apply for proceedings to be expedited if the hearing is not held within a time-limit of twenty-four months from the lodging of the claim for just satisfaction.

2. The president of the 'board of management' of the court, the judge heading this board or the judge delegated to this task shall examine the request and schedule an early date for the hearing, having taken into consideration the delays which occurred in the proceedings at the different levels of jurisdiction or at previous stages in proceedings, as well as the court's workload.

3. The request to expedite proceedings may be lodged in respect of claims brought after 16 September 2012, and an early hearing date must be scheduled within a maximum of six months, unless the claimant contributed to the delay in proceedings. The hearing may only be postponed once on serious grounds, and must not be scheduled for a date more than three months after the registration of the request to expedite proceedings.

4. For a five-year period starting on 16 September 2012, no hearing dates shall be scheduled within twenty-four months from the lodging of the claim in respect, for each day of hearing, of more than one-third of all the cases included on the relevant court's list of cases. The relevant criteria are those mentioned in the second subsection of this section, as well as the urgency of the case in question."

(c) Relevant case-law of the domestic courts

16. The first remedy attempted by an individual in order to obtain just satisfaction for the excessive length of proceedings before the Supreme

Administrative Court was brought before the same court on 20 April 2012. In this case the applicant complained of the length of proceedings which had lasted some eight years and had resulted in Supreme Administrative Court judgment no. 3267/2011. This judgment had been published on 20 October 2011 and then finalised and certified as authentic on 19 January 2012. The hearing on the claim for just satisfaction under Law no. 4055/2012 was held on 18 September 2012 and the corresponding Supreme Administrative Court judgment was delivered on 19 November 2012 (judgment no. 4467/2012). The Supreme Administrative Court concluded that a period of over eight years at a single level of jurisdiction had been excessive, having taken into account the conduct of the parties, the complexity of the legal issue raised by the case and what was at stake in the dispute. In so doing it made several references to the relevant case-law of the European Court. Furthermore, the Supreme Administrative Court awarded the applicant a sum of EUR 4,800 in respect of just satisfaction for the non-pecuniary damage which he had suffered. In calculating this sum it took account, *inter alia*, of the amounts which had previously been awarded by the Court in similar cases involving Greece, of the fact that the eight-year period had only involved one level of jurisdiction, of the margin of appreciation granted to national authorities in calculating compensation amounts payable for delays in judicial proceedings, and of the current standard of living in Greece.

17. Similarly, on 27 August 2012 an individual lodged a claim for just satisfaction with the Athens Administrative Court of Appeal on the grounds of the excessive length of administrative proceedings. In this case the applicant complained of the length of proceedings which had lasted over five years and had resulted in judgment no. 487/2012 delivered by the Athens Administrative Court of Appeal. This judgment had been published on 29 February 2012. The hearing on the claim for just satisfaction under Law no. 4055/2012 had initially been scheduled for 10 October 2012, and finally took place on 12 December 2012. The judgment of the Athens Administrative Court of Appeal on the claim for compensation was delivered on 28 January 2013 (judgment no. 1/2013). The Administrative Court of Appeal, having referred to the Court's case-law concerning the length of administrative proceedings and to Supreme Administrative Court judgment no. 4467/2012, concluded that the period of over five years at a single level of jurisdiction had been excessive. As in Supreme Administrative Court judgment no. 4467/2012, consideration was given to the conduct of the parties, the complexity of the legal issue raised by the case and what was at stake in the dispute. The Administrative Court of Appeal awarded the applicant a total of EUR 3,000 in respect of just satisfaction for the non-pecuniary damage which he had suffered.

18. According to the material in the case file, several other claims for compensation under section 53 of Law No. 4055/2012 are currently pending

with the Athens, Tripoli and Veria administrative courts, as well as with the Athens Administrative Court of Appeal and the Supreme Administrative Court.

COMPLAINTS

19. Relying on Article 6 § 1 and Article 13 of the Convention, the applicant company complained of what it saw as the excessive length of the proceedings which it had commenced before the Greek courts, and also of the lack of an effective domestic remedy for the situation complained of.

THE LAW

20. The applicant company alleged that the length of the proceedings which it had commenced before the administrative courts had been excessive and that the resultant situation had amounted to a denial of justice. Moreover, it complained that there was no domestic court with jurisdiction to hear and determine a complaint on this subject. It relied on Article 6 § 1 and Article 13 of the Convention, the relevant sections of which provide:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal established by law."

Article 13

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

A. The parties' submissions

1. The Government's submissions

21. The Government first of all submitted that the available domestic remedies had not been exhausted. They stated that the applicant company could have brought an action for damages as provided for in sections 53 to 58 of Law no. 4055/2012. They submitted that the aforementioned Law applied to the present case because it did not preclude the lodging of claims with the relevant courts within the deadline laid down in section 55 thereof, in respect of judicial proceedings which had been completed before it had entered into force. The Government relied on the relevant case-law of the domestic courts, notably judgment no. 4467/2012 of the Supreme Administrative Court. Further, the applicant company could have brought

the action for damages in question without waiting for judgment no. 451/2012 of the Supreme Administrative Court to be finalised and certified as authentic. On this latter point, they added that the company could, either on bringing its action for damages or at any stage of the proceedings before the Supreme Administrative Court, have complained of any delays in finalising judgment no. 451/2012.

22. The Government noted that the aim of the action for damages established by Law no. 4055/2012, following the aforementioned pilot judgment in the case of *Vassilios Athanasiou and Others*, had been to tackle the systemic problem of excessive length of administrative proceedings. Furthermore, they submitted that this new remedy fully complied with the effectiveness criteria established by the Court in that judgment. In particular, they asserted that sections 56 and 58 of the Law in question guaranteed the expedition of the proceedings and of the enforcement of the decision to award damages. They added that the procedural safeguards set out in Article 6 § 1 of the Convention had been fully observed and that the payment of the fiscal stamp fee as laid down in section 55 of the Law did not constitute an excessive burden on any claimant. Lastly, with reference to relevant judgments delivered by the Greek administrative courts in pursuance of Law no. 4055/2012, they submitted that the amount of the award was not insufficient as compared with the sums awarded by the Court in similar cases.

23. As to the merits of the complaint regarding the length of proceedings, the Government referred quite specifically to the proceedings before the administrative court of appeal. They contended that these proceedings had not been protracted and that in any case the applicant company had caused a delay of over one year between the adjournment of the case and the application for a new hearing date.

2. The applicant company's submissions

24. The applicant company submitted in reply that until judgment no. 451/2012 had been finalised and certified as authentic on 20 November 2012 it had been unable to bring the claim for compensation provided for by Law no. 4055/2012. It contended in particular that it had been unable to bring such a claim without knowing the exact duration of the proceedings, the date of whose conclusion was that of the finalisation of the aforementioned judgment. Moreover, with reference to the Court's case-law, the company asserted that the six-month deadline for bringing such an action had started on the date on which that judgment had been finalised. On this point, it submitted that Law no. 4055/2012 was at variance with the case-law requirements set out by the Court in cases against Greece concerning the length of administrative proceedings.

25. As to the merits of the complaint regarding the length of proceedings, the applicant company acknowledged that in the proceedings

before the Thessaloniki Administrative Court of Appeal it had been responsible for the delay lasting from 17 December 1986, the date scheduled for the hearing before that court, until 17 February 1988, when it had requested the resumption of the hearing.

B. The Court's assessment

1. General principles

26. By virtue of Article 1 of the Convention, which provides that "[t]he High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention", the primary responsibility for implementing and enforcing the rights and freedoms guaranteed by the Convention is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to the national systems safeguarding human rights. This subsidiary character is articulated in Article 13 and Article 35 § 1 of the Convention (see, among other authorities, *Balakchiev and Others v. Bulgaria* (dec.), no. 65187/10, § 49, 18 June 2013). At the same time, the principle of subsidiarity does not mean renouncing all supervision of the result obtained from using domestic remedies, otherwise the rights guaranteed by Article 6 § 1 of the Convention would be devoid of any substance. It should be remembered that the Convention is intended to guarantee not theoretical or illusory rights, but rights that are practical and effective (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 45, ECHR 2001-VIII). This is particularly true for Article 6 § 1 in view of the prominent place held in a democratic society by the right to a fair trial (ibid.).

27. The Court reiterates that the exhaustion of domestic remedies rule laid down in Article 35 § 1 of the Convention is based on the assumption, reflected in Article 13 of the Convention (with which it has close affinity) that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (see, for example, *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI, and *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, §§ 96-98, ECHR 2000-XI). The Court notes that the exhaustion of domestic remedies rule requires applicants, before bringing the matter before the Court, to use the legal remedies available in domestic law in order to afford the Contracting States the possibility of putting right the violations alleged against them (see, among other authorities, *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999-I).

28. However, the only remedies whose exhaustion is required under Article 35 § 1 of the Convention are those which relate to the breaches alleged and which at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory

but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII, and *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VIII). By the same token, these provisions must be applied with a degree of flexibility and without excessive formalism. According to the "generally recognised principles of international law", special circumstances may release the applicant from the obligation to exhaust the available domestic remedies. Furthermore, the exhaustion of domestic remedies rule is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, among other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate, as well as the applicants' personal circumstances (see *Scordino v. Italy* (dec.), no. 36813/97, ECHR 2003-IV).

29. Moreover, where the right to a hearing within a reasonable time is at issue, a remedy is "effective" if it can be used either to expedite a decision by the courts dealing with the case or to provide the litigant with adequate redress for delays that have already occurred (see *Sürmeli v. Germany* [GC], no. 75529/01, § 99, ECHR 2006-VII, and *Vassilios Athanasiou and Others*, cited above, § 54).

30. Inasmuch as the domestic legal system provides for the possibility of bringing an action against the State, such action must constitute an effective, adequate and accessible remedy for sanctioning the excessive length of a set of judicial proceedings. The adequacy of the remedy can thus be affected by excessive delays, and can also depend on the level of compensation provided (see *Paulino Tomás v. Portugal* (dec.), no. 58698/00, ECHR 2003-VII, and *Doran v. Ireland*, no. 50389/99, § 57, ECHR 2003-X (extracts)).

31. The effectiveness of a particular remedy is normally assessed with reference to the date on which the application was lodged. Nevertheless, the Court has approved a number of exceptions to this rule, justified by the specific circumstances of the cases in question, that is to say the enactment of new legislation to remedy the systemic problem of length of judicial proceedings (see *Brusco v. Italy*, (dec.) no. 69789/01, ECHR 2001-IX; *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII; and *Marien v. Belgium* (dec.), no. 46046/99, 24 June 2004).

2. Compatibility with the general principles of the appeal system put in place by the Greek Government

(a) General observations

32. The Court reiterates that in the above-mentioned case of *Vassilios Athanasiou and Others* it implemented the pilot-judgment procedure. It found, first of all, that the recurrent violations of Article 6 § 1 of the Convention in respect of the length of administrative proceedings had been continuing for several years and that this constituted a worrying structural problem capable of undermining public trust in the effectiveness of the judicial system (see *Vassilios Athanasiou and Others*, cited above, §§ 51 and 52).

33. In the same case the Court also held that there had been a violation of Article 13 of the Convention because the domestic legal system lacked a remedy by which the applicants could have secured their right to have their case heard within a reasonable time within the meaning of Article 6 § 1 of the Convention (ibid., § 35).

34. The Court also held in the aforementioned judgment, under Article 46 of the Convention, that the domestic authorities should introduce without delay a remedy or combination of remedies at the national level to guarantee proper and real redress for violations of the Convention caused by the excessive length of proceedings before the administrative courts (ibid., § 57).

35. In particular, in order to ascertain the effectiveness of the compensatory remedy in respect of excessive length of administrative proceedings, the Court established criteria appertaining both to the procedural safeguards during consideration of the remedy and to the calculation and payment of the compensation awarded. Where procedural safeguards are concerned, the Court held that a claim for compensation should be determined within a reasonable time and that the rules on such action should be in conformity with the fairness principle laid down in Article 6 of the Convention. It also held that the rules on legal costs should not impose an excessive burden on persons who had submitted well-founded cases. Moreover, as regards compensation, the Court ruled that it should be paid promptly, in principle within six months at the latest from the date on which the decision awarding the sum became enforceable. Furthermore, in the Court's view, the amount of the compensation should not be insufficient as compared with the sums awarded by the Court in similar cases (ibid., § 55).

36. In response to the above-mentioned pilot judgment, the Greek authorities have introduced two remedies, one preventive and the other compensatory, in accordance with sections 53 to 60 of Law no. 4055/2012, in order to provide "adequate and sufficient redress where proceedings before the administrative courts have not been considered within a

reasonable time, within the meaning of Article 6 § 1 of the Convention," (ibid., paragraph 5 of the operative part of the judgment). It is therefore incumbent on the Court to assess the effectiveness of these remedies in the meaning of Article 35 § 1 of the Convention.

(b) The preventive remedy

37. Reiterating that in this case as in many others, the best remedy in absolute terms is prevention (see *Sürmeli*, cited above, § 100), the Court considers that where the judicial system shows weaknesses *vis-à-vis* the reasonable time requirement set out in Article 6 § 1 of the Convention, a remedy enabling proceedings to be expedited is the most effective solution (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 74, ECHR 2006-V). The Court has on many occasions acknowledged the "effectiveness" of this type of remedy inasmuch as it helps accelerate decision-making by the court concerned (see *Gonzalez Marin v. Spain* (dec.), no. 39521/98, ECHR 1999-VII; *Holzinger (no. 1) v. Austria*, no. 23459/94, § 22, ECHR 2001-I; *Kunz v. Switzerland* (dec.), no. 623/02, 21 June 2005; and *Grzinčič v. Slovenia*, no. 26867/02, § 95, 3 May 2007).

38. In the instant case, the Court notes that the facility laid down in sections 59 and 60 of Law no. 4055/2012 for submitting a request for proceedings before the administrative courts to be expedited does indeed hasten the decision by the court concerned, in so far as additional conditions are in place to ensure that claims are dealt with more promptly. Where the competent judicial authority notes delays in the proceedings lasting more than twenty-four months after submission of the application, that authority must set down the case for hearing within no more than six months. The Court also notes that hearings can only be postponed once on serious grounds, and must be rescheduled within three months of the new hearing date. The Court therefore considers that the procedure for the implementation of the remedy in question guarantees that it will have a significant effect on the length of proceedings as a whole, either by speeding them up or by preventing them taking an unreasonably long time (see *Holzinger (no. 1)*, cited above).

39. The Court finds on that point that under sections 59 and 60 of Law no. 4055/2012, the competent judicial body must schedule an earlier date for the hearing, "having taken into consideration, *inter alia*, any delays in the proceedings at the different levels of jurisdiction or during previous stages in proceedings, as well as the court's caseload". It accordingly considers that it would not be unreasonable to take account of the specific features of each set of proceedings in examining a request for proceedings to be expedited, in order to ensure that the remedy in question can be implemented with some degree of flexibility. At the same time, the fact that the competent judicial body takes these features into consideration cannot be used to justify making acceptance of the request to expedite proceedings

discretionary when the criteria set out in sections 59 and 60 of Law no. 4055/2012 are fulfilled. Otherwise the effectiveness of this remedy would be undermined because it would not give litigants a personal right to compel the State to exercise its supervisory powers (see *Hartman v. Czech Republic*, no. 53341/99, § 66, ECHR 2003-VIII (extracts)).

40. In the light of the foregoing, and bearing in mind that the provisions of Article 35 § 1 of the Convention must be implemented with some degree of flexibility and without excessive formalism, the Court considers that the procedure for a request to expedite proceedings, as introduced into Greek legislation with effect from 16 September 2012 under sections 59 and 60 of Law no. 4055/2012, can be considered to be an effective remedy within the meaning of Article 35 § 1 of the Convention.

(c) The compensatory remedy

41. The Court observes that sections 53 to 58 of Law no. 4055/2012 provide for a remedy designed to award just satisfaction for damage caused by the unjustifiable length of administrative proceedings, with a view to guaranteeing, at the domestic level, the right to an administrative hearing within a reasonable time. It will assess the effectiveness of this compensatory remedy on the basis of the criteria already set out in the aforementioned *Vassilios Athanasiou and Others* pilot judgment (see paragraph 35 above). It reiterates at the outset that where the legislature or the domestic courts have agreed to play their proper role by introducing a domestic remedy, the Court will clearly have to draw certain conclusions from this. Where a State has taken a significant step by introducing a compensatory remedy, the Court must leave a wider margin of appreciation to the State to allow it to organise the remedy in a manner consistent with its own legal system and traditions and consonant with the standard of living in the country concerned (see *Cocchiarella*, cited above, § 80).

(i) Criteria relating to procedural safeguards

(α) Fairness of proceedings

42. The Court first of all notes that sections 54 and 56 of Law no. 4055/2012 provide for contentious proceedings for examining a claim for compensation which, in principle, comply with the procedural safeguards required under Article 6 § 1 of the Convention. Moreover, as regards the criteria applied by the domestic courts in assessing claims for compensation, the explanatory report on Law no. 4055/2012 and its abundant references to the Court's case-law make clear that the legislature's aim was to establish a remedy in conformity with the standards laid down by the Court in order both to guarantee the effectiveness of this remedy and to avoid an excessive workload for the competent courts (see paragraph 12 above). The Court thus notes that the operational criteria laid down by Law

no. 4055/2012 for examining claims for compensation on the grounds of length of administrative proceedings are as developed in the Court's relevant case-law: section 57 (1) of the Law provides that the conduct of the parties during the proceedings, the complexity of the case and what is at stake for the claimant are factors taken into account in deciding whether the length of proceedings was excessive (see, among many other authorities, *Vassilios Athanasiou and Others*, cited above, § 26). Lastly, it notes that in their judgments nos. 4467/2012 and 1/2013 respectively, the Supreme Administrative Court and the Athens Administrative Court of Appeal applied these criteria in assessing compensatory remedies under section 53 of Law no. 4055/2012.

43. Furthermore, the Court considers it necessary in particular to address three questions concerning the fairness of the impugned proceedings. First of all, an issue of impartiality might arise *vis-à-vis* the provisions of section 56 of Law no. 4055/2012, which provides that claims for compensation must be examined by a court at the same level of jurisdiction as that which adjudicated on the merits of the case. Secondly, the Law in question does not permit the claim for compensation to be lodged before the completion of the proceedings at each level of jurisdiction. Consequently, where the proceedings involve three levels of jurisdiction, the individual might be required to submit three separate claims for compensation – after the closure of proceedings at each level of jurisdiction. Lastly, and this point was raised by the applicant company in the present case, the remedy at issue is allegedly incompatible with the requirements of Article 6 § 1 of the Convention because section 55 (1) of Law no. 4055/2012 takes as the time-limit for instituting the proceedings in question the date of publication of the final decision given by the court in the proceedings whose length has been challenged.

44. First of all, as regards the impartiality issue, the Court notes that section 56 of Law no. 4055/2012 lays down a specific procedure for designating the competent judicial body at each level of jurisdiction responsible for examining the claim for compensation. It considers that this procedure and the mode of apportionment of jurisdiction do not in themselves raise any partiality issues. Furthermore, the Court reiterates that it is of fundamental importance in a democratic society that the courts inspire public confidence (see *Savino and Others v. Italy*, nos. 17214/05, 20329/05 and 42113/04, § 105, 28 April 2009). That requires the judicial bodies responsible for examining claims for compensation to ensure compliance with the safeguard on impartiality, using both a subjective approach, by endeavouring to ascertain the personal conviction or interest of a given judge in a particular case, and an objective approach, by determining whether he or she offered sufficient guarantees to exclude any legitimate doubt on this matter (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 118, ECHR 2005-XIII).

45. Secondly, as regards the issue of breaking down the claims for compensation by level of jurisdiction, the Court notes that in accordance with section 55 of the aforementioned Law, this remedy can only concern the length of proceedings at one level of jurisdiction and, moreover, can only be used at the end of the corresponding set of proceedings. It reiterates that in exercising its supervision under Article 6 § 1 of the Convention it can assess the reasonableness of the overall length of proceedings (see, among other authorities, *Lukenda v. Slovenia*, no. 23032/02, § 79, ECHR 2005-X). The Court therefore considers that it would be easier to make use of the compensatory remedy if domestic law enabled individuals to challenge the length of the whole proceedings, which may, depending on the type of case, involve several levels of jurisdiction.

46. At the same time the Court must take into account the margin of appreciation enjoyed by States Parties to the Convention in organising a domestic remedy in a manner consistent with their own particular legal system. On this latter point, it notes that the explanatory report on Law no. 4055/2012 provides a reasonable explanation concerning the manner of implementation of the compensatory remedy. The report states that it was logical to require the closure of proceedings at each level of jurisdiction before lodging the claim for compensation, thus averting the risk of superfluous appeals since claimants would retain the right, at each level of jurisdiction, to complain of the length of all the stages in proceedings – including those which had led to an interim decision – on completion of each stage. Furthermore, it should be noted that the legislation in question did not provide only for a compensatory remedy but also for an acceleratory procedure, as laid down in sections 59 and 60 of Law no. 4055/2012.

47. Lastly, as regards the starting date for the six-month time-limit set out in section 55(1) of Law no. 4055/2012 for applying to the competent court, it is true that as regards the time-limit for lodging applications in relation to proceedings before the Supreme Administrative Court, the Court takes the date on which the judgment in question was finalised and certified as authentic (see *Vassilios Athanasiou and Others,* cited above, § 23). The Court has previously noted on this point that in Greek law, the parties do not have full access to the content of the judgment of the Supreme Administrative Court until the date on which they can obtain a certified copy of the judgment. Furthermore, the finalisation of the judgment and its certification as authentic are necessary for any action required to secure its enforcement (ibid.).

48. Nevertheless, the Court takes note of the Government's argument to the effect that under the domestic legal system judicial proceedings are considered completed on the date of publication of a judicial decision. Given that the Court takes account of the specificities of the domestic legal system under which a particular remedy is available in assessing its effectiveness (see paragraph 28 above), this discrepancy cannot by itself

imply the ineffectiveness of the compensatory remedy. The Court notes that this choice on the part of the legislature is in line with legal practice in the respondent State. This is especially relevant because the domestic courts do not exclude consideration of any delay in the finalisation and certification of the judgment. In its judgment no. 4467/2012, for instance, the Supreme Administrative Court did not rule that the three-month period which had elapsed between the publication of the judgment on the merits in question and its finalisation in any case lay outside the period to be taken into account: instead, it considered that this could not be the case because the judgment in question was one rejecting the claims and consequently no issues of enforcement arose for the claimant.

49. Moreover, the Court does not consider it decisive that the arrangements for using the compensatory remedy laid down in Law no. 4055/2012 do not correspond exactly to the criteria set out by the Court, provided that the domestic courts award amounts which are not unreasonable as compared with those awarded by the Court in similar cases (see, on this point, *Cocchiarella*, cited above, § 105). In any event, since the burden of proof as to the effectiveness of the remedies in practice remains on the Greek Government, the Court's position may be subject to review in the future (see *Grzinčič,* cited above, § 108).

(β) Promptness of proceedings

50. The Court observes that the legislature has adopted measures to ensure that claims are determined within a reasonable period of time: under section 56(5) of the Law in question, the decision on the claim for compensation is published within two months at the latest after the hearing, which, in accordance with section 56 (1), must be scheduled within five months at the latest after the submission of the claim. Furthermore, as mentioned in the explanatory report on Law no. 4055/2012, the aim of promptness is also pursued by the fact that the claim for compensation must be mandatorily examined by the competent court, under section 56(1) of the aforementioned Law, even where the State fails to file its observations with that court (see paragraph 13 above).

51. The Court notes that according to the case-law of the Greek courts, the competent courts would appear to be meeting the above-mentioned deadlines. For instance, in connection with the proceedings leading up to Supreme Administrative Court judgment no. 4467/2012, the claim for compensation was submitted on 20 April 2012, the hearing took place on 18 September 2012, and the aforementioned judgment was delivered on 19 November 2012. Similarly, in the proceedings leading up to judgment no. 1/2013 of the Athens Administrative Court of Appeal, the claim for compensation was submitted on 27 August 2012, the hearing took place on 12 December 2012 and the judgment was published on 28 January 2013.

γ) Procedural expenses

52. Where procedural expenses are concerned, the Court reiterates that it has never ruled out the possibility held that the interests of the proper administration of justice may justify imposing a financial restriction on a person's access to a court (see *Kreuz v. Poland*, no. 28249/95, § 59, ECHR 2001-VI). Nonetheless, restricting access to a court can only be reconciled with Article 6 § 1 of the Convention if it pursues a legitimate aim and if there is a reasonable relationship of proportionality between the means used and the aim pursued (see *Weissman and Others v. Romania*, no. 63945/00, § 36, ECHR 2006-VII (extracts)).

53. In the present case the Court notes that under section 55(4) of Law no. 4055/2012, the amount of the fiscal stamp fee payable for bringing a claim for compensation is EUR 200, an amount which is not in itself unreasonable. The Court also notes that in accordance with section 57(3) of Law no. 4055/2012, if the claim for just satisfaction is accepted, the court fees which the applicant paid in order to submit his claim and to secure legal representation are refunded by the State. As regards the additional expenses mentioned in section 57(3) in the event of dismissal of the claim for compensation, the maximum amount of which ranges between five and ten times the value of the fiscal stamp fee, the Court does not consider those expenses excessive. Their main aim is to discourage the use of manifestly ill-founded or inadmissible remedies as the latter result in increasing the strain on the already overburdened administrative courts. It should be noted in this connection that the law does not require these rules to be applied inflexibly provided that the competent court has discretion to order the payment of the amounts in question upon consideration "of the particular circumstances of a given case". Accordingly, the domestic court can assess such factors as the person's solvency and ensure that the application of the aforementioned provisions does not implicitly oblige individuals to abandon the compensatory remedy (see *Weissman and Others*, cited above, §§ 37 and 40).

(ii) Criteria for calculation and payment of compensation

(α) Amount of compensation awarded

54. The Court notes that in its judgment no. 4467/2012, the Supreme Administrative Court awarded the applicant the sum of EUR 4,800 in respect of proceedings which had been before it for eight years, in respect of the non-pecuniary damage suffered. Moreover, in its judgment no. 1/2013, the Athens Administrative Court of Appeal awarded the applicant the sum of EUR 3,000 in respect of non-pecuniary damage sustained in proceedings which had lasted a total of five years. The Court reiterates that it has previously accepted that a State which has introduced a number of remedies, one of which is designed to expedite proceedings and one to afford

compensation, may award amounts which, although lower than those awarded by the Court, are not unreasonable, on condition that the relevant decisions, which must be consonant with the legal tradition and the standard of living in the country concerned, are speedy, reasoned and executed very quickly (see *Cocchiarella*, cited above, § 97).

55. In the instant case the Court observes that the amounts awarded under the aforementioned administrative court judgments vary between 60% and 80% of the Court's usual awards in similar Greek cases. It does not consider such awards for non-pecuniary damage unreasonable given that it has already ruled that the new compensatory remedy affords the procedural guarantees set out in the judgment *Vassilios Athanasiou and Others* (see paragraphs 42-53 above, and *Tomašić v. Croatia*, no. 21753/02, § 32, 19 October 2006). The Court also takes into account the fact that this new remedy is closer and more accessible than an application to the Court, is faster and is processed in the applicant's own language, thus offering advantages that need to be taken into consideration (see *Cocchiarella*, cited above, § 139).

(β) Diligence in the payment of compensation

56. The enforcement of judicial decisions to grant just satisfaction in cases of excessive length of administrative proceedings is covered by section 58 of Law no. 4055/2012. In particular, under the first subsection of this section, the decision to grant just satisfaction must be enforced within six months of its being served on the Minister of Finance. The Court considers that the aforementioned provision guarantees prompt enforcement of decisions relating to the claims for compensation in question. Moreover, it notes two additional factors present in the law in question guaranteeing timely enforcement of such decisions. Firstly, under section 56(5) of this Law, no appeal lies against a decision given by the competent court on a claim for compensation. Secondly, under section 58(1) of the Law, claimants can bring enforcement proceedings against the State if they has not received the compensation within six months.

57. The Court concludes from this that the compensatory remedy introduced into the Greek legal system under Law no. 4055/2012 can be deemed an effective and accessible remedy by which to submit complaints of infringement of the "reasonable time" requirement in judicial proceedings before the administrative courts.

(d) General conclusion

58. In the light of these considerations, the Court is convinced that the remedies speeding up proceedings and providing compensation for litigants are effective remedies in that they can both prevent the continuation of the alleged violation of the applicant's right to have his case heard without any excessive delay and provide appropriate redress for violations which have

already occurred. Furthermore, the recent decisions by administrative courts concerning awards of compensation for excessive length of proceedings before the administrative courts show that the compensatory remedy in question is effective not only *de jure* but also *de facto*. Consequently, this remedy fulfils the obligation on the respondent State to provide effectives remedies in respect of alleged violations of the individual rights enshrined in the Convention.

3. Assessment of the applicant company's case

59. In the present case, the judicial proceedings began on 20 May 1986 with an application to the Thessaloniki Administrative Court of Appeal and finished on 20 November 2012 when judgment no. 451/2012 of the Supreme Administrative Court was finalised and certified as authentic. The Court will examine the proceedings before each of these two courts separately because under section 55(1) of Law no. 4055/2012, each claim for compensation must be lodged separately at each level of jurisdiction. The Court must therefore determine whether the compensatory remedy was available at each of the levels of jurisdiction in question.

(a) As to the proceedings before the Thessaloniki Administrative Court of Appeal

60. The Court notes that the proceedings before the Thessaloniki Administrative Court of Appeal ended on 29 July 1988 with the publication of judgment no. 132/1988. Clearly, given that Law no. 4055/2012 entered into force on 2 April 2012, the applicant company could have lodged neither an application for proceedings to be expedited as provided for in section 60(3) nor the compensatory remedy provided for in sections 53 and 55 of that Law, since the aforementioned remedies were unavailable at the time. Therefore, the Court must dismiss the Government's objection as to inadmissibility based on non-exhaustion of domestic remedies in connection with the proceedings before the Thessaloniki Administrative Court of Appeal.

61. As regards the merits of the complaint, the Court notes that the impugned proceedings lasted some two years and two months. Given that the applicant company, as it has itself acknowledged, was responsible for a delay of over one year, that is to say from 17 December 1986 to 17 February 1988 (see paragraph 25 above), the Court considers that the period of proceedings before the Thessaloniki Administrative Court of Appeal was not unreasonable.

It follows that this part of the application must be rejected as manifestly ill-founded, in pursuance of Article 35 §§ 3 (a) and 4 of the Convention.

(b) As to the proceedings before the Supreme Administrative Court

62. The Court notes that under section 59(3) of Law no. 4055/2012 a request for proceedings to be expedited can only be submitted in respect of remedies used prior to 16 September 2012. In the present case, consequently, the preventive acceleration remedy was not available to the applicant company in respect of the proceedings before the Supreme Administrative Court.

63. As to the compensatory remedy, the Court notes that the present application was lodged with the Court on 23 June 2010, that is to say before the entry into force of Law no. 4055/2012 on 2 April 2012. It first of all considers that in view of the nature of the Law and the context in which it came into force, there are legitimate grounds for making an exception to the general principle that the effectiveness of a given remedy must be assessed with reference to the date on which the application is lodged (see paragraph 31 above).

64. Furthermore, the Court notes that the Supreme Administrative Court's judgment no. 451/2012 was published on 6 February 2012, that is to say before the entry into force of Law no. 4055/2012. It notes that the Government's argument to the effect that the Law in question does not preclude applications to the competent courts regarding judicial proceedings completed before its entry into force within the time-limit set out in section 55 of the Law is confirmed by the case-law of the administrative courts, particularly judgments nos. 4467/2012 of the Supreme Administrative Court and 1/2013 of the Athens Administrative Court of Appeal (see paragraphs 16-17 above). In the instant case, therefore, the applicant company could have applied to the Supreme Administrative Court between 2 April 2012, the date of entry into force of Law no. 4055/2012, and 6 August 2012, the date on which the time-limit set out in section 55(1) of the Law expired.

65. The Court also notes that in the light of its observations on the issue of the finalisation of Supreme Administrative Court judgment no. 451/2012 (see paragraph 48 above), the applicant company could also, on bringing its action and at any time during the compensation proceedings provided for in section 55(1) of Law no. 4055/2012, have complained of any delays in the finalisation and certification of that judgment. It should also be noted that by 6 February 2012, the date of publication of the judgment in question, the proceedings before the Supreme Administrative Court had already lasted over twenty-three years, which is, in principle, an excessive length of time for one single level of jurisdiction. Consequently, on the date of entry into force of Law no. 4055/2012, the applicant company could legitimately have lodged a complaint with the Supreme Administrative Court under that Law concerning the delays in these proceedings, without awaiting the finalisation of the aforementioned judgment.

66. In the light of the foregoing, particularly the Court's observations on the effectiveness of the compensatory remedy at issue (see paragraphs 41-57

above), the Court concludes that in the present case the applicant company was required under Article 35 § 1 of the Convention to have recourse to this remedy. It considers that the mere fact that the applicant company had doubts as to the prospects of success of this remedy – which, nevertheless, was not obviously futile - is not a valid reason for failing to use it (see *Akdivar and Others v. Turkey*, 16 September 1996, § 71, *Reports of Judgments and Decisions* 1996-IV). Moreover, the Court notes that no exceptional circumstances capable of exempting the applicant company from the requirement to avail itself of this domestic remedy have been identified in the instant case.

67. Consequently, in view of the applicant company's failure to resort to the aforementioned remedy, its complaint under Article 6 § 1 of the Convention must be dismissed for failure to exhaust domestic remedies, in pursuance of Article 35 §§ 1 and 4 of the Convention, in connection with the proceedings before the Supreme Administrative Court.

68. As to the complaint under Article 13 of the Convention, in the light of the foregoing considerations (see paragraphs 61 and 66 above) it is manifestly ill-founded and must be rejected in pursuance of Article 35 §§ 3 (a) and Article 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President