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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

PRELIMINARY DRAFT REPORT ON NATIONAL REMEDIES IN RESPECT OF EXCESSIVE LENGTH OF PROCEEDINGS[1]

[1] The questionnaires per country reproduced in this document contain only the questions to which there were responses. For the full questionnaire see the document CDL(2004) 124.

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Introduction

1. Following the request by Romania during the Conference on "The European Convention on Human Rights : from integrating standards to shaping solutions" (Bucharest, 8-9 July 2004), the Venice Commission decided to entrust the Secretariat with the task of carrying out the comparative study on national remedies with respect to allegations of excessive length of administrative, civil and criminal proceedings, with a view to proposing possible improvements in their availability and effectiveness.

2. The scope of this study being limited to the "reparation" aspects of the issue of the excessive length of proceedings, the questions related to the standards of a "reasonable time" of proceedings, and the causes of delays shall not be addressed here. The "preventive" aspects of this issue are the object of the work of the European Commission for the Efficiency of Justice (CEPEJ). The CEPEJ was established by the Council of Europe Committee of Ministers in 2002 with the aim to address the major problems of the judicial systems of member States and define ways to improve their efficiency and functioning[2]. In 2004, the CEPEJ set out the Framework Programme entitled "A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe"[3], which recommended lines of action aimed at realising this objective. The Task Force on timeframes of proceedings was charged with the task of translating these lines of action into concrete measures enabling them to improve procedure timeframes in the member States[4].

3. The present report was prepared mainly on the basis of the information provided by the Venice Commission members in reply to the questionnaire prepared by the Venice Commission Secretariat in co-operation with Romania (CDL (2004) 124). In preparing this report, the Secretariat ensured the co-ordination between its own work and the work done by other Council of Europe services in this field, in particular, the Secretariat of the DH-PR as well as the Secretariat of the CEPEJ.

A The right to an effective remedy before national authority in respect of allegedly unreasonable length of proceedings: international legal framework

1. European Convention on Human Rights and the case-law of the European Court of Human Rights

4. *Ubi jus ibi remedium*. When there is a right there should be a remedy. The effectiveness of human rights depends on the effectiveness of remedies provided for their violation. Remedies for violations of rights, which entail recourse to an independent authority competent to ensure respect for those rights, exist within most if not all legal systems. The right to a remedy for alleging a violation of a fundamental right or freedom is also a right expressly guaranteed by almost all international human rights instruments[5].

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[2] See the Committee of Ministers Resolution Res (2002) 12.

[3] CEPEJ (2004) 19 Rev.

[4] See «Terms of reference of the Working Group on evaluation of judicial systems (CEPEJ-GT-EVAL)", adopted by the CEPEJ-GT-2004 .

[5] See for example, Article 8 of the Universal Declaration on Human Rights and Freedoms, Article 2.3 of the International Covenant on Civil and Political Rights, Article 6 of the Convention on Elimination of Racial Discrimination, or Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women, and Article 13 of the Convention.

5. The *international* guarantee of a remedy implies that a State has the primary duty to protect human rights and freedoms first within its own legal system. Article 1 of the European Convention on Human Rights (hereinafter referred to as: the "Convention") requires the Contracting States to "secure" the rights and freedoms under the Convention. The European Court on Human Rights (hereinafter: "the Court") exerts its supervisory role subject to the principle of subsidiarity[6], i.e. only when domestic remedies fail consistently or are systematically unavailable. The right to a remedy established in Article 13 of the Convention stems directly from this principle.

6. Pursuant to Article 13 of the Convention, "Everyone whose rights and freedoms as set forth in this Convention are violated should have an effective remedy before a national authority notwithstanding that the violation has been committed by a person acting in an official capacity".

7. Although it appears to present a fairly straightforward legal concept, the wording of Article 13 has caused many problems of interpretation for the Convention organs. In fact, both the former European Commission for Human Rights and the Court, were somehow inconsistent in their analysis of issues raised under Article 13. Nevertheless, the scope and the contents of this important article are today clearly established.

8. As to its requirements, Article 13 requires that when a claim of violation under the Convention is an "*arguable*" one, a remedy both to have it decided and to obtain appropriate relief must be available[7]. The "national authority" competent for providing the remedy must not necessarily be a *judicial* authority. On the other hand, the powers and procedural guarantees of an authority will be relevant when determining whether a particular remedy is effective. Any such remedy must be effective in practice as well as in law[8]. It is important to stress that the effectiveness of a national remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome. Effectiveness should be assessed in terms of alleged violation of right guaranteed by the Convention in relation to assessing the cumulating of remedies available in the domestic law. Indeed, even when none of the remedies available to an individual would satisfy the requirements of Article 13 taken alone, the *aggregate of remedies* provided for under domestic law may be considered as "effective" in terms of this article[9].

9. Article 13 however, does not go as far as to guarantee a remedy allowing a domestic law as such to be challenged before a national authority on the ground of being contrary to the Convention or to equivalent domestic legal norms[10]. It does not require incorporation of the Convention into the domestic law of States Parties either.

10. Regarding its scope of application, Article 13 does not contain a general guarantee of legal protection ; it exclusively refers to those cases in which the alleged violation concerns one of the rights and freedoms guaranteed by the Convention. It cannot be invoked independently but only in conjunction with one or more articles of the Convention or of one of its Protocols. Naturally,

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[6] See *Z. and Others v. the UK*, judgement of 10/5/2001, ECHR 2001-V, § 103.
[7] See among others, *Klass and Others v. Federal Republic of Germany*, judgement of 6/09/1978, Series A no 28, §64 ; *Kaya v. Turkey*, judgement of 19/02/1998, Reports 1998-I, pp. 329-30, § 106.
[8] See among others, *Ilhan v. Turkey*, judgement of 27/06/2000,
[9] See among many others, *Silver and Others v. UK*, judgement of 25/03/1983, Series A no 61, § 113 and *Chahal v. UK,* judgement of 15/11/1996, Reports 1996-V, pp. 1869-70, §145.
[10] See among others, *James and Others v. UK*, judgement of 21/02/1986, Series A no 98, §85.

the scope of the obligation under Article 13 will vary depending on the nature of the applicant's complaint under the Convention.

Relationship between Article 13 and Article 6.1 of the Convention

11. Establishing the right of a person to a recourse for ensuring respect for its rights, Article 13 has a particular relationship with Article 6.1 of the Convention, which provides for procedural safeguards, rights of the defence and fair trial[11]. Yet, in spite of the potential contained in a complementary application of the two articles, until fairly recently the Convention institutions followed a more simplistic approach. Considering that the requirements of Article 6.1 were more strict than those of Article 13, in case of a violation of Article 6.1, the Strasbourg institutions had not deemed it necessary to determine whether there has also been a failure to observe the requirements of Article 13 as those were entirely "absorbed" by those of the former[12]. This was the case when the claim concerned the absence, within the national legal system, of a body competent to examine the claim that the length of proceedings was excessive[13], or of any means to shorten or terminate the excessive length of procedure[14].

12 Such reasoning was not without critics even within the Court itself; in their separate opinion in *Malone v. UK* case, while recognizing the "obscure" nature of Article 13, judges Matscher and Pinheiro Farinha contested the inadequacy of the arguments put forward by the Court to justify a non examination of the allegation of a breach of this Article[15]. They however noted that the "absorbtion argument" may be correct in so far as the other procedural guarantees of Article 6 of the Convention are concerned. In fact, the national laws generally do provide for specific procedural remedies which are "stronger" than that of Article 13 in respect of other procedural guarantees of Article 6, whereas to a wide extent this is not the case regarding the excessive

[11] In accordance with Article 6.1, « *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law /…/* ».

[12] See *Airey v. Ireland*, judgement of 9/10/1979, Series A no 32, § 35. Another obstacle to the applicability of Article 13 to the issue of the excessive length of proceedings, put forward by the former European Commission on Human Rights was its non application in cases where the alleged violation took place in the context of *judicial* proceedings (Report on *Bartolomeo Pizzetti v. Italy*, of 10/12/1991, volume 257-C, Series A of the Publications of the Court).

[13] See for example, *Giuseppe Tripodi v. Italy*, judgement of 25/01/2000, no 40946/98, § 15.

[14] See for example, *Bouilli v. France*, judgement of 7/12/1999, § 27.

[15] "…..We recognise that Article 13 (art. 13) constitutes one of the most obscure clauses in the Convention and that its application raises extremely difficult and complicated problems of interpretation. This is probably the reason why, for approximately two decades, the Convention institutions avoided analysing this provision, for the most part advancing barely convincing reasons. It is only in the last few years that the Court, aware of its function of interpreting and ensuring the application of all the Articles of the Convention whenever called on to do so by the parties or the Commission, has also embarked upon the interpretation of Article 13 (art. 13). We refer in particular to the judgements in the cases of Klass and Others (Series A no. 28, paras. 61 et seq.), Sporrong and Lönnroth (Series A no. 52, para. 88), Silver and Others (Series A no. 61, paras. 109 et seq.) and, most recently, Campbell and Fell (Series A no. 80, paras. 124 et seq.), where the Court has laid the foundation for a coherent interpretation of this provision. Having regard to this welcome development, we cannot, to our regret, concur with the opinion of the majority of the Court who felt able to forego examining the allegation of a breach of Article 13 (art. 13). In so doing, the majority, without offering the slightest justification, has departed from the line taken inter alia in the Silver and Others judgement, which was concerned with legal issues very similar to those forming the object of the present case. Indeed, applying the approach followed in the Silver and Others judgement. In the present case, and to the same extent, to have arrived at a finding of a violation of Article 13 (art.13*)", Malone v. UK*, judgement of 2/08/1984, A82.

length of proceedings. It is with respect to this specific part that Article 13 has its "*raison d'être*".

13. The change in reasoning with regard to the right to effective remedy in respect of the excessive length of proceedings came in 2000, with the *Kudla v. Poland* case[16].

14. In this judgement, the Court considered "in the light of the continuing accumulation of applications before it concerning the alleged violation of the right to a hearing within reasonable time" that "the time has come to review its case-law" according to which in case of a violation of that right (art. 6.1), there would be no separate examination of an alleged breach of the right to an effective remedy (art. 13)[17]. In support of this review the Court noted the "important danger that exists for the rule of law within national legal orders when excessive delays in the administration of justice occur in respect of which litigants have no domestic remedy" already pointed out in its previous case-law related to this matter[18]. It also underlined the subsidiary character of the machinery of complaint to the Court recalling that by virtue of Article 1 of the Convention, "the primary responsibility for implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities"[19]. This subsidiary character of the Strasbourg system of complaint is articulated precisely in Articles 13 and 35.1 of the Convention.

15. The purpose of Article 35.1 of the Convention, which sets out the rule on exhaustion of domestic remedies, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them *before* those allegations are submitted to the Court[20]. The rule in Article 35.1 is based on the assumption, reflected in Article 13 that there is an effective domestic remedy available in respect of the alleged breach of an individual right guaranteed by the Convention.

16. In the light of these arguments, the Court concluded that "the right of an individual to trial within reasonable time will be less effective if there exists no opportunity to submit the Convention claim first to a national authority and the requirements of Article 13 are to be seen as *reinforcing* those of Article 6.1, rather then being absorbed by them"[21].

Standard of "effectiveness" for the purposes of Article 13

17. With respect to the contents of Article 13, in the *Kudla v. Poland* case, the Court made clear that a remedy for complaining about excessive length of proceedings does not as such involve an appeal against the "determination" of any criminal charge or of civil rights and obligations. It reaffirmed its previous case-law pursuant to which this provision guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order (see *supra*, para. 8)[22].

[16] Judgement of 26/10/2000.
[17] To determine whether or not the time is «reasonable» within the meaning of Article 6.1 of the Convention, the court has laid down four main criteria: the complexity of the case, the applicant's conduct, the conduct of the relevant authorities (including the courts), and what is at stake for the applicant. It considers each case individually in the light of these criteria, which explains why the Court's decisions cannot be used to extrapolate standard times for different categories of case.
[18] *Ibidem*, §148. (See for example, *Bottazzi v. Italy*, judgement of 28/07/1999, ECHR 1999-V, § 22).
[19] *Ibidem*, §152.
[20] *Ibidem*, § 152. (See for example, *Selmouni v. France*, ECHR 1999-V, § 74).
[21] *Kudla v. Poland*, *cit*., § 152 (emphasis added).
[22] *Ibidem*, cit., § 157.

18. The Contracting States do have, provided that the requirements of the Convention have been respected and subject to monitoring by the Committee of Ministers, some discretion as to t*he manner in which they provide the relief* required by Article 13[23]. Respecting the margin of appreciation given to the Contracting States, the Court restrained from determining a specific form or type of an "effective remedy" for the purposes of Article 13. It is an *obligation of result* that is required by the Court: it will be considered to conform to the requirements of this article a remedy or a combination thereof provided it is capable of speeding up proceedings or preventing them becoming unreasonably long or providing an applicant with adequate redress where there was already a substantive delay of proceedings[24].

19. These standards were reaffirmed and further elaborated in the subsequent case-law of the Court.

20. The first two conditions are not cumulative ; a remedy is effective if it can result in *either* preventive *or* compensatory relief[25]. The fact that a remedy is purely compensatory does not affect its effectiveness as long as it remains itself an effective, sufficient and accessible means with regard to the excessive length of judicial proceedings. In this respect, the Court emphasized the need for the national court, which is competent to decide on these actions to deal with them in an expedient way as the excessive delays in this regard could affect the effectiveness of an action introduced to establish liability of the State[26].

21. Such a compensatory remedy should equally apply to cases where the proceedings in question are pending and cases where proceedings have already ended at domestic level[27].

22. The sufficiency of the purely compensatory remedy may also depend on the level of given compensation. In one of its recent decisions related to the length of proceedings in Italy, the Court questioned the effectiveness of a claim for compensation under the Pinto Act[28] on this basis. Referring to an extensive case-law of the Italian Court of Cassation on the matter, the Court deplored the fact that the right to a hearing within a reasonable time has not been regarded as a fundamental right and the Convention and the Strasbourg case-law are not directly applicable in relation to just satisfaction. Although recognizing that there is no formal obligation on Contracting States to incorporate the Convention in their domestic legal system, it stressed that it follows from the principle of subsidiarity that the national courts must, where possible, interpret and apply domestic law in accordance with the Convention. The amounts awarded to the applicants by the Italian courts that were significantly lower than the amounts given in similar cases by the Court itself were therefore considered inadequate and the remedy ineffective[29].

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[23] See for example, *Kaya v. Turkey*, judgement of 19/02/1998, ECHR 1998-I, §106.
[24] *Kudla v. Poland, cit*. §159.
[25] See for example, *Mifsud v. France*, decision of 11/09/2001, Reports 2002-VIII, § 17, *Djangozov v. Bulgaria*, judgement of 8/07/2004, no 45950/99, § 47, *Paulino Tomas v. Portugal*, Decision of 22/05/2003, Reports 2003-VIII, p.9.
[26] See *Paulino Tomas v. Portugal*, *cit*. p. 9.
[27] See among others, *Mifsud v. France*, *cit* , §17, *Soc v. Croatia*, judgement of 9/05/2003, no 47863/99, §93.
[28] It may be useful to recall that in 2001, further to the growing number of applications concerning the excessive length of procedures, the Italian authorities adopted the «Pinto Act», which established a specific domestic remedy allowing applicants to obtain an appropriate relief in the form of financial compensation before the Court of Appeal. Starting from the *Brusco v. Italy* case, the Court considered this claim as an effective remedy for the purposes of Articles 13 and 35.
[29] *Scordino v. Italy*, decision of 17/03/2003, ECHR 2003-IV, pp. 14-15.

23. In addition, to be "effective" for the purposes of Article 13 of the Convention, a remedy must have acquired a sufficient legal certainty to enable and oblige an applicant to use it at the date on which an application is lodged with the Court[30]. The right to appeal to a higher authority with respect to the length of proceedings will not be considered as an effective remedy in the absence of a specific procedure, and when a result of such appeals depend on the *discretion* of the concerned authority and do not give applicants a right to compel the State to exercise its supervisory powers[31]. The Court has indeed considered that an application to the Administrative Court against the administration's failure to decide cannot be regarded as "effective" with respect to the alleged unreasonable duration of the proceedings if "it cannot give rise neither to any finding as regards the length of proceedings as a whole nor to redress when an unreasonable delay has already occurred"[32]. On the other hand, it was considered to conform to a standard of "effectiveness" by the Court as an interlocutory application by which the higher authority is requested to fix a time-limit for taking a procedural measure which the competent court or public prosecutor has failed to take[33].

24. In other words, a national "complaint about delays" must not be theoretical: there should exist a sufficient case-law proving that the application can actually result in the acceleration of a procedure or the monetary compensation[34]. In the absence of the case-law relating to a "complaint about delays", such a specific remedy could nevertheless be considered "effective" when the wording of the legislation in question clearly indicates that it is specifically designed to address the issue of the excessive length of proceedings before the domestic authorities[35].

25. Finally, a recourse based on the direct applicability of the Convention in national legal system cannot be regarded with a sufficient degree of certainty as an effective remedy[36].

2. The work of the Committee of Ministers

a) The work on a case by case basis[37]

26. In pursuance of Article 46.2 of the Convention, the task of controlling the execution of the judgements issued by the Court lies with the Committee of Ministers. It has a general duty to scrutinize all measures taken by the State concerned to abide by the final judgement of the Court.

27. Like the State's obligation to execute, the power of supervision of the Committee of Ministers extends to measures pertaining to the individual case[38], general measures[39] and the

[30] See for example *Rachevi v. Bulgaria,* judgement of 23/09/2004, no 47877/99, §67.
[31] See, *Djangozov v. Bulgaria, Horvat v. Croatia*, judgement of 26/07/2001, Reports 2001-VIII, § 47, *Hartman v. The Czech Republic,* judgement of 10 July 2003,§ 82.
[32] See *Basic* and case respectively. However, the Convention organs hold that in case of doubt as to the effectiveness of a remedy, it has to be used (see *Raif v. Greece*, application no. 21782/93, Commission decision of 26 June 1995, Decisions and Reports 82-A, p. 5, and *Akdivar and Others v. Turkey*, judgement of 16 September 1996, *Reports* 1996-IV, p. 1211, § 68).
[33] See *Tomé Mota v. Portugal* (dec.), ECHR 1999-IX.
[34] *Rachevi v. Bulgaria*, § 64, *Horvat v. Croatia*, §§ 37-39, *Kangasluoma v. Finland*, §48.
[35] See *Slavicek v. Croatia*, decision of 4/07/2002, p.3. See also *Ohlen v. Denmark*, decision of 6/03/2003 (in this decision the Court considered that «*the wording of the invoked sections of the Act does not provide lucidity as to speculation on the effectiveness of such an action in a case like the present one*»), p. 8.
[36] Rachevi v. Bulgaria, cit. § 64.
[37] See Venice Commission's opinion on the implementation of the judgements of the European Court of Human Rights (CDL-AD (2002) 34, §§ 28-33 and §§ 41-42.

award of just satisfaction. The Committee of Ministers issues a final resolution when it deems to have discharged its functions under Article 46.2.

28. The supervisory function of the Committee of Ministers is a collective responsibility. This means that the execution of a particular judgement is not only the legal obligation of the State concerned, but a common concern. Consequently, the position and practice of the Committee of Ministers towards its supervisory role concerning the execution of Court judgements reflect the lowest common multiple of the opinions of the Member States and of their determination to have this crucial part of the mechanism function effectively.

29. The main tool at the disposal of the Committee of Ministers is peer pressure. It has also had recourse, and recently more and more so, to pressure by publicity[40]. The adoption of "interim resolutions" is instrumental in exercising pressure on the Government concerned by making public the fact that the State has not yet executed the judgement.

30. A procedure of monitoring in respect of commitments may also be opened before the Committee of Ministers in respect of a State which refuses to execute a judgement of the Court. In 2000, the Committee set up a special annual monitoring procedure concerning the reform of justice aimed at solving the problem of the excessive length of proceedings in Italy[41]. In this Interim Resolution, by recalling that "excessive delays in the administration of justice constitutes important danger, in particular for the respect of the rule of law", the Committee underlined the importance of taking "general measures preventing new violations of the Convention similar to those already found".[42]

b) The work of the Committee of Ministers on a general level

31. In the late nineties, the Committee of Ministers undertook a series of activities aimed at improving the compliance with commitments accepted by member States, in particular through better functioning of the judicial system[43].

32. At their 727th meeting of 25 October 2000, the Ministers' Deputies thus decided to start monitoring the effectiveness of national judicial remedies with respect to the length of proceedings (judicial control of deprivation of liberty and trial within reasonable time), and to the execution of judicial decisions[44] .

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[38] Such as measures necessary to ensure that the applicant is put, insofar as possible, in the same situation as he or she enjoyed prior to the violation of the Convention. These may entail, for instance, the need to put an end, if possible retroactively, to an unlawful situation.

[39] Such as legislative amendments, in order to prevent further violations of a similar nature. See Interim Resolutions DH (99) 436 and DH (99) 437 concerning excessive length of proceedings before the administrative courts and civil courts, respectively, in Italy, where the Committee of Ministers decided to resume its examination "*of the question as to whether the announced measures will effectively prevent new violations of the Convention"*.

[40] See in particular Rules 1 a), 5 of the new "Rules for the application of Article 46 § 2 of the ECHR", approved by the Committee of Ministers on 10 October 2001 at its 736th meeting of the Ministries' Deputies

[41] Interim Resolution DH (2002) 135 on Excessive length of judicial proceedings in Italy. General measures. Adopted by the Committee of Ministers on 25 October 2000.

[42] *Ibidem*, para. 2 – 3.

[43] See document on "Compliance with member States' commitments", CM/Monitor (2001)14 of 15 November 2001, Part I. General comments

[44] *Ibidem*.

33. This issue was also widely debated during the European Ministerial Conference on Human Rights, held on the occasion of the fiftieth anniversary of the Convention (Rome, 3 - 4 November 2000). Resolution No 1 adopted by the Conference urged Council of Europe member States to "*ensure that the exercise of the rights and freedoms guaranteed by the Convention, benefits from an effective remedy at national level*"[45]. Further to this Resolution, at their 736th meeting (10 -11 January 2001), the Committee of Ministers instructed the Steering Committee for Human Rights (CDDH) to "examine ways and means of assisting member States with a view to a better implementation of the Convention in their domestic law and practice, including the provision on effective remedies"[46]. The CDDH, in turn, entrusted the work of following up this decision to its Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR)[47].

34. Having discussed further the matter, the DH-PR experts agreed to limit the scope of the activity to that of remedies in connection with cases relating to allegations of excessive length of proceedings. The question of appropriate compensation in such cases was also debated. On the basis of information obtained by experts, in September 2002, the Secretariat of the CDDH prepared a memorandum containing a comparative overview of national practice with respect to effective remedies and mechanisms for reparation in cases of violation of the Convention by national authorities. This document shows that in various member States, legislative activities or discussions on this matter were in progress[48]. On the other hand, an ever-increasing number of applications in connection to unreasonably long proceedings before the Court indicated that the effectiveness of existing national remedies could be further improved. In certain cases, the measures adopted with the aim to improve the functionning of justice as regards the excessive delay of proceedings have not produced any singificant effect.

35. With this in mind, in May 2004, the Committee of Ministers adopted the Recommendation on the improvement of domestic remedies[49]. They recalled that in addition to the obligation of ascertaining the existence of effective national remedies in the light of the case-law of the Court, the Recommendation states that member States have the general obligation to *solve the problems underlying violations found* (emphasis added). The Recommendation thus calls upon member states to, in particular :

- review, following Court judgements which point to structural or general deficiencies in national law or practice, the effectiveness of the existing domestic remedies and, where necessary, set up effective remedies, in order to avoid repetitive cases being brought before the Court; and

- pay particular attention /…/ to the existence of effective remedies in cases of an arguable complaint concerning the excessive length of judicial proceedings.

36. Further to this Recommendation, at its 56th meeting (8-10 September 2004), the DH-PR decided to resume the study started in 2001 with a view to producing a report on the existing

[45] Resolution I («Institutional and Functional Arrangements for the Protection of Human Rights at National and European Level»), para. 14.
[46] See CM/Del/Dec (2001) 736 Appendix I, Item 4.3, decision number 9.
[47] Report of the 51st meeting of the CDDH (27 February – 2 March 2001), document CDDH (2001) 15, § 11.
[48] "Implementation of the European Convention on Human Rights– Effective remedies at national level», DH-PR (2002) 001rev, 10 September 2002.
[49] CM Rec (2004)6, adopted on 12 May 2004, at the 144th session of the Committee of Ministers (12-13 May 2004).

national practices in this matter in the Council of Europe member states[50]. The preparation of the report is still in progress.

B. Existing remedies in national legal systems of member States of the Council of Europe : a comparative analysis

[50] «Improvement of domestic remedies. Follow-up to the implementation of the Recommendation Rec (2004)6 – Information received by the Secretariat», DH-PR (2004) 012, 6 October 2004.

ALBANIA

2. Have such delays been acknowledged by court decisions ? What courts (national/ European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR case-law.

Yes.
Case-law of the European Court of Human Rights

In *Qufaj Co. Sh.P.K. v. Albania*, (judgement of 18 November 2004), the Court considered that there had been a violation of Article 6 § 1 of the Convention because of the delay in the execution of a judgement.

3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights exist in the Constitution or legislation ?

The Article 42 § 2 of the Albanian Constitution reads as follows:
"In the protection of his constitutional and legal rights, freedoms and interests, or in defending a criminal charge, everyone has the right to a fair and public hearing, within a reasonable time, by an independent and impartial court established by law."

5. Does a remedy in respect of excessive delays in the proceedings exist in your country ? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.

The Albanian legal system affords a remedy in the form of an application to the Constitutional Court complaining of a breach of the right to a fair trial. Article 131 of the Constitution provides that

"The Constitutional Court shall decide in:

(f) final adjudication of the complaints by individuals for the violation of their constitutional rights to a fair hearing, after all legal remedies for the protection of those rights have been exhausted."

The European Court of Human Rights holds that the fair trial rules in Albania should be interpreted in a way that guaranteed an effective remedy for an alleged breach of the requirement under Article 6 § 1 of the Convention.

The deadline for lodging the application with the Constitutional Court is provided in the Article 30 of the Law No. 8577 of 10 February 2000 on the Organisation and Functioning of the Constitutional Court of the Republic of Albania: "The application of persons regarding the violation of a constitutional right are to be presented no later than 2 (two) years from the time at which evidence of the violation becomes available to them. If the law provides that the applicant may address another authority, he/she may present the application to the Constitutional Court

after all the other legal means in protection of such rights have been exhausted. Under such a case, the deadline for lodging the application is 6 (six) months from the date on which the decision of the relevant authority is announced”.

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ARMENIA

1. Does your country experience excessive delays in judicial proceedings? What proceedings?

The Republic of Armenia does not experience excessive delays in judicial proceedings. The evidence of it is the statistical data introduced in point 4 below.

2. Have such delays been acknowledged by court decisions? What courts (national/ European Court of Human Rights)?

There is no case, where the delays of judicial proceedings have been acknowledged by national courts' decisions. In regard to the judgements of the European Court of Human Rights, we inform that the Republic of Armenia has ratified the European Convention on Protection of Human Rights and Fundamental Freedoms and has recognized the compulsory jurisdiction of the European Court in 2002, February 20. It is only two years, as the Republic of Armenia has assumed an obligation to guarantee the rights and freedoms set forth in the European Convention, and during this period the European Court has not yet adopted any judgement on the application against the Republic of Armenia, including judgements on the violation of the reasonable time of judicial proceedings.

3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 point 1 of the European Convention on Human Rights exist in the Constitution or legislation?

The Constitution of the Republic of Armenia does not provide for any provision, which would enshrine the requirement of reasonableness of the length of the proceedings.

The Code of Civil Procedure of the RA, Article 111, require the courts of first instance to examine the civil case and adopt a judgement within two months beginning from the date of the admission of the application. According to Article 214 of the same Code, the Appellate Court on Civil Cases has to examine the case and adopt a judgement within two months beginning from the date of the admission of the appellate appeal. According to Article 232, the Cassation Court has to examine the case and adopt a decision within one month beginning from the admission of the case.
The Code of Criminal Procedure does not determine any period for examination of criminal cases.

4. Are any statistical data available about the proportion of this problem in your country?

According to the results of the researches conducted by the Ministry of Justice of the RA, during 2003 the courts of first instance of the RA have examined 77.899 civil cases. During the mentioned period the courts exceeded the two months' period determined by Article 111 of the Code of Civil Procedure only in 46 cases.

During the first half of 2004 the courts of first instance of the RA have examined 45.065 civil cases. During the mentioned period the courts exceeded the two months' period determined by Article 111 of the Code of Civil Procedure only in 6 cases.

5. Does a remedy in respect of excessive delays in the proceedings exist in your country?

The existing legislation of the RA does not provide for any remedy in respect of excessive delays in the proceedings. But, a process of drafting of a relevant law has been started in our Republic, which will provide for legal guarantees to ensure the reasonable time of judicial proceedings and will determine appropriate responsibility for the violation of such period. It is foreseen to adopt the mentioned law during the second half of 2005.

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AUSTRIA

1. Does your country experience excessive delays in judicial proceedings ? what proceedings (civil, criminal, administrative, enforcement)?

There are isolated cases of excessive delays.

2. Have such delays been acknowledged by court decisions ? What courts (national/ European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR case-law.

Yes.
Case-Law of the European Court of Human Rights.

Among other, the European Court declared violation of Article 6 §1 of the Convention with respect to Austria in the following cases : *Holzinger v. Austria* (judgement of), *Maurer v. Austria* (judgement of 17 April 2002*), G.H. v. Austria* (judgement of 3 January 2001).

5. Does a remedy in respect of excessive delays in the proceedings exist in your country ? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.

Yes.

- Section 91 of the Courts Act (Gerichtsorganisationsgesetz) provides an effective remedy expediting proceedings before courts of law, and administrative proceedings (except for administrative criminal cases), including cases of private prosecution and tax offences.

- Section 73 of the General Administrative Procedure Act (Allgemeines Verwaltungsverfahrensgesetz) in conjunction with Article 132 of the Federal Constitution (Bundes-Verfassungsgesetz) provides that if an authority fails to take a decision within six months, a party may request a transfer of jurisdiction to the competent superior authority or the Administrative Court

- administrative criminal proceedings: no opportunity to expedite the proceedings, but regard must be had in determining the sentence, on whether the duration of the proceedings in issue can be regarded as reasonable in the light of the specific circumstances of the case. The authority must therefore examine in each individual case whether the duration of the proceedings is not to be regarded as unreasonable and in breach of Article 6 § 1 of the Convention, and if so, must take this circumstance into account in fixing the sentence (Constitutional Court ruling of 5 December 2001, B 4/01). Where an authority fails to comply with this duty, the parties concerned are free to address the Constitutional Court after the domestic remedies have been exhausted. The Constitutional Court must then examine whether the authority has complied with its duty arising from Article 6 § 1 of the Convention.

A complaint against the excessive length of proceedings can be lodged by a party in the proceedings.

6. Is this remedy available also in respect of pending proceedings ? how ?

YES – see supra question no 5: Section 91 of the Courts Act and Section 73 of the General Administrative Procedure Act in conjunction with Article 132 of the Federal Constitution.

7.Is there a cost (ex. fixed fee) for the use of this remedy?

No. The fees for the submission are included within the general cost of the proceedings (e.g. in criminal proceedings).

9. Is there a deadline for the competent authority to rule on the matter of the length ? Can it be extended ? What is the legal consequence of a possible failure by the authority to respect the deadline ?

There is no specific deadline, but there is a provision that the competent Court will determine the request for fixing an appropriate time-limit for taking a delayed action with “special expedition”.

10. What are the available forms of redress :

- **acknowledgement of the violation** **YES**
- **pecuniary compensation**
  - **material damage** **YES/NO**
  - **non-material damage** **YES/NO**
- **measures to speed up the proceedings, if they are still pending** **YES**
- **possible reduction of sentence in criminal cases** **YES**
- **other (specify what)**

For the pending proceedings, in accordance with Section 91 of the Courts Act, a relevant remedy is fixing an appropriate time-limit for the competent court to take the particular procedural step. The superior court sets the time-limit for taking an appropriate action.

In the administrative criminal proceedings – if the duration of the proceedings in issue can be regarded as excessive, that has to be taken into account in fixing the sentence (explained under question no 5).

16. Is an appeal possible against a decision on the reasonableness of the duration of the proceedings? Is there a fixed time-frame for the competent authority to deal with this appeal? What would be the legal consequence of non-compliance with this time-limit?

No, there is no appeal possible against the decision under section 91.

21. Has this remedy been assessed by the European Court of Human Rights in respect of Articles 13 or 35 ECHR? If so, please provide reference to the relevant case-law.

Yes. In *Holzinger v. Austria (No. 1)*, (judgement of 30 January 2001), the Court held that the remedy afforded by Section 91 of the Courts Act was effective in relation to delays encountered after its entry into force. On the same date, the Court held in *Holzinger v. Austria (No. 2)*, no. 28898/95, that this remedy was not effective where there was already a substantial delay by the time the legislation took effect.

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AZERBAIJAN

1. Does your country experience excessive delays in judicial proceedings? What proceedings (civil, criminal, administrative, enforcement)?

Very few (at least not within the context of the ECtHR case-law). Delays mainly happen in civil proceedings. In particular, they take place in situations, when appellate courts have to reconsider their own judgements, after the latter have been revoked by the cassation instance. Sometimes proceedings may be even suspended and thus, the general duration of the examination of a case may become much longer.

2. Have such delays been acknowledged by court decisions? What courts (national/ European Court of Human Rights)? Please provide some examples in English or French or reference to ECtHR case-law.

In very few cases higher courts have acknowledged non-compliance with the relevant time-limits established in the law. There has been no decision of the European Court of Human Rights on this matter against Azerbaijan.

3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights exist in the Constitution or legislation?

No. The Civil Procedure Code establishes fixed duration of the examination of a case (3 months; but for certain cases – 1 month). The Criminal Procedure Code does not provide for any time-limits for retrials at any instance. It only lays down a time-limit between the referral of a case to the court and the beginning of the trial (as a rule – 15 days).

4. Are any statistical data available about the proportions of this problem in your country? If so, please provide them in English or French.

The statistics available concern only non-compliance with the relevant time-limits established in the procedural legislation (but not the violation of reasonableness of the duration of the proceedings). So, in 2004 out of 48633 civil cases examined by the Azerbaijani courts 119 (i.e. 0.2 %) were accompanied with delays. Violations of certain time-limits in criminal cases last year were as following: 169 (1.3 %) out of 12533 cases; in 116 cases (0.9 %) the materials of cases were not submitted to the appellate courts within the established period (10 days).

5. Does a remedy in respect of excessive delays in the proceedings exist in your country? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.

No. However, breaches of the said procedural time-limits may be complained of, alongside with other violations and within an ordinary procedure, to the higher courts.

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BELGIUM

1. Votre pays est-il sujet aux longueurs excessives dans les procédures ?
Quels types de procédure (civiles, criminelles, administratives, d'exécution)?

La procédure criminelle
La longueur de certaines procédures pénales constitue un réel problème en Belgique, sans pour autant qu'il soit généralisé. Il se pose tant au niveau des phases préliminaires du procès pénal (information par le parquet et instruction par le juge d'instruction) qu'au niveau des juridictions de jugement. L'exécution de certaines condamnations pénales est délibérément retardée par l'administration en raison de la surpopulation pénitentiaire. Ce dernier aspect de l'exécution des condamnations pénales ne sera pas abordé ici.

La procédure civile

De manière générale en Belgique le contentieux civil représente 80% du contentieux traité par les cours et tribunaux (ces derniers temps la proportion semble toutefois se réduire devant les cours d'appel en raison de l'impact des procès d'assises).
En matière civile (en ce compris les procédures d'exécution en matière civile), on relève des longueurs excessives dans les procédures essentiellement devant les juridictions bruxelloises (en raison des problèmes linguistiques que le législateur s'efforce cependant de résoudre ne fût-ce que partiellement, sous l'effet de décisions rendues sur la base de l'article 6 de la Convention européenne des droits de l'homme [51]; une loi du 16 juillet 2002 a modifié l'article 86bis du Code judiciaire et la loi du 3 avril 1953 d'organisation judiciaire et une autre du 18 juillet 2002 a

[51] Ainsi un jugement du tribunal civil de Bruxelles du 6 novembre 2001 (J.T., 2001, 865) énonce que « en démocratie, le droit des citoyens de bénéficier du bon fonctionnement des pouvoirs de l'Etat, et notamment d'une bonne organisation judiciaire ne peut être supprimé, ou limité, par les difficultés du législateur et/ou du pouvoir exécutif à obtenir en leur sein l'accord politique nécessaire à l'adoption des mesures qui s'imposent. Certes, tant que cet accord n'existe pas, des mesures ne peuvent être adoptées mais tout citoyen lésé par cette situation, a droit à la réparation du dommage qu'il subit » (ce jugement a été confirmé par un arrêt de la cour d'appel de Bruxelles du 4 juillet 2002, J.L.M.B., 2002, p. 1184 ; on y reviendra).

remplacé l'article 43quinquies et inséré l'article 66 juin 1935 concernant l'emploi des langues en matière judiciaire afin d'alléger les exigences du bilinguisme et permettre de dégager davantage de moyens pour juger les affaires francophones qui sont majoritaires devant les juridictions bruxelloises) et les cours d'appel. Devant les autres juridictions l'arriéré est tantôt inexistant, tantôt peu significatif.

2. Ces délais sont-ils reconnus par des décisions des instances judiciaires? Lesquelles? (nationales / Cour européenne des Droits de l'Homme)?
Merci de nous faire parvenir des exemples de décisions en anglais ou en français ou la référence de la jurisprudence de la Cour européenne des Droits de l'Homme.

Le non-respect du délai raisonnable est fréquemment reconnu tant au cours de l'instruction que de la procédure de jugement.

Jurisprudence au niveau national
Voir par exemple corr., Mons (ch. cons.), 23 décembre 2003, J.T., 2003, p. 629 (pour la phase de l'instruction).
En ce qui concerne la procédure de jugement, voir corr., Liège, 7mai 2001, J.LM.B., 2002, p. 928 et note P. Monville ou cass., 31 octobre 2001, J.T., 2002, p. 44, cass., 4 février 2004, Rev. dr. pén., 2004, p. 845 (du point de vue interne). Ce ne sont là que quelques exemples parmi de très nombreuses décisions.

Jurisprudence de la Cour Européenne des Droits de l'Homme
Au stade du jugement, voir par exemple l'arrêt *Ernst c. Belgique* (jugement du 15 juillet 2003).
On en trouve un exemple pour la phase de l'instruction dans l'arrêt *Stratégies et Communications et Dumoulin c/ Belgique* (jugement du 15 juillet 2002).

3. Existe-t-il soit dans la Constitution ou dans la législation une exigence explicite relative à la durée raisonnable d'une procédure, comme celle contenue dans l'article 6 § 1 de la Convention européenne des Droits de l'Homme?

L'article 6 de la Convention européenne des droits de l'homme est considéré comme directement applicable en droit belge, indépendamment de toute disposition constitutionnelle ou légale interne. En outre, différentes dispositions légales récentes, en prévoyant différents «remèdes» au dépassement du délai raisonnable (voir les articles 136, al. 2 et 136bis du Code d'instruction criminelle et l'article 21ter du Titre préliminaire du Code de procédure pénale), consacrent l'exigence de son respect.

4. Votre pays dispose-t-il de données statistiques concernant ce phénomène dans votre pays? Si oui, merci de nous les faire parvenir en anglais ou en français.

Chaque parquet établit ses statistiques générales relatives à la durée des procédures, mais il n'existe pas de statistiques spécifiques sous l'angle du délai raisonnable

En ce qui concerne la procédure civile, les statistiques sont éparses et parfois tardives lorsqu'elles sont centralisées au niveau fédéral. De plus en plus les chefs de juridiction établissent, chambre par chambre, une liste des délais de fixation c'est-à-dire des délais qui s'écoulent entre la demande d'une audience de plaidoiries par les parties qui ont instruit le litige et la date de celle-ci (suivant les juridictions et les chambres la durée varie d'une semaine à

quelques mois; réserve faite des situations spéciales énoncées au n° 1). L'existence de «tableaux de bord» par juridiction est une pratique qui tend à se développer.

5. Une voie de recours palliant aux délais excessifs des procédures existe-elle dans votre pays? Dans ce cas, veuillez donner des détails (par exemple: qui peut déposer la plainte? devant quelle autorité? en fonction de quelle procédure - ordinaire/spéciale? dans quel délai? etc.) Merci de bien vouloir fournir les textes juridiques de base y afférant, en anglais ou en français.

a) Aucune voie de recours particulière n'est organisée comme telle à l'encontre d'une décision qui statuerait alors que le délai raisonnable était dépassé. Le prévenu pourra faire valoir ce moyen en appel. Celui-ci pourra également être soulevé devant la Cour de cassation pour autant qu'il ait déjà été allégué en appel et dans la mesure où il ne touche que des questions de droit, telles les conséquences que la Cour d'appel a tirées ou n'a pas tirées de la constatation du dépassement du délai raisonnable.

b) Une sanction est prévue par l'article 21ter du Titre préliminaire du Code de procédure pénale lorsque le juge du fond constate un dépassement du délai raisonnable. Cette disposition peut être invoquée par la défense ou appliquée d'office par le juge.

6. Cette voie de recours peut-elle être utilisée aussi pour les procédures pendantes? De quelle manière?

Pour ce qui concerne les procédures pendantes,

a) aucune disposition légale n'est prévue lorsque l'affaire est pendante devant la juridiction de fond pour accélérer son traitement.

b) Si l'affaire est à l'instruction, deux dispositions du Code d'instruction criminelle ont pour raison d'être d'éviter l'allongement de la procédure:

- l'article 136 du Code d'instruction criminelle prévoit que lorsque l'instruction n'est pas clôturée après une année, l'inculpé ou la partie civile peut saisir la chambre des mises en accusation (c'est-à-dire la juridiction d'instruction d'appel, qui a un très large pouvoir de contrôle de l'instruction) par simple requête; la chambre des mises en accusation peut alors demander des rapports sur l'état d'avancement des affaires et prendre connaissance des dossiers; elle peut enjoindre au juge d'instruction d'accélérer la procédure, voire lui fixer un délai de clôture de son instruction; elle peut aussi déléguer un de ses membres pour poursuivre l'instruction en lieu et place du juge d'instruction.

Il est à noter que si ce mécanisme vise à éviter l'allongement des instructions, les hypothèses concernées ne coïncident entièrement pas avec les cas de dépassement du délai raisonnable: celui-ci peut en effet être dépassé bien avant l'expiration d'une année, de même qu'une instruction beaucoup plus longue peut ne pas être excessive au regard du délai raisonnable.

- l'article 136bis du Code d'instruction criminelle, dans le même souci de contenir les instructions dans des délais raisonnables, fait obligation au procureur du Roi de faire rapport au procureur général de toutes les affaires dont l'instruction n'est pas clôturée

dans l'année du premier réquisitoire (c'est-à-dire de la saisine du juge d'instruction). S'il l'estime nécessaire pour le bon déroulement de l'instruction, et donc pour l'accélération de la procédure, par exemple, procureur général peut saisir la chambre des mises en accusation qui, après avoir éventuellement entendu le rapport du juge d'instruction, a alors les mêmes pouvoirs que dans le cadre de l'article 136 évoqué ci-dessus.

c) Pour ce qui concerne encore une affaire faisant l'objet d'une instruction, il faut relever que la chambre du conseil - juridiction d'instruction de première instance– lorsqu'elle est appelée à décider du sort d'une instruction clôturée par le juge d'instruction, peut, dès ce stade, constater le dépassement du délai raisonnable et ordonner le non-lieu ou déclarer les poursuites irrecevables. La chambre des mises en accusation peut mettre fin aux poursuites à tout moment pour le même motif, fût-elle saisie d'un problème de procédure en cours d'instruction.

7. Y a t il un coût (par exemple un tarif fixe), pour pouvoir bénéficier de ce recours?

Pour autant que l'article 136 du Code d'instruction criminelle puisse être considéré comme un recours suffisant, il s'exerce par simple requête, déposée gratuitement au greffe de la Cour d'appel.

8. Quels sont les critères pris en compte par l'autorité compétente dans la détermination du caractère raisonnable de la procédure ? Sont-ils semblables ou inspirés par ceux préconisés par la Cour européenne des Droits de l'Homme concernant l'article 6, § 1 de la Convention européenne des Droits de l'Homme?

Les critères pris en compte tant par les juridictions d'instruction que de jugement sont exactement ceux élaborés par la Cour européenne des droits de l'homme: complexité de l'affaire, temps morts dans la procédure, attitude de la défense, voire impact de la décision sur la personne concernée. En pratique, c'est très souvent l'inactivité des autorités judiciaires pendant plusieurs mois qui emporte la conclusion que le délai raisonnable est dépassé.

9. L'autorité compétente est-elle soumise à un délai à ne pas dépasser en la matière? Peut-il être repoussé? Quelle est la conséquence juridique d'un éventuel non respect du délai par l'autorité?

Lorsque la chambre des mises en accusation est appelée à statuer sur les instructions de longue durée (art. 136 et 136bis du Code d'instruction criminelle), aucun délai ne lui est imparti. Si elle tardait à statuer, l'écoulement inutile de ce délai serait pris en compte pour l'évaluation du dépassement du délai raisonnable soit à l'issue de l'instruction soit par le juge du fond.

10. Sous quelle forme la réparation peut-elle être accordée?

- **Reconnaissance de la violation** **Oui** **Non**
- **Compensation pécuniaire**
  - **Pour dommage matériel** **Oui** **Non**
  - **Pour dommage non matériel** **Oui** **Non**
- **Mesures destinées à accélérer la procédure**

dans le cas où elle est toujours pendante **Oui** **Non**

- **Dans les cas criminels, réduction de la peine** **Oui** **Non**
- **Autres (préciser)**

a) Par les juridictions d'instruction: sous forme de décision de non-lieu ou d'irrecevabilité des poursuites.

b) Par les juridictions de jugement: selon l'article 21ter du Titre préliminaire du Code de procédure pénale, la sanction du dépassement du délai raisonnable prend la forme d'une simple déclaration de culpabilité[52] ou du prononcé d'une peine inférieure à la peine minimale prévue par la loi; selon la jurisprudence de la Cour de cassation, il faut que cette réduction de peine soit réelle et mesurable par rapport à la peine que le juge aurait infligée s'il n'avait pas constaté la durée excessive de la procédure. Toutefois, la Cour de cassation admet que lorsque le dépassement du délai raisonnable a eu des conséquences sur l'administration de la preuve ou sur l'exercice des droits de la défense, il peut s'ensuivre une décision d'irrecevabilité des poursuites[53]. Aucune autre réparation n'est prévue.

13. Si des mesures peuvent être prises pour accélérer les procédures en question, y a-t-il un lien entre ces mesures et la gestion des affaires de la Cour compétente?
Sont-elles coordonnées au niveau d'une instance centrale ou à un plus haut niveau?
Sur la base de quels critères et de quelles informations factuelles (charge de travail, nombre de juges, nature des cas pendants, problèmes spécifiques concernant la cour en question) l'autorité compétente ordonne-t-elle de telles mesures?

Non. a) Si la chambre des mises en accusation a enjoint au juge d'instruction d'accélérer son instruction en application des articles 136 et 136bis du Code d'instruction criminelle, sauf dans certaines affaires d'une importance exceptionnelle, cela n'aura pas de conséquence sur la répartition de la charge de travail au niveau de l'instruction. Il n'y a donc aucune centralisation de la gestion des dossiers.

b) Si le problème se pose en raison du délai de fixation de l'affaire devant la juridiction de fond, comme on l'a vu, il n'y a aucun mécanisme juridictionnel d'accélération. En effet, la fixation des affaires aux audiences dépend du parquet, tandis que la chambre des mises en accusation ne peut lui adresser d'injonction. En pratique, le problème se résout généralement par une démarche de l'avocat de la défense auprès du parquet, sachant toutefois que celui-ci a sa propre politique de fixations qui peut être imperméable aux demandes particulières, fussent-elles justifiées par un risque de dépassement de délai raisonnable.

14. Quelle est l'autorité responsable de la supervision de la mise en œuvre de la décision quant au caractère raisonnable de la durée de la procédure?

Dans le cadre de l'instruction en cours, s'il est fait application des articles 136 ou 136bis examinés ci-dessus, la chambre des mises en accusation pourra être saisie à nouveau s'il n'était pas remédié à la durée excessive de la procédure.

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[52] Ce qui ne fait pas obstacle à ce qu'il soit statué sur les intérêts civils.

[53] Ce qui a pour conséquence notamment qu'il n'est plus possible de statuer sur l'action civile. Voir un exemple dans corr., Namur, 26 avril 2001, Journal des procès, 2001, n° 415, p. 24 et J.L.M.B., 2001, p. 1402.

15. Quelles mesures peuvent être prises en cas de non-exécution de cette décision ? Veuillez préciser quelles sont ces mesures pour chacune des possibilités de réparation et fournir des exemples

a) dans le cadre de l'instruction, la chambre des mises en accusation pourrait dessaisir le juge d'instruction et désigner un de ses membres pour poursuivre celle-ci.

b) lorsque le juge du fond a constaté le dépassement du délai raisonnable et en a tiré les conséquences au point de vue de la sanction, voire de la recevabilité des poursuites, la décision s'impose par elle-même.

16. Existe-il la possibilité de faire appel contre une décision sur le caractère raisonnable de la durée de la procédure? L'autorité compétente est-elle soumise à un délai impératif pour traiter cet appel? Quelle serait la conséquence juridique du non respect de ce délai?

a) si à la clôture d'une instruction, la chambre du conseil refuse d'admettre le dépassement du délai raisonnable, celui-ci ne pourra justifier un appel devant la chambre des mises en accusation que pour autant qu'il puisse être considéré comme constituant une cause d'irrecevabilité des poursuites, c'est-à-dire qu'il ait affecté l'administration de la preuve ou l'exercice des droits de la défense (art. 135 du Code d'instruction criminelle) ; il faut également que le moyen ait été préalablement soulevé par conclusions écrites devant la chambre du conseil. La chambre des mises en accusation n'est tenue par aucun délai pour statuer. Ici encore, si le délai dans lequel elle statuait était anormalement long, cet élément serait pris en compte par le juge du fond dans son évaluation finale du dépassement éventuel du délai raisonnable.

b) si le juge du fond a refusé d'admettre le dépassement du délai raisonnable, le jugement pourra être soumis, pour cette raison, à la juridiction d'appel. La décision rendue en appel pourra être contesté sur ce point devant la Cour de cassation dans la mesure évoquée à la réponse à la question 5, sub a). Ni la juridiction d'appel ni la cour de cassation ne sont tenues à un délai de rigueur pour statuer. La juridiction d'appel pourrait constater elle-même qu'elle n'a pas respecté le délai raisonnable, mais à défaut, il n'y aura pas de sanction, pas plus que si la Cour de cassation ne respectait pas le délai raisonnable.

17. Est-il possible de recourir à cette voie de recours plus d'une fois dans une même procédure? Y a-t-il un laps de temps à respecter entre la première décision sur le caractère raisonnable de la durée de la procédure et une deuxième requête sur le même thème?

En cours d'instruction, la défense ou la partie civile ne peut recourir à l'article 136 du Code d'instruction criminelle qu'à l'issue d'une année d'instruction. Elle pourra réitérer la même procédure, mais après l'écoulement d'un délai de 6 mois au moins depuis l'arrêt de la chambre des mises en accusation.

Si le moyen est soulevé devant la chambre du conseil à la clôture de l'instruction, il peut à nouveau l'être en appel devant la chambre des mises en accusation (cf. réponse à la question 16, sub a) et ensuite devant le juge du fond.

18. Existe-t-il des données statistiques sur la pratique de ce recours? Si oui, merci de bien vouloir nous les fournir, en anglais ou en français.

Il n'existe pas de données statistiques sur le recours aux articles 136 et 136bis du Code d'instruction criminelle, pas plus que sur les moyens invoqués devant les juridictions d'instruction ou de fond. Les projets d'informatisation des données judiciaires pourraient, à l'avenir, inclure cette donnée s'il s'avérait qu'elle constitue un critère pertinent.

19. Peut-on de manière générale estimer l'efficacité de cette voie de recours?

a) Pour ce qui concerne les articles 136 et 136bis du Code d'instruction criminelle, l'efficacité n'est pas attestée: les recours sont peu nombreux.

b) La sanction du dépassement du délai raisonnable par les juridictions d'instruction à la clôture de l'instruction ou par les juridictions de fond est beaucoup plus efficace et le moyen est très souvent soulevé par les plaideurs et accueilli par les juridictions.

20. Ce recours aurait-il eu un impact sur le nombre de cas éventuellement pendants devant la Cour européenne des Droits de l'Homme? Merci de bien vouloir fournir, si vous en avez, des statistiques à ce propos.

Les recours pendant devant la Cour européenne des droits de l'homme en matière de délai raisonnable deviennent plus rares, notamment en raison des sanctions dont disposent les juges du fond. À titre indicatif, pour les cinq dernières années, on ne relève que quatre arrêts statuant en matière pénale: un ne concerne qu'indirectement la matière pénale (CEDH, Sablon c/ Belgique, 10 avril 2004), un constate la non-violation de l'article 6 sous l'angle du délai raisonnable (CEDH, Coëme et autres c/ Belgique, 20 juin 2000), l'un prend acte d'un règlement amiable (CEDH, L.C. c/ Belgique, 17 octobre 2000) et, enfin, l'un – déjà évoqué à plusieurs reprises - constate le dépassement du délai raisonnable dès avant la fin de l'instruction (CEDH, Stratégies et Communications et Dumoulin c/ Belgique, 15 juillet 2002).

21. Est-ce que la Cour européenne des Droits de l'Homme s'est prononcée sur l'efficacité de cette voie de recours aux termes des articles 13 ou 35 de la Convention européenne des Droits de l'Homme? Dans l'affirmatif, merci de nous fournir la référence de la jurisprudence pertinente

La Cour européenne, dans son arrêt Stratégies et Communications et Dumoulin c/ Belgique du 15 juillet 2002 a considéré que l'article 136 du Code d'instruction criminelle ne constitue pas un recours suffisant au sens de l'article 13 interprété comme exigeant une voie de recours autonome en cas de dépassement du délai raisonnable. Sa décision s'appuie sur le fait qu'elle n'est pas convaincue que l'article 136 du Code d'instruction criminelle constitue un recours effectif et disponible tant en théorie qu'en pratique: d'une part, il soulève certaine questions de droit interne, en particulier celle de savoir si ce «recours» est ouvert non seulement à la partie civile constituée et à la personne formellement inculpée, mais aussi à la personne faisant l'objet de l'instruction qui n'est pas formellement inculpée; d'autre part, le Gouvernement belge n'avait mentionné aucun exemple de la pratique interne attestant que la chambre des mises en accusation aurait fait droit à une requête fondée sur l'article 136, alinéa 2, d'une personne non inculpée formellement.

Il est à noter que, dès lors que le problème soumis à l'examen de la Cour concernait une personne à qui le juge d'instruction n'avait notifié aucune inculpation formelle, on ne peut

déduire son l'arrêt que, de manière générale – et en particulier à l'égard de la partie poursuivie ayant le statut d'inculpé en vertu d'une décision du juge d'instruction - l'article 136 ne constitue pas une voie de recours suffisante au regard de l'article 13 de la Convention.

Par contre, la Cour n'a pas eu l'occasion de se prononcer sur l'efficacité de l'article 21ter du Titre préliminaire du Code d'instruction criminelle qui prévoit la sanction du dépassement du délai raisonnable au stade du jugement; la solution retenue par cette disposition est cependant tout à fait conforme à la jurisprudence de la Cour.

Questions 5 à 21 en ce qui concerne plus particulièrement la procédure civile

Compte tenu de l'exposé détaillé en ce qui concerne le procès pénal, il semble permis en ce qui concerne le procès civil de regrouper les réponses tout en relevant dans l'arrêt Kudla c/ Bologne du 26 octobre 2000 que le requérant qui aurait à se plaindre de la durée anormale d'une procédure doit pouvoir obtenir par une voie de droit effective, une satisfaction «préventive ou compensatoire» (§ 159).

Il y a donc lieu d'envisager brièvement d'une part les voies d'accélération et d'autre part les voies d'indemnisation.

A. Les voies d'accélération

La loi belge ne confère pas à celui qui se prétend victime de la durée anormale d'une procédure, une voie de recours spécifique lui permettant de faire constater par une juridiction supérieure la méconnaissance du délai raisonnable, avec injonction donnée au juge saisi de l'affaire de traiter celle-ci à bref délai. Certains auteurs ont suggéré d'emprunter, face au retard anormal d'une procédure, la voie du référé afin d'obtenir du président du tribunal de première instance une ordonnance d'injonction assortie d'astreinte. Actuellement il n'y a pas de jurisprudence sur le sujet de telle sorte que l'on voit mal comment cette action pourrait être considérée comme constituant un moyen effectif au sens de l'article 13 de la Convention. De plus, on s'interroge sur l'injonction concrète qui pourrait être donnée par un juge des référés à l'Etat représenté par le ministre de la Justice en vue d'assurer l'accélération d'une procédure en cours car l'indépendance du tribunal fait obstacle à toute immixtion du pouvoir exécutif dans l'exercice de la fonction juridictionnelle.

Certes il existe des mécanismes correcteurs mais leur portée est extrêmement limitée: la prise à partie est ouverte en cas de «déni de justice» (art. 1140, 4 du Code judiciaire) mais le déni de justice est entendu de manière stricte au sens de refus de juger et non de négligence du juge de juger la cause dans un délai raisonnable (Cass. b., 28 février 2002, Rev. Gen. Dr. Civ. B., 2002, p. 548; peut-être cette conception évoluera-t-elle sous l'effet de l'arrêt du 3 avril 2003 de la C.E.D.H. – n° 54589/ - qui décide que la prescription d'une action judiciaire, parce qu'elle est imputable au manque de diligence des autorités nationales dans une procédure parallèle, constitue un déni de justice); le dessaisissement du juge par la Cour de cassation à la demande du procureur général près la cour d'appel lorsque le magistrat néglige de juger pendant plus de six mois la cause prise en délibéré (ce mécanisme prévu par l'article 648 du Code judiciaire ne constitue évidemment pas une voie de droit effective pour le justiciable). Ainsi le justiciable confronté à la durée anormale d'une procédure civile ne dispose, en droit belge, d'aucune voie de droit effective et accessible lui permettant de dénoncer cette situation à une autorité supérieure à l'effet d'obtenir de celle-ci qu'elle prenne, d'office ou sur injonction, les mesures nécessaires en vue d'y remédier.

Même si le justiciable peut prendre des initiatives pour accélérer l'instruction de la cause, le droit judiciaire belge demeure marqué par le principe dispositif qui ne connaît pas l'institution d'un juge actif doté, comme dans d'autres pays, d'importants pouvoirs d'initiative et de contrôle dans le déroulement de la procédure. Toutefois, de plus en plus on estime que si le recours au juge reste un droit de l'Homme, son utilisation ne saurait être laissée à la liberté totale des justiciables; un équilibre doit être trouvé dans la mise en œuvre de principes qui contraignent les parties au respect d'une certaine loyauté procédurale et dans le renforcement des pouvoirs du juge pour assurer l'effectivité de ce principe. «Si les parties ont évidemment la maîtrise de la matière litigieuse, c'est bien le juge qui règle le déroulement de la procédure. Il est logique que le service public de la justice – qui engage la responsabilité de l'Etat en cas de dysfonctionnements – ait la capacité de fonctionner normalement pour apporter une réponse judiciaire dans un délai raisonnable» (J.Cl. MAGENDIE, Célérité et qualité de la justice (Rapport français remis au Gardes des Sceaux), Gaz. Pal., 22-23 décembre 2004, p. 11)). Il semble permis d'insister sur cet aspect fondamental dans la mesure où un avant-projet de loi modifiant le Code judiciaire en vue de renforcer les pouvoirs du juge en matière de mise en état devrait être prochainement soumis au Parlement belge.

B. Les voies d'indemnisation

Dans l'état actuel des textes, la voie indemnitaire peut être utilisée comme une réponse adaptée aux violations du délai raisonnable. La responsabilité de l'Etat du fait du fonctionnement défectueux de la justice peut être engagée en cas de faute dans l'organisation du service lui-même et non seulement à l'occasion de l'acte juridictionnel rendu par le juge. Il est admis que peut engager la responsabilité de l'Etat le dommage concrètement éprouvé par suite du retard apporté à la solution d'un litige, soit s'il doit apparaître que ce retard est directement imputable à la faute du juge, soit encore s'il doit être lié à l'encombrement des rôles et à la surcharge des tribunaux, entraînant pour ceux-ci l'impossibilité de respecter les exigences du délai raisonnable imposées par les dispositions de l'article 6 de la Convention européenne de sauvegarde des droits de l'homme (Cass., 19 décembre 2001, Rev. Crit. Jur. B., 1993, p. 285 et s. et la note de F. RIGAUX et J. van COMPERNOLLE).

Depuis l'arrêt de la Cour de cassation précité, plusieurs décisions du tribunal de première instance de Bruxelles ont condamné l'Etat à réparer le préjudice subi du fait de la méconnaissance du délai raisonnable (outre le jugement du tribunal civil de Bruxelles du 6 novembre 2001 cité à la note, voy. Civ. Bruxelles, 27 octobre 2000, Rev. Gén. Dr. Civ. B., 2002, p. 550). Confirmant ces décisions, un arrêt de la cour d'appel de Bruxelles du 4 juillet 2002 (supra note 1) déclare que l'Etat belge commet une faute qui engage sa responsabilité lorsqu'il omet de prendre les mesures susceptibles d'assurer le respect des obligations qui lui impose l'article 6 de la Convention européenne de sauvegarde des droits de l'homme et, en particulier, lorsque cette carence a pour effet de priver le pouvoir judiciaire – en l'espèce les juridictions bruxelloises – des moyens suffisants pour permettre de traiter les causes qui leur sont soumises dans un délai raisonnable. Cette carence de l'Etat constitue une violation grave et caractérisée de l'article 6 de la Convention, lequel confère aux particuliers un droit subjectif à ce que leurs causes soient entendues dans les conditions qu'il énonce et que sa méconnaissance peut être sanctionnée devant les juridictions de l'ordre judiciaire sur la base des articles 1382 et 1383 du Code civil.

En bref, la violation du délai raisonnable engage la responsabilité de l'Etat ; cette responsabilité est déduite de la méconnaissance de l'article 6 de la Convention européenne des droits de

l'homme et du droit subjectif que ce texte consacre au profit du justiciable; cette méconnaissance constitue, dans l'ordre interne, une faute au sens de l'article 1382 du Code civil obligeant l'Etat à réparer le préjudice qui en est résulté. Consacrant de tels principes, une jurisprudence établie serait de nature à éviter à la Belgique de nouvelles condamnations pour ne point offrir, dans l'ordre interne, un recours effectif au justiciable qui s'estimerait victime d'un dépassement du délai raisonnable.

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BELGIUM

La procédure administrative

I. Voies de recours non juridictionnelles existant en droit interne face à la durée excessive des procédures de droit administratif belge: lutte contre l'inertie de l'administration saisie d'une demande de permis. Permis tacite et lettre de rappel [54]

Le problème

Un trait majeur du système de l'autorisation administrative – il tient du truisme - est que l'administré ne peut en principe procéder à l'exécution de l'acte assujetti à autorisation avant que l'administration ne se soit expressément prononcée sur la demande. On peut évidemment se demander comment cela peut se produire dans un Etat de droit mais il se trouve que le législateur doit aussi composer avec l'hypothèse de l'inertie de l'administration chargée de se prononcer sur la demande ou sur le recours.

Il existe de nombreux moyens de stimuler l'administration ou de vaincre cette inertie. Parmi les mécanismes imaginés, certains consistent à se passer de la décision expresse de l'administration qui avait a priori été considérée comme nécessaire. Ces solutions ne sont jamais que des pis-aller.

Le problème du délai raisonnable

Le délai d'ordre appelle la question du délai raisonnable. La volonté de sanction est bien compréhensible [55]. La méthode du délai raisonnable présente toutefois au moins deux inconvénients.

D'abord, il y a dans l'administration du raisonnable une part importante de subjectivité. Bien sûr l'on peut dire que la complexité de l'affaire, la bonne volonté du demandeur sont des facteurs d'appréciation [56] mais il reste que ce critère est peu satisfaisant à une époque où l'on préfère les

[54] M. PÂQUES, «Aménagement du territoire, urbanisme, patrimoine et questions diverses de droit administratif notarial», *in* Chronique de droit à l'usage du notariat, Faculté de droit de Liège et Bruxelles, Larcier, Vol. XXXIX, 1er avril 2004, pp. 254 à 263.
[55] Not. C.E., 4 septembre 1997, DEBRABANDERE, 67981; C.E., 4 février 1994, ROYACKERS, 45999.

[56] Plus précisément, le caractère raisonnable du délai dans lequel l'autorité doit statuer est principalement déterminé par la possibilité, pour elle, de disposer de tous les éléments de fait, renseignements et avis, devant lui permettre de statuer en connaissance de cause (C.E., 6 février 1986, SA ELPEE GAS BELGIUM, 26155; C.E.,

procédures rythmées par un tempo connu d'avance pour escompter la durée des procédures et faire les choix d'implantation correspondants.

Ensuite, imposer le délai raisonnable revient à créer une condition d'exercice de la compétence, d'ordre public[57]. Une fois expiré le délai, la compétence de l'autorité prend fin, fait obstacle à une remédiation par le biais d'un recours organisé[58] et, une fois sanctionnée par le Conseil d'Etat, cet épuisement de la compétence empêche la réfection de l'acte sur la base de la demande initiale[59]. Cette conséquence est paradoxale, dans la mesure où la compétence de décider sur une demande d'autorisation ou de recours organisé n'est pas facultative mais obligatoire.

Au cours de la période récente, les procédés de la «lettre de rappel» et du «permis tacite» ont été au centre de controverses.

Inertie du collège des bourgmestre et échevins ou du Gouvernement et CWATUP

- Dans le droit de l'urbanisme, à l'expiration du délai d'ordre variable en fonction de la nature du dossier, imparti au collège des bourgmestre et échevins pour délivrer le permis ou le refuser (art. 118), le demandeur peut saisir le fonctionnaire délégué qui doit statuer dans un délai de rigueur.

- A l'expiration de ce délai de rigueur, la loi attribue à l'absence de décision du fonctionnaire délégué la portée d'un refus de permis (art. 118, §2, du CWATUP). Le fonctionnaire délégué cesse dès lors d'être compétent[60].

- La saisine du gouvernement est alors possible (art. 119) mais

- Que faire en cas de silence du Gouvernement, autorité de recours?

La lettre de rappel et la substitution d'un délai de rigueur à un délai d'ordre

Devant l'inertie de l'autorité de recours, ou de dernier recours en cas de recours à deux degrés (voy. l'ancien CWATUP, art. 52), le législateur a souvent eu recours à la technique de la lettre de rappel qui transforme un délai d'ordre en un nouveau délai de rigueur dans lequel la décision doit être prise, voire, selon le choix du législateur, notifiée ou même portée à la connaissance du demandeur.

Actuellement:

1er décembre 1988, CAP, 31487; C.E., 17 novembre 1995, NOSE et NONDELIER, 56256, A.P.T., 1995/4, p. 297, extr. Rapport de Mme GUFFENS et l'appréciation, n°2.4.2.).

[57] J.-Fr. NEURAY, Vie et mort du permis tacite, A.P.T., 2002, pp. 55 et s.

[58] L'autorité qui statue sur recours s'approprie de vice. (C.E., 17 novembre 1995, NOSE et NONDELIER, 56256, A.P.T., 1995/4, p. 297, extr. Rapport de Mme GUFFENS).

[59] C.E., 17 novembre 1995, NOSE et NONDELIER, 56256, A.P.T., 1995/4, p. 297, extr. Rapport de Mme GUFFENS.

[60]C.E., 24 juin 1980, Ville de Courtrai, 20447 rec. p. 827

- L'article 121 du CWATUP ne donne qu'au demandeur la compétence d'envoyer la lettre de rappel. Ce n'a pas toujours été le cas [61].

- Et l'option actuelle du CWATUP, à l'article 121, est que la décision doit non seulement être prise mais envoyée dans le délai de trente jours que fait courir la lettre de rappel. En conséquence l'arrêté pris dans le délai mais notifié tardivement est privé de sa force exécutoire par l'effet du décret et, pour des raisons de sécurité juridique, le Conseil d'Etat peut le suspendre ou l'annuler [62].

Art. 121. Dans les 75 jours à dater de la réception du recours, le Gouvernement envoie sa décision au demandeur, au collège des bourgmestre et échevins et au fonctionnaire délégué.

A défaut, le demandeur peut, par envoi recommandé à la poste, adresser un rappel au Gouvernement et en informe simultanément le collège des bourgmestre et échevins et le fonctionnaire délégué.

A défaut de l'envoi de la décision du Gouvernement dans les trente jours à dater de la réception par le Gouvernement de la lettre recommandée contenant le rappel, la décision dont recours est confirmée.

Formalités du rappel

Le rappel doit être introduit par lettre recommandée à la poste (art. 8 et 452/19 CWATUP); que le retrait d'un tel rappel à le supposer admissible doit à tout le moins se faire de la même manière. S'il a été fait par télécopie, il n'y a eu, en droit, aucun retrait du rappel (CE, 18 septembre 2003, BOTTON, 123059). Mais le retrait du rappel est sans effet (infra, n°s suivants).

La dénonciation du rappel au collège et au fonctionnaire délégué est une formalité qui n'est pas prévue dans l'intérêt de l'administré; elle ne peut être considérée comme substantielle et affectant la validité du rappel (CE, 23 septembre 2003, SA G.C., VALECO, 123292).

La lettre de rappel est valablement envoyée par l'architecte des demandeurs (CE, 20 novembre 2003, VAN HOOF, 125559).

Défaut de décision dans le délai de rigueur

Toutefois, à défaut de décision dans le délai, le législateur est de nouveau en difficulté de choisir le sens à donner au silence du Gouvernement saisi du rappel:

- Donner des effets à un acte antérieur de la procédure favorable au demandeur s'il y en a un (art. 52 ancien CWATUP)
- A défaut décider que le demandeur peut passer à l'exécution sans méconnaître d'autres dispositions légales ou réglementaires que celle qui impose d'avoir un permis, c'est le système du « permis tacite » (ex. art. 52 ancien CWATUP).
- Ou bien, décider plus généralement que la décision dont recours est confirmée (art. 119 à 121 in fine du CWATUP actuellement en vigueur): dans le système de ce code, le silence du collège des bourgmestre et échevins, saisi en premier lieu, peut donner lieu à

[61] Sur ce que, sans précision du législateur, la lettre peut émaner d'un autre que celui qui a introduit le recours, C.E., 4 décembre 1980, NUYENS, 20770, rec. p. 1478; C.E., 10 janvier 1984, VAN BEVER, 23870.
[62] C.E., 30 juin 2000, BOTTON, Rev. Rég. Dr., 2000, p. 398; C.E., 31 mai 2000, REGOUT, 87736, APM, 2000, p. 111; C.E., 29 octobre 2002, NOTREDAME et GYSSELS, 112002; C.E., 12 décembre 2002, QUEWET et QUAIRIAUX, 113604.

dessaisissement facultatif et saisine du fonctionnaire délégué dont le silence persistant est assimilé à un refus (art. 118, al. 3). En cas de silence sur toute la ligne c'est donc cette décision de refus qui sera confirmée par l'effet de l'article 121.

Exemples de calcul des délais

Exemple 1. Le refus du permis d'urbanisme par le collège a lieu le 12 avril 1999. La requérante introduit un recours au Gouvernement le 14 mai 1999. Un accusé de réception lui est délivré le 17 mai 1999. Jugé que le premier délai imparti au Gouvernement pour prendre et notifier sa décision prend cours le 18 mai 1999 et expire le 31 juillet 1999. La date d'expiration de ce délai étant un samedi, celui-ci prenait fin le lundi 2 août 1999. Le 2 février 2000, la requérante a adressé au Gouvernement un envoi recommandé contenant le rappel au sens de l'article 121 du CWATUP. Que ce rappel a été reçu par la partie adverse le 3 février 2000. Que le délai de trente jours pour envoyer la décision expirait le samedi 4 mars 2000 et était reporté au lundi 6 mars 2000. L'arrêté ayant été adopté le 6 mars 2000 mais notifié le 7 mars 2000, soit en dehors du délai, est privé d'effets par l'effet du décret lui-même, tandis que la décision de refus prise par le collège est, par l'effet du décret également, confirmée (C.E., 12 décembre 2002, SCA DICK, 113605). Eg. arrêté pris dans le délai mais notifié hors délai : tardif, annulation, CE, 23 septembre 2003, SA G.C., VALECO, 123292)

Exemple 2. Recours introduit le 28 décembre 2000 contre une décision de refus de permis du 24 novembre. Réception le 28 décembre 2000 (attesté par accusé de réception délivré le 10 janvier). Le délai de 75 jours imparti au gouvernement pour adopter et notifier sa décision prenait cours le 29 décembre et expirait le 13 mars 2001. Envoi du rappel le 14 mars 2001 reçu le jour même (selon accusé de réception du 15 mars). Retrait du rappel par télécopie le 11 avril jugé sans effet (voy. infra, numéro suivant). Décision du 27 juillet ; tardive (CE, 6 novembre 2003, DECALUWE et PROVOYEUR, 125118).

Exemple 3. Calcul du délai de 30 j: lettre de rappel envoyée le 31 janvier 2000; délai prend cours le jour de la réception de la lettre de rappel le 1er février 2000; l'acte attaqué devait être envoyé au plus tard le 2 mars (possibilité de report de ce délai au plus prochain jour ouvrable); l'acte ne l'a été que le 3 mars; acte dépourvu de tout effet de droit (CE, 20 novembre 2003, VAN HOOF, 125559).

Retrait du rappel?

Si la lettre de rappel fait courir un dernier délai de rigueur, est-ce que le demandeur qui a lancé cette ultime procédure et qui voit que l'autorité s'apprête à statuer favorablement, peut renoncer à son rappel en le retirant? La réponse était affirmative dans la jurisprudence du Conseil d'Etat, à condition que la renonciation soit expresse, sans équivoque (C.E., 18 mai 1999, PEREZ-VASQUEZ, 80288) et qu'elle intervienne dans le délai mais la jurisprudence du Conseil d'Etat s'est montrée hostile au procédé du retrait considéré comme un détournement de procédure (C.E., 5 octobre 2001, DOCKX, 99526, J.L.M.B., 2002, p. 356; Am.-Env., 2002, p. 82).

Peu de temps après cet arrêt DOCKX, la Cour d'appel de Liège a jugé que le procédé du retrait de la lettre de rappel constituait un «détournement de procédure», se ralliant expressément à l'arrêt DOCKX; elle a cependant jugé que «la sécurité juridique imposait de considérer que cette pratique administrative, admise de longue date et prônée par l'administration elle-même, ne peut nuire au citoyen qui doit pouvoir faire confiance aux organes de l'Etat» et encore que ce procédé ne peut être considéré comme la source d'une illégalité qui affecterait le permis délivré après

l'expiration du délai qu'avait fait courir l'envoi du rappel et qui a donc été interrompu par son retrait. En outre, la Cour considère qu'il n'y a pas de parallélisme des formes qui s'imposerait et qu'aucune forme particulière ne s'applique au retrait, ni recommandation postale, ni même de signature, pourvu que le retrait soit communiqué avant l'expiration du délai. Une télécopie suffit, juge la Cour. Ce dernier point, lui aussi, demeure controversé car la preuve du moment du retrait peut poser problème [63].

Depuis lors le Conseil d'Etat a assis sa jurisprudence dans de nombreux arrêts[64]. Nous en signalons quelques uns prononcés dans la période la plus récente:

Jugé que le retrait du rappel est sans effet, que le moyen pris en ce sens de la violation de l'article 121 est d'ordre public (CE, 20 novembre 2003, VAN HOOF, 125559); par souci de sécurité juridique le CE annule l'arrêté ministériel (C.E., 6 novembre 2003, ROMANO, 125114; CE, 6 novembre 2003, DECALUWE et PROVOYEUR, 125118; CE, 23 septembre 2003, Ville de Chiny, 123291; ég. arrêté pris dans le délai mais notifié hors délai: tardif, annulation, CE, 23 septembre 2003, SA G.C., VALECO, 123292).

Retrait du rappel condamné, sans effet. Dans l'intérêt de la sécurité juridique, le CE accepte d'annuler l'arrêté ministériel notifié tardivement (CE, 16 septembre 2003, VERBRUGGHE ET ClERCQ, 122876; CE, 23 septembre 2003, SA G.C., VALECO, 123292)[65].

Nouveau délai de recours contre l'acte confirmé

En outre, les requérants disposent, à partir de la notification de l'arrêt, d'un nouveau délai de 60 jours leur permettant , le cas échéant d'introduire un recours contre l'acte qui se trouve confirmé par l'effet du décret (CE, 16 septembre 2003, VERBRUGGHE ET CELRCQ, 122876; ég. sur le point, CE, 23 septembre 2003, SA G.C., VALECO, 123292).

Dans ce dernier cas, la décision confirmée du collège peut donc faire l'objet d'un recours au Conseil d'Etat à l'initiative d'un tiers. Le délai se calcule de manière ordinaire[66].

Dans ce cas aussi la Région wallonne est maintenue à la cause car c'est son silence qui a permis à la décision confirmée de sortir ses effets [67].

L'astreinte

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[63]Liège, 7 janvier 2002, J.L.M.B., 2002, pp. 360 et s. note A. VAN DER HEYDEN; dans l'arrêt du 2 août 2001, BONAFE-SWINNEN, 98121, cité par A. VAN DER HEYDEN (o.c., p. 366), le Conseil d'Etat avait au contraire imposé que certaines formes entourent le retrait du rappel.

[64] Not. C.E., 27 février 2003, STEENO, 116567, T.R.O.S., 2003, pp. 256 et s., note S. DE TAEYE qui attire l'attention sur certaines différences entre cette jurisprudence et celle des chambres flamandes.

[65] Aussi,

[66] Pour un cas d'application de la règle de prise de connaissance après une réunion d'information suivie d'une deuxième réunion au cours de laquelle a eu lieu l'examen de l'acte lui-même, C.E., 29 octobre 2002, NOTREDAME, 112003; C.E., 12 décembre 2002, Ville de Namur contre Députation permanente de Namur, 113606.

[67] C.E., 12 décembre 2002, Ville de Namur contre Députation permanente de Namur, 113606 (art. 52, ancien CWATUP).

Prononcée par le Conseil d'Etat dans un cas où, après l'annulation par le Conseil d'Etat du rejet d'un recours contre un refus de permis, le gouvernement flamand est resté plus de deux ans sans prendre une décision (C.E., 7 décembre 2000, MAROY, 91488, APM, 2001, p. 8)

La décision tacite

Au lieu de confirmer la décision antérieure, ce qui peut conduire à un refus sur toute la ligne, le législateur peut décider de donner un sens au silence persistant. La décision d'accorder un sens au silence de l'administration chargée de délivrer une autorisation doit être l'œuvre du législateur. Généralement, toutefois, l'autorisation tacite est réservée au cas dans lequel, il n'y a eu aucune décision au cours de la procédure[68].

Le législateur peut choisir l'octroi ou le refus tacite. Les intérêts servis par l'une et l'autre option ne sont pas les mêmes. Dans son arrêt du 3 juillet 1998, VAN DER STICHELEN, 74948, le Conseil d'Etat a mis en évidence les choix de politique que contenait l'option pour le refus ou le permis tacite. Dans le dernier cas , il s'agit de favoriser la liberté du commerce et de l'industrie ou à tout le moins l'exercice d'une activité[69]. Le permis tacite est alors la négation de l'utilité de soumettre le comportement à autorisation. Le refus tacite sert l'intérêt de police qui avait justifié l'instauration de l'autorisation, en l'espèce le droit à la protection d'une environnement sain (article 23 de la Constitution) ou le bon aménagement du territoire… Mais aucune de ces solutions aveugles n'est satisfaisante. Par leur portée radicale, elles sont disproportionnées. Elles sacrifient nécessairement les autres intérêts que l'autorité chargée d'autoriser devait également apprécier.

Le permis tacite, autorisation de la loi est-il un acte administratif susceptible de recours?

Le permis tacite, choix favorable au demandeur est-il une permission légale d'agir sans permis ou une autorisation tacite?[70] La question est d'importance, dans le premier cas, il n'y a pas d'acte administratif susceptible de recours ; dans le second, il y en a un. En matière d'urbanisme, c'est la première branche que la Cour de cassation à retenue dans un arrêt du 19 avril 1991[71]. Le Conseil d'Etat a retenu la même solution dans son arrêt du 3 juillet 1998, VAN DER STICHELEN, 74948, à propos de l'article 41 de l'ordonnance relative au permis d'environnement du 30 juillet 1992[72] [73]. Dans cet arrêt, à défaut d'acte susceptible de recours, le Conseil d'Etat n'a pas pu poser de question à la Cour d'arbitrage sur la conformité de cette législation aux articles 10 et 11 de la Constitution.

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[68] J.-Fr. NEURAY, Vie et mort du permis tacite, A.P.T., 2002, pp. 55 et s., p. 58.

[69] A propos de l'article 41 de l'ordonnance relative au permis d'environnement du 30 juillet 1992. Ce système fut abandonné dans l'ordonnance du 5 juin 1997 relative au permis d'environnement au profit de la confirmation de la décision entreprise (art. 82).

[70] J.-Fr. NEURAY, Vie et mort du permis tacite, A.P.T., 2002, pp. 55 et s.

[71] J.T., 1992, p. 76 et le commentaire de M. BOES, L'acte notarié au risque de l'infraction, in L'urbanisme dans les actes, Bruxelles, Bruylant, 1998, p. 695 ; Ph. NICODEME, L'arrêt 78/2001 de la Cour d'arbitrage: une atteinte disproportionnée aux droits du demandeur de permis d'urbanisme?, in Am.-Env., 2002/1, p. 45, sp. p. 50.

[72] Ce système fut abandonné dans l'ordonnance du 5 juin 1997 relative au permis d'environnement au profit de la confirmation de la décision entreprise (art. 82).

[73] Toutefois, C.E., 27 janv. 2002, 108540, T.R.O.S., 2002, p. 191, note J. VERKEST.

L'autorisation tacite condamnée par la Cour d'arbitrage

Toutefois le juge de référés du tribunal de première instance de Bruxelles a interrogé la Cour d'arbitrage à l'occasion d'une action de tiers qui se sont adressés à lui pour faire interdire provisoirement sous peine d'astreinte, la poursuite des travaux de construction entrepris sous le bénéfice de l'article 137 de l'OOPU qui contient une disposition similaire à celle de l'article 41 de l'ordonnance relative au permis d'environnement de 1992. La Cour a estimé que l'autorisation tacite n'était pas un acte administratif mais un effet direct de l'ordonnance et qu'il n'y avait donc pas de décision à entreprendre devant le Conseil d'Etat [74]. Même en l'absence d'acte administratif, le contrôle de la situation par le juge judiciaire est possible. Cette faculté d'agir sans permis a été justifiée par la volonté de ne pas pénaliser le demandeur de permis victime de l'incurie de l'administration. Le moyen est pertinent, juge la Cour. Toutefois, ce système porte une atteinte disproportionnée aux «droits des tiers» malgré la possibilité de saisir le juge judiciaire. Les tiers et les demandeurs sont privés du service d'une administration spécialisée chargée d'apprécier leur situation in concreto et du contrôle par le juge de cette appréciation, qu'il s'agisse du Conseil d'Etat ou du juge judiciaire. En outre, «charger le juge judiciaire, dans de telles circonstances, de substituer son appréciation au pouvoir discrétionnaire de l'administration reviendrait à lui reconnaître une compétence incompatible avec les principes qui régissent les rapports entre l'administration et les juridictions». «Il en résulte une atteinte disproportionnée aux droits des tiers intéressés, ce qui discrimine cette catégorie de personnes par rapport à celles auxquelles un contrôle juridictionnel est garanti»[75]. Le législateur bruxellois s'incline. La révision de l'article 137 est en cours[76].

Plus récemment la Cour a été saisie d'une question portant sur l'article 52 de l'ancien CWATUP qui contenait un dispositif identique à celui de l'article 137 de l'OOPU. Par son arrêt 156/2003, elle a tranché dans le même sens, par identité de motifs[77].

Voilà donc le système de l'autorisation tacite condamné, à tout le moins dans la mesure où il s'agit d'une décision tacite qui survient dans un cas où le projet ne peut pas bénéficier d'une autorisation décidée antérieurement dans le cours de la procédure.

En revanche, quand le législateur tire du silence de l'autorité de recours que la décision entreprise sortira ses effets, comme c'est le cas à l'article 121 in fine du CWATUP, par exemple, il ne se heurte pas à l'enseignement de l'arrêt 78/2001[78]. De nombreuses observations peuvent être faites. La Cour ne donne pas d'indication sur les droits des tiers dont elle affirme pourtant

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[74] Curieusement, c'est en se référant à cet arrêt 78/2001, et en partageant l'analyse qu'une chambre flamande du Conseil d'Etat accueille un recours contre un permis d'environnement implicite (art. 25, §1er, du Milieuvergunningsdecreet et art. 50 du Vlarem I), C.E., 27 juin 2002, SALAETS, 108540, T.R.O.S., 2002, pp. 191 et s., note J. VERKEST.

[75] C.A., 7 juin 2001, 78/2001, J.L.M.B., 2001, pp. 1203 et s., obs. J. SAMBON, Le «permis tacite» censuré par la Cour de Justice des Communautés européennes et par la Cour d'arbitrage; T.R.O.S., 2001, p. 212, note J. VERKEST; Am.-Env., 2002/1, p. 45, note Ph. NICODEME, L'arrêt 78/2001 de la Cour d'arbitrage: une atteinte disproportionnée aux droits du demandeur de permis d'urbanisme? J.-Fr. NEURAY, Vie et mort du permis tacite, A.P.T., 2002, pp. 55 et s.

[76] Doc. Cons. Rég. Brux.-Cap., A-501/1 – 2003/2004, du 26 novembre 2003.

[77] C.A., 26 novembre 2003, 156/2003.

[78] Dans le même sens, J. SAMBON, o.c., n°5.

l'existence. Sont-ce des droits déduits de l'article 23 de la Constitution dont la question faisait état de la violation en combinaison avec les articles 10 et 11 de la Constitution?

L'autorisation tacite condamnée par la Cour de Justice

Quand une directive communautaire exige qu'un projet soit soumis à autorisation préalable, l'organisation d'un mécanisme d'autorisation tacite n'est pas de nature à exécuter convenablement le droit communautaire (CJCE, 28 février 1991, C-360/87, Commission c/ Italie, Rec. I, p 791, en matière d'eaux souterraines). Cette décision est confirmée, en ce qui concerne les autorisations tacites, par l'arrêt du 14 juin 2001, Commission c/ Belgique, C-230/00, à l'occasion d'une affaire dans laquelle la Commission critiquait une série de législations belges au regard de nombreuses directives de protection de l'environnement. La Cour de Justice juge que les autorités nationales sont tenues «d'examiner au cas par cas toutes les demandes d'autorisation introduites»[79].

Cette décision doit être approuvée. En effet, à défaut d'autorisation aucune garantie d'examen concret du projet n'est donnée, aucune évaluation des incidences du projet sur l'environnement n'a lieu, aucune condition particulière d'exploitation n'est fixée… Comme le souligne bien M. J. SAMBON, cette censure s'étend même aux législations qui autorisent tacitement moyennant le respect de conditions d'émission fixées par voie réglementaire.

Dans ses conclusions sur l'affaire C-230/00, l'Avocat général MISCHO avait plus nettement considéré que tant l'autorisation tacite que le refus tacite étaient en contradiction avec l'obligation faite par le droit communautaire de soumettre des actes à autorisation. La Cour avait déjà jugé en ce sens dans l'arrêt du 28 février 1991, C-131/88, Commission c/ Allemagne, Rec., I, p. 825.

Responsabilité de l'administration pour refus de permis ou retard dans la délivrance du permis.

Sur cette question, voy. nos observations sous Réf. Nivelles, 26 mai 1987, Aménagement, 1987, p. 88 et s.; sous Bruxelles, 26 septembre 1990, Aménagement 1991, p. 51 et s.; ég. F. HAUMONT, Responsabilité de l'administration en matière d'aménagement de territoire, in La responsabilité des pouvoirs publics, Bruxelles, Bruylant, 1991, p. 261 et s

L'amende forfaitaire

L'article 40, §7, du décret wallon relatif au permis d'environnement dispose. § 7. Il y a lieu à indemnité équivalente à vingt fois le montant du droit de dossier visé à l'article 177, alinéa 2, 1 et 2, à charge de la Région, dans le cas où le refus de permis résulte de l'absence de décision en première instance et en recours, et si aucun rapport de synthèse n'a été envoyé dans les délais prescrits. Les demandes d'indemnité sont de la compétence des cours et tribunaux.

II. Voies de recours juridictionnelles face à la durée excessive des procédures de droit administratif belge: jurisprudence récente de la Cour européenne des droits de l'homme

L'Etat belge a récemment été condamné par la Cour européenne des droits de l'homme pour violation de l'article 6, §1, de la Convention. La Cour a en effet constaté le non-respect du délai

[79] J.L.M.B., 2001, p. 1200, note J. SAMBON; A.J.T., 2001-01, p. 350, note D. VAN HEUVEN et S. RONSE.

raisonnable relativement à une procédure administrative dans un arrêt «Entreprises Robert DELBRASSINE S.A.» contre Belgique, le 1er juillet 2004. Par ailleurs, on note que la Cour pourrait aboutir à une conclusion identique dans une affaire VAN PRAET contre Belgique, à propos de laquelle elle a rendu, le 28 octobre 2004, une décision de recevabilité. La longueur d'une procédure administrative était également en cause. Nous examinons succinctement ces deux affaires ci-après.

Dans la première affaire sub-mentionnée, la Cour condamna la Belgique après avoir constaté que le Conseil d'Etat n'avait rendu un arrêt que plus de cinq ans après avoir été saisi. On note que le gouvernement belge avait souligné la complexité de l'affaire, en ce que, notamment, celle-ci touchait à la matière particulière du droit de l'aménagement du territoire, de l'urbanisme et de l'environnement et compte tenu également du nombre des parties intervenantes et de la connexité des causes. La requérante avait pour sa part fait valoir que rien dans son attitude n'avait contribué au dépassement du délais raisonnable. La Cour lui donna raison. Elle observa que, même si «l'affaire pouvait présenter certaines difficultés particulières compte tenu notamment du nombre d'intervenants», la durée de la procédure résultait principalement du laps de temps pris par l'auditeur pour déposer son rapport dans l'affaire, et que le gouvernement ne fournissait pas d'élément de nature à expliquer la majeure partie de ce délai.

Plus récemment encore, dans l'affaire VANPRAET contre Belgique, le requérant se plaignait aussi de la longueur de la procédure qu'il avait engagée devant le Conseil d'Etat. Ce dernier avait en effet déclaré irrecevable, le 9 juin 1998, une requête introduite devant lui, le 29 novembre 1991. Le gouvernement invoqua une exception d'irrecevabilité tirée du non-épuisement des voies de recours internes au sens de l'article 35 de la Convention. Il estimait que «le requérant aurait dû assigner l'Etat belge devant les juridictions civiles internes pour l'entendre condamner, sur la base de l'article 1382 du code civil, à indemniser le préjudice éventuel subi». Il fit notamment valoir à ce propos «que, depuis un arrêt du 19 décembre 1991, la Cour de Cassation belge accepte le principe selon lequel la responsabilité civile de l'Etat peut être engagée pour le dommage causé par des fautes commises par des magistrats dans l'exercice de leurs fonctions». Il cita ensuite «plusieurs décisions de juridictions de fond ayant condamné l'Etat à payer une indemnisation dans le cas de violations du droit à faire entendre sa cause dans un délais raisonnable». La Cour européenne des droits de l'homme constata que la Cour de cassation belge avait déjà admis, à la date d'introduction de la requête de Monsieur VANPRAET, le principe selon lequel la responsabilité de l'Etat peut être engagée du fait de fautes commises par des magistrats dans l'exercice de leurs fonctions. Elle souligna cependant que les diverses décisions de juridictions de fond citées par le gouvernement, qui avaient fait application de ce principe, étaient elles toutes postérieures au mois d'août 1998, à l'exception d'une décision «qui portait, toutefois, sur la durée anormale d'une procédure non judiciaire». La Cour estima dès lors que, «à la date d'introduction de la requête, la possibilité de mettre en cause la responsabilité de l'Etat pour le dommage causé par la faute de magistrats qui auraient méconnu les exigences du délai raisonnable au sens de l'article 6 de la Convention n'avait pas encore acquis un degré de certitude juridique suffisant pour pouvoir et devoir être utilisé aux fins de l'article 35 §1 de la Convention». Elle en conclut que l'exception de non-épuisement soulevée par le gouvernement ne pouvait être retenue et reporta l'examen du grief sur le fond, estimant que celui-ci posait «de sérieuses questions de fait et de droit» [80].

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[80] L'arrêt de la Cour européenne des droits de l'homme portant sur le bien-fondé de la requête n'a pas encore été rendu au jour où nous écrivons cette contribution.

BOSNIA AND HERZEGOVINA

2. Have such delays been acknowledged by court decisions? What courts (national/ European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR case-law.

Yes.

Case-law of the Constitutional Court

The Constitutional Court of Bosnia and Herzegovina in its decision of 02-02-2001, no. U 23/00, found that the appellant's right under Article 6 § 1 ECHR to have her civil rights determined by a court within a reasonable time had not been respected. The Court, therefore, quashed the Municipal Court ruling to halt the proceedings and ordered it to decide on the merits of the case as a matter of urgency. The Court also pointed out that, according to the case-law of the European Court of Human Rights, a breach of Article 6 § 1 ECHR, insofar as it entitles a party to a court determination within a reasonable time, would normally give the injured party a right to financial compensation from the state concerned.

3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights exist in the Constitution or legislation ?

In accordance with Article II. 2 of the Constitution, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols apply directly in Bosnia and Herzegovina and have priority over all other domestic legislation.

5. **Does a remedy in respect of excessive delays in the proceedings exist in your country ? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.**

YES, a complaint on the basis of Article 6 § 1 of the Convention before the Constitutional Court. A complaint against the excessive length of proceedings can be lodged by a party in the proceedings.
There are no special requirements (distinct from the general procedural law) for submission of the complaint.
There is a prescribed time-limit for lodging a complaint for excessive length of proceedings - for the ended proceedings it is six months after the completion of the proceedings.

6. Is this remedy available also in respect of pending proceedings ? how ?

YES, the same remedy is applicable for both pending and ended proceedings.

7. Is there a cost (ex. fixed fee) for the use of this remedy ?

NO.

8. What criteria are used by the competent authority in assessing the reasonableness of the duration of the proceedings ? Are they the same as, or linked with, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR ?

The criteria used are those applied by the Europen Court of Human Rights.

9. Is there a deadline for the competent authority to rule on the matter of the length ? Can it be extended ? What is the legal consequence of a possible failure by the authority to respect the deadline ?

There is no specific deadline.

10. What are the available forms of redress :

- **acknowledgement of the violation** **YES**
- **pecuniary compensation**
  - **material damage** **YES/NO**
  - **non-material damage** **YES**
- **measures to speed up the proceedings, if they are still pending** **YES**
- **possible reduction of sentence in criminal cases** **YES/NO**
- **other (specify what)**

The Court would declare a breach of the Article 6 § 1 of the ECHR. It could, where the proceedings have not ended yet, order that the competent court complete the proceedings by certain date or without further delay (normally within six months), and it could order a monetary compensation for non-pecuniary damage.

If a delay occurred due to a misconduct of a judge, he/she could be subjected to a disciplinary procedure.

16. Is an appeal possible against a decision on the reasonableness of the duration of the proceedings? Is there a fixed time-frame for the competent authority to deal with this appeal ? What would be the legal consequence of non-compliance with this time-limit?

There are just general time-limits for the administrative bodies which govern issuing decisions. If these time-limits are not obeyed in the procedure initiated by a party, the latter could proceed with an appeal procedure considering that a negative decision is issued.

A decision of the Constitutional Court could be challenged only if a new fact of decisive nature is disclosed, provided that this fact could not had reasonably be known for the party in the course of proceedings before the Constitutional Court. A party must initiate proceedings for a revision of a decision within six months after having learned about the fact at issue.

17. Is it possible to use this remedy more than once in respect of the same proceedings ? is there a minimum period of time which needs to have elapsed between the first decision on the reasonableness of the length of the proceedings and the second application for such a decision ?

In order to avoid the excessive frequency of such complaints, the Court would reject a complaint if it concerns a case that was already dealt with.

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BULGARIA

2. Have such delays been acknowledged by court decisions ? What courts (national/ European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR case-law.

Yes.
Case-law of the Court on Human Rights :
In *Djangozov v. Bulgaria* case (judgement of 8 July 2004), the Court considered that there had been a violation of Article 6 § 1 of the Convention because of the excessive length of criminal proceedings.

In *Rachevi v. Bulgaria* case (judgement of 23 September 2004), the Court considered that there had been a violation of Article 6 § 1 of the Convention because of the excessive length of civil proceedings.

3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights exist in the Constitution or legislation ?

In accordance with Article 5 § 4 of the Constitution, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols apply directly in Bulgaria and have priority over all other domestic legislation.

5. Does a remedy in respect of excessive delays in the proceedings exist in your country ? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.

Partially YES: Article 217a of the Code of Civil Procedure, introduced in 1999, provides that:

“1. Each party may lodge a complaint about delays at every stage of the case, including after oral argument, when the examination of the case, the delivery of judgement or the transmitting of an appeal against a judgement is unduly delayed.

2. The complaint about delays shall be lodged directly with the higher court, no copies shall be served on the other party, and no State fee shall be due. The lodging of a complaint about delays shall not be limited by time

3. The chairperson of the court with which the complaint has been lodged shall request the case file and shall immediately examine the complaint in private. His instructions as to the acts to be performed by the court shall be mandatory. His order shall not be subject to appeal and shall be sent immediately together with the case file to the court against which the complaint has been filed.

4. In case he determines that there has been [undue delay], the chairperson of the higher court may make a proposal to the disciplinary panel of the Supreme Judicial Council for the taking of disciplinary action."

A complaint against the excessive length of proceedings can be lodged at any stage of the pending proceedings by a party in the proceedings.
There are no remedies for the proceedings complained of which are already completed.

There also exists the possibility to expedite the criminal proceedings through a complaint to various levels of the prosecution authorities.

6. Is this remedy available also in respect of pending proceedings ? how ?

YES, Article 217a of the Code of Civil Procedure is in fact aimed at accelerating the civil proceedings.

7. Is there a cost (ex. fixed fee) for the use of this remedy ?

NO. There is no fee for using the remedy.

9. Is there a deadline for the competent authority to rule on the matter of the length ? Can it be extended ? What is the legal consequence of a possible failure by the authority to respect the deadline ?

NO, but the complaint shall be dealt with "immediately".

10. What are the available forms of redress :

- **acknowledgement of the violation** **YES/NO**
- **pecuniary compensation**
  - **material damage** **YES/NO**
  - **non-material damage** **YES/NO**
- **measures to speed up the proceedings, if they are still pending** **YES**
- **possible reduction of sentence in criminal cases** **YES/NO**
- **other (specify what)**

The chairman of a superior court issues mandatory instructions as to the acts to be performed by the relevant court. In case it is determined that there has been [undue delay], the chairperson of the higher court may make a proposal to the disciplinary panel of the Supreme Judicial Council for the taking of disciplinary action.

16. Is an appeal possible against a decision on the reasonableness of the duration of the proceedings ? Is there a fixed time-frame for the competent authority to deal with this appeal ? What would be the legal consequence of non-compliance with this time-limit?

No, there is no appeal against a decision on the complaint.

21. Has this remedy been assessed by the European Court of Human Rights in respect of Articles 13 or 35 ECHR? If so, please provide reference to the relevant case-law.

In *Djangozov v. Bulgaria* case, the Court considered that the possibility to appeal to the various levels of the prosecution authorities cannot be regarded as an effective remedy because such hierarchical appeals aim to urge the authorities to utilise their discretion and do not give litigants a personal right to compel the State to exercise its supervisory powers.

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CROATIA

1. Does your country experience excessive delays in judicial proceedings ? what proceedings (civil, criminal, administrative, enforcement)?

Yes, in all types of proceedings.

2. Have such delays been acknowledged by court decisions ? What courts (national/ European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR case-law.

Yes. Case-law of the Constitutional Court:

The Constitutional Court of Croatia considered in numerous cases, that there had been a violation of the right to a hearing within reasonable time as guaranteed by Article 6 § 1 of the Convention because of the excessive length of proceedings (see for example, decision U-IIIA/2033/2003 of 8 February 2005, and decisions U-IIIA/2751/2004 and U-IIIA/2854/2004 of 14 February 2005).

Case-law of the European Court of Human Rights

See among many cases where the European Court declared violation of Article 6 §1 of the Convention with respect to Croatia, the following cases : *Kutic v. Croatia* (judgement of 1 March 2002), *Acimovic v. Croatia* (judgement of 9 October 2003), *Delic v. Croatia* (judgement of 27 June 2003), and *Multiplex v. Croatia* (judgement of 10 July 2003).

3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights exist in the Constitution or legislation ?

In accordance with Article 140 of the Constitution, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols apply directly in Croatia and has priority over all other domestic legislation.

5. Does a remedy in respect of excessive delays in the proceedings exist in your country ? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.

YES, there is a remedy provided by Section 63 of the 2002 Constitutional Act on the Constitutional Court. The latter provides that :

"(1) The Constitutional Court shall examine a constitutional complaint even before all legal remedies have been exhausted in cases when a competent court has not decided within a reasonable time a claim concerning the applicant's rights and obligations or a criminal charge against him ...

(2) If the constitutional complaint ... under paragraph 1 of this Section is accepted, the Constitutional Court shall determine a time-limit within which a competent court shall decide the case on the merits...

(3) In a decision under paragraph 2 of this Article, the Constitutional Court shall fix appropriate compensation for the applicant in respect of the violation found concerning his constitutional rights ... The compensation shall be paid from the State budget within a term of three months from the date when the party lodged a request for its payment".

A complaint can be lodged by a party in the proceedings.
There is no prescribed time-limit - the constitutional complaint could be lodged at any time during the proceedings.
The remedy procedure is a separate one before the Constitutional Court.

6. Is this remedy available also in respect of pending proceedings ? how ?

This remedy is available *only* for pending proceedings. By its decision, the Constitutional Court will determine a time-limit within which the competent Court is due to complete the proceedings and adopt a final decision on the merits of the case.

There are no remedies for the proceedings which are already completed.

8. What criteria are used by the competent authority in assessing the reasonableness of the duration of the proceedings ? Are they the same as, or linked with, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR ?

The same criteria as those applied by the European Court of Human Rights.

10. What are the available forms of redress :

- **acknowledgement of the violation** **YES**
- **pecuniary compensation**
  - **material damage** **YES/NO**
  - **non-material damage** **YES**
- **measures to speed up the proceedings, if they are still pending** **YES**
- **possible reduction of sentence in criminal cases** **YES/NO**
- **other (specify what)**

The Constitutional Court is to decide on whether the proceedings complained off lasted excessively long; if so, it will determine the time-limit for within which a competent court shall decide the case on the merits, and shall also fix appropriate compensation for the applicant in respect of the violation found concerning his constitutional rights.

12. If pecuniary compensation is available, according to what criteria ? are these criteria the same as, or linked with, those applied by the European Court of Human Rights ? Is there a maximum amount of compensation to be awarded ?

The compensation is determined in the light of the circumstances of the case before the Court and on the basis of the social and economic situation of Croatia.

20. Has this remedy had an impact on the number of cases possibly pending before the European Court of Human Rights ? Please provide any available statistics in this connection.

Following *Slavicek v. Croatia* case (decision of 4 July 2002), in which the Court considered that the constitutional complaint on the basis of Section 63 of the Constitutional Court Law was an effective legal remedy that must be exhausted before applying to the Court an important number of applications lodged before the Court were decided to be inadmissable (by July 2004, 12 cases were thus declared non admissible by the Court).

Further to *Nogolica v. Croatia* case (judgement of), the Court has considered that this legal remedy has to be exhausted even in those cases that were filed in Strasbourg before the adoption of the amendments in 2002.

21. Has this remedy been assessed by the European Court of Human Rights in respect of Articles 13 or 35 ECHR ? If so, please provide reference to the relevant case-law.

In 2002, further to *Horvat v. Croatia* case (judgement of 26 July 2001) in which the Court ruled that a new remedy for the protection of the right to a hearing within reasonable time was not an effective legal remedy, another set of amendments was adopted (see *supra*, under question no 5). In *Slavicek v. Croatia* case (decision of 4 July 2002), the new remedy was considered to be effective for the purposes of Article 13.

Where proceedings have ended, though, this remedy was considered as not effective for the purposes of Article 13 (*Soc v. Croatia*, judgement of 9 May 2003).

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CZECH REPUBLIC

2. Have such delays been acknowledged by court decisions ? What courts (national/ European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR case-law.

Yes. Case-law of the Constitutional Court

In its decision no. III. ÚS 70/97 of 10 July 1997, the Constitutional Court found that the Prague High Court (*vrchní soud*) had infringed with the appellant's right to have his case heard without unjustified delays. It held that such an infringement would not justify setting aside a decision which had become final unless the delays had led to the infringement of other Constitutional rights. Procedural delays alone, therefore, did not constitute grounds for setting the decision aside.

By its decision no. Pl. ÚS 6/98 of 17 February 1998 the Constitutional Court decided that the right to a hearing without unjustified delays corresponded to the courts' obligation to comply

with the principle of fair trial, without it being possible to draw a distinction between the various elements of judicial power.

The decision no. II. ÚS 342/99 of 4 April 2000 of the Constitutional Court held that delays in proceedings concerning the award of damages could infringe the constitutional right to judicial protection. It therefore ordered the court concerned to expedite the proceedings.

In its decision no. IV. ÚS 379/01 of 12 November 2001 the Constitutional Court held that delays in proceedings already concluded by a decision which had become final did not in themselves amount to a breach of Article 38-2 of the Charter of Fundamental Rights and Freedoms. Setting aside the impugned decision, in a situation where the Constitutional Court did not have any other means of protecting Constitutional rights, would be justified only if procedural delays had entailed an infringement of the principle of fair trial or other substantive rights guaranteed by the Constitution.

Decision no. I. ÚS 663/01 of 19 November 2002 of the Constitutional Court ordered the lower court to cease to infringe an appellant's right under Article 38-2 of the Charter and Article 6 § 1 of the Convention and to hear his claim without delay.

Case-law of the European Court of Human Rights:

Amongst others, in *Hartman v. Czech Republic* (judgement of 10 July 2003), *Dostal v. Czech Republic* (judgement of 25 may 2004), and *Houfova v. Czech Republic* case, the Court considered that there had been a violation of Article 6 § 1 of the Convention because of the excessive length of proceedings.

3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights exist in the Constitution or legislation ?

Under Article 38-2 of the Charter of Fundamental Rights and Freedoms, everyone is entitled, *inter alia*, to a hearing within a reasonable time (“without unnecessary delay”).

5. Does a remedy in respect of excessive delays in the proceedings exist in your country ? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.

Section 5 § 1 of the Law no. 335/1991 on courts and judges provides that :
“judges are required to rule impartially and fairly and without delay”. By virtue of Section 6 § 1 it is possible to lodge complaints with the organs of the judicial system (such as presidents of courts, or the Ministry of Justice) concerning the way courts have conducted judicial proceedings, whether these concern delays, inappropriate behaviour on the part of persons invested with judicial functions or interference with the proper conduct of court proceedings. An appellant is entitled to obtain information on the measures the supervisory authority has taken in response to his appeal, but the latter does not give him a personal right to require the State to exercise its supervisory powers.

Law no. 82/1998 on State liability for damage caused in the exercise of public authority by an irregularity in a decision or the conduct of proceedings (in force since 15 May 1998) in its

Section 13 provides that the State is liable for damage caused by an irregularity in the conduct of proceedings, including non-compliance with the obligation to perform an act or give a decision within the statutory time-limit. A person who has suffered loss on account of such an irregularity is entitled to damages which section 31(2) requires to include reimbursement of the costs incurred by the claimant in respect of the proceedings in which the irregularity occurred, in so far as those costs are linked to the irregularity.

Law no. 182/1993 on the Constitutional Court
Section 82(3) provides that when the Constitutional Court upholds a constitutional appeal it must either set aside the impugned decision by a public authority or, where the infringement of a right guaranteed by the Constitution is the result of an interference other than a decision, forbid the authority concerned to continue to infringe the right and order it to re-establish the status quo if that is possible.

The Constitutional Court's case-law shows that, in order to be able to declare admissible a constitutional appeal concerning the length of proceedings, it requires the appellant to have appealed to the organs of the judicial system. Where it finds an infringement of the right guaranteed by Article 38-2 of the Charter of Fundamental Rights and Freedoms it may order the court to put an end to the delay and expedite the proceedings (as it did in cases nos. I ÚS 313/97 and I ÚS 112/97), but is not empowered to award compensation to the appellant.

6. Is this remedy available also in respect of pending proceedings ? how ?

Yes. See *supra*, under question no 5.

15. What measures can be taken in case of non-enforcement of such decision ? Please indicate these measures in respect of each form of redress and provide examples.

None.

21. Has this remedy been assessed by the European Court of Human Rights in respect of Articles 13 or 35 ECHR ? If so, please provide reference to the relevant case-law.

Yes. In *Hartman v. Czech Republic*, (judgement of 10 July 2003), the Court held that none of the various remedies referred to by the Government could be accepted as effective. Law No. 335/1991 on the courts and judges was inadequate, since it did not give the individual the right to oblige the State to exercise its supervisory power. An appeal to the Constitutional Court was similarly ineffective, since there was no sanction in law if its ruling was not followed. This deficiency was not made good by the possibility of suing the State for damages under Law No. 82/1998, since the Government had not been able to prove that compensation for non-pecuniary damage would be available.

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CYPRUS

1. **Does your country experience excessive delays in judicial proceedings ? what proceedings (civil, criminal, administrative, enforcement)?**

In a few cases delay is encountered, mainly in civil proceedings. We have a very good record in criminal proceedings.

2. Have such delays been acknowledged by court decisions ? What courts (national/ European Court of Human Rights)? Please provide some examples in English or French or reference to ECtHR case-law.

Delays have been acknowledged both by national courts decisions as well as by European Court of Human Rights decisions.

Case-Laws of National Courts

See for example, Efstathiou v. Police (1990) 2 C.L.R 294

Case Law of the European Court of Human Rights

In the following four cases, the European Court declared violation of Article 6 §1 of the Convention with respect to Cyprus : *Papadopoulos v. Cyprus*, (judgement of 21 March 2000), *Louka v. Cyprus, (*judgement of 21 August 2000), *Gregoriou v. Cyprus*, (judgement of 25 March 2003) and *Serghides a.o. v. Cyprus* (judgement of 5 November 2002) case.

3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights exist in the Constitution or legislation?

The Constitution of Cyprus explicitly provides for the reasonableness of judicial proceedings. According to Article 30: "...every person is entitled to a fair and public hearing within a reasonable time…". This Article is equivalent to Article 6.1 of the European Convention on Human Rights.

Furthermore Practice Directions of 1986, issued by the Supreme Court provide that no judgement shall be reserved for a period exceeding 6 months. Circulars of the Supreme Court indicate that the above period creates the proceedings before the Supreme Court, but the principle is that judgements should be handled down promptly.

4. Are any statistical data available about the proportions of this problem in your country? If so, please provide them in English or French.

No.

5. Does a remedy in respect of excessive delays in the proceedings exist in your country? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.

(a) In Criminal cases, the accused may raise the issue that his constitutional right for a trial within a reasonable time has been violated and that he should be acquitted. The Court

will examine the argument based on the criteria established by the European Court of Human Rights. And we had cases with this result.

(b) If a judgement has been reserved for more than 6 months then an interested party can apply to the Supreme Court seeking a remedy. The Supreme Court in examining such an application can:

(i) order the retrial of the case by a different court
(ii) make an order for the issue of Judgement within a time limit
(iii) issue any other necessary order.

In all cases judgements have been delivered either before the application was placed in the Supreme Court, or immediately after.

6. Is this remedy available also in respect of pending proceedings? How?

Yes. By referring the matter to the Supreme Court, which issues the necessary directions to the Supreme Court.

7. Is there a cost (ex. fixed fee) for the use of this remedy?

There is no fixed fee for the use of this remedy.

8. What criteria are used by the competent authority in assessing the reasonableness of the duration of the proceedings? Are they the same as, or linked with, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

The criteria in assessing the reasonableness of the duration of the proceedings are the same as the ones applied by the European Court of Human Rights. These are namely the complexity of the case, the conduct of the authorities and the conduct of the parties what was at stake for the applicant

9. Is there a deadline for the competent authority to rule on the matter of the length? Can it be extended? What is the legal consequence of a possible failure by the authority to respect the deadline?

There is no deadline for ruling on the matter of delay, however a decision on the matter is given very shortly.

10. What are the available forms of redress:

- acknowledgement of the violation YES / NO
- pecuniary compensation
  - material damage YES
  - on-material damage NO
- measures to speed up the proceedings
- if they are still pending YES / NO

- possible reduction of sentence in criminal cases YES / NO
- other (specify what)

11. Are these forms of redress cumulative or alternative?

These forms of redress are cumulative.

12 If pecuniary compensation is available, according to what criteria? Are these criteria the same as, or linked with, those applied by the European Court of Human Rights ? Is there a maximum amount of compensation to be awarded?

Our legal system does not provide for pecuniary compensation for delay.

13 If measures can be taken to speed up the proceedings in question, is there a link between these measures and the general case-management of the relevant courts? Is the taking of these measures co-ordinated at a central or higher level? On the basis of what criteria and what factual information concerning the court in question (workload, number of judges, nature of cases pending, specific problems etc.) does the competent authority order such measures?

The Supreme Court, through the Chief registrar, is responsible for taking measures to speed up the proceedings. These measures may involve the general case- management of the relevant courts. If the workload of a judge includes complex cases or cases that will need a lot of time to be tried, he may not be assigned cases or redistribution of the cases may occur with the approval of the Supreme Court

14 What authority is responsible for supervising the implementation of the decision on the reasonableness of the duration of the proceedings?

The Supreme Court is responsible for supervising the implementation of the decision.

15 What measures can be taken in case of non-enforcement of such decision? Please indicate these measures in respect of each form of redress and provide examples.

The decision or directive of the Supreme Court, is always enforced.

16. Is an appeal possible against a decision on the reasonableness of the duration of the proceedings? Is there a fixed time-frame for the competent authority to deal with this appeal? What would be the legal consequence of non-compliance with this time-limit?

No appeal lies against a decision of the Supreme Court on the reasonableness of the duration of proceedings.

17. Is it possible to use this remedy more than once in respect of the same proceedings? is there a minimum period of time which needs to have elapsed between the first decision

on the reasonableness of the length of the proceedings and the second application for such a decision ?

This remedy can be used more than once in the same proceedings.

18. Are there any available statistical data on the use of this remedy? If so, please provide them in English/French

No.

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ESTONIA

1. Does your country experience excessive delays in judicial proceedings ? what proceedings (civil, criminal, administrative, enforcement)?

Yes, although on average, the proceedings are not excessively long.

2. Have such delays been acknowledged by court decisions ? What courts (national/ European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR case-law.

Yes. Case-Law of the European Court of Human Rights

In the *Treial v. Estonia* case (judgement of 2 December 2003), the Court has found Estonia to be in violation of Article 6 due to the excessive length of proceedings. It must be borne in mind that the Convention entered into force with respect to Estonia only in 1996 and thus the ECHR cannot review complaints against Estonia for violations occurring before that date.

Case-Law of the National Courts

The Supreme Court of Estonia has in several instances mentioned that the principle of effective court proceedings applies in Estonia and that this principle includes the duty to review the case within a reasonable time. However, there are no cases where the court has ended the proceedings in criminal cases for this reason, although such a possibility has been deemed acceptable. The requirement of reviewing the case within reasonable time is rather a principle that guides the courts when they take procedural decisions.

The most important case is the Rüngas case. In its first decision (Supreme Court criminal chamber decision of 13 February 2003), the Supreme Court argued:

"8. The criminal Chamber does not agree with the appellant [Rüngas], that invalidating the acquittal twice by the Appellate Court would necessitate the termination of proceedings due to the passing of reasonable time for conducting the proceedings. When judging the reasonability of the length of the proceedings, the Supreme Court analyzes the complexity of the case, deadlines for the preliminary investigation and judicial proceedings, as well as the behavior and attitudes of the participants to the proceedings.

13. Thus, when considering on the one hand the interest of Rüngas to have his case solved in the quickest time possible, and on the other hand, the public interest to proceed with the legally complex case in the changed legal environment as fully and correctly as possible, the Supreme Court decided that in the present case the reasonable length of the proceedings has not been exceeded. At the same time, the Supreme Court is of the opinion, that after the Appellate Court has already before sent the case for further consideration to the court of first instance, then in the further proceedings the decision to send the case back to the first instance should be considered very thoroughly."

One year later, the Supreme Court had Rüngas yet one more time before it (Judgement of 20 January 2004; the proceedings against him were initiated in May 1999). Then, the Supreme Court further specified its position:

"19. The right of the person to demand that his or her case be reviewed within reasonable time is guaranteed in the Article 6 (1) of the European Convention of Human Rights. To this right corresponds the duty of all institutions involved in the proceedings to take steps for speedy resolution of the case, both in pre-trial phase as well as in the courts. The reasonability of the length of the proceedings depends on the severity of the crime, the complexity and volume of the case, but also on other facts, including on how the previous stages of the proceedings have been carried out. The last aspect encompasses, among other things, the question, how many times the case has been sent for further consideration to the lower courts or to the investigative authorities.

21. In principle, it is not impossible that the reasonable length of the proceedings expires after the Supreme Court has remanded the case for further proceedings to the appellate court.

22. The criminal chamber of the Supreme Court finds it necessary to point out that if the reasonable length of the proceedings has expired, it does not mean that the person must automatically and always be acquitted. Depending on the circumstances, the appropriate result may also be a termination of proceedings or taking the length of the proceedings into account in the sentencing decision."

The administrative and civil courts have similarly urged the courts to proceed in an efficient manner, and have used the principle of effectiveness of judicial proceedings in interpreting various procedural rules.

3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights exist in the Constitution or legislation?

The Constitution does not contain an explicit requirement equivalent to the Article 6 of the ECHR. However, the Supreme Court has interpreted Article 15 of the Estonian Constitution to guarantee the right to effective judicial remedies, including the right to speedy remedies. Also, the ECHR is directly applicable in Estonia, and the courts have to enforce its guarantees. The most important decision in this regard is the Rüngas case (see question No. 2).

4. Are any statistical data available about the proportions of this problem in your country? If so, please provide them in English or French.

According to the Ministry of Justice,[81] the average length of a proceedings were (in days):

	First instance	Second instance
Criminal court	100	41
Civil court	167	99
Administrative court	123	170

There are certain cases where the length of the proceedings is well above average. As the end of 2003, there were approximately 90 criminal and 200 civil cases that had been in the courts for more than five years. The data, broken down by the year when a case entered the courts, are the following (showing the number of cases still pending at the end of 2003):

	1989	1992	1993	1994	1995	1996	1997	1998	1999
Criminal	-	1	13	8	13	11	17	24	64
Civil	1	1	2	5	4	18	43	121	223

Altogether, there were 3272 criminal and 12633 civil cases pending at the end of 2003.

However, the statistics do not capture situations where the length of the proceedings have nothing to do with the delays caused by the courts and may be caused by purely objective factors. Thus, this table cannot give an accurate overview of the actual extent of the problem.

There are no specific data on the enforcement of judicial decisions. However, the length of the enforcement proceedings does not seem to constitute a major problem in Estonia.

5. Does a remedy in respect of excessive delays in the proceedings exist in your country ? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.

There is no specific remedy in respect of excessive delays in the proceedings.

Delays by the administrative authorities in administrative proceedings may be appealed to the courts, whereas the court is able to order specific performance and, if damage has been caused due to the delay, damages to the person. However, this does not concern judicial delays.

According to the State Liability Act, the damages caused in the process of judicial decision-making may be claimed only if a crime was committed by the judge in the process. This is normally not the case when excessive length of the proceeding is at issue.

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FINLAND

1. Does your country experience excessive delays in judicial proceedings? What proceedings (civil, criminal, administrative, enforcement)?

[81] The ministry that keeps track of statistics on those issues. The report as of the end of 2003 is available in Estonian at http://www.just.ee/files/statistika/2003/kstat2003.pdf

There is some experience of excessive delays in judicial proceedings, although the average times for proceedings are quite reasonable. Excessive delays have been a problem in, e.g., penal law cases concerning economic crimes and administrative law cases concerning taxes, as well as zoning and building.

2. Have such delays been acknowledged by court decisions? What courts (national/European Court of Human Rights)? Please provide some examples in English or French or reference to EctHR case-law.

Case-Law of the National Courts

The Penal Code (Chapter 6, Art. 7) mentions the time elapsed from the crime as a reason for mitigating the punishment. The Supreme Court has applied this provision in, e.g., its decision 2004:58. The Court stated – referring explicitly to Art 6 of the Convention - that the length of the proceedings did not provide a sufficient reason for acquitting the defendant but had to be taken into account in the punishment. In a recent decision, a district court broke off the proceedings in a case concerning economic crimes with reference to the time elapsed and the praxis of the ECtHR.

Case-Law of the European Court of Human Rights

The ECtHR has in four cases concerning Finland found a violation of Art. 6 of the Convention because of the excessive length of the proceedings. These cases are *Launikari vs Finland* (judgement of 5 October 2000); *Turkikye IS Bankasi vs Finland* (judgement of 18 June 2002); *Pietiläinen vs Finland* (judgement of 5 November 2002); and *Kangasluoma vs. Finland* (judgement of 20 January 2004).

3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights exist in the Constitution or legislation?

The Convention has been incorporated into domestic law through a parliamentary law. In addition, Article 21 of the Constitution establishes the right to a fair trial, which is supposed to be interpreted as providing at least as efficient as protection guaranteed by Art. 6 of the Convention (as applied and interpreted by the ECtHR).

4. Are any statistical data available about the proportions of this problem in your country? If so, please provide them in English or French.

Statistical information is available on the average length of different types of judicial proceedings. The following figures are from the year 2002.

District Courts

- private law cases 2,6 months
- criminal law cases 2 months 27 days

Courts of Appeal

- private law cases 8,6 months

Supreme Court

- private law cases 6,3 months
- criminal law cases 5,9 months

Administrative Courts

- all cases 8,8 months
- tax law cases 13,6 months

Supreme Administrative Court
- 11 months (year 2003)

In district courts, in 2600 out of 137 509 cases, the length of private law proceedings exceeded one year. In 11 % of criminal cases, the district court proceedings exceeded six months.

5. Does a remedy in respect of excessive delays in the proceedings exist in your country ? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.

For the moment, there is no specific remedy in respect of excessive delays. However, it is possible to submit a complaint either to the Ombudsman or to the Chancellor of Justice. These authorities can raise a criminal or disciplinary case against those they deem responsible for the delay. They can also apply ”softer” methods, such as informing those responsible of the requirements of the law and of his/her interpretation of these requirements.

In 2002, the Government submitted to the Parliament a bill on an amendment to the law on legal proceedings (190/2002). The draft amendment included a provision on the right of a party to request that the case be declared urgent. This right would have covered both private and criminal law proceedings. The bill included an explicit reference to the requirements of Art. 6 and 13 of the Convention, and to the interpretation of these articles in *Kudla vs Poland*. However, the provision was not passed by the Parliament. The Committee of Legal Affairs referred to a recent reform of private law proceedings which had, i.a., obliged the courts to draw up a time-table for each case. The Committee criticized the bill for not giving any account of the relation of the proposed remedy to this reform. At the same time, the Committee refrained from taking any stand on the adequacy of the Government’s proposal as the remedy possibly presupposed by Art. 6 and 13 of the Convention.

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ITALY

1. Does your country experience excessive delays in judicial proceedings ? what proceedings (civil, criminal, administrative, enforcement)?

Yes.

2. Have such delays been acknowledged by court decisions ? What courts (national/ European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR case-law.

Case-law of the European Court of Human Rights

In *Di Mauro v. Italy*, (judgement of 28 July 1999), drew attention to the fact that since 25 June 1987, the date of the *Capuano v. Italy* judgment (Series A no. 119), it had delivered 65 judgments in which it had found violations of Article 6 § 1 in proceedings exceeding a "reasonable time" in the civil courts of the various regions of Italy. Similarly, under former Articles 31 and 32 of the Convention, more than 1,400 reports of the Commission resulted in resolutions by the Committee of Ministers finding Italy in breach of Article 6 for the same reason.

3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights exist in the Constitution or legislation ?

Article 111 of the Constitution provides that "An Act of parliament shall lay down provisions to ensure that trials are of a reasonable length".

4. Are any statistical data available about the proportions of this problem in your country ? If so, please provide them in English or French.

See the answer to question number 2.

5. Does a remedy in respect of excessive delays in the proceedings exist in your country ? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.

YES, as provided by Pinto Law – a claim for just satisfaction.

The Pinto Law, which came into force in 2001, has introduced a legal remedy in cases where the length of proceedings before the Italian courts has been excessive.
A complaint can be lodged by anyone sustaining pecuniary or non-pecuniary damage as a result of a violation of ECHR.

Special requirement (distinct from the general procedural law) - a claim must be submitted by a lawyer holding special authority.

A claim must be submitted within six months from the date when the decision ending the proceedings becomes final (or during the proceedings).

The remedy proceedings are separate from the proceedings on merits.

6. Is this remedy available also in respect of pending proceedings ? how ?

YES, the same remedy is provided both for pending and ended proceedings.

7. What criteria are used by the competent authority in assessing the reasonableness of the duration of the proceedings ? Are they the same as, or linked with, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR ?

Italian Court of Appeal and the Cassation Court generally use the same criteria as those applied by the European Court of Human Rights.

9. Is there a deadline for the competent authority to rule on the matter of the length ? Can it be extended ? What is the legal consequence of a possible failure by the authority to respect the deadline ?

YES, the Court of Appeal shall deliver a decision within four months after the application is lodged.

10. What are the available forms of redress :

- **acknowledgement of the violation** **YES**
- **pecuniary compensation**
  - **material damage** **YES**
  - **non-material damage** **YES**
- **measures to speed up the proceedings, if they are still pending** **NO**
- **possible reduction of sentence in criminal cases** **YES/NO**
- **other (specify what)**

The remedy is a compensatory one – payment of a sum of money, and giving suitable publicity to the finding of a violation.

The competent authority can not set a time-limit to conclude the proceedings complained of.
If a claim is grounded, a decision shall be communicated to State Council at the Court of Audit to enable him to start an investigation into liability, and to the authorities responsible for deciding whether to institute disciplinary proceedings against the civil servants involved.

12. If pecuniary compensation is available, according to what criteria ? are these criteria the same as, or linked with, those applied by the European Court of Human Rights ? Is there a maximum amount of compensation to be awarded ?

There is no limit as to the amount of compensation.

16. Is an appeal possible against a decision on the reasonableness of the duration of the proceedings ? Is there a fixed time-frame for the competent authority to deal with this appeal ? What would be the legal consequence of non-compliance with this time-limit?

YES, a decision can be appealed before the Court of Cassation. There is no time-limit for it to deal with the appeal.

20. Has this remedy had an impact on the number of cases possibly pending before the European Court of Human Rights ? Please provide any available statistics in this connection.

Yes, following *Brusco v. Italy case* (decision of 6 September 2001) case, an important number of applications lodged before the European Court were declared inadmissible.

21. Has this remedy been assessed by the European Court of Human Rights in respect of Articles 13 or 35 ECHR ? If so, please provide reference to the relevant case-law.

In its decision *Di Cola and ors. V. Italy*, (decision of 11 October 2001), the Court considered that the remedy provided by "Pinto Act" was an effective remedy for the purposes of Article 13 and 35.

More recently, the amount of damages awarded by the Italian courts has proven in some cases to be inadequate and thus, the remedy has been considered ineffective (*Scordino and ors. (no. 1) v. Italy*, (decision of 27 March 2003). This defect has been corrected by the Italian Court of Cassation in a judgment of January 2004, as noted by the Court in *Di Sante c. Italie*, no. 56079/00, decision of 24 June 2004. The Court has taken the view that this new development in national law should have been widely known by 26 July 2004, which becomes the key date for the exhaustion of domestic remedies in future applications.

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THE NETHERLANDS

1. Does your country experience excessive delays in judicial proceedings? What proceedings (civil, criminal, administrative, enforcement?)

A great majority of judicial proceedings come to an end within a reasonable time. However, incidently there are examples of delays, and indeed excessive delays, both in civil, criminal and administrative cases, and in enforcement procedures.

2. Have such delays been acknowledged by court decisions? What courts (national/European Court of Human Rights)? Please provide some examples in English of French or reference to ECtHR case-law.

Case-Law of the National Courts

Especially criminal courts and administrative courts have more than once acknowledged that a case had not been dealt with within a reasonable time as proscribed by Article 6 of the European Convention on Human Rights.

Thus, in a judgement of 22 May 2001 in a criminal case, the Supreme Court held that a delay of more that five years on the part of the public prosecutor made the delay in that phase of the proceedings unreasonable (NJ 2001, 440).

In a judgement of 4 July 2003 in an administrative procedure, the Central Appeals Board held that, taking into account the total period of the judicial proceedings and the periods, both in the first instance and in appeal, of inactivity without any clear reason, and also taking into account the character of the case and the attitude of the applicant, the reasonable-time requirement referred to in Article 6 of the Convention had been violated (JB 2003, 249).

And in another administrative procedure, in a judgement of 19 November 2003, the Administrative Jurisdiction Division of the Council of State held that the reasonable-time requirement had been violated in a case where proceedings in the first instance had lasted four and a half years, and in appeal one more year, in a not very complicated case in which the applicant has not contributed to the delays (AB 2004, 27).

Case-Law of the European Court of Human Rights

The European Court of Human Rights found more than once that the reasonable time requirement of Article 6 had not been met in Dutch proceedings. Some of the more recent examples are the following ones: *Meulendijks v. the Netherlands* (judgement of 14 May 2002), *Göcer v. the Netherlands* (judgement of 3 October 2002) and *Beumer v. the Netherlands* (judgement of 29 July 2003).

3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6,1 of the European Convention on Human Rights exist in the Constitution or Legislation?

That is not the case in the Netherlands. The above-mentioned domestic judgements are based directly on Article 6 of the Convention. There are instances where the law prescribes that a certain step in the proceedings has to be set within a certain period (e.g. Artikel 8:66 General Administrative Procedure Act: the court takes a decision within six weeks from the moment the examination of the case has been closed). However, surpassing such periods does not have any legal effect. Article 20, paragraph 1, of the Civil Procedure Act states that the court sees to it that proceedings are not delayed unreasonably and, if necessary, takes measures to that effect. Again, no legal effect ensues from that provision.

4. Are any statistical data available about the proportions of this probleem in your country? If so, please provide them in English or French.

There are no specific statistics on the matter. There are statistics concerning the average duration of categories of proceedings (www.cbs.nl "Rechtspraak in Nederland"), but these do not indicate in what cases the duration was unreasonable.

5. Does a remedy in respect of excessive delays in the proceedings exist in your country? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary, special - procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English and French.

Dutch law does not provide a specific remedy nor a specific procedure to obtain a remedy. There is the general remedy of a civil action against the State for tort, but tort actions for violation of the reasonable-time requirement have been instituted only very seldom and have not been successful so far. Consequently, the European Court of Human Rights has held that in this respect there are no effective remedies to be exhausted before a complaint is lodged in Strasbourg (judgement of 3 Octobre 2002, Göcer v. the Netherlands).

There is, however, the possibility to raise the issue of the reasonable time in the proceedings concerned. In criminal cases, and in administrative cases where a punitive sanction is at issue, recognition by the court that the reasonable-time requirement has been violated, may result in a mitigation of the penalty or of the punitive sanction. In its judgement of 3 October 2000 (NJ 2000, 721), the Supreme Court has developed general guidelines for criminal cases in this respect.

In other administrative cases than those involving a punitive sanction, the court has so far taken the position that the acknowledgment of a violation of the reasonable-time requirement of Article 6 of the Convention is no ground for damages, nor for any other remedy in that same procedure. In some cases the court has left it to that conclusion, in other cases the court has referred the party concerned to the possible remedy of a tort action.

6. Is this remedy available also in respect of pending procedures?

As was explained under point 5, in pending procedures there is only the possibility of a remedy in criminal cases, and in administrative cases where a punitive sanction is at issue.

7. Is there a cost (ex. fixed fee) for the use of this remedy?

For obtaining a remedy within pending proceedings no additional costs are involved. For a tort action against the State the normal rules concerning legal costs apply.

8. What criteria are used by the competent authority in assessing the reasonableness of the duration of the proceedings? Are they the same as, or linked with, the criteria applied by the European Court of Human Rights in respect of Article 6, 1 ECHR?

In those cases in which the court did examine a complaint about the reasonableness of the duration of the proceedings, it based itself not only on Article 6 of the Convention, but also on the case-law as developed by the European Court of Human Rights.

9. Is there a deadline for the competent authority to rule on the matter of the length? Can it be extended? What is the legal consequence of a possible failure by the authority to respect the deadline?

If a complaint concerning the reasonable-time requirement is raised in pending proceedings, the issue is not decided separately but together with the decision on the merits of the case. As such it is subject to the requirements of reasonableness of the proceedings as a whole.

In the case of a tort action against the State no special deadline applies; the proceedings are subject to the normal reasonable-time requirement.

10. What are the available forms of redress:

- acknowledgement of the violation YES

As indicated under point 2, there are several instances in which the criminal court and administrative court have acknowledged that the reasonable-time requirement of Article 6 of the Convention has been violated.

- pecuniary compensation
  - *material damage YES
  - *non-material damage YES

As indicated under point 5, in criminal cases, and in administrative cases concerning a punitive sanction, the penalty or sanction may be mitigated.

A tort action against the State might result in indemnification of material and non-material damage, but so far this has not happened in connection with the issue here under discussion.

- measures to speed up the proceedings, if they are still pending YES

In the administrative phase, an interested party may institute proceedings against failure to act. In judicial proceedings, the parties may ask the court to speed up the proceedings and, in case of urgency and danger of irreparable damage, may request provisional measures. There is, however, no special action for speeding up proceedings.

- possible reduction of sentence in criminal cases YES

As indicated under point 5, penalties in criminal cases, and punitive sanctions in administrative cases may be mitigated.

- other (specify what) NO

11. Are these forms of redress cumulative or alternative?

Mitigation of a penalty or punitive sanction, and damages in civil proceedings must always be preceded by the assessment that the reasonable-time requirement has been violated.

12. If pecuniary compensation is available, according to what criteria? Are these criteria the same as, or linked with, those applied by the European Court of Human Rights? Is there a maximum amount of compensation be awarded?

As indicated under point 5, there is no practice concerning pecuniary compensation.

13. If measures can be taken to speed up the proceedings in question, is there a link between these measures and the general case-management of the relevant courts? Is the taking of these measures coordinated at a central or higher level? On the basis of what criteria and what factual information concerning the court in question (workload, number of judges, nature of cases pending, specific problems etc.) does the competent authority order such measures?

No other measures exist than the general measures to speed up the proceedings in the framework of general case-management. Concerning internal case-management procedures no general information is available.

14. What authority is responsible for supervising the implementation of the decision on the reasonableness of the duration of the proceedings?

The same court that has acknowledged that the reasonable-time requirement has been violated, is competent to decide about the legal effects of the assessment.

In criminal cases, if the court decides to mitigate the penalty, that part of the decision is subject to the normal rules of execution of criminal judgements. If the administrative court decides to mitigate a punitive sanction, it will annul the administrative decision concerned and substitute its own decision for it or order the administrative body to take a new decision.

If a separate tort action is instituted against the State, the civil court will take the considerations of the court concerned about the reasonableness of the duration of the proceedings as a starting point, but may give its own assessment of the reasonableness.

15. What measures can be taken in case of non-enforcement of such decision? Please indicate these measures in respect of each form of redress and provide examples.

In criminal cases, the court determines the penalty. If the penalty is mitigated, this is expressed in the conviction, which thereafter will be executed.

In administrative cases, if the court mitigates a punitive sanction, it may either substitute its own decision for that of the administrative body, or order that body to take a new decision. If the latter decision is not in conformity with the court's decision, the person concerned may again lodge an appeal with the court.

In civil cases, if the court would grant damages, the decision constitutes a legal title for execution.

16. Is an appeal possible against a decision on the reasonableness of the duration of the proceedings? If there a fixed time-frame for the competent authority to deal with this appeal? What would be the legal consequence of non-compliance with this time-limit?

In criminal and administrative cases, the assessment of the reasonableness is part of the decision on the merits. It is subject to appeal if, and to the extent that the latter decision is still subject to appeal, and will be dealt with in that same appeal procedure. No special time-frame applies.

17. Is it possible to use this remedy more than once in respect of the same proceedings? Is there a minimum period of time which needs to have elapsed between the first decision on the reasonableness of the length of the proceedings and the second application for such a decision?

The issue of the reasonable-time requirement may be raised in each phase of the proceedings, but not in a separate application.
A separate tort action may be brought with respect to each phase of judicial proceedings, but in pending proceedings the civil court will leave it first to the court concerned to decide the issue.

18. Are there any available statistical data on the use of this remedy? If so, please provide them in English/French.

In legal practice in the Netherlands, the assessment of the reasonableness of the duration of the proceedings, if made at all, so far has been part of the decision on the merits, and any appeal against such assessment has been part of the appeal against the decision on the merits. Consequently, the remedy does not manifest itself as a separate remedy and no statistical data are available.

19. What is the general assessment of this remedy?

From the above it may be clear that, apart from criminal cases, and administrative cases concerning a punitive sanction, Dutch law does not yet provide an effective remedy against violations of the reasonable-time requirement of Article 6 of the Convention.

20. Has this remedy had an impact on the number of cases possibly pending before the European Court of Human Rights? Please provide any available statistics in this connection.

The reasonable-time complaints against the Netherlands before the European Court of Human Rights are not very numerous. However, the reason is not so much the effectiveness of the remedy provided by Dutch law, but the fact that most judicial proceedings comply with the reasonable-time requirement. No statistical data are available.

21. Has this remedy been assessed by the European Court of Human Rights in respect of Articles 13 or 35 ECHR? If so, please provide reference to the relevant case-law.

The European Court of Human Rights has not yet decided on the conformity of the situation in the Netherlands with Article 13 of the Convention. As was pointed out under point 5, the European Court of Human Rights considered the possibility of bringing a tort action against the State for violation of the reasonable-time requirement to be a remedy that does not have to be previously exhausted. This implies that the Court does not consider such a remedy to be effective.

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SERBIA AND MONTENEGRO

1. **Does your country experience excessive delays in judicial proceedings? What proceedings (civil, criminal, administrative, enforcement)?**

Serbia and Montenegro experiences excessive delays in all types of judicial proceedings, but the problem is most grievous in regard to civil litigation, as well as the enforcement of judgements in civil proceedings.

2. **Have such delays been acknowledged by court decisions ? What courts (national/ European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR case-law.**

The delays have not been acknowledged by decisions of domestic courts, as until recently, no-one has sued the State for damages caused by unreasonably long judicial proceedings. The

recent cases are still pending, and no final judgements have been rendered. The European Court of Human Rights is yet to decide a case against Serbia and Montenegro.

3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights exist in the Constitution or legislation ?

Article 17 of the Charter on Human and Minority Rights of Serbia and Montenegro prescribes that everyone is entitled for a determination of his rights, obligations or any criminal charge against him, to be made by an independent, impartial and lawfully established court, without any undue delay. Article 10 of the recently enacted Code of Civil Procedure of Serbia states that a party to the proceedings has the right for the court to decide on its motions and petitions within a reasonable time, while the court must conduct the proceedings without undue delays and with minimal expenses. Article 11 of the Code of Civil Procedure of Montenegro prescribes that the court has a duty to conclude the proceedings without delays, within a reasonable time, with minimal expenses, and to prevent any abuse of process by the parties. The legislation dealing with criminal and administrative judicial proceedings does not contain an explicit requirement of reasonableness, though Article 17 of the Charter on Human and Minority Rights is nevertheless applicable

4. Are any statistical data available about the proportions of this problem in your country ? If so, please provide them in English or French.

No reliable statistics exist at this time.

5. Does a remedy in respect of excessive delays in the proceedings exist in your country ? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.

There are two types of remedies available.

First, on the basis of the combined provisions of the Law on Contracts and Torts, and the special provisions of the Law on the Courts and the Law on Judges, any party to an unreasonably long judicial proceeding can sue the State in a civil action for material and moral damages caused by the improper actions of a state organ, in this case a court. This remedy has never been used, as until the ratification of the ECHR, and the enactment of the Constitutional Charter and the Charter on Human and Minority Rights and the new procedural legislation no specific right to a trial within a reasonable time existed in the law of Serbia and Montenegro. Several suits have been lodged against the State in Serbian courts, but as yet no final decisions have been rendered. The effectiveness of this remedy depends on the future jurisprudence of the Supreme Court of Serbia, which would need to resolve several issues on the interpretation of the general provisions on the compensation of damages. Also, the fact that an ordinary civil judicial procedure is used to determine whether the duration of another judicial procedure was reasonable, and the fact that this procedure could also take several years to complete, is a major factor in assessing the effectiveness of this remedy. The European Court of Human Rights has not yet had an opportunity to decide on this issue, in the light of Article 35 of the ECHR..

Second, a new central monitoring body has been established by the recent amendments to the Law on Judges. This Oversight Board is comprised of five justices of the Supreme Court, and

has the authority to inspect any case, pending or concluded before any court in Serbia, and can institute disciplinary proceedings against a judge who has not performed his or her duties in a conscientious and competent manner, and can recommend the judge to be dismissed from office. Any party can file a complaint to the Oversight Board, or to the president of the court which is deciding on the particular case. The Board does not have the power to award damages. Presidents of the courts do not have the authority to inspect a case in order to determine whether the judge is performing his or her duties adequately; they can only involve themselves in matters of judicial administration (e.g. case-load, frequency of delays and so on).

6. Is this remedy available also in respect of pending proceedings ? how ?

Both remedies outlined above are available in respect of pending proceedings. The complaint to the Oversight Board is specifically designed to be used for speeding up pending cases.

7. Is there a cost (ex. fixed fee) for the use of this remedy ?

There is a fee for filing a civil suit in any court, the amount of which depends on the amount of compensation which is being claimed. The courts can waive the requirement of the payment of the fee if the plaintiff is in a poor financial situation.

8. What criteria are used by the competent authority in assessing the reasonableness of the duration of the proceedings ? Are they the same as, or linked with, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR ?

As no cases have yet been decided by a civil court there are no criteria to speak of. The Oversight Board is a form of internal control so it does not publish its decisions. However, the Charter on Human and Minority Rights prescribes that human rights provisions of the Charter and the directly applicable treaties, such as the ECHR, are to be interpreted by the courts in a manner consistent with the jurisprudence of treaty monitoring bodies, such as the European Court of Human Rights.

9. Is there a deadline for the competent authority to rule on the matter of the length ? Can it be extended ? What is the legal consequence of a possible failure by the authority to respect the deadline ?

There is no specific deadline.

10. What are the available forms of redress :

- acknowledgement of the violation — YES
- pecuniary compensation
  - material damage — YES
  - non-material damage — YES
- measures to speed up the proceedings, if they are still pending — YES
- possible reduction of sentence in criminal cases — NO
- other (specify what)

11. Are these forms of redress cumulative or alternative ?

Cumulative.

12. If pecuniary compensation is available, according to what criteria ? are these criteria the same as, or linked with, those applied by the European Court of Human Rights ? Is there a maximum amount of compensation to be awarded ?

See also under 5(A) and 8. There is no maximum amount of compensation to be awarded, as a matter of law. There is no jurisprudence dealing with this issue to analyze.

13. If measures can be taken to speed up the proceedings in question, is there a link between these measures and the general case-management of the relevant courts ? Is the taking of these measures co-ordinated at a central or higher level ? On the basis of what criteria and what factual information concerning the court in question (workload, number of judges, nature of cases pending, specific problems etc.) does the competent authority order such measures ?

The measures for speeding up proceedings are linked with the general case-management of the courts, as far as they are exercised by the president of a court. The Oversight Board was established in order to provide coordination on a central level, but it is not clear to what extent has it begun to perform this function. The competent authorities use all of the criteria cited in the question.

14. What authority is responsible for supervising the implementation of the decision on the reasonableness of the duration of the proceedings?

The same authority which has delivered the decision.

15. What measures can be taken in case of non-enforcement of such decision ? Please indicate these measures in respect of each form of redress and provide examples.

The enforcement of a judgement awarding compensation is a purely theoretical issue, as no such judgements have been delivered. These judgements will undergo the regular procedure of enforcement, as any other judgement delivered by a civil court. The decisions of the Oversight Board meant to speed up proceedings are complied with, as the Board may in the end recommend the dismissal of a judge.

16. Is an appeal possible against a decision on the reasonableness of the duration of the proceedings ? Is there a fixed time-frame for the competent authority to deal with this appeal ? What would be the legal consequence of non-compliance with this time-limit?

An appeal is possible against a judgement, as this is a regular civil action. There are no time – limits for the decision on appeal. No appeal is possible against a decision of the Oversight Board.

17. Is it possible to use this remedy more than once in respect of the same proceedings ? is there a minimum period of time which needs to have elapsed between the first decision on the reasonableness of the length of the proceedings and the second application for such a decision ?

In respect to a civil suit against the State for the compensation of damages, it would generally be possible to use this remedy only once. However, complaints can be made either to the Oversight

Board or to the president of any specific court for an indefinite number of times, without any minimum period of time which needs to elapse.

18. Are there any available statistical data on the use of this remedy ? if so, please provide them in English/French

No reliable statistical data is available.

19. What is the general assessment of this remedy ?

The effectiveness of the first remedy is purely ephemeral, as it has never been used before. The second remedy can have some impact on speeding up proceeding, but as these are measures of internal control and are of purely administrative character, they should not be regarded as effective in the sense of Article 35 ECHR, at least for the time being. The Supreme Court of Serbia must establish its own jurisprudence in respect to Article 6 ECHR before these remedies can be properly assessed.

20. Has this remedy had an impact on the number of cases possibly pending before the European Court of Human Rights ? Please provide any available statistics in this connection.

No cases of this nature have been dealt with by the European Court in respect to Serbia and Montenegro.

21. Has this remedy been assessed by the European Court of Human Rights in respect of Articles 13 or 35 ECHR ? If so, please provide reference to the relevant case-law.

No.