



Strasbourg, 23 January 2007

CDL(2007)001

Study no. 316/ 2004

Bil.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

ANNEX
RELATED TO THE STUDY

ON THE EFFECTIVENESS OF NATIONAL REMEDIES
IN RESPECT OF
EXCESSIVE LENGTH OF PROCEEDINGS

* This document will not be distributed at the meeting. Please bring this copy.

** This document has been classified restricted at the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
ALBANIA		<p>Article 131 of the Constitution provides that</p> <p>“The Constitutional Court shall decide in:</p> <p>(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.”</p>
ANDORRA	A party can address to the Superior Council of Justice in case of the delay in proceedings and request taking of necessary measures. The Superior Council of Justice can ask the judges and magistrates to speed up the proceedings in question.	A constitutional complaint (amparo) before the Constitutional Tribunal.
ARMENIA		
AUSTRIA	<p>There are 3 specific remedies: § 91 GOG Fristsetzungsantrag § 73 AVwVG Devolutivantrag § 132 B-VG Säumnisbeschwerde</p> <p><u>Section 91 of the Courts Act</u></p> <p>If a court is dilatory in taking any procedural step, such as announcing or holding a hearing, obtaining an expert's report, or preparing a decision, any party may submit a request to this court for the superior court to impose an appropriate time-limit for the taking of the particular procedural step. Subject to any contrary provision in the administrative regulations, the authorities must give a decision on</p>	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.

1 A specific action related to the breach of the reasonable time requirement (for example: a request to accelerate the proceedings in question, an action against a State for damage caused by non-compliance with the obligation to give a decision without delay, an action aimed at mitigation of sentence in criminal proceedings).

2 A general action (for example: an action for breach of a constitutional/conventional right, a civil action for tort against the State).

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
	<p>applications by parties ... and appeals without unnecessary delay, and at the latest six months after the application or appeal has been lodged.</p> <p><u>Section 73 of the General Administrative Procedure Act</u></p> <p>If the decision is not served on the party within this time-limit, jurisdiction will be transferred to the competent superior authority upon the party's written request (Devolutionsantrag). This request has to be refused by the competent superior authority if the delay was not caused by preponderant fault of the authority</p> <p>Pursuant to <u>Article 132 of the Austrian Federal Constitution</u>, an application may be lodged with the Administrative Court against the administrative authorities' failure to decide (Säumnisbeschwerde). This provision is not applicable in administrative criminal proceedings.</p> <p>As far as the <u>administrative criminal proceedings</u> are concerned, there is 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.</p> <p>A complaint against the excessive length of proceedings can be lodged by a party in the proceedings.</p>	
AZERBAIJAN		

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
BELGIQUE	<p>Une sanction est prévue par <u>l'article 21ter du Titre préliminaire du Code de procédure pénale</u> lorsque le juge du fond constate un dépassement du délai raisonnable.</p> <p>La sanction du dépassement du délai raisonnable prend la forme d'une simple déclaration de culpabilité ou du prononcé d'une peine inférieure à la peine minimale prévue par la loi;</p> <p>Si l'affaire est à l'instruction <u>l'article 136 du Code d'instruction criminelle</u> 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.</p> <p>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</p>	<p>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 <u>l'article 1382 du Code civil</u> obligeant l'Etat à réparer le préjudice qui en est résulté.</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
	<p>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.</p> <p>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.</p>	
<p>BOSNIA AND HERZEGOVINA</p>	<p>With regard to administrative proceedings, parties may appeal to a second instance body if the first instance body hasn't taken a decision within the time-limit prescribed by the Law.</p> <p>The second instance body will request a written explanation from the first instance body and may, if a decision was not taken due to legitimate reasons, determine a deadline for the first instance body to take a decision.</p> <p>In case the reasons for delay are not justified, the second instance body will take the final decision. If the second instance body fails to take a decision on the party's appeal within a fixed period, the party may raise an administrative dispute.</p>	<p>A complaint on the basis of Article 6 § 1 of the Convention can be lodged before the Constitutional Court.</p> <p>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.</p> <p>If a delay occurred due to a misconduct of a judge, he/she could be subjected to a disciplinary procedure.</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
BULGARIA	<p>Article 217a of the Code of Civil Procedure, introduced in 1999, provides that:</p> <p>“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 judgment is unduly delayed.</p> <p>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.</p> <p>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.</p> <p>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.”</p> <p><u>Articles 368-369 of the new Code of Criminal Proceedings</u> provide for a defendant to ask for the transfer of his or her case to a competent court once a period of 1 or 2 years has elapsed since the beginning of the preliminary investigation, according to the gravity of the charges. The court to which the case is referred may</p>	

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
	order the prosecutor to bring the preliminary investigation to an end within two months or put an end to the penal proceedings.	
CROATIA	<p><u>Section 63 of the 2002 Constitutional Act</u> provides that:</p> <p>“(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 ...</p> <p>(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...</p> <p>(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”.</p> <p>After 29 December 2005 the Constitutional Court retained its jurisdiction stipulated in Article 63 of the 2002 Constitutional Act in a manner that it decides, in the first and last instance, on the reasonable length of proceedings before the Supreme Court, where the constitutional complaint may be lodged as long as proceeding is pending, i.e. until the Supreme Court decision is served on the party.</p> <p>In all other cases the Constitutional Court has become the court of last instance concerning the protection</p>	

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
	<p>of the right to a trial within reasonable time, so the constitutional complaint may be lodged within 30 days from the day when the second instance decision of the Supreme Court is served on the party. (In this decision the Supreme Court adjudicated on the appeal of the party against the first instance judgment of a lower court delivered in accordance with Articles 27 and 28 of the 2005 Courts Act.)</p> <p>The 2005 Courts Act prescribed a new legal remedy for the protection against the excessive length of judicial proceedings. It is a request for the protection of the right to a trial within a reasonable time.</p> <p>This request is decided on by the higher instance court of law in respect of a lower instance court before which proceedings are pending.</p> <p>The Constitutional Court decides on the length of proceedings before the Supreme Court (the highest court of law in Croatia) in both the first and last instance.</p> <p>Article 27</p> <p>"(1) A party in a judicial proceedings that deems that the competent court did not adjudicate within a reasonable time on his/her rights, obligations, suspicion or indictment, may directly file a request to a higher court with aim of protecting his/her right to a trial within a reasonable time.</p> <p>(2) If the request pertains to a pending proceedings before the High Commercial Court of the Republic of Croatia, the High Tort Court of the Republic of Croatia or the Administrative Court of the Republic of Croatia, the Supreme Court of the Republic of Croatia</p>	

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY¹	A GENERIC REMEDY²
	<p>will adjudicate on the matter.</p> <p>(3) The adjudication procedure pertaining to the request stated in Paragraph 1 of the Article hereof is of urgent nature."</p> <p>Article 28</p> <p>"(1) If the court referred to in Article 27 of the Law hereof finds the request of the applicant well-founded, it will establish a deadline within which the court before which the proceedings is pending has to decide on the right or the obligations, or the suspicion or the indictment of the applicant. It also has to determine the appropriate compensation to which the applicant is entitled since his/her right to a trial within a reasonable time has been infringed.</p> <p>(2) The compensation will be remunerated from the State Budget within 3 months of the day the party filed its request for compensation.</p> <p>(3) An appeal against the decision of a request for the protection of the right to a trial within a reasonable time may be filed to the Supreme Court of the Republic of Croatia within 15 days. The adjudication of the Supreme Court of the Republic of Croatia cannot be contested, however, a constitutional lawsuit can be filed."</p> <p>A request may be submitted by a party in a judicial proceeding that deems that the competent court of law did not adjudicate within a reasonable time on his/her rights and obligations or suspicion or indictment. A request may be filed as long as proceedings are pending, i.e. until the decision on its completion is served on the party. The procedure is a special one and it is of urgent nature.</p>	

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
CYPRUS	<p><u>In criminal cases</u>, 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.</p> <p>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:</p> <ul style="list-style-type: none"> - order the retrial of the case by a different court - make an order for the issue of Judgement within a time limit - issue any other necessary order. 	
THE CZECH REPUBLIC	<p><u>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”</u>. 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.</p> <p><u>Law No. 192/2003 introduced a new Article 174a to the Law No. 6/2002 on tribunals and judges (in force since 01/07/2004)</u> according to which a party who considers that proceedings have lasted too long may ask for a deadline for taking a procedural action.</p> <p><u>Law No. 82/1998 on State liability for damage caused in the exercise of public authority by an irregularity in a decision</u></p>	<p><u>Law No. 182/1993 on the Constitutional Court</u></p> <p>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.</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
	<p>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.</p> <p><u>The draft law modifying the Law No. 82/1998</u> has been submitted to the Parliament. The draft law provides for an adequate compensation (including the one for non-pecuniary damage) for the applicants suffering from undue delays during the proceedings. The draft law will be applied retroactively: if the applicant has his length of proceedings case pending before the European Court, he has the possibility of asking for compensation within one year from the entry into force of the draft law.</p>	
DENMARK	<p>In <u>civil as well as criminal cases</u>, it is the court dealing with the concrete case that decides on a complaint concerning the length of proceedings. If a violation of ECHR article 6 is found, the result may for instance be compensation, reduction of the sentence or the exemption from paying legal costs that the person in question should otherwise have paid.</p> <p>In pending court proceedings, any party to the case may – at any point during the proceedings, ask the court dealing with the case to schedule the case for trial.</p> <p>In <u>criminal cases</u>, where the case has not yet been brought before the courts, the person in question may lodge a complaint with the Regional Prosecutor. The Regional Public Prosecutors generally supervise the work of the Chief Constables and may – on</p>	<p>The compensation claim is considered under <u>section 1018h of the Administration of Justice Act</u> which in practice also covers compensation on the basis of the length of proceedings.</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
	the basis of a complaint or otherwise – give instructions to the Chief Constables, including instructions concerning the handling of a specific case.	
ESTONIA	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.	
FINLAND	<p>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.</p> <p>The mitigation of sentence is possible.</p>	
FRANCE	<p>New provisions dating to 2005 modifying the procedural part of the <u>Code of Administrative Justice</u> determine new modalities for deciding on the applications with respect to the length of administrative proceedings. The Conseil d'Etat is competent to decide on the above-mentioned matters in the first and last resort. Applications are therefore dealt with promptly thus avoiding a new litigation with respect to the length of proceedings within the authority responsible for dealing with the complaint.</p> <p>Moreover a draft decree examined by the Conseil d'Etat on 7 December 2005 completed the above provision. A preventive remedy was introduced in conformity with the recommendations of the Committee of Ministers of the Council of Europe. It was decided to confer particular responsibilities to the permanent Mission of</p>	<p><u>Article L. 781-1 of the Code of Judicial Organisation:</u> "The State shall be under an obligation to compensate for damage caused by a malfunctioning of the system of justice. This liability shall be incurred only in respect of gross negligence or a denial of justice".</p> <p>Procédures devant les juridictions judiciaires (= procédures civiles et pénales) :</p> <p>Après avoir longtemps jugé le contraire (Vernillo c/ France, du 20 février 1991), la Cour a affirmé dans une décision d'irrecevabilité du 12 juin 2001 (Giummarra et autres c/ France) que le recours en responsabilité pour</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
	<p>inspection of administrative jurisdictions. Any party of allegedly lengthy proceedings should be able to address to the chief of the inspection Mission. If appropriate, the latter will draw the attention of the chief of the jurisdiction in question to the issue. At the same time he will receive administrative or judicial decisions on compensation for the damage suffered due to the excessive length of administrative proceedings. He could therefore, if considers appropriate, point out to the heads of jurisdictions the cases involving malfunctioning of the public service.</p>	<p>fonctionnement défectueux du service de la justice du Code de l'organisation judiciaire est un recours effectif pour les victimes de la durée excessive d'une procédure judiciaire.</p> <p>La Cour de cassation, en redéfinissant la faute lourde engageant la responsabilité de l'État comme "toute déficience caractérisée par un fait ou une série de faits traduisant l'inaptitude du service public de la justice à remplir la mission dont il est investi" (Cass. ass. plén., 23 févr. 2001, Cts Bolle-Laroche c/ Agent judiciaire du Trésor), a favorisé ce revirement de jurisprudence de la Cour européenne.</p> <p>Dans la décision sur la recevabilité rendue le 11 septembre 2002 dans l'affaire Mifsud c/ France, la Cour européenne a précisé que « la jurisprudence montre l'efficacité de ce recours, quel que soit l'état d'avancement de la procédure au plan interne. »</p>
<p>GEORGIA</p>	<p>The law of Georgia “On disciplinary proceedings and disciplinary liability of judges of the courts of general jurisdiction of Georgia” provides for the liability of a judge. In particular one ground for liability of a judge is “unreasonable delay of consideration of a case...”.</p>	
<p>GERMANY</p>	<p>At present German law does not provide for a specific remedy in respect of excessive length of proceedings. However, the</p>	<p>Article 93 The Federal Constitutional Court, jurisdiction:</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
	<p>jurisprudence of the civil courts has developed – although the practice differs in diverse court regions – an extraordinary remedy in cases of unreasonable delays. In general, such a remedy is granted if a decision is delayed for an unreasonably long time and if this may objectively be viewed as a denial of justice. In such a case, the appeal court will issue an order to the original court to proceed with the case. It may even indicate specific measures to be taken.</p> <p>In criminal cases, the jurisprudence of the Federal Court clearly states that whenever the proceedings have been unduly delayed so as to constitute a breach of Article 6 ECHR, the court has to mention this explicitly in its judgment and to compensate by reducing the sentence. Undue delay may even lead to the proceedings being terminated, if the violation can not be compensated otherwise.</p> <p>In addition to this, the Federal Government is contemplating the passing of a law introducing a specific remedy against excessive length of proceedings in all branches of the law. The draft has been circulated among Länder ministries and professional bodies. Responses to the draft are now coming in. In the light of these reactions the government will decide whether and how to proceed with the project.</p>	<p>The Federal Constitutional Court shall rule:</p> <p>4a. on constitutional complaints which may be filed by anybody claiming that one of their basic rights or one of their rights under paragraph (4) of Article 20 or under Article 33, 38, 101, 103 or 104 has been violated by public authority.</p>
GREECE		
HUNGARY	<p>The new Act No. XIX. of 2006. entered into force on 1 April 2006. According to the information given by the Office of the National Judicial Council, this organ will survey the implementation and practice of the act. The first relevant statistics will be available at the end of this year.</p>	<p>According to Article 349 of the Civil Code, the official liability of the State administration may be established only if the relevant ordinary remedies have been exhausted or have not been found adequate to</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
	<p>The main elements of the new law are as follow:</p> <p>Part of the Act deals with the modification of the Code of Criminal Procedure and the other part of the Act refers to the Civil Procedure. It gives the possibility for the parties to complain if the law prescribes a time limit for the Court within which it needs to terminate the proceedings, if the Court has failed to fulfil its obligation to terminate the Court proceedings within a reasonable length of time, or if the Court itself has prescribed a time limit for the person participating in the procedure and the time limit has elapsed without any result and then Court has failed to impose the measures allowed by law. The Court proceedings in the given case shall examine the complaint within 8 days and if it finds the complaint well founded it takes the appropriate measures within 30 days. If the Court does not agree with the complaint, it is forwarded to the superior Court, which will decide in this case. If the complaint is well founded the superior Court instructs the proceeding Court to perform the particular procedural act.</p>	<p>redress the damage. Unless otherwise specified, this provision also covers the liability for damage caused by the courts or the prosecution authorities. Changes might be brought about by the amendments (applicable only to cases introduced after 1 July 2003) to the effect that compensation can be claimed irrespective of any fault on the part of the proceeding judge.</p> <p>According to S. 114 of the Code of Civil Procedure, a party may complain of the irregularity of proceedings at any time during the proceedings. Minutes shall be taken of any oral complaint to that effect. If the court fails to take such a complaint into account, the grounds for such failure shall be given immediately or, at the latest, in the final decision.</p>
ICELAND		
IRELAND	<p>In the criminal context an accused can take Judicial Review proceedings seeking an order for prohibition against the prosecution on the ground of delay. This application is to be made before the High Court by an accused and must be made 'promptly'. The Court has an inherent jurisdiction to prohibit a prosecution where there is unreasonable delay.</p> <p>In the civil context defendants may seek an order for dismissal for</p>	<p>Under the European Convention on Human Rights Act 2003 an applicant may apply to the High Court for damages if an organ of State has not fulfilled its obligations under the Convention. Under that legislation the courts are excluded from the definition of organ of State but delay by the DPP or other State</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
	<p>want of prosecution in circumstances where there has been delay on the part of the Plaintiff. This application is made to the courts.</p> <p>Under the Courts and Court Officers Act 2002 section 46, if judgment has not been delivered within a prescribed period the Courts Service will list the matter before the relevant judge and at that time the Judge must fix a date by which time judgment will be delivered.</p> <p>According to a procedure initiated in 1996 any litigant who has a complaint in relation to delay must address it formally to the President of the High Court.</p>	<p>agents or agencies might give rise to this remedy.</p>
ITALY	<p>In 2001, the so-called "Pinto Law" introduced a specific domestic legal remedy with respect to the excessive length of proceedings allowing applicants to obtain a relief in the form of financial compensation before the Court of Appeal.</p> <p>A complaint can be lodged by anyone sustaining pecuniary or non-pecuniary damage as a result of a violation of ECHR.</p> <p>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.</p>	
LATVIA		
LIECHTENSTEIN	<p>A supervisory complaint in accordance with Article 23 of the State Law on the Administration of Justice may be submitted by any party involved in proceedings and has to be filed with the Administrative Court if it concerns</p>	<p>A violation of this basic right to prohibition of delay of justice may be asserted within the framework of the ordinary procedure for legal remedies. This</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
	<p>a refusal or a delay of justice on the part of the government; if it concerns other authorities, it has to be filed with the government.</p> <p>Article 23 of the Court Organisation Law governs the right of the parties involved in proceedings to file a supervisory complaint due to a delay or refusal of justice. If the supervisory complaint is made against the courts, the presidents of the courts or court officials, it has to be filed with the President of the Court of Appeal; if the complaint is made against the Court of Appeal or a member of that court, it has to be filed with the Supreme Court (para 1). If court clerks or enforcement officers are the subject of the complaint, it has to be submitted to the President of the County Court (para 3).</p>	<p>violation of basic rights may also be specifically invoked before the Constitutional Court by means of an individual complaint to protect rights guaranteed by the Constitution.</p>
LITHUANIA	<p>In the pending proceedings, the remedy in respect of excessive delays in the proceedings is the question of internal administration in the courts. In 2002, the Council of the Courts of the Republic of Lithuania adopted the Regulation on administration in the courts, according to which the chairmen of the courts are monitoring the administrative activities of the judges, which includes the measures to ensure the transparent and operative process of the investigation of the cases; checking of the cases of unjustifiably long judicial proceedings; the investigation of the complaints concerning the actions of the judges which are not related to the administration of justice etc.</p> <p>Therefore it is possible, that the chairman of the court, in responding to the justified complaint concerning the actions or omission of the judge, instructs</p>	<p>National legal dispositions concerning the compensation of the damage, which was caused by the unlawful actions of the investigators, the procurator, the judge and the court. They are provided in the Civil Code of the Republic of Lithuania (Article 6.272) and the special Law on the Compensation of the Damage Made by Unlawful Actions of the State Authorities.</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
	the judge to speed up the judicial proceedings or initiates the disciplinary action against the judge.	
LUXEMBOURG	<p>Le dépassement d'un délai raisonnable pour obtenir un jugement peut être invoqué à tout niveau de juridiction sans qu'il y ait toutefois des moyens spécifiques prévus pour accélérer la procédure.</p> <p>La notion de dépassement d'un délai raisonnable a été à plusieurs reprises appréciée par les juridictions luxembourgeoises sur la base des critères fixées par la Cour européenne des Droits de l'Homme. Dans plusieurs cas, les juridictions ont reconnu qu'il y avait eu dépassement du délai raisonnable dans le cadre d'une affaire pénale et elles en ont tenu compte par un allègement de la sanction.</p>	<p>La personne qui se plaint d'un dépassement de délai raisonnable peut demander réparation sur base de la loi du 1er septembre 1988 relative à la responsabilité civile de l'Etat et des collectivités publiques.</p>
MALTA		<p>The issue of whether judicial proceedings are excessively long or not has to be raised by the party alleging it by means of a Court case. This can also be made in the form of constitutional complaint.</p>
MOLDOVA	<p>According to the provisions of <u>Article 20 para (4) and (5) of Criminal Procedure Code</u>, the observance of the reasonable term during the criminal prosecution is secured by the prosecutor, and at the trial of the case by the respective court. The observance of the reasonable term during the trial of the certain cases will be verified by the hierarchically superior court in the proceeding of the trial of the respective case by ordinary and extraordinary remedy.</p>	<p>As for material compensations, <u>Article 204 para (2) of Civil Procedure Code</u> provides the commitment of the court, at the request of the interested party, to redress the prejudice caused by the delay, in the case another party provided ungrounded or false evidence in order to delay the trial.</p> <p>According to the <u>Article 1422 of the Civil Code</u>, the moral damage is</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
		provided in case the compliant proves that physical and psychical damages were caused by the facts that attempted to her/his personal non-patrimonial rights.
MONACO		
MONTENEGRO		
NETHERLANDS	<p><u>In criminal cases, and in administrative cases where a punitive sanction is at issue,</u> 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.</p>	There is the general remedy of a <u>civil action against the State for tort.</u>
NORWAY	<p><u>In criminal cases</u> where there have been excessive delays in the judicial proceedings, the courts shall acknowledge that such delays have taken place. In addition, the courts shall reduce the sentence.</p>	
POLAND	<p><u>Act of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time</u> established a specific remedy in respect of excessive delays in judicial (civil and criminal) as well as administrative (only before administrative courts) proceedings allowing speeding-up lengthy proceedings.</p> <p>The complaint can be lodged by everyone who has the pending case before domestic courts.</p> <p>The complaint shall be examined by the court immediately above the court conducting the impugned proceedings, this complaint shall be lodged while the proceedings are pending.</p> <p>If the superior court finds a violation of Article 6 of the Convention, it instructs the lower court to take measures to accelerate the proceedings and/or</p>	<p>The party whose complaint as to the excessive length of the pending proceedings has been allowed, may in addition, in separate proceedings on the basis <u>of Article 417 of the Civil Code</u>, request reparation of damage resulted from the established undue delay.</p> <p><u>Article 417 of the Civil Code provided for a new regime of the State liability for damage caused by public authority.</u> Party which has not lodged a complaint about the unreasonable length of the proceedings during judicial proceedings may claim – under Article 417 of the Civil Code – compensation for the damage which resulted from the unreasonable</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
	awards the complainant compensation of up to 10,000 zł. (approximately 2,550 euros).	length of the proceedings after the proceedings concerning the merits of the case have ended.
PORTUGAL	<p><u>The Criminal Procedure Code (of 1 January 1988)</u></p> <p><u>Article 108</u> “1. When the time-limits provided for by law for any step in the proceedings are exceeded, the public prosecutor, the accused, the private prosecutor (<i>assistente</i>) or the civil parties may make an application for an order to expedite the proceedings.</p> <p>2. That application shall be considered by: (a) the Attorney-General, when the proceedings are in the hands of the Attorney-General's Department; (b) the Judicial Service Commission, when the proceedings are taking place in a court or before a judge.</p> <p>3. No judge who has intervened in the proceedings in any capacity may participate in the decision.”</p> <p><u>Article 109</u></p> <p>“ /.../ 3. The Attorney-General shall make a decision within five days.</p> <p>/.../ 5. The decision shall be taken without any other formalities. It may take the form of: (a) a dismissal of the application as unfounded or because the delays complained of are justified; (b) a request for further information...; (c) an order for an investigation to be carried out within fifteen days into the delays complained of...; (d) a proposal to implement or cease to implement disciplinary measures or measures to manage, organise or rationalise the methods required by the situation.</p>	<p><u>Article 22 of the Constitution :</u></p> <p>“The State and other public bodies shall be jointly and severally liable in civil law with the members of their agencies, their officials or their agents for actions or omissions in the performance of their duties, or caused by such performance, which result in violations of rights, freedoms or safeguards or in prejudice to another party.”</p> <p>Furthermore, <u>Legislative Decree No. 48051</u> governs the State's non-contractual civil liability. Pursuant to its Article 2 § 1, “The State and other public bodies shall be liable to third parties in civil law for such breaches of their rights or of legal provisions designed to protect the interests of such parties as are caused by unlawful acts committed with negligence (<i>culpa</i>) by their agencies or officials in the performance of their duties or as a consequence thereof.”</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
ROMANIA		
RUSSIAN FEDERATION	<p><u>Criminal proceedings</u></p> <p>The institute of remitting the criminal case for further investigation was excluded from the Criminal Procedure Code of the Russian Federation. Article 237 of the Code, however, allows remitting of the criminal case to public prosecutor for removal of formal deficiencies in the case file that pose obstacle for its consideration by court. The possibility to appeal the decision on remitting the case to public prosecutor was upheld by the Constitutional Court of the Russian Federation in its Decision of 20 October 2005 No 404-O on complaint by L.G.Verzhutskaya.</p> <p>The Constitutional Court of the Russian Federation in its Judgment of 2 July 1998 and Judgment of 23 March 1999 No. 5-P also upheld the possibility to lodge appeals to a higher court against decisions to suspend criminal proceedings (both at trial and pre-trial stages) and decisions to delay hearing that could result in delays of proceedings.</p> <p>A decision to extend the period of investigation may also be appealed to a court. This directly follows from Article 46 of the Constitution, and was confirmed by the Constitutional Court in its Judgment of 23 March 1999 No. 5-P. The court may revoke any unfounded or unlawful extension.</p>	<p><u>Article 1070.1 of the Civil Code of the Russian Federation</u> provides for compensation by the state of damage caused in the process of administration of justice in case when the guilt of a judge has been established by the court sentence that became final.</p> <p>As it follows from the Judgment of the Constitutional Court of the Russian Federation of 25 January 2001, the damage caused in the process of administration of justice in civil proceedings can be compensated by the State also in other cases resulting from unlawful actions (or failure to act) of a court (judge), inter alia from violations of reasonable time requirement, if the guilt of the judge has been established not by the sentence, but by different court decision. In the above Judgment the Constitutional Court stated the duty of the legislator to make provisions for grounds and procedure of compensation by the state of damage caused by unlawful actions (or failure to act) of a court (judge), as well as for provisions concerning courts jurisdiction over relevant cases. However, since by the end of 2006 the legislator has not passed the said amendments, courts of ordinary jurisdiction refuse to admit relevant applications for</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
		<p>consideration (see for example Decision of 16 June 2003 No 49-GOZ-43 of the Supreme Court of the Russian Federation).</p> <p><u>Disciplinary sanctions against judges</u></p> <p>Articles 12.1 and 14 of the Law "On the status of judges in the Russian Federation" set forth that a judge can be subjected to disciplinary sanction in forms of a warning or termination of powers for disciplinary offences. Competent Judicial Qualifications Board shall pass the relevant decision. There is no legislative definition of the notion of "disciplinary offence"; in practice, however, it has been given rather wide interpretation, and can include, inter alia, a judge's action (or failure to act) resulting in violation of reasonable time requirement in respect to the length of proceedings or other violations of procedure.</p> <p>Apart from this, procedural actions of a judge shall be subject to appeal in a procedure provided for by the civil procedure legislation of the Russian Federation (Chapters 40 and 41 of the Civil Procedure Code of the Russian Federation)".</p>
SAN MARINO		<p>As Article 6 § 1 ECHR may be considered as a self-executing provision, it may be considered that an ordinary action for damages may be brought</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
		before the civil judge on the ground of breach of the reasonable time requirement.
SERBIA	<p>A central monitoring body has been established by the recent amendments <u>to the Law on Judges</u>. 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, 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. The complaint to the Oversight Board is specifically designed to be used for speeding up pending cases.</p>	<p>On the basis of the combined provisions of the <u>Law on Contracts and Torts</u>, and the special provisions of the <u>Law on the Courts and the Law on Judges</u>, 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.</p>
SLOVAKIA	<p><u>According to the Section 250t of the Code of Civil Procedure</u>, a person or legal entity may lodge a complaint before the court against inactivity of a public administration authority. When the complaint is considered justified, the court has the power to impose a time-limit within which the public administrative authority is obliged to take a decision.</p> <p><u>Law No. 514/2003 on State liability for damage caused in the exercise of public authority (in force since 1 July 2004) in its Article 9</u> provides that the State is liable for damage caused by an incorrect act, including non-compliance with the obligation to perform an act or give a decision within the statutory time-limit.</p> <p>A person can lodge a complaint</p>	<p>In accordance with <u>Article 4c of the Complaints Act of 1998</u>, a person can lodge a complaint alleging, <i>inter alia</i>, the violation of their rights or legally protected interests as a result of an action of a public authority or its failure to act. The complaint will be examined by the head of the public authority concerned or by the hierarchically superior authority if directed against the head of the public authority itself.</p> <p><u>Article 127 of the Constitution (as amended in 2001) provides:</u></p> <p>"1. The Constitutional Court shall decide on</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
	<p>against undue delays in judicial proceedings to the President of an ordinary court including the Supreme court according to <u>Articles 62 to 70 of the Law No. 757/2004 Collection of Laws on courts.</u> The result of an investigation in such a case can lead to the conclusion on undue delay in particular proceedings and subsequently to the instigation of disciplinary proceedings against a judge under Article 116 of the Law No. 385/2000 Collection of Laws on judges and lay judges.</p>	<p>complaints lodged by natural or legal persons alleging a violation of their fundamental rights or freedoms or of human rights and fundamental freedoms enshrined in international treaties ratified by the Slovak Republic ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.</p> <p>2. When the Constitutional Court finds that a complaint is justified, it shall deliver a decision stating that a person's rights or freedoms set out in paragraph 1 were violated as a result of a final decision, by a particular measure or by means of other interference. It shall quash such a decision, measure or other interference. When the violation found is the result of a failure to act, the Constitutional Court may order [the authority] which violated the rights or freedoms in question to take the necessary action. At the same time the Constitutional Court may return the case to the authority concerned for further proceedings, order the authority concerned to abstain from violating fundamental rights and freedoms ... or, where appropriate, order those who violated the rights or freedoms set out in paragraph 1 to restore the situation existing prior to the violation.</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
		<p>3. In its decision on a complaint the Constitutional Court may grant adequate financial satisfaction to the person whose rights under paragraph 1 were violated”...</p>
SLOVENIA	<p>A person alleging the violation of this right can lodge a complaint with the Administrative Court against lengthy proceedings in pending cases. Under Article 62 of the Administrative Dispute Act, the injured party may request, besides the abolishment of the infringement of his or her constitutional right, also the compensation for damage inflicted.</p> <p>Article 3 of the “Act on the Protection of the Rights to a Trial without Undue Delay” provides for the following remedies to protect the right to a trial without undue delay:</p> <ol style="list-style-type: none"> 1. Supervisory appeal - appeal with a motion to expedite the hearing of the case, which is filed with the court hearing the case. 2. Motion for a deadline, which is filed with the court hearing the case, the president of which has to refer it together with the case file to the president of the superior court. 3. Claim for just satisfaction – if the supervisory appeal was granted or if the motion for a deadline was filed, the party may claim just satisfaction which may be provided by: <ul style="list-style-type: none"> - Payment of monetary compensation, which shall be payable for non-pecuniary damage in the amount of 300 up 	<p>The party can lodge a constitutional appeal with the Constitutional Court under Section 51 § 1 of the Constitutional Court Act.</p> <p>Action for pecuniary damage caused by a violation of the right to a trial without undue delay may be brought in accordance with the Obligations Code.</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
	<p>to 5 000 euros;</p> <ul style="list-style-type: none"> - A written statement of the State Attorney's Office that the party's right to a trial without undue delay was violated; <p>The publication of a judgment that the party's right to a trial without undue delay was violated.</p>	
SPAIN		<p>An <i>amparo</i> appeal can be filed (while proceedings are still pending) on the basis of Articles 24 and 53 § 2 of the Constitution.</p> <p><u>The Constitutional Court Act provides in Section 44(1)(c)</u></p> <p>"1. An <i>amparo</i> appeal in respect of a violation of rights and guarantees capable of constitutional protection ... does not lie unless ... the violation in question has been formally alleged in the proceedings in question as soon as possible after it has occurred..."</p> <p><u>Article 121 of the Constitution</u> provides that: "Losses incurred as a result of judicial errors or a malfunctioning of the administration of justice shall be compensated by the State.</p> <p><u>According to Section 292 of the Judicature Act:</u></p> <p>"1. Anyone who incurs a loss as a result of a judicial error or a malfunctioning of the judicial system shall be compensated by the State, other than in cases of <i>force majeure</i>, in accordance with the provisions of this</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
		<p>Part. Section 293(2) “In the event of a judicial error or a malfunctioning of the judicial system, the complainant shall submit his claim for compensation to the Ministry of Justice. The claim shall be examined in accordance with the provisions governing the State’s financial liability. An appeal shall lie to the administrative courts against the decision of the Ministry of Justice. The right to compensation shall lapse one year after it could first have been exercised.”</p>
<p>SWEDEN</p>	<p>In <u>criminal proceedings</u>, an unreasonable length may cause the sentence imposed to be more lenient. Thus, chapter 29 section 5 and chapter 30 section 4 of the Penal Code provide that courts in criminal cases shall, both in its choice of sanction and in its determination of the appropriate punishment, take into account whether an unnaturally long time has elapsed since the commission of the offence.</p>	<p>Pursuant to chapter 3 section 2 of the 1972 Tort Liability Act the State shall be held liable to pay compensation for personal injury, loss of or damage to property and financial loss where such loss, injury or damage has been caused by a wrongful act or omission done in the course of, or in connection with, the exercise of public authority in carrying out functions for the performance of which the State is responsible..</p> <p>A public official who intentionally or through carelessness disregards the duties of his office, e.g. by omitting to render a decision in a matter that is pending before him, may be held criminally or administratively responsible and subjected to criminal or disciplinary sanctions (chapter 20 section 1 of the Penal</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
		<u>Code and section 14 of the Public Employment Act).</u>
SWITZERLAND	At canton level most codes of <u>criminal procedure</u> explicitly provide for the competent authorities to conduct proceedings within a reasonable time. The violation of this principle may give rise to: "due consideration in the fixing of the sentence; release of the defendant, when the time-limit for legal action has run out; exemption from punishment if the defendant is found guilty; termination of the proceedings (as an <i>ultima ratio</i> in extreme cases). "	According to <u>the Federal Law on the Liability of the Confederation, Members of its Authorities and Officials (14 march 1958)</u> , the Confederation is responsible for the damage caused by an official in the course of the exercise of his/her functions.
"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"	There is an administrative remedy within the competences of the Ministry of Justice in the area of judicial administration. According to <u>Article 77 of the Law on the Courts</u> , the Ministry of Justice is competent to review the complaints of the citizens concerning the work of the courts especially those related to delays in the court proceedings. The complaint is lodged in writing, by the party in the proceeding. Upon the complaint the Ministry of Justice in written correspondence with the court obtains information regarding the case (especially about the reasons for the delay and to whom is the delay attributable) and informs the complainant about its findings again in writing. The Ministry of Justice cannot order the court to undertake certain measures for speeding-up the procedure in a particular case. If the Ministry of Justice finds that the delay in the procedure is a result of unprofessional and unethical conduct of the judge sitting in the case, the Ministry can inform the Judicial Council of the Republic of Macedonia and propose dismissal of the judge.	

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY ¹	A GENERIC REMEDY ²
TURKEY		
UKRAINE	<p>In accordance with <u>Articles 6 and 31 of the Law on Status of Judges</u>, a disciplinary proceeding can be instituted against the judge who has not performed his or her duties in compliance with the Constitution and legislation concerning observation of time-limits while administrating justice. A judge can also be held responsible for deliberate violation of the legislation in force or omission that caused substantive consequences.</p>	<p><u>Article 55 § 1 of the Constitution of Ukraine guarantees to everyone</u> “the right to challenge before a court decisions, actions or omissions of State authorities, local self-government bodies, officials and officers”.</p>
UNITED KINGDOM	<p>There is no specific remedy for excessive delay applicable in all proceedings in English and Scots law. However, one aim that motivated recent reforms in civil procedure in England and Wales is the importance of ensuring that cases are dealt with expeditiously and fairly. Civil judges now exercise an important case-management role that seeks to minimise delay and to ensure that the court's handling of a case is proportionate to the value and difficulty of what is in dispute. In exercise of their inherent jurisdiction, the criminal courts may stay a prosecution where there has been an unreasonable lapse of time such that a fair trial could not be held. Moreover, both in English and Scots law, criminal proceedings are subject to legislative time-limits, particularly as to the length of time in which an accused person may be held in detention pending trial; in some circumstances, when these limits have been exceeded, the accused person must be set free without trial. Under the Human Rights Act 1998 (see adjoining column) the position in Scotland is that an accused person must be discharged where trial has not taken place within a reasonable</p>	<p>Under the HRA, all courts and tribunals must where possible give effect to Article 6(1) ECHR and take account of the jurisprudence of the ECtHR. If a court or tribunal fails to give effect to the ECHR when it could have done so, this will be a ground of appeal to a higher court or tribunal.</p>

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY¹	A GENERIC REMEDY²
	time; in English law, the accused must be discharged only where any unreasonable delay that has occurred has prejudiced the fairness of any trial that were now held.	