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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

CAN EXCESSIVE LENGTH OF PROCEEDINGS BE REMEDIED?

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This publication contains firstly the Report on the Effectiveness of National Remedies in respect of Excessive Length of Proceedings adopted by the Venice Commission at its 69th Plenary Session (15-16 December 2006). The questionnaire which served as the basis for this study, as well as the replies thereto by the 47 member States of the Council of Europe appear in Section II. Finally, Section III contains the reports which were presented at the International Conference on "Remedies for unduly lengthy proceedings: a new approach to the obligations of Council of Europe member States", in Bucharest on 3 April 2006 and which provided invaluable "food for thought" for the report.

The Venice Commission would like to thank the European Commission for the Efficiency of Justice (CEPEJ), the European Court of Human Rights and the Directorate General of Human Rights of the Council of Europe for their valuable contribution to this study.

Section I

Report on the effectiveness of national remedies in respect of excessive length of proceedings Adopted by the Venice Commission at its 69th Plenary Session (Venice, 15-16 December 2006)

I. Introduction

1. In December 2002, in its opinion on the implementation of the judgments of the European Court of Human Rights[1] (hereinafter "the Court" or "the Strasbourg Court"), the Venice Commission expressed the view that it would be useful if the Committee of Ministers of the Council of Europe would develop guidelines on what measures are to be taken by the respondent States following the finding by the Court of a breach of a particular provision of the European Convention on Human Rights (hereinafter "the European Convention" or "the Convention"), so that member States may know in advance what consequences they may face. These guidelines, which should be inspired by both the practice of the Committee of Ministers and a more explicit case-law of the Court in this respect would, in the Commission's opinion, allow for a stricter approach by the Committee of Ministers to the supervision of the execution of the Court's judgments.

2. Following a request by the Romanian authorities 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 carry out a comparative study on existing national remedies with respect to allegations of excessive length of proceedings, with a view to proposing possible improvements in their availability and effectiveness.

3. The Secretariat subsequently prepared a questionnaire on the kind, nature and characteristics of national remedies which currently exist in Council of Europe member States (CDL(2004)124). Replies to this questionnaire in respect of 45 European countries (CDL(2006)026) were provided by Venice Commission members or were obtained through the valuable assistance of the Registry of the European Court of Human Rights, as well as of the Department of Execution of judgments of the European Court of Human Rights and of the Secretariat of the Committee of Experts for the improvement of procedures of the protection of human rights (DH-PR), Directorate General II of the Council of Europe.

4. The Venice Commission also worked in close co-operation with the European Commission for the Efficiency of Justice (CEPEJ), a body established on 18 September 2002 by Resolution Res(2002)12 of the Committee of Ministers of the Council of Europe,[2] with the aims "(a) to improve the efficiency and the functioning of the justice system of member states, with a view to ensuring that everyone within their jurisdiction can enforce their legal rights effectively, thereby generating increased confidence of the citizens in the justice system and (b) to enable a better implementation of the international legal instruments of the Council of Europe concerning efficiency and fairness of justice".

5. A conference, co-organised by the Venice Commission and the Ministry of Foreign Affairs of Romania within the framework of the Romanian Chairmanship of the Committee of Ministers of the Council of Europe, was held in Bucharest on 3 April 2006 on "Remedies for unduly lengthy proceedings: a new approach to the obligations of Council of Europe member states". On this occasion, representatives of the Venice Commission, the Strasbourg Court, the Directorate General II of the Council of Europe, CEPEJ, Government Agents and representatives of the Romanian authorities discussed about possible guiding principles in the identification of effective remedies for unreasonably lengthy proceedings. The results of these discussions are fed into this study.

6. The present study is based on contributions by Messrs. Bogdan Aurescu (substitute member, Romania); Pieter Van Dijk (member, Netherlands); Elsa Garcia Maltras de Blas (expert, Spain); Franz Matscher (expert, Austria) and Giorgio Malinverni (member, Switzerland). It was drafted by the Constitutional Co-operation Division of the Secretariat, and discussed and adopted by the Venice Commission at its 69th Plenary Session (Venice, 15-16 December 2006).

II. The scope and aims of the present study

7. It is important at the outset to clarify what is the scope of the present study. The length of the

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1 Opinion on the implementation of the judgments of the European Court of Human Rights, CDL-AD(2002)34, § 102.

2 www.coe.int/cepej.

proceedings is a very complex problem which many European States experience with different degrees of gravity: for some of them it is a generalised problem, a "systemic" one", whereas for others it must rather be seen as an occasional dysfunction of an otherwise effective system of administration of justice.

8. The identification of the causes of excessive delays is a complex exercise. It is certainly not the ambition of the Venice Commission to proceed with such identification. Other bodies are better equipped and more specialised, *in primis* the European Commission for the Efficiency of Justice (CEPEJ), whose tasks are, amongst others, to analyse the results of the judicial systems, to identify the difficulties they meet and to define concrete ways to improve, on the one hand, the evaluation of their results, and, on the other hand, the functioning of these systems.

9. Indeed, CEPEJ has looked into the causes for the excessive duration of proceedings[3] and has identified them through the analysis of the case-law of the European Court of Human Rights.[4] CEPEJ has also prepared a "Compendium of "best practices" on time-management of judicial proceedings."[5] The Venice Commission refers to the CEPEJ analyses, and reiterates to be neither equipped nor tasked with these analyses. Issues relating to the functioning of justice and the concrete management of court procedures are outside of the scope of competence of the Venice Commission.

10. The Venice Commission stresses however that members States of the Council of Europe have obligations in respect of the length of proceedings stemming not only from Article 6 § 1 but also from Article 13 of the European Convention on Human Rights. As the European Court of Human Rights put it, "by becoming a High Contracting Party to the European Convention on Human Rights the respondent State assumed the obligation to secure to everyone within its jurisdiction the rights and freedoms defined in Section 1 of the Convention. In fact, the States have a general obligation to solve the problems that have led to the Court finding a violation of the Convention. This should therefore be the primary goal of the respondent State. Should violations of the Convention rights still occur, the respondent States must provide mechanisms within their respective legal systems for the effective redress of violations of the Convention rights".[6] As the Committee of Ministers pointed out,[7] "in addition to the obligation of ascertaining the existence of […] effective remedies in the light of the case-law of the European Court of Human Rights […], States have the general obligation to solve the problems underlying violations found".[8]

11. The obligations under Article 13 of the Convention, i.e. the provision of effective remedies in respect of breaches of the reasonable time requirement, are not the direct object of the work of CEPEJ. They are dealt with by the Committee of Ministers with the assistance of the Department of the Execution of judgments of the Directorate General II of the Council of Europe.

12. The Commission intends to deal with the obligations of Council of Europe member States to provide effective remedies against the excessive length of proceedings within the meaning of Article 13 of the Convention. Inevitably, acceleratory remedies will concern the management and functioning of national courts: in this respect, the Venice Commission will of course again refer to the work of CEPEJ.

13. The present study aims at assisting the Committee of Ministers and the Directorate General II, as well as the Council of Europe member States, in addressing this problem in a global manner, with a view to identifying solutions based on the national experiences, the case-law of the European Court of Human Rights and the know-how of the Council of Europe.

14. The Commission expresses the hope that its study may also assist the Parliamentary Assembly of the

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3 See the following documents: Length of court proceedings in the member States of the Council of Europe based on the case-law of the European Court of Human Rights, CEPEJ(2006)15; Length of court proceedings in the member States of the Council of Europe based on the case-law of the European Court of Human Rights - Summary, CEPEJ(2006)15; Reducing judicial times in the countries of Northern Europe, CEPEJ(2006)14.

4 CEPEJ(2006)15, pp. 27-43.

5 CEPEJ(2006)13.

6 ECtHR, *Lukenda v. Slovenia* judgment of 6 October 2005, §§ 94 and 95.

7 CM Rec (2004)6, adopted on 12 May 2004, at the 144th session of the Committee of Ministers (12-13 May 2004).

8 See also Interim Resolution ResDH(2005)114 concerning the judgments of the European Court of Human Rights and decisions by the Committee of Ministers in 2183 cases against Italy relating to the excessive length of judicial proceedings.

Council of Europe, which has endeavoured to contribute to the speedy and effective implementation of the judgments of the European Court of Human Rights. In particular, the Assembly's Committee of Legal Affairs and Human Rights is currently examining cases relating to five countries in which, due to major structural problems, unacceptable delays of implementation have arisen.[9]

III. The right to an effective remedy before a national authority in respect of the unreasonable duration of proceedings: the international guarantee

A. The right to a hearing within a reasonable time: what is at stake

15. Article 6 § 1 of the European Convention on Human Rights provides as follows:

> *"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."*

16. In requiring cases to be heard within a "reasonable time", the Convention underlines the importance of administering justice without delays which might jeopardise its effectiveness and credibility.[10] Excessive delays in the administration of justice constitute an important danger, in particular for the respect of the rule of law.[11]

17. The Convention requires proceedings to be conducted "within a *reasonable* time". The notion of reasonableness must reflect the necessary balance between *expeditious* proceedings and *fair* proceedings.[12] A careful balance needs to be struck between procedural safeguards, which necessarily entail the existence of lengths that cannot be reduced, and a concern for prompt justice.[13]

18. Celerity of proceedings responds to the need for legal certainty, for both citizens and the State, and to the need to further, and restore as soon as possible, the peaceful coexistence of individuals (*Rechtsfrieden*). Indeed, the economic life too suffers from contested situations which remain unsettled for too long. Long-lasting disputes disturb such peaceful coexistence: judicial proceedings may not be pursued *ad infinitum*, not even when this prolongation may eventually lead to substantive justice. Decisions must at some foreseeable point become final.

19. The duration of judicial proceedings certainly affects the interests of at least one of the parties to such proceedings: indeed, overstepping the reasonable time requirement of Article 6 of the Convention may result in (procedural) breaches of other important Convention provisions, such as Article 3 (in the case of unreasonably slow investigations into allegations of ill-treatment, for example),[14] Article 5 (in the case of lack of a speedy decision by a court on a *habeas corpus* action, or Article 8 (in the case of undue delays in custody proceedings which may result in the de facto determination of the issue submitted to the court before it has held its hearing).[15]

20. *Justice delayed is justice denied.* The undue postponement of judicial decisions may result in a denial of justice for the parties to the proceedings (although it may happen that parties delay the proceedings on purpose). In more general terms and in the longer run, it risks to affect the confidence which the general public places in the capacity of the State to dispense justice, to decide disputes, and, very importantly, to punish crimes as well as to prevent and deter future crimes. This may cause or even incite the recourse by

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[9] See PACE, Implementation of judgments of the European Court of Human Rights, Report of the Committee on Legal Affairs and Human Rights, 18 September 2006, Doc. 11020.

[10] ECtHR, *Katte Klitsche de la Grange v. Italy* judgment of 27 October 1994, § 61.

[11] Committee of Ministers of the Council of Europe, Res DH(97)336, Length of civil proceedings in Italy: supplementary measures of a general character, 27 May 1997.

[12] ECtHR, *Nideröst-Huber v. Switzerland* judgment of 18 February 1997, § 30; mutatis mutandis, *Acquaviva v. France* judgment of 21 November 1995, Series A no. 333-A, p. 17, § 66.

[13] CEPEJ(2004)19rev2, A new objective for Judicial Systems: the processing of each case within an optimum and foreseeable timeframe, available at www.coe.int/cepej, p. 7.

[14] ECtHR, *Labita v. Italy* judgment of 6 April 2000, §§ 133, 136.

[15] ECtHR, *W. v. the United Kingdom* judgment of 8 July 1987, § 65.

individuals to alternative means of dispute settlement or dispensation of punishment. The deleterious effects on the rule of law of such a situation are evident.

21. The public interest in the proper functioning and use of justice, including in its cost-effective management, is another important element.

22. Celerity, however, must not be sought to the detriment of the good administration of justice.[16] Due consideration must always be given in the first place to the need to ensure the fairness of the proceedings: the other guarantees implied in Article 6 of the Convention, notably the right of access to a court, the equality of arms, the adversarial principle, and the right to dispose of adequate time and facilities for the preparation of one's defence, must not be undermined or affected by a rushed conduct of the procedure.

23. The quality of the legal reasoning and the extent to which judgments are motivated and made transparent to the parties and to the public, are also extremely important and need to be given due consideration. As CEPEJ pointed out, "meticulously drafting a decision, weighing up the reasons for it, and making it clear and comprehensible are all operations that take time", which may prompt a decision to "lighten the requirements for providing reasons for a decision". However, "a decision with clearly stated reasons allows the parties to accept it more easily. Good decisions at first instance have the effect of reducing appeals".[17] The Strasbourg Court has stated in this respect that: "since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings may disclose a serious deficiency in the judicial system."[18]

24. The requirement of celerity must not impinge on the need to preserve the independence of the judiciary in organising its own procedures without undue internal and external control.

25. In conclusion, each case must be processed within an *optimum* time-frame. The CEPEJ places great importance on the *foreseeability* of such time-frame. It notes in fact that "one of the most awkward problems for court users is that they are unable to predict when proceedings will end. (…) Users need foreseeable proceedings (from the outset) as much as an optimum time. However, it must be noted that a foreseeable time-limit is not *per se* an acceptable time-limit."[19]

26. The assessment of the reasonableness of the duration of any set of proceedings must never be mechanical. It necessarily depends on the specific circumstances of the case and must reflect the concern of ensuring the right balance amongst all the different guarantees set out by Article 6 of the Convention.[20]

B. The reasonableness requirement in Article 6 of the Convention: an outline

27. The requirement that proceedings must be conducted within a reasonable time applies to the determination of both criminal charges and civil rights and obligations.[21] Article 6 applies to criminal and civil, but also to certain disciplinary[22] and administrative proceedings, which are qualified as "civil" or as "criminal" by the case-law of the ECtHR.[23]

28. As regards the period to be taken into consideration, in civil cases it normally starts when the case is brought before the competent judicial authority, or even before, if a preliminary claim before an

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16 ECtHR, *Gast and Popp* judgment of 25 February 2005, § 75.

17 CEPEJ (2004)19rev2, pp. 8, 9.

18 ECtHR, *Silc v. Slovenia* judgment of 29 June 2006, § 32; *Wierciszewska v. Poland* judgment of 25 November 2003, § 46.

19 CEPEJ (2004)19rev2.

20 See F. Tulkens, « Le droit d'être jugé dans un délai raisonnable : les maux et les remèdes », CDL(2006)34, p. 4.

21 Numerous issues have arisen before the Court as regards the scope of Article 6. They are far too complex to be addressed in this study, for which they are of no direct relevance.

22 ECtHR, *Engel and others v. the Netherlands* judgment of 8 June 1976, § 83; *Öztürk v. Germany* judgment of 21 February 1984, § 56.

23 With the notable exception, *inter alia*, of the disputes "which are raised by public servants whose duties typify the specific activities of the public service in so far as the latter is acting as the depositary of public authority responsible for protecting the general interests of the State or other public authorities": ECtHR, *Pellegrin v. France* judgment of 8 December 1999, § 66. For procedures concerning the admission and expulsion of aliens, see ECtHR, Maaouia, judgment of 5 October 2000, and for taxation cases, see ECtHR, Ferrazzini, judgment of 12 July 2001.

administrative authority is necessary.[24] In criminal cases, it starts when the person is "accused", that is when he or she is informed of criminal proceedings having been instituted against him or her[25] or suffers important repercussions on account of such proceedings.[26]

29. The final point is normally the date when the judgment becomes final (it is either filed with the court's registry or notified, or the deadline for appealing it has expired etc., depending on the applicable domestic rules).[27]

30. In the assessment of the reasonableness of the length of a set of proceedings, regard must be had to the circumstances of the case and the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and that of the competent authorities, and the importance of what was at stake for the applicant (the parties) in the dispute.[28]

31. Special diligence is required on the part of the competent authorities, for instance, in cases when parties to the proceedings are affected by illnesses, or in labour disputes, child-care cases[29] and claims of compensation for health damage allegedly resulting from medical malpractice.[30] It is also generally required in criminal cases, in particular when the accused is detained on remand.[31]

32. Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet the requirements of this provision.[32] Accordingly, the Court does not accept backlogs or administrative difficulties as justification for procedural delays.[33] However, exceptional political or social situations in the country concerned may be taken into consideration for a transitory period.[34]

33. The obligation to organise its judicial system in a manner that complies with the requirements of Article 6 § 1 of the Convention also applies to a Constitutional Court. However, "when so applied it cannot be construed in the same way as for an ordinary court. Its role as guardian of the Constitution makes it particularly necessary for a Constitutional Court sometimes to take into account other considerations than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms. Furthermore, while Article 6 requires that judicial proceedings be expeditious, it also lays emphasis on the more general principle of the proper administration of justice".[35]

C. The right to an effective remedy before a national authority under Article 13: an outline

34. *Ubi jus ibi remedium*. When there is a right, there should be a remedy. 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"*.

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[24] ECtHR, *Jorg Nina Jorg and others v. Portugal* judgment of 19 February 2004, § 30.

[25] ECtHR, *Deweer v. Belgium* judgment of 27 February 1980, Series A no. 35, p. 24, § 46; *Wemhoff v. Germany* judgment of 27 June 1968, Series A no. 7, p. 26, § 19; *Ringeisen v. Austria* judgment of 16 July 1971, Series A no. 13, p. 45, § 100;

[26] ECtHR, *Foti and others v. Italy* judgment of 10 December 1982, Series A no. 56, p. 18, § 52; *Lavents v. Latvia* judgment of 28 November 2002, § 85.

[27] ECtHR, *Barattelli v. Italy* judgment of 4 July 2002, § 15; *Mattoccia v. Italy* judgment of 25 July 2000, § 75.

[28] ECtHR, *Scordino v. Italy* judgment of 29 March 2006 [GC], § 177.

[29] See, amongst others, ECtHR, *H. v. the United Kingdom*, Series A no. 120-B, § 83; *Olsson no. 2 v. Sweden*, Series A no. 250, § 103; *Hokkanen v. Finland*, Series A no. 299-A, § 72; *Ruotolo v. Italy* Series A no. 230-D, § 17.

[30] ECtHR, *Marchenko v. the Russian Federation* judgment of 5 October 2006, § 40.

[31] ECtHR, *Debboub v. France* judgment of 9 November 1999, § 46.

[32] ECtHR, *Bottazzi v. Italy* judgment of 28 July 1999, § 22.

[33] ECtHR, *Kolb and others v. Austria* judgment of 17 April 2003, § 54.

[34] ECtHR, *Milasi v. Italy* judgment of 25 June 1987, §§ 17-20; ECtHR *Maltzan and Others v. Germany* decision of 2 March 2005 (GC).

[35] ECtHR, *Gast and Popp v. Germany* judgment, cit. § 75.

35. The effectiveness of human rights largely depends on the effectiveness of the remedies which are provided to redress their violation. The right to a remedy in respect of an arguable claim of a violation of a fundamental right or freedom is expressly guaranteed by almost all international human rights instruments.[36]

36. 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 Convention requires the Contracting States to "secure" the rights and freedoms under the Convention. The European Court exerts its supervisory role subject to the principle of subsidiarity,[37] i.e. only after domestic remedies have been exhausted or when domestic remedies are unavailable or ineffective. The right to an effective remedy established in Article 13 of the Convention stems directly from this principle.

37. Although the principle of the rule of law, which is contained in the Preamble and in Article 3 of the Statute of the Council of Europe, of which it constitutes one of the three pillars (together with democracy and respect for human rights), would justify the right of an effective remedy as an autonomous one, Article 13 does not contain a general guarantee of effective 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, the scope of the obligation under Article 13 will vary depending on the nature of the applicant's complaint under the Convention.[38]

38. Notwithstanding the literal wording of Article 13, the existence of an actual breach of another ("substantive") provision of the Convention is not a prerequisite for its application.[39] According to the case-law of the Court, Article 13 requires that, when a claim of a violation under the Convention is an "*arguable*" one, a remedy allowing both to have such claim decided and subsequently to obtain appropriate relief, must be available.[40] The arguability test requires that a claim "only needs to raise a Convention issue which merits further examination."[41]

39. The "national authority" competent for providing the remedy must not necessarily be a *judicial* authority.[42] On the other hand, the powers and procedural guarantees of an authority will be relevant when

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[36] See for example, in addition to Article 13, 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 the Elimination of Racial Discrimination, and Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women.

[37] ECtHR, *Z. and Others v. UK* judgment of 10 May 2001, § 103.

[38] See for example, *Chahal v. UK*, cit., §§ 151-152.

[39] See *Klass and Others v. Germany*, judgment of 6 September 1978, § 64.

[40] See among others, *Klass and Others*, *cit*., § 64; *Kaya v. Turkey*, judgment of 19 February 1998, pp. 329-30, § 106. However, Article 13 cannot be interpreted so as to require a remedy in domestic law in respect of any supposed grievance under the Convention that an individual may have, no matter how unmeritorious his complaint may be (*Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, § 52; *Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, §§ 31-33).

[41] See European Commission of Human Rights before the Court in *Boyle and Rice v. theUnited Kingdom*, § 53. Non-arguable is not the same as manifestly ill-founded in the sense of Article 35(3) of the Convention. However, although originally the Court seemed to leave open the possibility that a complaint that is declared manifestly ill-founded may still be deemed to have been arguable (*Boyle and Rice v. the United Kingdom*, § 53), it conceded that "it is difficult to conceive how a claim that is "manifestly ill-founded" can nevertheless be "arguable" and vice versa" (ibidem, § 54). And in Powell and Rayner the Court held in so many words that the "dual [i.e. domestic and European] system of enforcement is at risk of being undermined if Article 13 (…) is interpreted as requiring national law to make available an 'effective remedy' for a grievance classified under Article 27 § 2 [the present Article 35 § 3] (…) as being so weak as not to warrant examination on its merits at international level" (ECtHR, *Powell and Rayner v the United Kingdom*, § 33). It is now standing case-law that if a complaint under a substantive right is declared manifestly ill-founded, the arguability of that same complaint under Article 13 is denied on the basis of the same reasoning (e.g. ECtHR, *Igor Vrabec v. Slovakia* judgment of 5 October 2004). At the admissibility stage, if a complaint about access to court or the reasonable time requirement under Article 6(1) is declared admissible, the Court will adopt the same position with respect to any claim under Article 13 without a separate examination (ECtHR, *Jonasson v. Sweden* judgment of 30 March 2004). At the phase of the merits, the Court will usually find concurrent breaches of the reasonable time requirement under Article 6(1) and the requirement of an effective remedy under Article 13 (ECtHR, *Rachevi v. Bulgaria* judgment of 23 September 2004, §§ 60-68 and §§ 96-104). In some cases, however, the Court finds reason to thoroughly examine the existence of an effective remedy after it has found a breach of the reasonable time requirement. And, indeed, in certain cases the Court treated the complaint concerning Article 6(1) as being absorbed into the examination of the more general obligation under Article 13 (ECtHR, *Kaya v. Turkey* judgment of 19 February 1998, § 105).

[42] See for example, *Golder v. the United Kingdom*, judgment of 21 February 1975, § 33, *Leander v. Sweden*, judgment of

determining whether a particular remedy is effective.[43] Any such remedy must be effective in practice as well as in law.[44]

40. The effectiveness of a national remedy within the meaning of Article 13 does not depend on the certainty of a *favorable* outcome.[45] Effectiveness is to be assessed in respect of the possibility of redressing the alleged violation of the right guaranteed by the Convention, possibly by cumulating available remedies. 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.[46] In other terms, there is no particular form of remedy required, the Contracting States being afforded a margin of discretion in conforming to their obligations under this provision.[47]

41. To be considered effective and thus conform to Article 13, a domestic remedy must allow the competent national authority both to deal with the substance of the relevant Convention complaint and to grant "appropriate relief".[48] This can entail, for example, the ending, modification, non-application or annulment of the challenged action, or obtaining reparation of damages resulting from the violation. The principle of effectiveness also implies that the procedure of obtaining domestic remedies must not be unjustifiably hindered by acts or omissions of the authorities of the State concerned.[49]

D. The relationship between Article 6 § 1 and Article 13 of the Convention

42. Until fairly recently, the Convention organs considered that, since the requirements of Article 6.1 are stricter than those of Article 13, in case a violation of Article 6 § 1 was found, it was unnecessary to determine whether there had also been a breach of Article 13; the requirements of the latter being entirely "absorbed" by those of the former.[50] 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,[51] or of any means to shorten or terminate the excessive length of procedure.[52]

43. Such reasoning was not without critics even within the Court itself. Judges Matscher and Pinheiro Farinha, in their separate opinion in *Malone v. the United Kingdom*, while recognizing the "obscure" nature of Article 13, contested the adequacy of the arguments put forward by the Court to justify a non-examination of the allegation of a breach of this Article.[53] They, however, noted that the "absorption

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26 March 1987.

[43] Thus for example, the possibility of applying to the judge responsible for the execution of sentences cannot be regarded as an effective remedy for the purposes of Article 13, as he is required to reconsider the merits of his own decision, taken moreover without any adversarial proceedings (see *Domenichini v. Italy*, judgment of 15 November 1996, § 42) In the same sense, see also: *Calogero v. Italy*, judgment of 15 November 1996, § 41.

[44] See among others, *Ilhan v. Turkey* judgment of 27 June 2000, §§ 61-62.

[45] See for example, *Vilvarajah v. the United Kingdom*, judgment of 30 October 1991, § 122.

[46] See among many others, *Silver and Others v. the United Kingdom*, judgment of 25 March 1983, § 113 and *Chahal v. the United Kingdom*, judgment of 15 November 1996, § 145.

[47] See *Chahal v. the United Kingdom*, cit.

[48] See for example, *Smith and Grady v. UK* judgment of 27 September 1999, § 135; *Aksoy v. Turkey*, judgment of 18 December 1996, § 95.

[49] ECtHR, *Altun v. Turkey* judgment of 1 June 2004, § 70

[50] See *Airey v. Ireland*, judgment of 9 October 1979, § 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 December 1991).

[51] See for example, *Giuseppe Tripodi v. Italy*, judgment of 25 January 2000, § 15.

[52] See for example, *Bouilly v. France*, judgment of 7 December 1999, § 27.

[53] "… 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). We refer in particular to the judgments 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.

argument" may be correct in so far as the procedural guarantees of Article 6 of the Convention are concerned. In fact, national law generally does provide for specific procedural remedies which are "stronger" than that of Article 13 in respect of procedural guarantees of Article 6, whereas to a wide extent this is not the case regarding the excessive length of proceedings. It is with respect to this specific part that Article 13 has its "*raison d'être*".

44. The change in reasoning with regard to the right to an effective remedy in respect of the excessive length of proceedings came in 2000, with *Kudla v. Poland*.[54]

45. In this judgment, 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 (Article 6 § 1), there would be no separate examination of an alleged breach of the right to an effective remedy (Article 13). 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", that it had already pointed out in its previous case-law related to this matter.[55]

46. According to the Court, the requirements of Article 13 should be considered as "reinforcing" those of Article 6 §1, rather than being absorbed by the obligation to prohibit inordinate delays in legal proceedings under Article 6 § 1.[56]

47. The Court 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."[57] This subsidiary character of the Strasbourg system of complaint is articulated precisely in Articles 13 and 35 § 1 of the Convention. Article 13 establishes an additional guarantee.[58] According to the *travaux préparatoires*, Article 13 aims at according a means whereby individuals may obtain relief at national level for violations of their Convention rights before having recourse – if they are of the opinion that no (satisfactory) relief has been given – to the Strasbourg Court.[59]

IV. The supervision by the Committee of Ministers of the Council of Europe in respect of the implementation of length-of-proceedings cases[60]

48. In pursuance of Article 46 § 2 of the Convention, the task of supervising the execution of the judgments 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 judgment of the Court.

49. Like the obligation of the States under Article 46(1) to abide by the judgments of the Court in any case

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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. In so doing, the majority, without offering the slightest justification, has departed from the line taken inter alia in the Silver and Others judgment, 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 judgment the Court ought, in the present case, and to the same extent, to have arrived at a finding of a violation of Article 13*", Malone v. the United Kingdom*, judgment of 2 August 1984, Series A no. 82.

54 ECtHR, *Kudla v. Poland judgment* of 26 October 2000. The Court's change of position must have also been inspired by concerns of judicial economy, as a "radical effort" to find an antidote to its ever-increasing backlog. See J-F Flauss, Le droit à un recours effectif au secours de la règle du délai raisonnable: un revirement de jurisprudence historique, in : Revue trimestrielle des Droits de l'Homme, 2002, pp. 179-201. See also L. Burgorgue-Larsen, De l'art de changer de cap, in : Libertés, justice, tolérance : mélanges en hommage au Doyen Gérard Cohen-Jonathan (Vol 1), Bruxelles, Bruylant, 2004, pp. 343-347 ; J. Andriansimbazovina, Délai raisonnable du procès, recours effectif ou déni de justice ?, in : Revue française de droit administratif, 2003(I), pp. 85-98.

55 *Ibidem*, § 148. See also *Bottazzi v. Italy*, judgment of 28 July 1999, § 22.

56 ECtHR, *Kudla v. Poland*, cit., § 152.

57 *Ibidem*, § 152.

58 ECtHR 28 July 1998, *Selmouni v. France*, § 74; ECtHR *Kudla v. Poland* judgment of 26 October 2000, § 152.

59 Collected Editions of the *Travaux Préparatoires*, vol. II, pp. 485 and 490, and vol. III, p. 651.

60 In this respect, see also the Venice Commission's opinion on the implementation of the judgments of the European Court of Human Rights (CDL-AD (2002) 34, §§ 28-33 and §§ 41-42).

to which they are parties, the power of supervision of the Committee of Ministers under Article 46(2) extends to measures pertaining to the individual case,[61] general measures[62] and the award of just satisfaction. The Committee of Ministers issues a final resolution when it deems to have discharged its functions under Article 46 § 2.

50. When supervising the implementation of judgments finding a breach of the reasonable time requirement, the Committee of Ministers most often requires, as an individual measure, the acceleration of the proceedings in question if these are still pending. Such speeding up, which may be seen as a form of *restitutio in integrum*, will often be the result of a judgment by the Strasbourg Court, even in the absence of a specific remedy under domestic law.

51. The Committee of Ministers insists on the fast-tracking of proceedings in particular in those cases in which the Strasbourg Court imposes a "special diligence" (see para. 31 above) or when the breach concerns the failure to enforce a domestic court's decision or concerns the continuing breach of a substantive Convention provision (the right of property, for example).[63]

52. In case the proceedings complained about have ended in the meanwhile, in addition to possible damages the taking of general measures to prevent similar violations in the future with respect to the applicant and in other cases will be the main means of implementation of the Court's judgment.

53. When a State refuses to execute a judgment of the Court, the Committee of Ministers may decide to open a procedure of monitoring in respect of that State's commitments.

54. 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.[64] In 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.[65] In particular, in 2002 the Committee of Ministers set up the European Commission for the Efficiency of Justice (CEPEJ) with the aim to address the major problems of the judicial systems of member States and define ways to improve their efficiency and functioning.[66] In 2004, CEPEJ set out a Framework Programme entitled "A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe",[67] 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. In 2006, CEPEJ decided in particular to act as a Centre for judicial time management (SATURN Centre) aimed at collecting specific information necessary to the knowledge of judicial timeframes in the member States and detailed

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[61] 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.

[62] 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*".

[63] See Mr Lobov, « L'exécution des arrêts relatifs à la durée excessive de procédures judiciaires : l'expérience du Comité des ministres » , CDL(2006)035, p. 3.

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

[65] *Ibidem*. In 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".[65] 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). See the Report of the 51st meeting of the CDDH (27 February – 2 March 2001), document CDDH (2001) 15, § 11. 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 (See document "Implementation of the European Convention on Human Rights – Effective remedies at national level", DH-PR (2002) 001rev, 10 September 2002).

[66] See para. 4 above.

[67] See CEPEJ (2004) 19 Rev2.

enough to enable member states to implement policies aiming to prevent violations of the right to fair trial within a reasonable time protected by Article 6 of the European Convention on Human Rights.[68]

55. The ever-increasing number of applications to the European Court of Human Rights in connection with unreasonably long proceedings cast doubts as to the effectiveness of the existing national remedies. In May 2004, the Committee of Ministers adopted its Recommendation on the improvement of domestic remedies (hereinafter: "the Recommendation").[69] The Recommendation 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, member States have the general obligation to *solve the problems underlying violations found* (emphasis added). The member States are thus called to, in particular:

- "review, following Court judgments 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".

56. Further to this Recommendation, the Steering Committee for Human Rights (CDDH)[70] decided to resume the study started in 2001, on means of assisting member States in the implementation of the Convention in domestic law and practice, with the aim of producing a report on the existing national practices in the field of effective remedies.[71] The preparation of the report is in progress.[72]

V. Existing domestic remedies in respect of allegedly lengthy proceedings in the Council of Europe member States: a comparative survey

A. In general

57. The right to a hearing within a reasonable time is today enshrined in the constitutions[73] and/or legislation[74] of almost all Council of Europe member States. It may also be provided for through the direct application of the European Convention on Human Rights in domestic legal systems.[75] However, even without specific provisions in domestic law, it is a general principle of procedure to speed up the procedures, and the activities of the courts in this respect are under the supervision of the Ministry of Justice (annual reports of the courts, periodical controls etc.).

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[68] See "Terms of reference of the Working Group on evaluation of judicial systems (CEPEJ-TF-DEL)" adopted by the CEPEJ. See also "Terms of reference of the Groupe de pilotage of the SATURN Centre for judicial time management", CEPEJ(2006)9, Appendix II.

[69] See footnote 7.

[70] Through its Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR).

[71] See document: "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.

[72] The information transmitted by the Secretariat of the DH-PR has been used to fill in questionnaires with respect to several countries.

[73] Albania, Andorra, Croatia, Czech Republic (the Charter of Fundamental Rights and Freedoms), Germany, Iceland, Italy, Malta, Poland, Portugal, Romania, San Marino (the Declaration of the rights of the citizens and of the fundamental principles of the San Marino legal order), Slovakia, Slovenia, Spain, Switzerland, Turkey (the right is provided only for persons under detention).

[74] Hungary, Iceland, Italy, Latvia, Lithuania, Moldova, Montenegro, Netherlands, Romania, San Marino, Serbia, Sweden, "the former Yugoslav Republic of Macedonia", United Kingdom.

[75] Countries recognizing the supremacy of international treaties over conflicting national law: Albania, Andorra, Armenia, Azerbaijan (although international treaties do not take precedence over conflicting constitutional provisions and acts accepted by way of referendum), Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia (although Estonia may not conclude international treaties which are in conflict with its constitution), France, Georgia (as long as the international treaties do not contradict the constitution), Greece, Moldova, Netherlands, Poland, Romania, Russian Federation, San Marino and "the former Yugoslav Republic of Macedonia". Countries prioritizing generally recognized principles of international law: Austria, Portugal. Constitutions of some countries provide that their national legislation shall comply with generally accepted principles of international law: Georgia, Hungary, Italy and Slovenia. The Constitution of the Swiss Confederation provides that the Confederation and the Cantons shall respect international law. The Belgian Constitution provides that federal authorities may temporarily substitute themselves for councils and communities "in order to ensure respect of international and supranational obligations". The Latvian Constitution provides that the State shall "recognize and protect fundamental human rights in accordance with the constitution, laws and international agreements binding upon Latvia".

58. In a number of countries there is no general requirement with respect to the reasonableness of the length of judicial proceedings, but provision is nonetheless made for a maximum time-limit for examining and deciding a case.[76]

59. Generally speaking, in the majority of the Council of Europe member States there exists a procedural venue allowing an individual to complain about the excessive length of proceedings.[77]

60. The remedy may be constituted by a *general action*,[78] in the form, for example, of an action for breach of a constitutional or conventional right, or a civil action for tort against the State.

61. Numerous States provide a *specific remedy* for the breach of the reasonable time requirement,[79] in the form for instance of a request to accelerate the proceedings in question or an action against the State for the damage caused by non-compliance with the obligation to give a decision within a reasonable delay. Some countries have established specific remedies after having been faced with the limits of the ordinary legal remedies and having been urged by the findings of the European Court of Human Rights.[80] Some additional countries are currently preparing legislation aimed at introducing a specific remedy or improving the existing ones.[81]

62. In a number of countries, both general and specific remedies are available.[82]

63. Remedies for excessive length, be they general or specific, are often contained in legislation;[83] they can be foreseen in the Constitution, when they take the form of an individual complaint before the Constitutional Court;[84] or they can be praetorian.[85]

64. The precise scope of application and the specific procedural modalities of the different remedies in question vary greatly from one country to the other. They will therefore not be dealt with in detail in this

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[76] For example in Armenia (the Code of Civil Procedure provides for a fixed timeline for examining and making decision on cases), Azerbaijan (a fixed timeline for examination of cases is established), Georgia (the Code of Criminal Procedure provides for terms of detention on remand, the Code of Civil Procedure provides that the procedural action shall be exercised within a term established by law. In case a procedural term is not established by law, it shall be determined by a court), Norway, Ukraine (the Code of Criminal Procedure provides for terms of pre-trial investigation).

[77] Save for Armenia, Azerbaijan, Greece, Latvia, Romania, Turkey. The effectiveness of the existing procedural venues within the meaning of Article 13 ECHR may however be questionable.

[78] Albania, Luxembourg, Malta, San Marino, Spain.

[79] Bulgaria, Croatia, Cyprus, Estonia (only in case of delays in administrative proceedings), Finland, Georgia (a disciplinary action may be initiated in case of an unreasonable delay of examination of a case), Italy, Norway, "the former Yugoslav Republic of Macedonia".

[80] Croatia, Czech Republic, France (by means of case law), Italy (by means of legislation), Poland, Portugal, Slovakia, Slovenia.

[81] For example: Czech Republic (The draft law modifying the Law No. 82/1998 has been submitted to the Parliament. The draft law provides an adequate compensation 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), Greece (see document CM/Del/OJ/DH (2005) 922, Vol. I, p. 18), Ukraine. According to the information provided by Mr Francesco Crisafulli, Government Co-Agent of Italy during the Workshop on the improvement of domestic remedies with particular emphasis on cases of unreasonable length of proceedings, held at the initiative of the Polish Chairmanship of the Council of Europe on 28 April 2005, Italy is also working on the improvement of the existing remedies.

[82] Andorra, Austria, Bosnia and Herzegovina, Belgium, Czech Republic, Denmark, France (a specific remedy is provided for administrative proceedings), Ireland, Germany (a specific remedy was developed by the case-law), Liechtenstein, Lithuania, Moldova, Montenegro (like in Serbia, the specific remedy is a measure of internal control and has an administrative character), Netherlands, Poland, Portugal, Russian Federation, Serbia, Slovakia, Slovenia, Sweden, Switzerland, Ukraine, United Kingdom.

[83] Andorra, Austria, Bosnia and Herzegovina, Bulgaria, Czech Republic, Estonia, Finland, France, Georgia, Hungary, Italy, Latvia, Lithuania, Luxembourg, Montenegro, Netherlands, Norway, Poland, Portugal, Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", Ukraine.

[84] Albania, Andorra, Austria, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Germany, Liechtenstein, Malta, Slovakia, Slovenia and Spain.

[85] In France, the remedy envisaged in Article L.781-1 of the Code of Judicial Organisation was considered as being effective only as a result of the developments in the national case law. In Iceland, the possibility of reducing a sentence in light of the excessive duration of the proceedings is not provided for in the General Criminal Code, but has been developed by judicial practice.

study. The analysis will be limited to a general overview of the domestic remedies currently existing in the Council of Europe member States with respect to allegations of unreasonable delay in administrative, civil and criminal proceedings,[86] on the basis of the information available,[87] with a view to identifying the main kinds of remedies available and their main features.

65. Several kinds of categorisation of the remedies available for allegations of excessive length of proceedings are possible.

- *Preventive* or *acceleratory* remedies are designed to expedite the proceedings in order to prevent them from becoming excessively lengthy, while *compensatory* remedies provide the individual with redress for delays that have already occurred (regardless of whether or not the proceedings have ended).

- *Pecuniary* remedies provide a financial reparation for the damage incurred (material or non-material, or both). *Non-pecuniary* remedies provide a moral reparation (for example, the acknowledgment of the violation or the mitigation of a sentence).

- Certain remedies are *available for both pending and terminated proceedings*, and others are *only available for pending proceedings*. Indeed, when the proceedings are over, acceleratory remedies are clearly of no use, and the remedy may only consist in compensation for the damage resulting from the allegedly excessive duration of proceedings[88] or in a disciplinary action against the dilatory authority.[89]

- Certain remedies may be *applicable to any kind of proceedings (civil, administrative or criminal)*, while others are *applicable only to criminal proceedings*.

66. These categories, however, are not clear-cut. It is difficult to say, for example, whether a disciplinary action against a dilatory judge is only a preventive remedy or if it is also compensatory (as the applicant may see it).[90] Further, these categories often overlap with each other.

67. It should be noted indeed that in most countries different forms of redress coexist and may be applied cumulatively.[91]

68. For the sake of simplicity, and in the light of the practical approach which is sought, in the present study the existing national remedies will be presented <u>according to the kind of proceedings</u> (civil/administrative and criminal) to which they are applicable. Due to what has been explained above, some repetitions and inaccuracies will be inevitable.

B. State of Art

1. Remedies available for civil/administrative proceedings

69. In most of the Council of Europe member States, <u>preventive</u> remedies are available for administrative and civil proceedings in the form of the possibility for the party/ies to lodge a *request for the acceleration*

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86 Enforcement proceedings will not be treated.

87 The Secretariat has relied on the information submitted by Venice Commission members in reply to the questionnaire (CDL(2004)124), on the information provided by the Department for the Execution of Judgments of the European Court of Human Rights of Directorate General II of the Council of Europe, by the Registry of the European Court of Human Rights and by the Secretariat of the DH-PR, and on the information it has itself obtained from direct sources or from Permanent Representations.

88 In Croatia the compensation for damage resulting from excessive duration of proceedings can be claimed for pending proceedings.

89 In Bulgaria a disciplinary action against a dilatory authority may be initiated only during pending proceedings.

90 While a disciplinary sanction will only concern the personal position of the responsible judge, there being no direct and immediate consequence for the proceedings which have given rise to the complaint, a disciplinary action will most often be preceded by a complaint to a supervisory organ, which can give (generally non-binding) instructions to a dilatory judge. At the same time, the risk of an ensuing disciplinary action may have a certain (although indirect) effect of speeding-up the proceedings in question as well as a general preventive effect.

91 Almost all countries providing, in case of an excessive delay, for a remedy in the form of an acknowledgment of the violation, foresee this as a general form of redress for all types of proceedings. Both acceleratory and compensatory remedies are always preceded by an ascertainment that the reasonable time requirement has been violated.

of the proceedings.

70. Such requests for acceleration may be lodged:

- with a superior authority/court, either directly[92] or through the court dealing with the proceedings. In the latter case the court concerned will transmit it to the competent court/authority;[93] or
- with the dilatory court.[94]

71. The measures taken in response to the above requests may consist in:

a) fixing an appropriate time-limit for the relevant authority to
   i. take a particular procedural step (holding a hearing, obtaining an expert's report, issuing another necessary order or taking an act which the concerned authority has failed to take),[95] or/and
   ii. decide on the merits of the case or terminate the proceedings,[96] or
b) transferring jurisdiction to a different court or a superior authority.[97]

72. In most countries, acceleratory remedies co-exist with compensatory ones.[98] In a few countries, however, pecuniary compensation for damage remains - thus far - the *only* possible remedy an applicant can claim in respect of delay of proceedings.[99]

73. Compensation can be sought:

- from the same authority which decides on the reasonableness of the length of the proceedings,[100]
- or in separate proceedings.[101]

74. Reparation may be granted on account of:

- a fault of a judge or another officer of the court,[102]
- the heavy workload of the tribunals,[103]
- 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,[104]
- an unlawful act or omission committed in the course of proceedings,[105]

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92 Bulgaria, Estonia, Switzerland.

93 Austria (if the dilatory court takes all the procedural steps specified in the request within four weeks of receipt, and informs the party concerned, the request is deemed withdrawn unless the party declares within two weeks after service of the notification that it wishes to maintain its request), Czech Republic, Poland, Slovenia (a motion for deadline).

94 Denmark, Lithuania, Montenegro, Netherlands. Norway, Serbia, Slovenia (a supervisory appeal), Spain.

95 Austria, Cyprus, Czech Republic, Denmark, Estonia (administrative proceedings), Lithuania, Malta, Poland, Slovakia, Slovenia.

96 Austria, Bosnia and Herzegovina, Croatia, Cyprus, Slovakia.

97 This possibility exists in Austria, where a party to administrative proceedings may request that the case be remitted to a superior authority, in the last resort to the Administrative Court, which must then decide itself within a statutory time-limit, and in Cyprus, where the Supreme Court can order a retrial by a different court.

98 Austria, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France (acceleratory remedies are available for administrative proceedings), Germany, Hungary, Ireland, Liechtenstein, Lithuania, Montenegro, Netherlands (to a limited extent only), Poland, Portugal (acceleratory measures are used only in criminal proceedings), Serbia, Slovakia, Slovenia, Spain.

99 Italy.

100 Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Italy, Malta, Netherlands (in administrative proceedings where a punitive sanction is at issue; there the sanction may be lowered as a means of compensation); Poland, Slovakia,

101 Netherlands (tort action); Poland, Spain (the compensation claim may be lodged with the Ministry of Justice after the termination of the main proceedings).

102 Lithuania, Netherlands.

103 Belgium.

104 Czech Republic and Slovakia.

105 Netherlands, Poland, Portugal, Sweden.

or, more in general, on account of:

- a malfunctioning of justice or denial of justice,[106] or
- a violation of the right to a hearing within a reasonable time.[107]

75. Several high and supreme jurisdictions of member States have expressly declared that a violation of the reasonable time requirement as guaranteed by Article 6 § 1 of the Convention is to be treated as a "fault", an "unlawful act", a "malfunctioning of administration of justice", a "denial of justice", or an "irregularity in the conduct of proceedings" that engages the responsibility of the State and obliges it to repair the ensuing damage.[108]

76. As regards the *kind of compensation*, it may take different forms: pecuniary compensation (of material or non-material damage or both); assumption of a decision in the applicant's favour; disciplinary sanction to the dilatory judge; exemption from legal costs;[109] lowering of an administrative sanction.[110]

77. As for pecuniary compensation, in a number of States, it is only awarded for *non-material* damage, in particular in cases where the proceedings are still pending.[111]

78. As to the amount of pecuniary compensation to which a victim of the excessive length of proceedings may be entitled, its determination generally remains within the discretion of the jurisdiction concerned. Taking into account the fact that when assessing the reasonableness of the duration of proceedings in a case before them, the competent authorities of the member States generally refer to criteria applied by the Court with respect to Article 6 § 1 of the Convention, it might be assumed that this will also be the case when they are called to determine the amount of compensation. Yet, such assumption is not certain.[112] In fact, only a few replies to the questionnaire specifically indicate that in determining the amount of compensation, the competent authority refers to/relies on the amounts of pecuniary compensation granted by the Court.[113]

79. In certain countries, in relation to administrative proceedings, in the event that a public authority fails to take a decision within the prescribed time-limit, it shall be deemed to have made a decision to the applicant's favour.[114]

80. Finally, the possibility for a party in judicial proceedings to bring a disciplinary action against a dilatory authority is mentioned by a number of States as a remedy in respect of excessive delays in the proceedings.[115]

2. Remedies available for criminal proceedings

81. In most cases, the above-mentioned remedies described for civil and administrative proceedings are not exclusive of these jurisdictions, but may also be applicable in criminal proceedings[116]. Therefore,

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106 France, Spain.

107 Croatia, Italy, Lithuania, Switzerland.

108 Belgium, Czech Republic, France, Poland, Portugal, Sweden.

109 Denmark. In Iceland, an award to legal costs to the other party may be ruled, if the unnecessary delay has been caused by that party intentionally or by negligence.

110 Netherlands.

111 In Croatia, Poland and Slovakia. When proceedings are terminated and it can be established that the applicant has been delayed in the enjoyment of certain rights, pecuniary damages may be also given in France, Italy, Poland.

112 ECtHR, *Scordino v. Italy* judgment, cit.

113 Denmark, Lithuania, Poland, Slovakia. In Italy, the level of compensation granted by the national courts for breaches of the reasonable time requirement was problematic to the extent that it was not sufficiently related to that granted by the European Court. (see the Pinto law).

114 Belgium, Italy, Sweden.

115 Bosnia and Herzegovina, Bulgaria, Finland, Georgia, Italy, Lithuania, Montenegro, Portugal, Russian Federation, Serbia, Slovakia, Sweden, "the former Yugoslav Republic of Macedonia" and Ukraine.

116 Unless it results otherwise from the specific scope or nature of the concrete remedy, for example the effect of positive

general constitutional or legal actions aiming at the acceleration of the proceedings, the reparation of damages or a disciplinary action against the judge may also derive from an alleged breach of the reasonable length of proceedings in a criminal case.[117]

82. As for preventive remedies, a characteristic of criminal proceedings is that, in general, the trial phase is preceded by an investigative phase. Depending on the different systems, the investigation might be entrusted to a court or body[118] other than the one which must decide on the merits of the case. In this sense, some countries provide for specific preventive remedies which aim at speeding up investigative or pre-trial proceedings by allowing for complaints or requests for acceleration to be lodged with the superior prosecuting or judicial authority.[119]

83. Measures taken in response to the above mentioned requests range from a dismissal of the application if the delays are unjustifiable, an investigation into the causes of the alleged delays or a request for follow-up reports, to the fixing of a time-limit to conclude the investigative phase, hierarchical instructions between Prosecutors including on how to handle the case, or the adoption of disciplinary measures.[120] Specific preventive remedies related to the trial phase appear to be less common.[121]

84. As to compensatory remedies, in criminal proceedings there is a specific form of redress by means of which the excessive delays incurred during the proceedings are taken into account, ex officio or at the request of a party, in the assessment of the appropriate punishment. In some countries this remedy has been incorporated into legislation[122] whereas in others it appears to have been set out or developed through case-law.[123]

85. A remedy of this kind is always of a compensatory character, for its effects necessarily derive from the acknowledgement that a delay has already occurred, even if in some countries such effects can be anticipated by discontinuing the proceedings on the grounds of delays before the case is brought to the court that decides on its merits.[124]

86. In the majority of cases, however, the court will consider the issue of the length of proceedings

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silence is exclusive to administrative proceedings.

117 Therefore the fact that specific information regarding criminal proceedings was only provided for 13 countries - Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, Germany, Netherlands, Portugal, Sweden, Switzerland and United Kingdom - does not imply that generic remedies are not applicable in such cases. For example, in late 2005 the Swedish Supreme Court ruled that pecuniary and non –pecuniary damages are available in unduly prolonged criminal cases.

118 For example investigative judges, prosecution services, police.

119 For example Belgium (where the request can be lodged not only by the defendant but also by the Attorney General), Bulgaria, Denmark and Portugal (where any party can request that the proceedings before the Prosecution Services or those taking place in a court or before a judge be expedited when the time-limits provided by law for any procedural step are exceeded).

120 Disciplinary measures have been referred to in this context as preventive remedies, whereas they may also be considered to be compensatory.

121 Only Denmark has referred to the possibility of asking the court dealing with the case to schedule it for trial. Belgium expressly refers to the lack of such a legal speeding mechanism.

122 For example Belgium, (Article 21ter Preliminary Title of the Criminal Procedure Code), Finland (Criminal Code Chapter 6, Article 7), or Sweden (Chapter 29 Section 5 and Chapter 30 section 4 of the Penal Code) According to the latter, "Courts in criminal cases shall both in their choice of sanction and in their determination of the appropriate punishment, take into account whether an unnaturally long time has elapsed since the commission of the offence".

123 For example, the Estonian Supreme Court or the German Constitutional Court. In the Netherlands, the Supreme Court has developed general guidelines for criminal cases in this respect. In Switzerland the Federal Court has determined the possible consequences of a breach in the reasonable length of proceedings in criminal matters, and specified that the judge must explicitly mention the violation of this principle in his judgment and state what account was taken of it.

124 For example Belgium, where this decision can be taken by the "Chambre du Conseil" or the "Chambre de Mises en Accusation" before the investigate phase is concluded and the case is passed on to the Court that shall take a decision on the merits. Specific mention must be made to the Statutory rules in England and Scotland which impose time-limits on the institution of proceedings, particularly when individuals charged with crimes are held in custody, and may lead to the barring of prosecution or the discontinuance of proceedings. Notwithstanding their effectiveness, such rules seem more related to the question of statute of limitations and the expiry of overall or specific procedural time-limits (for example, for remand on custody or commencement of the trial) than to the issue of the reasonable length of proceedings. The same comment applies to Switzerland, where the "violation of the "reasonable time" principle may give rise to the release of the defendant when the time-limit for legal action has run out".

together with the decision on the merits. If a violation of the reasonable time requirement is found to have occurred, the court may decide to give redress, namely by means of:

- a reduction or mitigation of the sentence;[125]
- a mere declaration of guilt;[126]
- an acquittal;[127] or
- a decision to stay the prosecution or discontinue the proceedings.[128]

87. Finally, this remedy of individual redress may also be applied in administrative proceedings where a punitive sanction is at stake so that the recognition of an excessive duration of proceedings may result in its mitigation.[129]

VI. The assessment of the existing national remedies by the European Court of Human Rights

A. In general

88. Since the requirement of Article 13 constitutes an obligation of result, the Contracting States have some discretion as to t*he manner in which they provide the relief* required.[130] "Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment".

89. Until recently, the Court, respecting the margin of appreciation given to the Contracting States, refrained from indicating a specific form or type of an "effective remedy" with respect to an alleged violation of the right to a hearing within a reasonable time. It nevertheless assessed the remedies available in the Contracting States in the light of the generally established "effectiveness" criteria.[131]
90. It should be noted in this respect that, although States often refer to particular types of domestic remedies as being available for allegations of the excessive length of proceedings, according to the Court's assessments a significant number of these remedies can not be considered as effective in practice.

91. The Court has recently adopted a more directive approach to what remedy is to be considered as effective within the meaning of Article 13 of the Convention. Indeed, it has given explicit indications as to the characteristics which an effective domestic remedy in length-of-proceedings cases should have.[132]

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[125] This appears to be the most common effect. See for example Denmark, Estonia, Finland, Germany, Iceland, Netherlands or United Kingdom. Belgian law specifies what the reduction of sentence will consist of: a penalty lower than the minimum set by the law will be imposed.

[126] For example Belgium, Denmark (where penalties imposed might be suspended), or Switzerland (where exemption from punishment may be granted even if the defendant is found guilty).

[127] Case-law seems to favour a restrictive interpretation in the sense that acquittal does not automatically derive from the acknowledgement of a delay in criminal proceedings (see for example Estonia and Finland).

[128] These remedies are only used "in exceptional cases" (Germany, Netherlands, Switzerland). In the United Kingdom it is usually necessary for the prosecutor to have been at fault in causing the delay and, even then, the trial will be stayed only if the defendant can show that because of the delay a fair trial will not be possible and that he will therefore be prejudiced. The trial would not be stayed if the effects of unfairness could be dealt with in the course of the trial. Similarly, in Belgium to take this decision (which seems to entail the impossibility to rule on the civil action) the delay must have affected the administration of evidence or the defence rights.

[129] For example Austria, Netherlands.

[130] See for example, *Kaya v. Turkey*, judgment of 19/02/1998, ECHR 1998-I, § 106, *Chalal v. the United Kingdom*, cit., § 145.

[131] The present chapter does not include the Court's relevant case-law with respect to all member States. In order to provide a general overview of the effectiveness of particular types of existing domestic remedies, it merely invokes several country examples with pertinent illustrations of assessments made by the Court. It is to be noted though that in certain cases, the effectiveness patent is only partial as the concerned remedies can only be used for some types or categories of proceedings (for example, only criminal proceedings in case of Portugal and Spain), for pending proceedings only (for example, in Croatia and Poland), or only with respect to proceedings before lower courts (for example, in Austria, France and Italy).

[132] ECtHR, *Scordino v. Italy* judgment, cit., § 183.

92. In addition, the Court is increasingly assessing the States' obligations under Article 46 of the Convention. In doing so, it examines draft legislation or intended measures and states whether it finds that these represent "reassuring improvements",[133] failing which it could "indicate […] general measures at national level that could be called for in the execution of […] a judgment."[134]

93. The Court has expressly encouraged certain respondent States to proceed speedily with a prospected legislative initiative,[135] or to amend the existing range of legal remedies or add new remedies so as to secure genuinely effective redress for violations of that right, following the indications as to the characteristics of an effective remedy given by the Court itself in the judgments.[136]

B. Remedies available for civil/administrative proceedings

a) Remedies found to be effective :

i. Austria

94. The Austrian legal system provides for several acceleratory remedies. In this respect, the Court held that the transfer of jurisdiction to the superior authority in case of a delay by the competent authority in making a decision (as provided for in Section 73 of the General Administrative Procedure Act) constituted an effective remedy to be used for the alleged breach of a reasonable time requirement with respect to administrative proceedings,[137] although not in every case.[138]

95. In the case of *Holzinger v. Austria*, the Court found that a request for the superior court to impose an appropriate time-limit for the competent court to take particular procedural steps (under Section 91 of the Austrian Courts Act) could, in principle, constitute an effective and sufficient remedy which had to be used in respect of complaints about the length of court proceedings.[139]

ii. France

96. The Court found, in the case of *Giummarra and others v. France*, that national case law indicated the existence of an adequate remedy in respect of completed civil proceedings. Thus Article L.781-1 of the Code of Judicial Organisation as interpreted in the case-law was considered an effective remedy for the purposes of Article 35 § 1.[140]

iii. Italy

97. In its decision *Brusco v. Italy*,[141] the Court considered that the remedy provided by the "Pinto Act", which had been introduced in Italy to provide a remedy for the excessive length of proceedings following numerous findings by the ECtHR of breaches (and even a pattern) of Article 6 § 1 of the Convention, was an effective remedy for the purposes of Articles 13 and 35.

98. The level of damages awarded by the Italian courts proved however, in some later cases, to be inadequate, which led the Court to consider this remedy as ineffective.[142] This problem was corrected by the Italian Court of Cassation in a judgment of January 2004, as noted by the Court in its *Di Sante*

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133 ECtHR, *Lukenda v. Slovenia* judgment, cit., § 98.

134 ECtHR, *Sürmeli v. Germany* judgment, cit. § 139.

135 ECtHR, *Sürmeli v. Germany* judgment, *cit.*, § 139.

136 ECtHR, *Lukenda*, cit. § 98.

137 *Egger v. Austria* (dec.), no. 74159/01, 9 October 2003.

138 *Kern v. Austria*, judgment of 24/02/2005.

139 *Holzinger v. Austria* judgment of 30/01/2001, §§ 24-25. On the same date, the Court held in *Holzinger v. Austria (No. 2)*, that this remedy was not effective where there was already a substantial delay by the time the legislation took effect.

140 *Giummarra v. France*, decision of 12/06/2001; *Broca Texier-Micault v. France* judgment of 21 October 2003 (with respect to administrative proceedings).

141 ECtHR, *Brusco v. Italy*, decision of 6/09/2001.

142 ECtHR, *Scordino and ors. (no. 1) v. Italy*, decision of 27/03/2003.

v. Italy decision.[143]

99. The Grand Chamber delivered nine judgments against Italy concerning the effectiveness of the Pinto Law.[144] The Court (in particular in the pilot judgment of *Scordino*) outlined the principles which it intended to apply in assessing the effectiveness of domestic remedies.The Court found that the proceedings under the Pinto law were not entirely sufficient and therefore did not deprive the applicants of their victim status for the purpose of bringing a case to Strasbourg.

100. The victim status of the applicants was based principally on the manifestly unreasonable nature of the amounts awarded by the Italian authorities (including sums as low as 8% of what the Court itself would have awarded). In addition, in all these cases, save for *Scordino*, the Court found it unacceptable that the applicants had waited more than six months to receive the compensation awarded by the national courts.

iv. Poland

101. The Court considered a number of cases concerning the effectiveness of the Polish Law of 17 June 2004 ("the 2004 Act", according to which, 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 awards the complainant compensation), which Poland introduced as a remedy for excessive length of proceedings cases in response to judgments of the ECtHR. In the leading decisions of *Michalak v. Poland*[145] and *Charzynski v. Poland*,[146] the Court held that the applicants were required to exhaust this remedy before bringing their case to Strasbourg. This applied even to applications registered with the Court before the entry into force of the 2004 Act, given that the latter explicitly allowed complaints to be lodged by those who had already brought a case to Strasbourg, provided that the Court had not already adopted a decision on the admissibility of the case. The Court further stated that the 2004 Act was capable of preventing alleged violations of the right to a hearing within a reasonable time and of providing adequate redress for any violation that had already occurred.

v. Portugal

102. In its decision in the case of *Paulino Tomás v. Portugal*,[147] the Court ruled that an action in tort against the State for excessive length of civil proceedings, based on Legislative Decree 48051 of 21 November 1967, could be said to constitute an effective remedy within the meaning of Article 35 of the Convention only after the publication of the judgment in the Pires Nino case in which the administrative court held that the excessive length of proceedings could constitute grounds for State responsibility.

b) Remedies found to be non effective

i. Bulgaria

103. The Court considered that a complaint based on the direct applicability of the Convention in Bulgarian law was not an effective remedy within the meaning of Article 13 of the Convention.[148] A remedy a "complaint about delays" was introduced in July 1999 with the adoption of new Article 217a of the Code of Civil Procedure of Bulgaria, according to which a litigant is entitled to apply to the chairperson of the higher court when the examination of the case, the delivery of judgment or the transmitting of an appeal against the judgment has been unduly delayed, and the chairperson has the power to issue binding instructions to the court examining the case. In a recent case, the Court found that this remedy might be considered prima facie effective, although in the present case it had not proved so. The Court stressed

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143 ECtHR, *Di Sante v. Italy* decision of 24/06/2004. The Court took the view that this new development in national law became widely known to the public should by 26 July 2004: applications lodged after this date would therefore be barred for non-exhaustion of domestic remedies.

144 ECtHR, *Scordino v. Italy*, cit., *Cocchiarella v. Italy* judgment, cit.; *Riccardi Pizzati v. Italy* judgment, cit.; *Musci v. Italy* judgment; *Giuseppe Mustacciuolo v. Italy (no. 1)* judgment, cit.; *Procaccini v. Italy* judgment, cit.; *Zullo Ernestina v. Italy* judgment, cit.; *Apicella v. Italy* judgment, cit.; *Giuseppe Mustacciuolo v. Italy (no. 2)* judgment, cit..

145 ECtHR, *Michalak v. Poland* , decision of 1/03/2005.

146 ECtHR, *Charzynski v. Poland* , decision of 1 /03/2005.

147 ECtHR, *Tomás v. Portugal*, no. 58698/00, decision of 27/03/2003.

148 ECtHR, *Rachevi v. Bulgaria*, judgment of 23/12/2004, § 100.

however the absence in Bulgarian law of any possibility of seeking pecuniary compensation for the excessive length).[149]

104. As regards the possibility to make informal complaints to the Supreme Administrative Court and to the Ministry of Justice, the Court held that these could not be described as a remedy. "The possibility to appeal to various authorities in the absence of a specific procedure cannot be regarded as an effective remedy, because such 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".[150]

ii. The Czech Republic

105. The Court assessed the effectiveness of a constitutional appeal, as well as of an action for damages against the State under Law no. 82/1998. According to the Czech legislation, the Constitutional Court, in case of finding that proceedings which have led to a constitutional appeal have been held up by delays imputable to a particular court, can order the latter to put an end to the delays and continue the proceedings. In the Court's view, while such an order may speed up the proceedings in question if it is acted upon immediately, the Czech legislation does not envisage any sanction for failure to comply, thus depriving the Constitutional Court of the possibility to take practical steps to expedite the proceedings. Neither can the Constitutional Court award any compensation for delays that have already occurred.

106. As for the possibility of bringing an action for damages against the State under Law no. 82/1998, the applicant can not be awarded compensation for non-pecuniary damage. Therefore it can not provide adequate redress for violation. [151]

107. Neither can appeals to a higher authority be regarded as an effective remedy since they do not give litigants a personal right to compel the State to exercise its supervisory powers. [152]

108. The remedies provided for in the Czech legislation are therefore assessed by the Court as being non-effective, since they do not make it possible to compel the court to expedite proceedings or to provide compensations for damages. [153]

iii. Germany

109. In a recent case, the Court examined the effectiveness of four remedies which existed in German law against the undue length of civil proceedings. In respect of the constitutional complaint, the Court observed that the right to expeditious proceedings was guaranteed by the German Basic Law and that a violation of that right could be alleged before the Federal Constitutional Court. Where that court found that proceedings had taken an excessive time, it declared their length unconstitutional and requested the court concerned to expedite or conclude them. However, the Federal Court was not empowered to set deadlines for the lower court or to order other measures to speed up the proceedings in issue; nor was it able to award compensation. Under these circumstances, the Court found that a constitutional complaint had not been proved to be capable of affording redress for the excessive length of pending civil proceedings.

110. As regards an appeal to a higher authority, the Court noted that the Government had not advanced any relevant reasons to warrant the conclusion that that remedy, provided for in the German Judiciary Act, would have been capable of expediting the proceedings in question.

111. As regards a special complaint alleging inaction, this remedy had no statutory basis in German law. Although a considerable number of courts of appeal had accepted it in principle, the admissibility criteria for it were variable and depended on the circumstances of the case. The Federal Court of Justice, for its part, had yet to give a ruling on the admissibility of such a remedy. Having regard to the uncertainty about

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149 ECtHR, *Stefanova v. Bulgaria*, judgment of 11 January 2007, §§ 64-74.

150 ECtHR, *Dimitrov v. Bulgaria*, judgment of 23/09/2006, § 80.

151 ECtHR, *Hartman v. the Czech Republic*, judgment of 03/12/2003, §§ 67-68.

152 Idem. § 66.

153 Idem. §§ 81-84. *Bartl v. the Czech Republic*, judgment of 22/06/2004, Idem. § 58, *Konečny v. the Czech Republic*, judgment of 26/10/2004, § 85.

the admissibility criteria for this remedy and to its practical effect on the proceedings in question, the Court considered that no particular relevance should be attached to the fact that the Court of Appeal had not ruled out such a remedy in principle. Moreover, the Federal Constitutional Court had not declared the applicant's constitutional complaints inadmissible for failure to exhaust domestic remedies. Accordingly, the Court concluded that a special complaint alleging inaction could not be regarded as an effective remedy in the applicant's case.

112. Finally, as concerns an action for damages, the Court noted that a single judicial decision, such as the one relied upon by the Government , was not a sufficient indication that there had been an effective remedy available in theory and in practice. In any event, the Court noted that even if the courts before which an action for damages was brought were to conclude that there had been a breach of judicial duties on account of excessively lengthy proceedings, they would not be able to make an award in respect of non-pecuniary damage, whereas in cases concerning the length of civil proceedings the applicants above all sustained damage under that head. The Court therefore considered that none of the four remedies advocated by the Government could be considered effective within the meaning of Article 13. Nor could the aggregate of these remedies be so considered.

iv. Russian Federation

113. In *Kormacheva v. the Russian Federation*, the Court determined that the recourse to the higher judicial and other authorities could not be regarded as effective remedy since it could neither expedite the determination of the case nor provide the applicant for the adequate redress for delays already occurred. In the Court's view, the disciplinary action concerned the personal position of the responsible judges, but did not result in any direct and immediate consequence for the proceedings. The Court therefore concluded that the applicant had no domestic remedy whereby she could enforce her right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention.[154]

v. Slovenia

114. The Slovenian legal system sets out a number of remedies that may be used in respect of delays in court proceedings. In *Lukenda v. Slovenia* the Court had to determine whether an administrative action,[155] a claim for damages in civil proceedings, a request for supervision and a constitutional appeal, taken individually or in aggregate, could be considered effective legal remedies within the meaning of Article 35 of the Convention.

115. According to the Court, the Government failed to show clearly that the judgments and decisions of the administrative courts could speed up unduly protracted proceedings or award reparation for violations that had already occurred. The absence of specific measures (i.e. to decide a case or take specific procedural measures within a fixed time-limit) to expedite the procedures was also stressed by the Court in *Belinger v. Slovenia*.[156]

116. As for the claim for tort the Court considered that it could only provide redress when the main proceedings had already been ended. Even in this cases the Government failed to show that compensation for non-pecuniary damage could be awarded.

117. As regards the remedy under section 72 of the Judicature Act, the Court held that the request for supervision was a measure in the framework of judicial administration and not within the judicial system.[157] The remedy did not provide for a guarantee to accelerate procedures, or provide redress in the form of compensation. At the same time the measure did not have any legally binding effect on the court concerned.[158] Moreover no right of appeal was provided by the legislation.

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154 ECtHR, *Kormacheva v. the Russian Federation*, judgment of 14/07/2004, §§ 61-64.

155 However in *Sirc v. Slovenia* case (decision of 16/05/2002) where the court dealt with the length of proceedings before administrative organs, the Court found that in the event of lack of reply from the administrative authority, the applicant can and should seek a decision directly from the Administrative Court. This remedy was therefore found effective for proceedings before administrative authorities.

156 ECtHR, *Belinger v. Slovenia*, decision of 2/10/2001.

157 Idem.

158 Idem.

118. Finally, in respect of the constitutional complaint the Court stressed that a constitutional appeal, in principle, could only be lodged after domestic remedies (an administrative action or a claim for tort) had been exhausted. In the *Belinger* case the Court found that the efficiency of the constitutional appeal was already problematic in view of the probable length of the combined proceedings. The opinion was confirmed in *Lukenda v. Slovenia*.

C. Remedies available for criminal proceedings

a. Remedies found to be effective

i. Austria

119. The remedy mentioned in paragraph 95 above are applicable also to criminal proceedings.

ii. Denmark

120. In *Ohlen v. Denmark*,[159] the Court found that the redress afforded at domestic level (reduction of sentence) for the violation of the applicant's right to trial within reasonable time was adequate and sufficient.

iii. Germany

121. The mechanism established in the German case-law, whereby redress is given by taking the breach of the reasonable time requirement into account when determining the sentence, was considered as being "capable of proving suitable". However, the Court also noted that the national jurisdiction must clearly acknowledge that a specific measure of redress that has been taken, is directly linked with the over-stepping of the "reasonable time" in the meaning of Article 6 § 1 of the Convention.[160]

iv. Norway

122. The Court held that "the mitigation of a sentence on the ground of the excessive length of proceedings does not in principle deprive the individual concerned of his status as a victim within the meaning of Article 34 of the Convention. However this general rule is subject to an exception when the national authorities have acknowledged in a sufficiently clear way the failure to observe the reasonable time requirement and have afforded redress by reducing the sentence in an express and measurable manner".[161] Thus, the delay element being a direct factor for making a decision on mitigation of the sentence, the Court considered the remedy to be effective.

v. Portugal

123. In its judgment *Tomé Mota v. Portugal*[162] the Court held that an interlocutory application by which the Judicial Service Commission or the Attorney-General is requested to fix a time-limit for taking a procedural measure which the competent court or public prosecutor have failed to take, as envisaged in Articles 108 and 109 of the Portuguese Code of Criminal procedure, constituted an effective remedy to be exhausted by an applicant.

b. Remedies found to be non effective

i. Bulgaria

124. After having examined the effectiveness of the remedies in respect of the unreasonable length of criminal proceedings in Bulgaria,[163] the Court concluded that the possibility of an appeal to the various

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159 ECtHR, *Ohlen v. Denmark*, judgment of 24.05.2005.

160 ECtHR, *Eckle v. Germany*, judgment of 15.07.1982, § 94.

161 ECtHR, *Beck v. Norway*, judgment of 26.09.2001.

162 ECtHR, *Tomé Mota v. Portugal*, decision of 2.12.1999.

163 ECtHR, *Djangozov v. Bulgaria*, judgment of 8.07.2004.

levels of the prosecution authorities (such as the District Prosecutor's Office, the Regional Prosecutor's Office, or the Chief Prosecutor's Office) could not be regarded as an effective remedy since such hierarchical appeals aimed 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.

ii. Finland

125. In *Kangasluoma v. Finland*[164] the Court had to determine whether the remedies set in the Finnish legislation could meet the "effectiveness" criteria. The Court found that the remedies referred to by the government such as a complaint to the Chancellor of Justice or the Parliamentary Ombudsman, as well as submission of a request to accelerate proceedings to the court considering the case could not be regarded as being effective both in law and in practice. As for a possibility of an action in tort, it could not be considered as effective within the meaning of Article 13, since a mere delay, where no erroneous or negligent act had been committed and where the delay had not resulted in any damage, was not as such a ground for compensation.

iii. Ireland

126. In its judgment *Barry v. Ireland*[165] the Court held that the judicial review proceedings were not capable of expediting the decision by the criminal courts. The aim of the judicial review proceedings was to stay future criminal proceedings, not to expedite them. Moreover the judicial review proceedings themselves were not sufficiently swift to be preventative of future delay.[166] They were neither capable of providing adequate redress for delays that had already occurred.

127. Furthermore according to the Court "the judgment of the Supreme Court made clear that, in determining the applicant's judicial review proceedings (based on, inter alia, delay), the domestic courts would not take into account delays caused by any national authorities other than the D.P.P. Given that the judicial authorities (both the judiciary and the authorities responsible for listing cases) were responsible for a considerable part of the delay in this case, this is a further reason for concluding that the remedy of judicial review cannot be considered an effective one."[167]

iv. Ukraine

128. The Court surveyed the existing remedies available in the Ukrainian legal system and found there were no effective and accessible remedies which could be used to obtain redress for the excessive length of the criminal proceedings.[168]

129. In respect of the possibility to file complaints with the superior prosecutor provided by the Ukrainian legislation, the Court observed that the latter could not be considered effective and accessible since the status of the prosecutor in the domestic law and his participation in the criminal proceedings against the applicant did not offer adequate safeguards for an independent and impartial review of the applicant's complaints.

130. The Court noted that, although since the amendment of 21 June 2001 (with effect as from 29 June 2001), Article 234 of the Code of Criminal Procedure of Ukraine provided for the possibility to complain to the courts about the resolutions of an investigating officer/prosecutor in the course of the administrative hearing or in the course of the consideration of the case on the merits, this remedy did not satisfy the criteria of accessibility, as it suggested that complaints against the length of the investigation of the case could be made after the investigation had finished, but left no possibility of appeal in the course of the investigation. As to the amendments to Article 234 of the Code of Criminal procedure, allowing for complaints to be lodged in the course of the investigation, the Court held that the Government failed to show what its practical implications were. The law did not specifically state

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164 ECtHR, *Kangasluoma v. Finland*, judgment of 14.06.2004.

165 ECtHR, *Barry v. Ireland*, judgment of 15.03.2006.

166 ECtHR, *Doran v. Ireland*, judgment of 31.10.2003, §§ 57 and 65.

167 ECtHR, *Barry v. Ireland*, judgment, cit., § 55.

168 ECtHR, *Merit v. Ukraine*, judgment of 30 October 2004.

whether Article 234 was a remedy for the length of proceedings in a criminal case and what kind of redress could be provided to an applicant in the event of a finding that the length of the investigation breached the requirement of "reasonableness".[169]

VII. The requirements of Article 13 of the Convention in respect of unreasonably lengthy proceedings according to the case-law of the European Court of Human Rights

131. The Strasbourg Court, in assessing the effectiveness of various domestic remedies in respect of the excessive length of proceedings, has elaborated several criteria and principles. Recently, the Court has even given certain explicit indications as to the characteristics which an effective domestic remedy in length-of-proceedings cases should have. It did so "in so far as the parties appear to link the issue of victim status to the more general question of effectiveness of the remedy and seek guidelines on affording the most effective domestic remedies possible".[170]

132. The Venice Commission welcomes the Court's willingness to provide such explicit indications. It recalls that, in its opinion on the implementation of judgments of the European Court of Human Rights, it had expressed the view that it would be appropriate for the Court "to address the question of whether and to what extent concrete reparation is possible, prior to examining whether and to what extent it is appropriate to award, instead or in addition, just satisfaction." And that "the Court would need to give indications as to what would constitute adequate reparation in the type of case under consideration, in order to express its view as to whether such reparation would be possible, wholly or in part, under the applicable national legislation."[171]

133. Guidance by the Court will certainly assist States in providing for an "incontestably" effective remedy in their domestic legal system.[172]

134. Below is an outline of the principles which can be derived to-date from the case-law of the Strasbourg Court.

A. As regards the kind of remedy

135. As was previously underlined, in terms of the Court's case-law, it is an *obligation of result* that is required by Article 13. Even when none of the remedies available to an individual, taken alone, would satisfy the requirements of Article 13, the *aggregate of remedies* provided for under domestic law may be considered as "effective" in terms of this article.[173]

136. The Court has indicated in the first place that "the best solution [to the problem of excessive length of proceedings] in absolute terms is indisputably, as in many spheres, prevention."[174]

137. Where the judicial system of a State is deficient in terms of ensuring compliance with the reasonable time requirement, "a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution. Such a remedy offers an undeniable advantage over a remedy affording only compensation, since it also prevents a finding of successive violations in respect of the same set of proceedings and does not merely repair the breach *a posteriori*, as does a compensatory remedy […]."[175]

138. While stating expressly that such acceleratory remedy would be "the most effective solution", the Court has refrained from indicating that the provision of such a remedy is *required* by Article 13 of the Convention. This reluctance is, no doubt, in conformity with the general principles of international law and motivated by the need to afford the Contracting States a certain discretion as to the manner in which they

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169 Idem, § 65.

170 ECtHR, *Scordino v. Italy*, judgment, cit., § 182.

171 CDL-AD(2002)34, §§ 64-71.

172 ECtHR, *Cocchiarella v. Italy*, judgment [GC] of 29 March 2006, § 60.

173 See para. 9 above.

174 ECtHR, *Scordino v. Italy* judgment , cit., § 183; *Sürmeli v. Germany* judgment, cit., § 100.

175 ECtHR, *Scordino v. Italy* judgment, cit., § 183.

provide individuals with the relief required by Article 13 and conform to their Convention obligation under that provision.[176]

139. The Court does, however, express a clear preference for an acceleratory remedy over a mere compensatory remedy, at least within legal systems which have consistently proven unable to secure the right to a trial within a reasonable time. In this respect, it may be taken that the Court's position has somewhat shifted from that previously expressed[177] that Article 13 offers an alternative between a remedy which can be used to expedite a decision by the courts dealing with the case, and a remedy which can provide the litigant with adequate redress for delays that have already occurred. The latter, in fact, only offer an *a posteriori* remedy and are unable to prevent successive violations.

140. The same preference for an acceleratory remedy has been expressed by the United Nations Human Rights Committee, which has stated that all stages of judicial proceedings must take place without undue delay and that, to make this right effective, a procedure must be available to ensure that this applies in all instances. Furthermore, according to the Committee, "the mere possibility of obtaining compensation after, and independently of, a trial that was unduly prolonged does not constitute an effective remedy" for the purposes of the International Covenant on Political and Civil Rights.[178]

141. Where "the proceedings have clearly already been excessively long", mere prevention may not be adequate.[179] In this case, compensatory remedies may be appropriate instead.
142. Indeed, the Court indicates that a combination of two types of remedy, one designed to expedite the proceedings and the other to afford compensation, may appear as the best solution.[180]

143. A compensatory remedy may take the form of financial reparation of the damage (pecuniary and non-pecuniary) suffered.

144. Other kinds of "compensatory" remedy may constitute an appropriate redress for the violation of the reasonable time requirement and an "effective remedy" in the sense of Article 13. This is true, for example, for a discontinuance of the prosecution,[181] a mitigation of sentence,[182] an exemption from paying legal costs,[183] an acquittal,[184] the suspension of the sentence, the lowering of a fine and the non-deprivation of civil and political rights[185] (possibly more than one form of redress being applied at the same time). These measures must be taken in an express and measurable manner.[186]

145. The quashing of a ruling on a procedural issue (including the non respect of the relevant time-limit) following complaints by the applicant does not amount to an appropriate redress to the extent that it is irrelevant for and incapable of expediting the proceedings or providing the applicant with redress for the

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176 ECtHR, *Kaya v. Turkey*, judgment of 19/02/1998, ECHR 1998-I, § 106, *Chalal v. the United Kingdom*, cit., § 145; *Kudla v. Poland*, cit., § 154.

177 ECtHR, *Kudla v. Poland*, cit. § 158; *Mifsud v. France*, decision of 11 September 2002, Reports 2002-VIII, § 17, *Djangozov v. Bulgaria*, cit., § 47, *Paulino Tomas v. Portugal*, Decision of 22 May 2003, Reports 2003-VIII, p. 9.

178 See the UN Committee on Human Rights' General Comment 13 (Article 14), § 10, 21 session 1984 (Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 14 (1994). This view was confirmed in its conclusions of 31 October 2002, on the application no. 864/1999, *Alfonso Ruiz Agudo v. Spain*, § 9.1.

179 ECtHR, *Scordino v. Italy* judgment, cit., § 185.

180 ECtHR, *Scordino v. Italy* judgment , cit., § 186.

181 ECtHR, *Eckle v. Germany* judgment of 15 July 1982, Series A no. 51, §§ 66-67 and 94; European Commission on Human Rights, *Conrad v. Germany*, decision of 13/04/1988, D.R., 56, p. 264; *G. v. Germany*, decision of 6/07/1983, D.R., 33, p. 5.

182 ECtHR, *Eckle v. Germany*, cit., §§ 66-67. See also, *Van Laak v. the Netherlands*, decision of 31 March 1993, D.R., 74 p. 156; *Hozee v. the Netherlands*, judgment of 22 May 1998, § 54; *Beck v. Norway*, judgment of 26 September 2001, ECHR 404, § 27; *Ohlen v. Denmark* judgment of 24 February 2005, § 27.

183 ECtHR, *Ohlen v. Denmark* judgment, § 28.

184 Eur. Commission on Human Rights, *Byrn v. Denmark*, report of 16 February 1993, § 21.

185 ECtHR, *Morby v. Luxembourg* (dec.), 13 November 2003.

186 ECtHR, *Scordino v. Italy* judgment, cit., § 186.

delays occurred.[187]

146. The favourable outcome of the proceedings as such cannot be considered to constitute adequate redress for their length.[188]

147. A disciplinary action against the dilatory judge may amount to an effective remedy against the length of the proceedings in terms of Article 13 of the Convention only if it has a "direct and immediate consequence for the proceedings which have given rise to the complaint". This entails that the disciplinary action must present certain specific features. There must be an obligation for the supervisory organ to take up the matter with the dilatory judge, if a complaint is lodged. The applicant must be a party to the proceedings. The effect of any decision taken must not merely concern the personal position of the responsible judge.[189]

148. Whatever form the redress takes, it must be coupled with the acknowledgement of the occurred violation. Indeed, the national jurisdiction must acknowledge that the reasonable-time requirement has not been met and a specific measure has to be taken with the aim of repairing the over-stepping of the "reasonable time" in the meaning of Article 6 § 1 of the Convention.[190] This acknowledgement needs to be made "in substance at least".[191]

149. Such acknowledgement is an indispensable, though not a sufficient,[192] component of any effective remedy set up under Articles 6 and 13 of the Convention.[193]

150. In conclusion, according to the Strasbourg Court, States have to:

- organise their legal system so as to prevent unreasonable procedural delays from taking place;
- if excessive delays occur, acknowledge the violation of Article 6 of the Convention and provide adequate redress;
- when their legal system is deficient in terms of reasonableness of the length of proceedings, provide an acceleratory remedy;
- if they chose not to do this, and also in cases when excessive delays have indeed already taken place, provide a compensatory remedy, in the form of either financial compensation or other forms such as mitigation of the sentence and discontinuance of the prosecution.

B. As regards the legal basis for the remedy and its clarity/accessibility

151. Article 13 does not require the provision of a *specific* remedy in respect of the excessive length of proceedings;[194] a general constitutional or legal action, such as an action to establish non-contractual liability on the part of the State, may be sufficient. Such action, however, must be effective both in law and in practice.

152. In the absence of a specific legal basis, the availability of a remedy and its scope of application must be clearly set out and confirmed or complemented by the practice of the competent organs and/or through appropriate case-law.[195]

153. Whatever measure may be ordered by a competent authority, a domestic remedy in respect of

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187 ECtHR, *Kuzin v. the Russian Federation* judgment of 9 June 2005, § 45.

188 ECtHR, *Kuzin v. the Russian Federation* judgment, cit. § 45 ; *mutatis mutandis* Eur. Comm. H.R., *Byrn v. Denmark*, decision of 1 July 1992, DR 74, p. 5.

189 ECtHR, *Kormacheva v. the Russian Federation* judgment of 29 January 2004, § 62.

190 ECtHR, *Eckle v. Germany*, cit., § 94, *Beck v. Norway*, cit., § 27.

191 ECtHR, *Cocchiarella v. Italy* judgment of 29 March 2006, §§ 84-85.

192 ECtHR, *Eckle v. Germany*, cit., § 70; *Ohlen v. Denmark*, cit., § 30.

193 ECtHR, *Ohlen v. Denmark*, cit., § 27; *Eckle v. Germany* judgment of 15 July 1982, Series A no. 51, § 66; *Beck v. Norway* judgment 26 June 2001, § 27; *Graaskov Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X and *Normann v. Denmark* (dec.), no. 44704/98, 14 June 2001; *Morby v. Luxembourg* (dec.), cit..

194 ECtHR, *A.M. Paulino Tomas v. Portugal*, decision of 22 May 2003; *Broca and Texier-Micault v. France* judgment, cit., § 18.

195 See, for example, ECtHR, *Soc v. Croatia* judgment of 9 May 2003, § 94.

unreasonable delays will conform to the requirements of the Convention only when it has acquired a sufficient legal certainty, in theory and in practice, enabling the applicant to have used it at the date on which an application is lodged with the Court.[196]

154. If the remedy is set up through legislation, it will acquire "a sufficient level of certainty" on the date of entry into force of that legislation, independently of the existence of any case-law confirming its applicability, provided that the wording of the legal text in question is clear and indicates that it is specifically designed to address the issue of the excessive length of proceedings before the domestic authorities.[197] Mere doubts as to the effective functioning of a newly created statutory remedy does not dispense the applicant from having recourse to it.[198]

155. If the effectiveness of a general remedy in respect of claims of unreasonable duration of proceedings is acquired or proved after its entry into force through specific case-law, a certain lapse of time after the judgment concerned may be necessary before a sufficient level of certainty is acquired. Such length of time may vary.[199]

156. In respect of a remedy consisting in providing financial compensation for the excessive length of proceedings, the legal basis for the State's liability to pay damages and the criteria of how such damages would be calculated or what amount of damages could be expected must be clear.[200]

C. As regards the general characteristics of the remedial procedure

157. A remedy in respect of the excessive length of judicial proceedings must be effective, sufficient and accessible.[201]

158. A national "complaint about delays" must not be merely theoretical: there must exist sufficient case-law proving that the application can actually result in the acceleration of a procedure or in adequate redress.[202]

159. In the absence of specific case-law, a remedy may 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.[203]

160. The possibility to apply to a higher authority for speeding-up proceedings (imposing an appropriate time-limit for the taking of necessary procedural steps or putting forward a hearing) will not be considered

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196 See, among many others, the *Giummarra and Others v. France* decision (*cit*.), where the Court has held that having regard to the developments in the case-law, the possibility to request reparation of damages resulting from breach of the reasonable time requirement was an effective remedy for the purposes of Article 34 § 1, *only for those applications that are lodged with the Court before 20 September 1999* (emphasis added). The reference to the date on which the application was lodged is subject to exceptions which may be justified by the particular circumstances of each case (see *Baumann v. France*, judgment of 22 May 2001, Reports 2001-V, § 47) or when a specific remedy was clearly designed to address, *inter alia*, the problem of the unreasonable delay of proceedings, as was the case in Croatia, Italy and Slovakia (see, for example, *Giacometti and Others v. Italy*, decision of 8 November 2001, Reports 2001/XII; *Nogolica v. Croatia*, decision of 5 September 2002 and *Andrasik v. Slovakia*, cit.).

197 ECtHR, *Slavicek v. Croatia*, dec., 4 July 2002.

198 ECtHR, *Krasuski v. Poland* judgment of 14 June 2005, § 71.

199 The Strasbourg Court held that six months had been sufficient for the first judgment of the French Conseil d'Etat holding the State responsible for a breach of the reasonable time requirement to become legally certain (ECtHR, *Broca and Texier-Micault v. France*, cit.); six months were equally sufficient for a judgment of the Italian Court of Cassation bringing the fixing of the level of reparation for breach of the reasonable time requirement into line with European case-law to become known to the general public (ECtHR, *Scordino v. Italy* judgment, cit., § 147). An action to establish non-contractual liability on the part of the State in Portugal acquired, in the view of the Strasbourg Court, a sufficient degree of legal certainty one year after the judgment of the Supreme Administrative Court accepting for the first time that the State could be held liable under Article 6 of the Convention for the length of judicial proceedings, was rendered (ECtHR, *Paulino Tomas v. Portugal, cit*.).

200 ECtHR, *Doran v. Ireland*, cit. §§ 65-66.

201 ECtHR, *Paulino Tomas v. Portugal, cit.* ; see also *Belinger v. Slovenia*, decision of 2/10/2001.

202 ECtHR, *Doran v. Ireland, cit.*; *Timar v. Hungary*, decision of 19 March 2002; *Horvat v. Croatia*, cit., §§ 37-39.

203 ECtHR, *Slavicek v. Croatia*, cit., p. 3. For the argument *a contrario*, see *Ohlen v. Denmark*, decision of 6/03/2003, where 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.

effective in the absence of a specific procedure, when the result of such application depends on the *discretion* of the authority concerned and where the applicant is not given the right to compel the State to exercise its supervisory powers.[204]

161. The efficiency and sufficiency requirements entail in particular that the duration of the remedial procedure needs to be reasonably short, and indeed requires "special attention" on the part of the competent authorities in order to avoid infringements of Article 6 in this respect (this applies to the remedial procedure).[205] An unreasonable duration of the remedial procedure may amount to a disproportionate hurdle to the effective exercise by an applicant of the right to individual application within the meaning of Article 34 of the Convention and exempt an individual from the obligation to exhaust it.[206]

162. The duration of the phase of enforcement of decisions on the reasonable time requirement is crucial: the payment of the awarded compensation must be made within six months from the date when the relevant domestic decision becomes enforceable.[207] Indeed, in order to be effective, a compensatory remedy must be accompanied by an adequate budgetary provision so that effect can be given to decisions of the court awarding compensation within six months of their being deposited with the registry (or from the date when they become enforceable).[208]

163. With regard to the requirement that a remedy affording compensation complies with the reasonable-time requirement, it may well be that the procedural rules are not exactly the same as for ordinary applications for damages. It is for each State to determine, on the basis of the rules applicable in its judicial system, which procedure will best meet the requirement of "effectiveness", provided that the procedure conforms to the principles of fairness guaranteed by Article 6 of the Convention.[209]

164. Special rules concerning legal costs (particularly fixed expenses such as the fees of registration of judicial decisions) in the remedial procedure would be appropriate (lower than in ordinary proceedings) in order to avoid that excessive costs may constitute an unreasonable restriction on the right to lodge such claims.[210]

165. Reparation refers to both pecuniary and non-pecuniary damage. The existence and quantum of the pecuniary damage are to be determined by the domestic courts. As for the non-pecuniary damage, there is a strong but rebuttable assumption that such damage will be occasioned by excessively lengthy proceedings It may however be minimal or even non existent; domestic courts have to provide sufficient reasons to prove such to be the case.[211]

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204 ECtHR *Djangozov v. Bulgaria*, decision of 8 October 2004*; Horvat v. Croatia*, cit., § 47; *Hartman v. the Czech Republic*, judgment of 10 July 2003, § 82; *Nuvoli v. Italy* judgment of 16 May 2002, § 35.

205 ECtHR, *Paulino Tomas v. Portugal*, cit.; *Gouveia da Siva Torrado v. Portugal* (dec.), 22 May 2003.

206 ECtHR, *Vaney v. France* judgment of 30 November 2004, p. 9 (the remedial procedure had lasted more than ten years. A number of applications directed against Italy and raising the issue of the unreasonable duration of the remedial procedure under the Pinto law have been declared inadmissible: ECtHR, *Scordino v. Italy* judgment, cit., § 208 (four months); *Pelli v. Italy*, dec., 13 November 2003 (eighteen months); *Cataldo v. Italy*, dec., 3 June 2004 (two years and five months including the enforcement phase); *Tomaselli v. Italy*, dec., 18 March 2004 (one year and four months).

207 ECtHR, *Scordino v. Italy*, cit., § 198. The Court underlined that under the Pinto law such decisions are immediately enforceable. In a series of Italian cases, the Court found the duration of the phase of enforcement of the decisions finding a breach of the reasonable time requirement to be unacceptable and considered was found by the Strasbourg Court to be unacceptable; this factor, coupled with the excessive legal fees and the insufficient level of compensation, led the Court to consider that the redress afforded in domestic law was insufficient and the applicants had not lost their victim status (ECtHR, *Cocchiarella v. Italy* judgment, cit., §§ 99-100 (seven months plus more than three years to obtain enforcement); *Riccardi Pizzati v. Italy* judgment, cit., §§ 98-99 (fourteen months plus 22 months to obtain enforcement); *Musci v. Italy* judgment, cit, §§ 100-101 (eight months plus 23 to obtain enforcement); *Giuseppe Mustacciuolo v. Italy* (no. 1) judgment, cit., §§ 98-99 (eight months plus fifteen to obtain enforcement); *Procaccini v. Italy* judgment, cit., §§ 97-98 (eight months plus more than three years to obtain compensation); *Zullo Ernestina v. Italy* judgment, cit., §§ 101-102 (seven months plus 23 Months to obtain enforcement) *Apicella v. Italy* judgment, cit., §§ 97-98 (seven months plus eleven to obtain enforcement); *Giuseppe Mustacciuolo v. Italy* (no. 2) judgment, cit., §§ 97-98 (nine months plus fourteen months to obtain enforcement).

208 ECtHR, *Scordino v. Italy* judgment, cit., § 209.

209 ECtHR, *Scordino v. Italy* judgment, cit., § 200.

210 ECtHR, *Scordino v. Italy* judgment, cit., § 201. The Court pointed out that in Poland applicants are reimbursed the court fee payable on lodging a complaint if their complaint is considered justified (see *Charzyński v. Poland* (dec.), no. 15212/03, to be published in ECHR 2005).

211 ECtHR, *Scordino v. Italy* judgment, cit., § 204.

166. The sufficiency of the remedy may depend on the level of compensation. The determination of non-pecuniary damage for excessive length of proceedings "must be done in a legally defined framework since reference has to be made to the amounts awarded, in similar cases, by the Strasbourg Court. Some divergence is permissible, within reason".[212]

167. A compensation that is lower than the amount usually awarded for comparable delays by the Court itself may nevertheless be considered "adequate" in the light of the specific circumstances of the case, such as the standard of living in the State concerned, the promptness of the finding and award by the national court as well as the promptness of the payment within the national legal system.[213] A lower level of compensation awarded by a State which has introduced a number of remedies, one of which is designed to expedite proceedings and one to afford compensation, is acceptable, provided that it is not unreasonable and that the relevant decisions are consonant with the legal tradition and the standard of living in the country concerned, are speedy, reasoned and executed very quickly.[214]

168. The remedy must be available both for proceedings that have already ended and for those that are still pending.[215]

VIII. The Venice Commission's proposals concerning the effectiveness of domestic remedies in respect of excessive length of proceedings

A. As concerns the kind of remedy

169. The Venice Commission has previously expressed its view that, in general, in case of breach of one of the rights laid down in the European Convention on Human Rights, concrete reparation (*restitutio in* integrum) is preferable to the award of pecuniary compensation.[216]

170. In the case of excessive length of proceedings, if the proceedings have ended or if they are still pending but a breach of the reasonable time requirement has occurred, reparation (pecuniary or non-pecuniary) is certainly acceptable, essential even, *in relation to that breach*.

171. However, the right to a trial within a reasonable time is, by its very nature, a *continuous* one, as much as its violation is; it develops with the development of the proceedings themselves: undue delays can occur at all times until the proceedings are over. New breaches of Article 6 of the Convention are therefore always possible as long as the proceedings are pending[217]. The grant of pecuniary compensation for an undue delay which has already occurred does not exclude that another undue delay will occur. It thus does not close the issue of reparation, including preventive and acceleratory remedies.

172. Preventing and putting an end to undue delays is therefore of the utmost importance, and continues to be essential *even after* the past proceedings have already been excessively long. Speeding-up the proceedings is the only means of ensuring compliance with Article 6 ECHR in relation to the future conduct of that set of proceedings.

173. The Commission is thus of the view that each State-party to the European Convention on Human Rights should provide, in the first place, acceleratory remedies. *In addition* to – and not as an alternative to – these acceleratory remedies, States must provide compensatory remedies for breaches of the reasonable time requirement *which may have already occurred*.

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212 ECtHR, *Scordino v. Italy* judgment, cit. § 146; *Ohlen v. Denmark* judgment of 24 February 2005, §§ 30-31.

213 ECtHR, *Bako v. Slovakia*, decision of 15 March 2005.

214 ECtHR, *Scordino v. Italy* judgment, cit. § 206; *Dubjakova v. Slovakia*, decision of 10 October 2004.

215 ECtHR, *Soc v. Croatia* judgment of 9 August 2003, § 94; *Paulino Tomas*, dec. cit.; *Mifsud v. France, cit* , § 17.

216 See Venice Commission's Opinion on the implementation of judgments of the European Court of Human Rights, CDL-AD(2002)034, § 64.

217 See ECtHR, *Apicella v. Italy* [GC], 29 March 2006, § 113; *Rotondi v. Italy*, judgment of 27 April 2000, §§ 14-16, and *S.A.GE.MA S.N.C. v. Italy*, judgment of 27 April 2000, §§ 12-14. See also *Tengerakis v. Cyprus*, judgment of 9 November 2006, § 68.

174. If there exists an effective national remedy capable of speeding up the proceedings, no further question of reparation would arise after this remedy has been successfully used. If no such remedy exists, the procedure for an effective remedy granting pecuniary reparation for undue delays may have to be used after each undue delay. In a country with systemic problems, undue delays would be likely to continue to occur; the burden of a great number of pecuniary reparations might be assumed to constitute an incentive to introduce an effective acceleratory remedy, but that does not appear to be always the case .

175. CEPEJ states that "the mechanisms which are limited to compensation are too weak and do not adequately incite the States to modify their operational process and provide only one element *a posteriori* in the event of violation proven instead of trying to find a solution for the fundamental problem of excessive delays.[218]

176. The Committee of Ministers, within the framework of its supervision of the execution of the judgments of the Strasbourg Court, mostly recommends to States, as general measures, those which allow not only for the compensation for the delays already occurred in the past, but also for the acceleration of pending proceedings.[219]

177. The Court itself, while leaving the choice between compensatory and acceleratory remedies to the member States, expresses its preference for the latter and indeed seems to encourage States to adopt them, by granting certain "privileges", for example by according that lower damages may be awarded by those States which have introduced "a number of remedies, one of which is designed to expedite proceedings and one to afford compensation".

178. The Venice Commission wishes in addition to underline the following: acceleratory remedies in the form of a request to take the procedural step to avoid unreasonable delay are to be seen as *preventive*, not compensatory. They do not amount to a *restitutio in integrum*. When an undue delay has taken place in a certain phase of the proceedings, the possibility of putting an end to such delay to avoid an unreasonably delayed trial as a whole does not represent a reparation in kind. The individual's entitlement not to suffer from an excessive delay derives from Article 6 § 1 as such, not from the finding of a breach of that provision.

179. If an undue delay has taken place in the proceedings as a whole, *restitutio in integrum* will be possible in the following forms:

- If the proceedings are still pending: (a) If the proceedings are criminal, by way of mitigation of the sentence or similar remedies (see para. 84 above). If the proceedings are civil, administrative or criminal, by way of *fast-tracking the case* to the extent possible. This means that the threshold of reasonableness in the remainder of the proceedings will be reduced, the case will be dealt with more quickly than an ordinary one: in this manner, the undue delay will be caught up (of course not arithmetically) and the global length of the proceedings will be "reasonable" within the meaning of Article 6 § 1. In this case, no pecuniary reparation will be necessary.

- If the proceedings are terminated, the only possibility will of course be pecuniary reparation.

180. The Venice Commission also underlines that the Strasbourg Court has stressed the importance of the subsidiarity principle: individuals should not be systematically forced to refer to the Court in Strasbourg complaints that could otherwise, and in the Court's opinion more appropriately, have been addressed in the first place within the national legal system.

181. The Commission notes that individuals who complain about the excessive length of still pending proceedings before the Strasbourg Court may obtain not only pecuniary reparation in application of Article 41 of the Convention, but also the acceleration of pending proceedings as a "natural" individual measure urged by the Committee of Ministers within the framework of the supervisory procedure. It follows that by going to Strasbourg, an individual may obtain, if applicable, both kinds of redress, compensatory and

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[218] CEPEJ(2004)19rev2, A new objective for Judicial Systems: the processing of each case within an optimum and foreseeable timeframe, available at www.coe.int/cepej, p. 3.

[219] See Mr Lobov, CDL(2006)035, p. 7.

acceleratory.

182. In cases where the national legal system does not provide for acceleratory remedies (which is the case for most domestic legal systems), the individual is not afforded before his own authorities an equivalent redress to that which he may obtain in Strasbourg; there, the subsidiarity principle is deficient. Under these circumstances, the individual may argue not to have lost his status of victim even after obtaining (mere) pecuniary compensation in a domestic procedure and may challenge his need to exhaust the domestic remedy in question.

183. In conclusion, the Venice Commission considers that, in order to comply fully with the requirements of Article 13 of the Convention in relation to the reasonable time requirement laid down in Article 6 §1 of the Convention, Council of Europe member States should provide in the first place *acceleratory remedies* designed to prevent any (further) undue delays from taking place at any time until the proceedings are terminated.

184. In addition, they should provide *compensatory remedies* for any breach of the reasonable time requirement which may have already occurred in the proceedings (prior to the introduction of the effective acceleratory remedies).

B. As concerns whether or not the compensatory remedies for the excessive length of proceedings should be specific

185. The Venice Commission observes that, particularly in respect of compensatory pecuniary remedies, some States provide *generic* remedies, such as an action for damages against the State.

186. The possibility of such remedies in connection with excessive delays in the proceedings must be unequivocal, for example on the basis of established case-law. Otherwise, their effectiveness is questionable.

187. In doubtful cases, it would be appropriate that either the accessibility of the generic remedy for length complaints be duly clarified at the national level, or that a specific remedy be adopted.

C. As concerns the form of the remedies

188. The question of whether or not the remedy/ies for the excessive length of proceedings should be contained in specific legislation needs to be addressed at this stage.

189. The replies to the questionnaire show that not many States do have such legislation. Those States however which have been faced, or are expecting to be faced, with a significant number of applications before the Strasbourg Court on account of the excessive length of proceedings have introduced remedies for this problem through specific laws, which supplement or amend the relevant codes of procedure, or equivalent legislation.

190. Specific laws present the matter of reparation in a detailed manner, and therefore have the advantage of clarity and comprehensiveness. They (are deemed to) address the root cause of the length-of-proceedings problem, regulate in detail all matters, and contain the necessary explicit references to the case-law of the Strasbourg Court (notably as concerns pecuniary reparation). They may be more easily accessible to the public (and, in some cases, even to the courts) as well as to the instances of the Council of Europe.

191. Specific laws are not, however, indispensable and are not required in those countries which already dispose of effective remedies for excessive length, which are known by the authorities, the courts and the public.

D. As concerns the various remedies

1. Civil and administrative proceedings

a. In general

192. The acceleratory remedies concerning civil and administrative proceedings are: measures designed to

put an end to the undue delay (such as requests to hold a hearing, obtain an expert's report, issue another necessary order or taking an act which the concerned authority had failed to take), disciplinary actions against the dilatory judge by means of a complaint to a supervisory authority (in the limited sense explained above), the possibility for a higher court to establish a time limit for the dilatory judge to deliver a solution or/and give instructions to the dilatory judge (this measures might be joined by the decision of the higher court to transfer the case to another judge).

193. The available compensatory remedies are: awarding compensation for the damages that occur as a result of lengthy proceedings (this remedy can either be the only one, or it can be coupled with the above-mentioned remedies that allow the speeding up of the proceedings in question), and the possibility of fast-tracking the case.

194. In civil proceedings, private parties often have different, even opposite interests, including as far as the length of these proceedings is concerned. The public interest however cannot be but a fair solution of the litigation, within a reasonable time frame (the fact that a party of a specific civil procedure has the interest of delaying the trial and acts to this purpose is generally considered, in many national legislations, as a procedural abuse, if certain limits are crossed).

195. Regarding administrative proceedings, it is clear that the public interest is both to ensure prompt and efficient decision making, and to enable individuals who apply to administrative authorities or to administrative courts to receive fair and equitable treatment. Further to the measures described above, the efficiency of the administrative proceedings could be improved by the preventive measure of providing the so-called positive silent procedure, within a prescribed time limit, for certain administrative acts (such as authorizations, licences etc) to be issued or renewed (if a public authority fails to take a decision in the prescribed time limit, it shall be deemed to have made a decision in favour of the applicant). However, the public interest involved as well as any interests of third parties will have to be given due consideration.

b. Acceleratory remedies

196. Providing acceleratory remedies is, in the Commission's opinion, the most effective manner of securing the right to a trial within a reasonable time and the right to an effective remedy for breaches of the said right. All States should therefore provide, in the first place, acceleratory remedies, and in particular for those cases in which the Strasbourg Court imposes a special diligence on the part of the authorities (see para. 31 above).

197. The Commission wishes to draw attention to the Checklist of indicators for the analysis of lengths of proceedings in the justice system, prepared by CEPEJ.[220]

198. Indicator FIVE (Means to promptly diagnose delays and mitigate their consequences) reads, inter alia, as follows:

> *"While monitoring the duration of proceedings, the judicial system needs to have established mechanisms for prompt identification of excessive duration (delays) and should instantly alarm responsible persons and offices with a view to remedying the situation and preventing further dysfunctions.*
>
> *<u>Clear responsibility for prevention and suppression of delays</u>*
>
> *7. Can responsibility for the identification and avoidance of undue delays be clearly determined?*
> *a. Is there a person or office that is in charge of monitoring the regular course of particular proceedings and locating delays with a view to reducing them, irrespective of the stage of the proceedings (first instance, appeal)?*
> *b. Does a responsible person or office have a duty to report to the court, authority or office undue delays? Can the responsible person take steps to resolve current delays or prevent future ones and speed up the proceedings? Are appropriate measures available against the responsible person if steps are not undertaken or results achieved?*
> *c. Is there an office being responsible for appropriate length of judicial proceedings at the national*

[220] CEPEJ(2005)12REV.

level? Has it authority to take action where delays have been observed? (…)"

199. In the Commission's view, it would be highly appropriate not only to provide for the monitoring structure suggested by CEPEJ, but also *to regard it as a means of preventing undue delays within the meaning of Articles 35 and 13 of the Convention*.

200. The powers, scope of action and right of initiative of the monitoring body should be coordinated with the relevant domestic rules on the already existing measures for accelerating the proceedings.

201. A duty should be imposed on the monitoring person or office to monitor and promptly intervene ex officio.

202. In addition, the possibility to seek the intervention of such monitoring authority should be given to parties to proceedings through their lawyer. The consequence of the failure by a party, through its own fault, to have recourse to it should entail the forfeiture of the right to reparation for the undue delay that may have occurred as a consequence of such failure.

203. As regards the concrete application of acceleratory remedies, it obviously impacts on the management of the courts and the conduct of the proceedings, a domain which falls outside the competence of the Venice Commission and instead should be looked into by CEPEJ. In this respect, the Venice Commission notes that in many States, when a procedure has already exceeded a reasonable time, the superior court may impart deadlines to the dilatory court for the termination of the procedure. The Venice Commission wishes to underline the importance of linking such deadlines to the effective management of the court: otherwise, this peremptory deadlines might affect the order of treatment of cases which may be more urgent in absolute terms. For this reason, the Venice Commission considers that the possibility of imparting deadlines should be left to national courts with a direct knowledge of the situation of the dilatory court and should even be exercised in coordination with the authority that is in charge of the court management.

c. Compensatory remedies

204. As concerns reparation of damages, the replies to the questionnaire show that the grounds for obtaining damages vary from the heavy workload of the courts, the malfunctioning or the denial of justice, the fault of a judge or of another authority, or a violation of the right to a hearing within a reasonable time.

205. The Venice Commission, in the light of the case-law of the Strasbourg Court, considers that it would be appropriate to award damages on the objective ground of the "unreasonable" length of the procedure, without referring to personal fault or malfunctioning and without taking into consideration practical circumstances such as a heavy workload, changes in personnel etcetera. It is of evidence that in appreciating the excessive character of the length the three criteria established by the ECtHR are to be taking into consideration, namely the complexity of the case, the behaviour of the applicant and the conduct of the authorities, including the court. A subsequent regress action could be introduced, if the fault of an authority is under question. But for the scope of the remedy, it should be based on the objective responsibility of the State.

206. It is very important that the amount of pecuniary compensation for the victim be adequate and sufficient, be awarded in conformity with the European Court of Human Rights' case-law on the matter and by taking into account the specific circumstances (the standard of living) in the respective State, and not be left to the total discretion of a jurisdiction. Otherwise, an inaccurate amount of the damages would not have the significance of a true reparation of the violation.

207. In this respect, the Venice Commission considers that the most appropriate solution would be that the criteria for granting pecuniary reparation of moral damage, as well as the general criteria for the award of pecuniary reparation of material damage, should be spelled out clearly and in as great detail as possible at the national level.

208. At least with reference to the countries which face "systemic" length-of-proceedings problems, these criteria should be submitted to the Committee of Ministers through the Department of Execution of Judgments of the Directorate General II in order for their compatibility with the Council of Europe's requirements to be assessed (ideally with a participation of the European Court of Human Rights) prior to

their enactment.

209. As concerns the features of the remedial procedures, it is essential for any compensatory remedy in respect of excessive length of proceedings to be conducted in the swiftest possible manner. Compensatory procedures should follow simplified rules, possibly not be subject to three levels of jurisdiction, and be governed by strict time-limits.

210. Normally, the quantification of the damage, at least the moral one, should be made by the same authority which rules on the existence of a violation of Article 6 § 1 by reference to the criteria developed by the Strasbourg Court. In case of a complex determination of pecuniary damage, it should instead be possible to refer the decision to more competent bodies: but the duration of the relevant procedure should be carefully monitored (it might even be appropriate to prioritise this kind of cases). It might be appropriate to allow for the choice, to be made by the individual, between ordinary proceedings of determination of pecuniary damage, possibly with three levels of jurisdiction, and an abridged, simplified but clearly fast-tracked procedure, with only a limited possibility of appeal.

211. The decisions awarding damages should be immediately enforceable, and provision should be made for their enforcement within a maximum of six months (which entails adequate budgetary provisions).

212. Legal costs in the remedial proceeding should be kept to a minimum, and indeed be charged on the State, at least when the application is successful. No fixed expenses should be imposed in this kind of procedures.

213. Exemption from legal costs could indeed be seen as a compensatory remedy (which is done in certain member States, such as Denmark), which would present the advantage of providing the applicant with a tangible, prompt, often significant form of pecuniary measure which would not necessitate to issue proceedings. The matter of what State budget would be affected by this exemption will of course deserve consideration at the national level.

214. As regards disciplinary proceedings, only to a certain extent may they be considered an actual "remedy" as regards undue delays, unless the disciplinary action may be initiated pending proceedings and lead to instructions to or "removal" of the dilatory judge. On the whole, this measure may become closer to a preventive remedy as to the future behaviour of the judge concerned and with a more general, educational effect.. As the Court has pointed out, this measure may only be regarded as effective if it has a direct impact on the proceedings at issue (see para. 147 above).

215. Disciplinary measures during pending proceedings could however, on the other hand, raise the issue of judicial independence as well as the danger of abuse by parties in the proceedings and by the judicial hierarchy.

216. In any case, this compensatory remedy of disciplinary measures or instructions should not be limited to judges only, as the cause of delay may reside in any other professional that participate in criminal (or other) proceedings. It should be made sure that responsibility can reach all of them (i.e. prosecutors, police, clerks, experts, etc).

217. In civil proceedings, the remedies for excessive length should be adapted in consequence. For example, if the length of proceedings is due to the dilatory manoeuvres of one party (left unsanctioned by the judge), the other party(ies) should be entitled to ask for the measures described above. And if the length of proceedings is due to the lack of diligence from the part of the applicant, the domestic legislation should provide the possibility for the judge to suspend the procedure and even pronounce it obsolete. This is, beside a sanction for the lack of diligence, also a method for assuring that a procedure once started will not continue *sine die*.

2. Criminal proceedings

a. In general

218. The replies to the questionnaire indicate that, with few exceptions, almost all existing remedies are *compensatory* (after the breach of reasonable time has happened).

219. The Commission recalls that procedural delays acquire special relevance in criminal proceedings,

because these proceedings affect basic individual rights (together with the right to a fair trial, other guarantees linked to the right to defence and to personal freedom can be violated). Compensatory remedies, capable of operating only *a posteriori*, do not appear fully satisfactory, and preventive remedies should be developed.

220. This can only be achieved if member States systematically collect information about their systems so that they can identify where delays occur and how efficient the existing remedies are as to their prevention or redress. At the same time the lawyer of the defendant should be vigilant from the very beginning to challenge unnecessary delays, and should be given the possibilities to effectively do so and to react adequately.

b. Acceleratory remedies

221. Very few countries appear to have remedies that allow to speed up proceedings before an unreasonable delay actually occurs. In countries which have acceleratory systems that are applicable to both civil and criminal proceedings it would have to be clarified whether the investigative phase of the criminal procedure is also covered. In other words, accelerating criminal proceedings must imply the possibility of accelerating not only the hearing or trial itself but also the investigative or pre-trial phase. Undue delays may happen in both. Procedural law must allow to obtain a remedy from the authority (i.e. judge or prosecutor) that is actually dealing with the proceedings, as criminal proceedings sometimes go through different stages and different authorities.

222. For example, the interlocutory system described by Portugal (see para 123 above) seems very effective: it can be addressed both to the prosecutors and to the judges depending on where the case is pending. It sets up a simple procedure, with time-limits to decide and the explicit possibility of adopting acceleratory measures. It can be initiated by any party in the proceedings and from the moment a legal time-limit has been exceeded. In fact, this last characteristic is not an element of the reasonable time requirement; it would suffice for a similar mechanism to be efficient if it could allow to raise the alarm about a stalling in the proceedings that could become unjustifiable and to take measures therein. It appears important that legitimacy to lodge such complaints would be as wide as possible and not only reduced to the defendant, but also to the public or private prosecutor, as the case may be, and any civil parties, who also have a legitimate interest.

223. In this sense it could also be appropriate to give public prosecutors the possibility or the obligation to be kept informed of pending proceedings and the powers to either request the investigative judge to close proceedings if the prosecutor has sufficient elements to bring charges, or take acceleratory measures, and inversely the same could be applied to judges when the case is in the hands of the prosecutors (for example an order to decide on bringing charges), so that both institutions could in a sense act as watchdogs on the length of proceedings. It could be useful to provide certain time-limits after which an obligation to inform of the progress of the proceedings could arise. It could also be useful if the possibility to adopt management measures related to the handling of the case was specifically provided.

224. Finally, almost no information has been provided on remedies to accelerate proceedings as regards the trial phase. These could include the possibility to ask for the conclusion of the investigative phase and/or the setting of a date for the hearing, and powers to speed up this scheduling in specific cases (dangers of undue delay considering the time it took to close investigations, defendant held in custody, etc). Once again the question of expediting proceedings depends on all the participants in the proceedings and therefore, to the appropriate extent, remedies should be applicable to all. For example in the phase of the hearing, the possibilities should be investigated to introduce measures such as the power of the judge to take coercive or preventive measures such as setting time-limits for experts to provide their input, to decide on fines or disciplinary sanctions if lawyers, experts or witnesses do not appear before the court when so requested; to suspend the hearing only in exceptional cases, etc.

c. Compensatory remedies specific to criminal proceedings

225. As regards the possibility to adopt the decision of discontinuing the case before it is brought before the court, this solution has the obvious advantage of anticipating the effects without the need of going through the trial and waiting for a decision on the merits of the case.

226. However, due to the seriousness (substantive character) of the effects and in view of the public and

other interests which are at stake in criminal proceedings, it can also be argued that such a decision should be taken cautiously, after a proper hearing and by means of a motivated decision on the merits.

227. A balanced approach could be to welcome, on the one hand, that countries provide for a remedy that can anticipate these effects to the "pre-trial" phase of the proceedings but at the same time considering (as it happens now) that it should be reserved only for very exceptional cases. Moreover, "anticipating" the procedure might pose a problem of legal basis in countries that follow the legality principle (mandatory prosecution) in which a specific legal basis would have to be provided to allow for the discontinuance of proceedings before the final ruling.

228. In itself, the principle of taking into account the delays in the assessment of the punishment must be considered to be an appropriate form of redress in criminal proceedings, in particular as regards the mitigation of the sentence and a mere declaration of guilt.

229. It is true that these forms of redress may contradict other exigencies of justice and notably they may cause a lack of "substantive justice", when a delay in the justice system makes it impossible to punish the offender or to punish him at the level that is common for the crime concerned, or they may lead to an outcome of criminal proceedings on the basis of procedural reasons, and not on the basis of the gravity of the alleged crime. On the other hand, they may be seen as the consequence of the fundamental guarantee of a trial within a reasonable time.

230. Even though the purposes of criminal law and the ultimate aim of the punishment are retribution and justice from the point of view of society, (re)education and atonement on the part of the perpetrator, and satisfaction for the victim(s), the perspectives of a meaningful fulfilment of each of these purposes and aims after a considerable lapse of time have to be weighted against the public interest of a fair and speedy trial and the interest of the person concerned not to be subjected to a long period of uncertainty about the outcome of the prosecution instituted against him alone and not a mere application of the private justice principle "eye for an eye". Consequently, taking into consideration serious delays in the trial in the assessment of the punishment would appear accurate as the social scope of the punishment can no longer be achieved and the society is no longer interested in punishing a crime committed a long time ago. Only the retributive scope of the punishment can still be reached by continuing the criminal procedure.

231. As regards more specifically the acquittal and the discontinuance of proceedings, they present other problems and once again raise the need to set up real preventive methods that avoid these extreme solutions. They should in any case be applied in exceptional cases as they may raise issues in connection with the possibility of declaring civil responsibility "ex-delicto" (in countries that have this system) to which Belgium seems to refer. This might imply in the best of cases that the victim would not be able to get compensation at least in the criminal proceeding and would have to initiate an independent civil proceeding. In the worse of cases, this could even imply that the victim will not get any compensation at all because the offender has been found "not guilty" or the existence of the crime has not been determined as there has not been a decision on the merits.

232. The motivation used by the judge when assessing the punishment against the length of the proceedings is of great importance. The decision must indicate if and to what extent the defence rights or the establishment of the truth were affected by the length of the proceedings. The link between the assessment of the punishment and the breach of the reasonable time requirement must equally be made explicit. It would also seem appropriate to indicate what sentence would have been applied in the absence of "compensation" due to the excessive length.

d. General compensatory remedies also applicable to criminal proceedings

233. As regards reparation of damages (pecuniary or non-pecuniary) that occur as a result of lengthy proceedings, it may constitute some, although indirect, motivation for the reasonable time requirement to be observed in criminal cases. The effectiveness of this remedy also depends on whose budget it is charged.

234. In some countries, reparation of damages appears to be only possible in case of discontinuance or acquittal, and it seems that courts are usually reluctant to provide it cumulatively, even when that is formally possible (see: the United Kingdom). This could be unfair for it is also possible that a defendant who would have been acquitted in any case, in addition suffers from delayed proceedings to have his case

solved. The procedural situation of a defendant in criminal proceedings pending a decision on his case is especially "sensitive" and might have for example repercussions in social/professional life. In case of undue delays it seems important that compensatory remedies include pecuniary redress of these possible consequences. Another general suggestion is to simplify the procedure to lodge and decide upon these claims as they derive from the previous acknowledgement of undue delay.

235. The possibility of introducing a claim for damages pending the allegedly lengthy proceedings may raise concerns as to the effect of the pressure exercised in this way upon the prosecutor or judge, thus possibly leading to rendering decisions too quickly and, as a consequence, to a superficial solution of the case.

IX. Main Conclusions

236. The Venice Commission is of the opinion that the right to a trial within a reasonable time, guaranteed by Article 6 § 1 of the European Convention on Human Rights, must be secured as such by Council of Europe member States, and cannot be systematically replaced by the payment of pecuniary compensation.

237. While the payment of pecuniary compensation must be granted in cases where undue delays have occurred pending the possibly necessary reforms and improvements of the judicial systems and practices, it should not be regarded or accepted as a form of fulfilment of the obligations stemming from Article 6 and from Article 13 of the Convention.

238. The Venice Commission considers therefore that Council of Europe member States should provide in the first place adequate procedural means of ensuring that cases are processed by courts in a foreseeable and optimum manner. These procedural means respond in the first place to the obligation of securing the reasonable time requirement. To the extent that they can be used also in cases when a delay has occurred, they can also be seen as *acceleratory remedies*. However, the possibility of obtaining that the delayed procedural step be taken upon application to a higher body, for example, should not be seen as *restitutio in integrum*, their effect being merely to obtain one's right under Article 6 § 1 of the Convention, and not reparation under Article 13.

239. States should provide in addition *compensatory remedies* for any breach of the reasonable time requirement which may have already occurred in the proceedings (prior to the introduction of the effective acceleratory remedies).

240. In criminal cases, there exist specific forms of compensatory remedies which are to be considered as forms of *restitutio in integrum*: the discontinuance of the prosecution, the mitigation or reduction of the sentence; an acquittal; the low-fixing of a fine; the non deprivation of civil and political rights. They may cause however, in some cases, a lack of substantive justice. Acquittal and discontinuance of the proceedings should be only applied in exceptional cases. In the motivation used by the judge when assessing the length of the proceedings, the link between the latter and the assessment of the punishment should be made explicit, and it would seem appropriate to indicate what sentence would have been imposed if the duration had been reasonable.

241. In civil and administrative proceedings (and also, residually, in criminal ones) the ideal compensatory remedy would seem to be the fast tracking of the - until then delayed - procedure. If the case is dealt with faster than the ordinary ones, the previous undue delay will be caught up, and the global length of the proceedings will be "reasonable". No need for pecuniary reparation will exist in such a case. In criminal cases, it should be possible to accelerate the investigative or pre-trial phase too.

242. Pecuniary reparation should be granted in cases when the delays are irreparable, that is when the proceedings are over.

243. Pending possibly necessary national reforms, pecuniary compensation will remain essential for breaches which have already occurred.

244. In order not only to monitor, but also to intervene in the proceedings when they are being unduly delayed, the structure suggested by CEPEJ in Indicator FIVE of its checklist of indicators for the analysis of length of proceedings in the justice system should be set up and also used and regarded as a remedy within the meaning of Articles 13 and 35 of the Convention.

245. Pecuniary compensation should be awarded in an amount compatible with the case-law of the European Court. The criteria for awarding moral damage and the general criteria for calculating material damage should be set out clearly and in detail, preferably in the law itself. In respect of countries which face systemic problems of length of proceedings, these criteria should be previously assessed by the Committee of Ministers, ideally with the participation of the Strasbourg Court.

246. The remedial proceedings should be conducted as swiftly as possible, and possibly with fewer levels of jurisdiction. Complex determination of material damage should either follow the ordinary way, or be carried out by the authority competent to assess the reasonableness of the proceedings through a simplified but clearly fast-tracked procedure, the choice between the two being left to the applicant.

247. The adoption by Council of Europe member States of specific laws on length-of-proceedings remedies does not appear indispensable and is not required in those countries which already dispose of effective remedies for excessive length, which are known by the authorities, the courts and the public. However, the Venice Commission underlines that specific laws present the matter of reparation in an abstract and general manner, and therefore have the advantage of clarity and comprehensiveness. They may be thus more easily accessible to the public (and, in some cases, even to the courts) as well as to the instances of the Council of Europe.

248. The Venice Commission stands ready to assist any country which should wish to proceed with the elaboration of a specific piece of legislation setting out or improving the national remedies in respect of excessive length of proceedings, as well as the Committee of Ministers and the Directorate General II in their assessment of the general measures taken by States pursuant to Article 46 of the Convention.

Section II

Questionnaire and Replies

QUESTIONNAIRE

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

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

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?

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

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.

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

7. Is there a cost (ex. 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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

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?

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

11. Are these forms of redress cumulative or alternative?

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

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?

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

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

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?

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?

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

19. What is the general assessment of this remedy?

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.

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.

ALBANIA

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

One of the endemic problems of the judicial system in Albania is the excessive delay in judicial proceedings. This problem in encountered in all kinds of proceedings, but is especially disquieting in civil law cases and especially in property restitution cases.

2. Have such delays been acknowledged by court decisions? Which 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*, (judgment 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 judgment.

Following this judgment of the European Court of Human Rights, after more than 5 years of doctrinal debate, addressed this problem in the Albanian jurisprudence in its judgment no.6, of 31.03.2006.

There are no other cases in the Albanian jurisprudence recognising expressly and redressing such problem of the Albanian judicial system.

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 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."*

Article 28 of the Albanian Constitution on its third paragraph provides that:

> *"A person in pre-trial detention has the right to appeal the judge's decision. He has the right to be tried within a reasonable period of time or to be released on bail pursuant to law."*

Article 4 of the Albanian Civil Procedure Code provides that:

> *"The court takes care for the due development of legal proceedings. On basis of authority given by this Code, the court decides on the time-periods and orders the necessary measures to be taken."*

But the Code does not contain other provisions developing further this concept.

The situation is quite identical with the Code of Criminal Procedure. Its Article 1 provides:

> *"1. The main role of criminal procedural legislation is to provide a fair, equal and due legal process, to protect the individuals' freedoms, the rights and the legal interests of the citizens, to contribute to the strengthening of the rule of law and to the application of the Constitution and*

laws ruling the country."

Further on there are different provisions providing for time-limits but this concept applies in mainly to the parties before the court than to the court itself. There are no provisions in the Code limiting the power of the judges to delay the proceedings. A proposal to include in the Criminal Procedure Code fixed deadlines for the judicial proceedings was not endorsed by the Legal Reform Commission in December 2006.

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 Albanian Ministry of Justice Statistical Yearbook for 2005 in criminal cases 3161 judgments are delivered within 2 months, 2089 judgments within 6 months, 646 judgments within one year and 165 judgments take more than one year. In 2005, from 7871 criminal cases, 6061 are concluded and 1810 are unresolved.

In 2005 they have been resolved 58% of civil proceedings. Have been resolved also 30% of family law proceedings, 11% of administrative law proceedings and 1% of commercial law proceedings. According to this Yearbook 37951 cases are resolved within 2 months, 7415 within 6 months and 5987 require more than 6 months 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.

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. But until now there are no examples of Albanian jurisprudence endorsing this understanding of the fair trial concept as comprising the celerity of proceedings as well.

The Albanian Civil Procedure Code, Criminal Procedure Code and Administrative Procedures Code do not provide for any available remedy for excessive delays.

The deadline for lodging the application with the Constitutional Court is provided in 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".

Article 611

Problematic might be considered Article 362 of the Civil Procedure Code entitled "Delay in announcement of final decision" which provides that:

"The court may postpone the announcement of the decision for up to one year, when it has not created the conviction that any possibility of conciliation of the spouses is excluded."

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 stressed out above there are no cases before the Albanian courts assessing directly this issue.

10. What are the available forms of redress:

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

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.

Article 610 of the Civil Procedure code provides:

> *"Against the actions of the sheriff and against his refusal to perform an action, the parties may appeal to the court which executes the decision within 5 days from the performance or refusal of the action when the parties have been present at the performance of the action or have been called and in other cases from the day when they are notified or they receive knowledge of the action or of the refusal."*

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 is no any possibility of appeal against a decision on the reasonableness of the duration of the proceedings.

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.

This remedy has had an impact in the case of *Qufaj sh.p.k v. Albania*.

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.

Considering the Constitutional Court's position in the Qufaj case, the European Court found that Article 131 of the Albanian Constitution only in theory affords a remedy against delay in the enforcement of judicial decisions (§§ 40-41 of the ECHR judgment). This position was also confirmed in the case of *Balliu v. Albania* (judgment of 16.06.2005).

ANDORRA

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

Parties to court proceedings sometimes complain about judicial delay in our country, given its size and population, but in comparison with neighbouring countries justice may be said to be done promptly in most cases. The courts believe that criminal investigation proceedings are perhaps a bit long because of the strict procedure, meant to provide close protection of fundamental rights (remarks taken from the 2003-2004 report by the president of the Batllia). Normally, the maximum period for ruling on a case at first instance is four years, depending on its complexity and the conduct of the parties. For appeal cases, the period shortens to a maximum of one year. Constitutional Tribunal proceedings do not exceed three months. The problem arises more in relation to ensuring the enforcement of decisions, which takes much longer.

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

Such delays have not been acknowledged by court decisions. But the justice department's foremost concern is to ensure the right to a fair trial within a reasonable time.

In a ruling of 2 December 2004 on case 2004-9-RE, the Constitutional Tribunal held that the right to a trial within a reasonable time had been infringed because "when the decision in a case brought – after previous administrative proceedings – on 11 September 1999 and concluded in 2003 has not yet been enforced, with no sign that it will be, it may be inferred that the case is of unreasonable length and infringes the right to jurisdiction enshrined in paragraph 2 of Article 10 of the Constitution".

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 10 of the Andorran Constitution provides as follows:

> *"1. All persons shall have the right to jurisdiction and to have a ruling founded in the law, and to a due trial before an impartial tribunal established by law.*
>
> *2. All persons shall have the right to counsel and the technical assistance of a competent lawyer, to trial within a reasonable time, to the presumption of innocence, to be informed of the charges against them, not to declare themselves guilty, not to testify against themselves and to appeal in criminal causes."*

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

At the start of each judicial year the Judicial Service Commission (Conseil supérieur de la justice) – the body that represents, governs and manages the judicature – publishes a report, produced by the various ordinary courts, on the state of the judicial system, with statistics and suggestions for improvements to the system.

The statistics compiled for the 2003/2004 judicial year were as follows: decisions delivered within two to three years accounted for approximately 6% of the total number; decisions taking between 1 and 2 years represented 65.6%, those between 6 months and 1 year totalled 22.28% and those delivered in fewer than 6 months amounted to 6.12%.

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.

Parties to court proceedings may go to the Judicial Service Commission to make known any dissatisfaction with the courts or delay in settling their cases. The commission will take the necessary steps to resolve any disputes.

The Constitution also provides for making a constitutional complaint (*amparo*) to the Constitutional Tribunal if decisions by the public authorities are believed to have infringed fundamental rights. The procedure is set out in Chapter VI of the *Llei Qualificada* (a law enacted by qualified majority) on the Constitutional Tribunal. Section 94 provides that if one of the rights laid down in Article 10 of the Constitution (including the right to a fair trial within a reasonable time) is infringed in court or pre-court proceedings, the person holding the infringed right refer the infringement to the ordinary courts using the remedies and procedure legally provided for. When no further appeal can be lodged or there is no means of claiming the infringed constitutional right, the person whose constitutional right to go before a court has been infringed may make a constitutional complaint to the Constitutional Tribunal within fifteen working days from the day following notification of the final judgment dismissing the appeal or from the date on which the person was informed of the judgment infringing his or her constitutional right to go before a court.

When all ordinary means of redress have been exhausted and within this same time-limit, the Public Prosecutor's Office may likewise – of its own motion or at the request of the party concerned – make a constitutional complaint to the Constitutional Tribunal for enforcement of the fundamental right to go before a court and challenge judicial decisions or omissions which infringe it.

The document making the complaint must specify what steps have been taken to claim the infringed right in the ordinary courts and copies must be attached.

When the complaint has been submitted by the person concerned the Constitutional Tribunal, before ruling on its admissibility, will request a report from the Public Prosecutor's Office, which must deliver it within a maximum period of fifteen working days. The Tribunal is not obliged to follow its advice. Failure to produce this report within the stipulated time-limit will not affect the time-limit by which the Tribunal must rule on the admissibility of the constitutional complaint.

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

A constitutional complaint can be made only when all ordinary legal proceedings have been exhausted.

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

The Constitutional Tribunal has held that Article 10 of the Constitution must be construed in the light of Article 6 of the European Convention on Human Rights since the convention, which is incorporated in the Andorran legal system as provided for in Article 3.4 of the Constitution, can be referred to for interpretation purposes (Decision 2000-3-RE). European Court of Human Rights case-law regarding Article 6 of the convention has on occasion been applied (Decision 2000-17-RE). The general criteria laid down by the Tribunal are ones "which, adapted to the features of the specific case, provide the assessment of 'reasonableness' required by the Constitution to protect a legal interest in obtaining prompt and effective justice". Consequently, "the complexity of the case before the court, the conduct of the parties and the attitude of the public authorities and the courts are the criteria to be used for assessing, in each specific case, whether or not the length of proceedings is reasonable. And the point of reference is the proceedings as a whole, from beginning to end, even including the assessment of fees and costs, and with special attention to unwarranted deferment of execution, since it is enforcement of the decision which ultimately affords satisfaction to the person who brought the case to court." (Decision 2004-9-RE)

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?

The Constitutional Tribunal has a time-limit of two months to rule on a constitutional complaint (*Llei Qualificada* on the Constitutional Tribunal, Section 91.2) once it has been declared admissible.

Nevertheless, Section 42 provides as follows: "[T]he time-limits laid down in this law for bringing various actions shall be mandatory for the parties and for the Constitutional Tribunal. However, if necessary and provided that they are not laid down by the Constitution, the Tribunal may agree to reduce or increase these time-limits by an order giving reasons, at the instigation of the reporting judge, of its own motion or at the request of a party."

So far there has not been any occasion to apply these provisions.

10 What are the available forms of redress:

When the Constitutional Tribunal acknowledges infringement of the right to a trial within a reasonable time (Section 92.2 of the law regulating it) it asks the court to restore the litigant's right by taking the necessary measures. If there is no possible material redress for the infringement, the Tribunal can determine the type of liability so that a claim may be made through an ordinary court.

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

Since this situation has never arisen in the Tribunal, it has not had occasion to rule on the matter.

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?

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 Judicial Service Commission can ask judges and prosecutors to expedite specific proceedings if it deems it necessary. The Constitutional Tribunal can find that the right to a trial within a reasonable time has been infringed by delayed enforcement and simply ask the court to enforce the decision concerned.

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

The court of first instance (Batllia) is the court responsible for supervising enforcement of the decision.

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

The Constitutional Tribunal has ruled only once on infringement of the right to a trial within a reasonable period by non-enforcement of a decision (Case 2004-9-RE, already mentioned). It asked the court of first instance to proceed with enforcement. An applicant can always refer a case to the Constitutional Tribunal if a decision is not enforced, but the Tribunal has no means of compelling enforcement, apart from possible liability claims.

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.

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?

No.

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

We have no statistical data on this point.

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.

We do not know.

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, it has not been assessed so far.

ARMENIA

1. Does your country experience excessive delays in judicial proceedings? Which 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? Which 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 judgments 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. The European Court has not yet adopted any judgment on the application against the Republic of Armenia, including judgments 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 judgment 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 judgment 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. Is 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.

AUSTRIA

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

There are isolated cases of excessive delays.

2. Have such delays been acknowledged by court decisions? Which 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* (judgment of 30 January 2001), *Maurer v. Austria* (judgment of 17 April 2002*), G.H. v. Austria* (judgment of 3 January 2001) in respect of criminal proceedings, *Alge v. Austria* (judgment of 22 January 2004) in respect of administrative proceedings and *Schredder v. Austria* (judgment of 13 December 2001) in respect of civil proceedings

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*), in force since 1 January 1990, provides as follows:

> *"(1) 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; unless sub-section (2) of this section applies, the court is required to submit the request to the superior court, together with its comments, forthwith.*
>
> *(2) If the court takes all the procedural steps specified in the request within four weeks of receipt, and so informs the party concerned, the request is deemed withdrawn unless the party declares within two weeks after service of the notification that it wishes to maintain its request.*
>
> *(3) The request referred to in sub-section (1) shall be determined with special expedition by a Chamber of the superior court consisting of three professional judges, one of whom shall preside; if the court has not been dilatory, the request shall be dismissed. This decision is not subject to appeal."*

This Section 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.

According to Section 73 of the General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz*) :

> *"(1) Subject to any contrary provision in the administrative regulations, the authorities must give a decision on applications by parties ... and appeals without unnecessary delay, and at the latest six months after the application or appeal has been lodged.*

(2) 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.

(3) The period for giving a decision by the superior authority runs from the date the request for transfer of jurisdiction was lodged with it."

As far as the administrative criminal proceedings 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. 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.

According to the new law on the Administrative Court clone cases are now examined through a special accelerated procedure. It resulted in diminishing of cases pending before the Administrative Court.

6. Is this remedy also available 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
- 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)*, (judgment 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.

More recently, in *Egger v. Austria* (decision of 9 October 2003), the Court held that Section 73 of the General Administrative Procedure Act in combination with Article 132 of the Constitution do ensure an effective remedy for excessive length of administrative proceedings, although not in every case (see *Kern v. Austria*, judgment of 24 February 2005).

AZERBAIJAN

1. Does your country experience excessive delays in judicial proceedings? Which 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 judgments, 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? Which courts (national/European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR 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. Is any statistical data available about the extent of this problem in your country? If so, please provide it 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 48.633 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 12.533 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.

BELGIUM

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

Criminal proceedings

The length of some criminal proceedings constitutes a real problem in Belgium, although not one that is widespread. It arises both in the preliminary stages (collection of evidence by the prosecution authority and investigation by the investigating judge) and in the trial courts. Enforcement of some criminal sentences is deliberately delayed by the authorities because of prison overcrowding. The latter aspect of enforcing criminal sentences will not be discussed here.

Civil proceedings

Generally speaking, civil proceedings account for 80% of the cases handled by the courts in Belgium (although the percentage seems to have fallen recently in the appeal courts owing to the effect of assize proceedings).

In civil cases (including execution proceedings), excessive delays have been noted mainly in the Brussels courts (owing to language problems, which the legislature has nevertheless endeavoured to solve – if only partially – following decisions delivered on the basis of Article 6 of the European Convention on Human Rights:[1] a law of 16 July 2002 amended Article 86 *bis* of the Judicial Code and the law of 3 April 1953 on organisation of the courts, and another law of 18 July 2002 replaced Article 43 *quinquies* and added a new Article 66 on the use of languages in judicial proceedings in order to reduce bilingual requirements and release more resources for trying the French-language cases which make up the majority of proceedings before the courts in Brussels) and in the appeal courts. In other courts the backlog is either non-existent or of no significance.

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

Failure to complete proceedings within a reasonable time is frequently acknowledged, both in investigations and in trial proceedings.
National case-law

See, for example, Mons Criminal Court (in chambers), 23 December 2003, *J.T.*, 2003, p. 629 (for the investigative stage).

For trial proceedings, see: Liege Criminal Court, 7 May 2001, *J.LM.B.*, 2002, p. 928 and comments P. Monville; Court of Cassation, 31 October 2001, *J.T.*, 2002, p. 44, and Court of Cassation, 4 February 2004, *Rev. dr. pén.*, 2004, p. 845 (from the domestic point of view). These are only a few examples among many.

ECHR case-law

At the trial stage, see, for example, the *Ernst v. Belgium* judgment (15 July 2003).

An example for the investigative stage is to be found in the *Stratégies et Communications and Dumoulin v.*

[1] Thus a Brussels Civil Court judgment of 6 November 2001 (J.T., 2001, 865) states that "in a democracy a citizen's right to enjoy effective government, including proper administration of justice, cannot be abolished, or restricted, by problems on the part of the legislature and/or executive in reaching the internal political agreement needed to adopt the requisite measures. Of course, as long as such agreement does not exist, measures cannot be adopted, but any citizen injured by this situation is entitled to redress for the injury suffered" (this judgment was confirmed by a decision of the Brussels Court of Appeal on 4 July 2002, *J.L.M.B.*, 2002, p. 1184, to which we shall return).

Belgium judgment (15 July 2002).

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 6 of the European Convention on Human Rights is held to be directly applicable in Belgian law, irrespective of any domestic statutory or constitutional provisions. Moreover, by providing various "remedies" for excessive length of proceedings, sundry recent statutory provisions (see Articles 136, para 2 and 136 *bis* of the Code of Criminal Investigation and Article 21 *ter* of the preliminary part of the Code of Criminal Procedure) have made reasonable length a compulsory requirement.

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

Each prosecution authority compiles its own general statistics for length of proceedings, but there are no specific statistics on reasonable length.

As far as civil proceedings are concerned, statistics are scattered and sometimes slow to be collated at federal level. Increasingly, heads of court draw up, division by division, a list of time-limits for the period between the application for a hearing (which the parties make when the case is ready) and the hearing. Depending on court and division, the period will vary from one week to a few months, except in the special circumstances laid down in Section 1 above. Use of "management charts" for each court is a practice that is tending to spread.

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. There are no specific remedies for decisions not delivered in reasonable time. The defendant can use this as an argument in an appeal. It may also be raised before the Court of Cassation provided it has already been raised at appeal and has to do solely with points of law, such as conclusions the appeal court drew or failed to draw from its finding of unreasonable length.

b. A penalty is provided in Article 21 *ter* of the preliminary part of the Code of Criminal Procedure when the trial court finds that reasonable time has been exceeded. This provision can be raised by the defence or applied *ex officio* by the court.

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

With regard to pending proceedings:

a. When a case is pending before a trial court there is no statutory provision for expediting it.

b. If a case is at the investigative stage, there are two provisions in the Code of Criminal Investigation which are specifically intended to avert lengthy proceedings:

- Article 136 of the Code of Criminal Investigation provides that if an investigation has not been completed within a year, the defendant or the party claiming damages can refer the case to the Indictments Chamber (that is, the appeal-court investigating chamber, which has very broad supervisory powers over the investigation) simply by applying to it; the Indictments Chamber can then ask for progress reports on the case and inspect the file; it can instruct the investigating judge to expedite the proceedings or even set a time-limit for the judge to complete the investigation; it may also delegate one of its members to take over the investigation from the investigating judge.

It should be noted that although this system is intended to avoid protracted investigations, the approach is not quite the same as a reasonable-time one in that reasonable time may be exceeded well before a year has elapsed, just as a much longer investigation may not be excessive in terms of reasonable time.

- Article 136 *bis* of the Code of Criminal Investigation, similarly concerned to keep investigations to a reasonable length, requires the prosecutor to report to the chief prosecutor all cases in which the investigation has not been completed within a year of the prosecutor's first application for an investigation (that is, within a year of referral to the investigating judge). If the chief prosecutor thinks it necessary for proper conduct of the investigation, and therefore for faster proceedings, he or she may, for example, refer the case to the Indictments Chamber, which, having heard the investigating judge's report where appropriate, will then have the same powers as those laid down in the above-mentioned Article 136.

c. Also at the investigative stage, when the investigating judge completes the investigation and the Court in Chambers (the trial-court investigating chamber) decides what action to take on it, it can even at this point find that a reasonable period has been exceeded and order termination of the proceedings or declare the prosecution inadmissible. The Indictments Chamber may terminate the prosecution at any time for the same reason if it has a procedural question referred to it during the investigation.

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

In so far as Article 136 of the Code of Criminal Investigation can be considered an adequate remedy, it can be brought into play simply by application, filed free of charge, to the registry of the court of appeal.

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

The criteria used by both the investigating authorities and the trial courts are exactly the same as those drawn up by the European Court of Human Rights: the complexity of the case, lulls in proceedings, the attitude of the defence, and even the effect of the decision on the person concerned. In practice, it is very often months-long inaction on the part of the judicial authorities that brings about a finding that reasonable time has been exceeded.

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 deadline is set for Indictments Chamber decisions on lengthy investigations (Articles 136 and 136 *bis* of the Code of Criminal Investigation). If the chamber is slow in taking its decision the unnecessary delay will be taken into account in determining whether reasonable time has been exceeded, either at the end of the investigation or by the trial court.

10. What are the available forms of redress:

a. From the investigating authorities: a decision to terminate proceedings or declare the prosecution inadmissible.

b. From the trial courts: under Article 21 *ter* of the preliminary part of the Code of Criminal Procedure the penalty for excessive delay takes the form of either a straightforward finding of culpability[2] or imposition of a lighter sentence than the statutory minimum; under the case-law of the Court of Cassation, the sentence reduction must be real and measurable in relation to the sentence that the court would have imposed if it had not found the proceedings to be excessively long. However, the Court of Cassation has accepted that when their excessive length has affected the taking of evidence or the rights of the defence a decision that the prosecution is inadmissible may be required.[3] No other redress is provided.

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[2] Which does not preclude a ruling on civil claims.

[3] One result of which is that it is no longer possible to rule on the civil action. See example of Namur Criminal Court, 26 April 2001, *Journal des procès*, 2001, No. 415, p. 24 and *J.L.M.B.*, 2001, p. 1402.

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?

No.

a. If the Indictments Chamber has instructed the investigating judge to expedite his or her investigation under Articles 136 and 136 *bis* of the Code of Criminal Investigation, this will have no effect on the distribution of the caseload at the investigative level except in some exceptionally important cases. There is consequently no centralisation of case management.

b. If the problem arises because of the time taken to schedule a hearing before the trial court, there is, as we have seen, no judicial means of expediting matters, since the scheduling of cases for a hearing depends on the prosecution authority, and the Indictments Chamber is unable to give it directions. In practice, the problem is usually solved by an approach to the prosecution authority by the defence counsel, although the former has its own scheduling policy which may be unable to accommodate specific applications, even if they are justified by the risk of exceeding reasonable time.

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

If Article 136 or 136 *bis* (see above for details) is applied to an investigation in progress, the case may be referred to the Indictments Chamber again if no action is taken concerning the excessive length of the proceedings.

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

a. The Indictments Chamber can take the investigating judge off the case and have one of its members take it over.

b. When the trial court has found the proceedings to have been unreasonably long and has drawn the appropriate conclusions with regard to the penalty or to the admissibility of the prosecution, the decision is automatic.

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?

a. If, upon completion of an investigation, the Court in Chambers refuses to acknowledge that the proceedings have been unreasonably long, their length cannot justify an appeal to the Indictments Chamber unless the delay can be held to constitute a ground for declaring the prosecution inadmissible – that is, it has affected the taking of evidence or the rights of the defence (Article 135 of the Code of Criminal Investigation); this argument must also have been raised previously in written submissions to the court in chambers. The Indictments Chamber is not bound to rule within any time-limit. Here again, if it took an abnormally long time to rule, this would be taken into account by the trial court when ultimately determining whether the proceedings had been unreasonably long.

b. If the trial court has refused to acknowledge that proceedings have been unreasonably long, the judgment can be appealed on that ground. The appeal ruling can be challenged on that point before the Court of Cassation as described in the reply to Question 5, paragraph (a) above. Neither the appeal court nor the Court of Cassation is bound by a mandatory time-limit when ruling. The appeal court can itself decide that it has not ruled within a reasonable time, but failing that there are no penalties, any more than if the Court of Cassation has not ruled within a reasonable time.

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?

For an investigation in progress, the defence or the party claiming damages cannot use Article 136 of the Code of Criminal Investigation until one year has elapsed. The same procedure can then be repeated, but not until at least 6 months after the Indictments Chamber's decision.

If the argument has been raised in the Court in Chambers on completion of the investigation, it can be raised again in an appeal to the Indictments Chamber (cf. reply to Question 16, paragraph (a)) and thereafter before the trial court.

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

There are no statistical data available on use of Articles 136 and 136 *bis* of the Code of Criminal Investigation or on arguments raised before the investigating authorities and trial courts. Plans for computerisation of judicial data might include this information in future if it proved relevant.

19. What is the general assessment of this remedy?

a. As far as Articles 136 and 136 *bis* of the Code of Criminal Investigation are concerned, their effectiveness is unproven since they are little used.

b. Penalties for excessively long judicial investigations and excessively long proceedings in trial courts are much more effective and the excessive-length argument is frequently deployed by litigants and accepted by the courts.

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.

Fewer cases are now pending before the European Court of Human Rights for unreasonably long proceedings, in particular because of the penalties available to the lower courts. As a rough guide, over the past five years we find only four judgments in criminal cases: one concerned criminal law only indirectly (ECHR, *Sablon v. Belgium*, 10 April 2004), one found no violation of Article 6 with respect to reasonable time (ECHR, *Coëme and Others v. Belgium*, 20 June 2000), one took formal note of a friendly settlement (ECHR, *L.C. v. Belgium*, 17 October 2000) and, last but not least, one – already mentioned several times before – found that the proceedings had become unreasonably long even before the end of the investigation (ECHR, *Stratégies et Communications and Dumoulin v. Belgium*, 15 July 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 its judgment of 15 July 2002 in *Stratégies et Communications and Dumoulin v. Belgium* the European Court held that Article 136 of the Code of Criminal Investigation did not constitute an adequate remedy within the meaning of Article 13, construed as necessitating an independent remedy in the event of unreasonably long proceedings. Its ruling relied on the fact that the Court was not satisfied that Article 136 of the Code of Criminal Investigation was an effective remedy available both in theory and in practice: on the one hand, it raised certain issues of domestic law, in particular whether the "remedy" was available not only to a party claiming damages in criminal proceedings and a person formally charged but also to a person under investigation who had not been formally charged; on the other hand, the Belgian Government had not cited any examples of domestic practice confirming that the Indictments Chamber had granted an application based on Article 136, paragraph 2, by a person not formally charged.

It should be noted that, since the question under consideration by the Court concerned a person whom the investigating judge had not formally charged, it cannot be inferred from the judgment that, generally speaking – and particularly with regard to a person whom the investigating judge *has* formally charged – Article 136 does not constitute an adequate remedy in respect of Article 13 of the Convention.

However, the Court has not had a chance to rule on the effectiveness of Article 21 *ter* of the

preliminary part of the Code of Criminal Investigation, which provides for unreasonably long proceedings to be penalised at the trial stage. That approach is perfectly consistent with the Court's case-law.

Questions 5 to 21 with particular reference to civil proceedings

Given this detailed account of remedies in criminal proceedings, it would seem permissible to amalgamate the replies for civil proceedings, whilst noting from the *Kudla v. Poland* judgment of 26 October 2000 that any applicant having occasion to complain of abnormal length of proceedings must be able to obtain "preventive or compensatory" relief through an effective remedy (§ 159).

We must therefore briefly consider methods firstly of expediting proceedings and secondly of providing compensation.

A. Methods of expediting proceedings

Belgian law does not offer the alleged victim of abnormally long proceedings a specific remedy allowing him to have a higher court establish failure to hear the case within a reasonable time with a direction to the court handling the case to deal with it promptly. Some writers have suggested as the answer to abnormal delay in proceedings an urgent application to the president of the court of first instance for an injunction coupled with penalties for non-compliance. At present there is no case-law on the subject, so such action scarcely qualifies as an effective remedy within the meaning of Article 13 of the Convention. Moreover, we might ask – since the independence of the court precludes any interference by the executive in the exercise of judicial powers – what kind of specific injunction an urgent applications judge could issue to have the state, represented by the Minister of Justice, expedite proceedings in progress,.

Corrective mechanisms do exist, but they are extremely limited in scope: an action for damages against a judge for misuse of his authority is possible in the event of "denial of justice" (Judicial Code, Article 1140, para. 4), but denial of justice is interpreted strictly as meaning refusal to hear a case rather than a court's failure to try a case within a reasonable time (Belgian Court of Cassation, 28 February 2002, *Rev. Gen. Dr. Civ. B.*, 2002, p. 548; perhaps this view of the matter will change under the influence of the ECHR judgment of 3 April 2003 – No. 54589 – which ruled that time-barring of a court action owing to lack of diligence by national authorities in parallel proceedings constituted a denial of justice); the Court of Cassation can remove a judge at the request of the chief prosecutor at the court of appeal if the judge fails to consider a case in chambers for over six months (this mechanism, provided by Article 648 of the Judicial Code, is obviously not an effective remedy for a litigant). Thus litigants confronted with abnormally long civil proceedings do not have any available and effective remedy in Belgian law allowing them to report the situation to a higher authority for the purpose of getting the latter, either of its own motion or by injunction, to take the necessary measures to remedy it.

Even if a litigant can take steps to expedite preparation of a case for trial, Belgian civil procedure is characterised by the *principe dispositif* (whereby, in civil proceedings, the court is required to make decisions on all the questions submitted to it and on nothing else), which does not recognise the institution of an active court endowed, as in other countries, with considerable powers of initiative and supervision with regard to conduct of proceedings. However, it is increasingly being held that while recourse to the courts is a human right, litigants cannot be left totally free to exercise it; a balance must be struck by applying principles that compel parties to observe a certain procedural fairness and by strengthening a court's powers to ensure that this is effective. "While the parties obviously have control over the subject-matter, it is the court which determines the conduct of the proceedings. It is only natural that the justice system – as a public service for whose failings the state is liable – should have the means of functioning normally in order to provide a judicial response within a reasonable time" (J.C. Magendie, *Célérité et qualité de la justice* ("Speed and Quality of Justice", a French report to the Minister of Justice), *Gaz. Pal.*, 22-23 December 2004, p. 11). It seems legitimate to dwell on this fundamental aspect inasmuch as preliminary draft legislation amending the Judicial Code in order to strengthen court powers over preparation of cases for trial is shortly to come before the Belgian Parliament.

B. Methods of compensation

As the law currently stands, compensation can be used as an answer to unreasonably long proceedings. The state may incur liability on account of unsatisfactory operation of the judicial system if the fault is with

the actual organisation of the courts rather than simply the decision delivered by the court. It is accepted that the state can incur liability through specific injury sustained as a result of delay in settling a case if the delay is clearly and directly attributable to negligence on the court's part or if it is connected with a court backlog or overload, making it impossible for the courts to comply with the "reasonable time" requirement of Article 6 of the European Convention on Human Rights (Court of Cassation, 19 December 2001, *Rev. Crit. Jur. B.*, 1993, p. 285 *et seq.* and comments by F. Rigaux and J. van Compernolle).

Since the above-mentioned judgment by the Court of Cassation, a number of decisions by the Brussels Regional Court have ordered the state to redress injury suffered on account of failure to hear a case within a reasonable time (in addition to the judgment of the Brussels Civil Court of 6 November 2001 cited in the footnote, see Brussels Civil Court, 27 October 2000, *Rev. Gén. Dr. Civ. B.*, 2002, p. 550).
Confirming these decisions, a judgment of 4 July 2002 by the Brussels Court of Appeal (see footnote 1 above) found that the Belgian state was guilty of negligence that rendered it liable when it failed to take measures ensuring compliance with its obligations under Article 6 of the European Convention on Human Rights and, in particular, when this failure to act resulted in the courts – in this instance the Brussels courts – having insufficient resources to deal with the cases before them within a reasonable time. Such failure on the part of the state constitutes a serious breach of Article 6 of the Convention, which confers on private individuals the right to have their cases heard in the manner it prescribes and to have failure to comply with it penalised by the ordinary courts under Articles 1382 and 1383 of the Civil Code.

In short, unreasonably long proceedings render the state liable; this liability is inferred from infringement of Article 6 of the European Convention on Human Rights and of the right conferred on the individual by this provision; in domestic law, such infringement constitutes fault within the meaning of Article 1382 of the Civil Code, requiring the state to redress the resultant injury. A well-established line of decisions confirming these principles would likely spare Belgium further violation findings for not affording any effective domestic remedy to the individual who considers that his or her case has not been heard within a reasonable time.

APPENDIX

Administrative proceedings

1. Non-judicial domestic remedies in respect of excessive length of proceedings in Belgian administrative law: combating official dilatoriness in dealing with a licence application. Tacit permission and reminder letters.[4]

The problem

A primary feature of the administrative licensing system – and this is something of a truism –is that a citizen cannot normally carry out the act subject to licensing until the authority has expressly reached a decision on the application. Although it may of course be wondered how it can occur in a law-based state, official inertia in determining an application or appeal is something which the legislature must cater for.

There are a number of ways of spurring an authority to action and overcoming the inertia. Some of the methods devised entail bypassing the express decision of the authority that was initially considered necessary. Such solutions are never anything but a stopgap.

The problem of a reasonable time-limit

An indicative time-limit raises an issue of reasonable time. The wish to impose a penalty is perfectly understandable.[5] The reasonable-time approach, however, has at least two drawbacks.

Firstly, subjectivity plays a large part in determining what is reasonable. It may of course be argued that the

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[4] 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, 1 April 2004, pp. 254-263.

[5] See in particular, Conseil d'Etat, 4 September 1997, Debrabandère, 67981; Conseil d'Etat, 4 February 1994, Royackers, 45999.

case's complexity and the applicant's goodwill are relevant considerations,[6] but the fact remains that reasonableness is an unsatisfactory criterion in this day and age, which has a preference for knowing the pace of proceedings beforehand in order to estimate their length and plan accordingly.

Secondly, setting a reasonable time-limit amounts to laying down a mandatory condition for exercising jurisdiction.[7] Once the time-limit has expired, the authority's jurisdiction comes to an end, precluding redress through an appeal mechanism,[8] and once the Conseil d'Etat has laid down the penalty this *functus officio* means that the process cannot be restarted on the basis of the original application.[9] This outcome is paradoxical inasmuch as the power to decide on a licence application or a legal appeal is not optional but mandatory.

Latterly, there has been considerable debate about the "tacit permission" and "reminder letter" methods.

CWATUP and inertia on the part of the regional government or the mayor and deputy mayors

- Under town-planning law, when the indicative time-limit (which will vary according to the nature of the case) for the mayor and deputy mayors to grant a licence or refuse it has expired (Article 118), the applicant can refer the case to the regional planning officer, who must rule within a mandatory time-limit.

- Upon expiry of this mandatory time-limit, the law treats the absence of a decision by the regional planning officer as a refusal of a licence (CWATUP, Article 118, § 2). At that point the regional planning officer ceases to have jurisdiction.[10]

- It is then possible to refer the case to the regional government (Article 119).

- What happens if the regional government, the appellate authority, fails to reply?

The reminder letter and substitution of a mandatory time-limit for an indicative time-limit

Faced with dilatoriness of the appellate authority, or the authority of last resort in the case of a two-tier appeal (see previous version of CWATUP, Article 52), the legislature has often had recourse to the reminder letter, which converts an indicative time-limit into a new mandatory time-limit within which the decision must be taken, and even, if the legislature so chooses, notified to or brought to the attention of the applicant.

At present:

- Article 121 of the CWATUP gives the applicant alone the power to send a reminder letter. This was not always the case.[11]

- The CWATUP has now opted, in Article 121, for the decision to be not only taken but also sent within thirty days from receipt of the reminder letter. Consequently, a decision taken within the time-limit but notified late is rendered unenforceable under the decree, and, on grounds of legal certainty, the Conseil d'Etat can suspend it or set it aside.[12]

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[6] To be more precise, the reasonableness of the time-limit within which the authority must take a decision is determined mainly by the authority's ability to assemble all the evidence, information and opinions enabling it to make a decision with full knowledge of the facts (Conseil d'Etat, 6 February 1986, SA Elpee Gas Belgium, 26155; Conseil d'Etat, 1 December 1988, CAP, 31487; Conseil d'Etat, 17 November 1995, Nose et Mondelier, 56256, *A.P.T.*, 1995/4, p. 297, from report by Ms Guffens and assessment, No. 2.4.2.).

[7] J.-F. Neuray, "Vie et mort du permis tacite", *A.P.T.*, 2002, pp. 55 et seq.

[8] An authority that rules on appeal is guilty of an irregularity (Conseil d'Etat, 17 November 1995, Nose et Mondelier, 56256, *A.P.T.*, 1995/4, p. 297, from report by Ms Guffens).

[9] Conseil d'Etat, 17 November 1995, Nose et Mondelier, 56256, *A.P.T.*, 1995/4, p. 297, from report by Ms Guffens.

[10] Conseil d'Etat, 24 June 1980, Ville de Courtrai, 20447, Recueil, p. 827.

[11] On how, if the law does not specify, the letter can be sent by someone other than the applicant: Conseil d'Etat, 4 December 1980, Nuyens, 20770, Recueil p. 1478; Conseil d'Etat, 10 January 1984, Van Bever, 23870.

[12] Conseil d'Etat, 30 June 2000, Botton, *Rev. Rég. Dr.*, 2000, p. 398; Conseil d'Etat, 31 May 2000, Regout, 87736,

"Article 121. Within 75 days from receipt of the appeal, the Government shall send its decision to the applicant, the mayor and deputy mayors, and the regional planning officer.
Failing this, the applicant may send a reminder to the Government by registered post whilst at the same time notifying the mayor and deputy mayors and the regional planning officer.
If the Government does not send a decision within thirty days from receiving the registered letter, the decision being appealed is confirmed."

Reminder formalities

The reminder must be lodged by registered post (CWATUP, Articles 8 and 452/19), and the withdrawal of the reminder, if allowed, must occur in the same manner. In law a faxed withdrawal is deemed not to have been made (Conseil d'Etat, 18 September 2003, Botton, 123059) and is void (see cases below).

Notice of the reminder to the mayor, deputy mayors and regional planning officer is a formality which is not prescribed in the citizen's interests; such notice cannot be held to be essential or to affect the validity of the reminder (Conseil d'Etat, 23 September 2003, SA G.C., Valeco, 123292).

The reminder letter can legitimately be sent by the applicant's architect (Conseil d'Etat, 20 November 2003, Van Hoof, 125559).

No decision in mandatory time-limit

However, if no decision is taken within the time-limit, the legislature again has difficulty in determining what meaning to assign the regional government's failure to reply:

- It could give effect to an earlier decision in the proceedings in favour of the applicant if one exists (previous version of CWATUP, Article 52).

- Or it could decide – adopting the tacit-permission system – that the applicant is allowed to proceed if he complies with all statutory or regulatory provisions other than the licence requirement (see Article 52 of previous version of CWATUP).

- Or it could decide more generally that the decision being appealed is confirmed (current CWATUP, Articles 119 to 121): here, failure to reply on the part of the mayor and deputy mayors to which the case was originally referred may give rise to optional removal of the case from the latter and referral to the regional planning officer; a persistent failure by the latter to reply being treated as a refusal (Article 118, para. 3). In the event of failure to reply all along the line, the decision to refuse permission will therefore be confirmed under Article 121.

Examples of how time-limits are calculated

Example 1: Planning permission was refused by the mayor and deputy mayors on 12 April 1999. The applicant lodged an appeal with the regional government on 14 May 1999. She received an acknowledgement of receipt on 17 May 1999. The initial period for the regional government to take and notify its decision began on 18 May 1999 and ended on 31 July 1999. Since the expiry date was a Saturday, the period terminated on Monday 2 August 1999. On 2 February 2000 the applicant sent the regional government a registered letter containing a reminder within the meaning of CWATUP Article 121. This reminder was received by the other party on 3 February 2000. The thirty-day time-limit for sending a decision expired on Saturday 4 March 2000 and was put back to Monday 6 March 2000. As the decision was adopted on 6 March 2000 but notified on 7 March 2000, out of time, it was unenforceable under the decree itself, while the decision to refuse permission taken by the mayor and deputy mayors was, under the same decree, confirmed (Conseil d'Etat, 12 December 2002, SCA Dick, 113605). Another example of a decision taken in due time but notified out of time (set aside): Conseil d'Etat, 23 September 2003, SA G.C., Valeco, 123292).

Example 2: Appeal lodged on 28 December 2000 against a decision of 24 November to refuse permission.

A.P.M., 2000, p. 111; Conseil d'Etat, 29 October 2002, Notre Dame et Gyssels, 112002; Conseil d'Etat, 12 December 2002, Qwewet et Quairiaux, 113604.

Received on 28 December 2000 (confirmed by an acknowledgement of receipt issued on 10 January). The 75-day period for the regional government to adopt and notify its decision began on 29 December and ended on 13 March 2001. A reminder was sent on 14 March 2001 and received on the same day (according to the acknowledgement of receipt dated 15 March). Withdrawal of the reminder by fax on 11 April was held to be ineffective (see next case below). The decision of 27 July was out of time (Conseil d'Etat, 6 November 2003, Decaluwe et Provoyeur, 125118).

Example 3: Calculation of the 30-day time-limit: reminder letter sent on 31 January 2000; the period started on 1 February 2000, the date on which the reminder letter was received; the contested decision had to be sent by 2 March at the latest (option of putting the deadline back to the next working day); it was not sent until 3 March and was therefore without any legal effect (Conseil d'Etat, 20 November 2003, Van Hoof, 125559).

Withdrawal of the reminder

If a reminder letter marks the start of a final mandatory period for replying, can an applicant who has initiated this last procedure and sees that an authority is preparing to rule in his or her favour renounce the reminder by withdrawing it? The answer is in the affirmative with regard to the case-law of the Conseil d'Etat provided that the renunciation is clear and unambiguous (Conseil d'Etat, 18 May 1999, Perez-Vasquez, 80288) and that it occurs within the time-limit, but the case-law of the Conseil d'Etat has been hostile to withdrawal when it has been held to be an abuse of procedure (Conseil d'Etat, 5 October 2001, Dockx, 99526, *J.L.M.B.*, 2002, p. 356; *Am.-Env.*, 2002, p. 82).

Shortly after the Dockx ruling, the Liege Court of Appeal clearly adopted the same position by holding that withdrawal of the reminder letter constituted an "abuse of procedure"; it nevertheless held that legal certainty made it necessary to hold that this administrative practice, long accepted and recommended by the authorities themselves, could not be prejudicial to the citizen, who must be able to have confidence in official bodies and that this procedure could not be regarded as a cause of illegality that would affect permission granted after expiry of the period initiated by the sending of the reminder and which was therefore interrupted by its withdrawal. Furthermore, the Court held that the reminder did not need to be withdrawn using the same procedure by which it had been sent and that no specific formalities applied to the withdrawal – neither registered delivery nor even a signature – provided that the withdrawal was notified before expiry of the time-limit. The Court considered a fax to be enough. The latter point also remains controversial, since proving the exact date of withdrawal could present a problem.[13]

Since then, the Conseil d'Etat has established its position in numerous judgments.[14] The following judgments were delivered quite recently.

Withdrawal of the reminder was held to be ineffective and the ground citing an infringement of Article 121 was held to involve a question of public policy (Conseil d'Etat, 20 November 2003, Van Hoof, 125559); in the interests of legal certainty, the Conseil d'Etat set aside the ministerial decision (Conseil d'Etat, 6 November 2003, Romano, 125114; Conseil d'Etat, 6 November 2003, Decaluwe et Provoyeur, 125118; Conseil d'Etat, 23 September 2003, Ville de Chiny, 123291; also a decision taken in time but notified late (set aside), Conseil d'Etat, 23 September 2003, SA G.C., Valeco, 123292).

Withdrawal of reminder ineffective. In the interests of legal certainty, the Conseil d'Etat agreed to set aside the ministerial decision notified late (Conseil d'Etat, 16 September 2003, Verbrugghe et Clercq, 122876; Conseil d'Etat, 23 September 2003, SA G.C., Valeco, 123292).[15]

Further time-limit for appealing against confirmed decision

In addition, applicants have a further period of 60 days from notification of the judgment to lodge an

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[13] Liège, 7 January 2002, *J.L.M.B.*, 2002, pp. 360 et seq., comments A. Van Der Heyden; in its judgment of 2 August 2001, Bonafe-Swinnen, 98121, quoted by A. Van Der Heyden (ibid, p. 366), the Conseil d'Etat laid down, on the contrary, that certain formalities must be observed when withdrawing the reminder.

[14] In particular, Conseil d'Etat, 27 February 2003, Steeno, 116567, *T.R.O.S.*, 2003, pp. 256 et seq., comments S. De Taeye, who draws attention to certain differences between this case-law and that of the Flemish courts.

[15] Additional examples.

appeal, where appropriate, against a decision confirmed by a decree (Conseil d'Etat, 16 September 2003, Verbrugghe et Clercq, 122876; also on this point, Conseil d'Etat, 23 September 2003, SA G.C., Valeco, 123292).

In the latter case the confirmed decision of the mayor and deputy mayors was then appealable to the Conseil d'Etat on the initiative of a third party. The time-limit was calculated in the normal way.[16]

In this case the Walloon Region was also implicated because it was its failure to reply that enabled the confirmed decision to become effective.[17]

Coercive penalty

Ordered by the Conseil d'Etat in a case where the Conseil d'Etat had set aside the dismissal of an appeal against refusal to grant permission, the Flemish Government did not take a decision within two years (Conseil d'Etat, 7 December 2000, Maroy, 91488, *A.P.M.*, 2001, p. 8).

Tacit decision

Instead of confirming the previous decision, which may entail a refusal from start to finish, the legislature may decide to interpret a persistent failure to reply. The decision to interpret the permission-granting authority's silence must be taken by the legislature. In general, however, tacit permission is reserved for cases in which there has been no decision throughout the procedure.[18]

The legislature can choose between tacit permission and tacit refusal. The interest served is not the same in each case. In its judgment of 3 July 1998 (Van Der Stichelen, 74948) the Conseil d'Etat highlighted the policy options inherent in the choice between tacit refusal and tacit permission. In the latter case, it was a question of encouraging freedom of trade and industry or, at the very least, economic activity.[19] Tacit permission thus nullifies the point of making the proposed action subject to planning permission. Tacit refusal is in the interests of law and order which justified the introduction of planning permission, in this case sound regional planning and the right to protection of a healthy environment (Article 23 of the Constitution). But neither of these implicit solutions is satisfactory, since each has disproportionate effects. Both inevitably sacrifice the other interests that the authority responsible for permission should also take into account.

Tacit permission: statutory authorisation or an administrative decision open to challenge?

Does tacit permission, an option favouring the applicant, constitute statutory permission to act without a licence or is it merely an implied authorisation?[20] The question is important, for in the former case there is no administrative decision that can be challenged, whereas in the latter case there is. In the context of town planning, it was the first alternative that the Court of Cassation adopted in a judgment of 19 April 1991.[21] The Conseil d'Etat took the same line in its judgment of 3 July 1998 (Van Der Stichelen, 74948) regarding Article 41 of the Order on Environmental Planning Permission of 30 July 1992.[22] [23] For this judgment, in

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16 For a case of the disclosure rule applying after a briefing meeting followed by a second meeting during which the decision itself was considered: Conseil d'Etat, 29 October 2002, Notredame, 112003; Conseil d'Etat, 12 December 2002, *Ville de Namur v. Députation permanente du Conseil provincial de Namur*, 113606.

17 Conseil d'Etat, 12 December 2002, *Ville de Namur v. Députation permanente du Conseil provincial de Namur*, 113606 (previous version of CWATUP, Article 52).

18 J.-F. Neuray, "Vie et mort du permis tacite", *A.P.T.*, 2002, pp. 55 et seq. (p. 58).

19 Article 41 of the Order on Environmental Planning Permission of 30 July 1992. This system was abandoned in the Order on Environmental Planning Permission of 5 June 1997 in favour of confirmation of the decision being challenged (Article 82).

20 J.-F. Neuray, "Vie et mort du permis tacite", *A.P.T.*, 2002, p. 55 et seq.

21 *J.T.*, 1992, p. 76, and commentary by M. Boes, "L'acte notarié au risque de l'infraction", in *L'urbanisme dans les actes*, Brussels, Bruylant, 1998, p. 695; P. 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 (p. 50).

22 This system was abandoned in the Order on Environmental Planning Permission of 5 June 1997 in favour of confirmation of the decision being challenged (Article 82).

23 See, however, Conseil d'Etat., 27 January 2002, 108540, *T.R.O.S.*, 2002, p. 191, comments J. Verkest.

the absence of a decision open to challenge, the Conseil d'Etat was unable to consult the Administrative Jurisdiction and Procedure Court (AJPC) on the compatibility of this legislation with Articles 10 and 11 of the Constitution.

Implied authorisation condemned by the AJPC

However, the urgent applications judge of the Brussels Regional Court consulted the Administrative Jurisdiction and Procedure Court on an action by third parties who had applied to it for an interim injunction to restrain, subject to penalties, further building work challenged under Article 137 of the Constitutional Order on Planning and Development (OOPU), which contained a provision similar to Article 41 of the 1992 Order on Environmental Planning Permission. The AJPC held that implied authorisation was not an administrative decision but a direct effect of the Order and that there was therefore no decision to be challenged before the Conseil d'Etat.[24] Even in the absence of an administrative decision, a review of the situation by the ordinary courts was possible. The right to proceed without permission was justified by the intention of not penalising an applicant for planning permission who had met with slackness on the part of the authorities. The Court held that this argument was relevant. However, this system disproportionately interfered with "third-party rights" despite the possibility of referring the matter to the ordinary courts. Applicants and third parties were denied a specialist authority to assess their specific situation and a judicial review of this assessment, whether by the Conseil d'Etat or an ordinary court. Furthermore, "instructing the ordinary court, in such circumstances, to substitute its assessment for that of the government authority would amount to granting it jurisdiction inconsistent with the principles governing the relationship between government authorities and the courts". "The result is a disproportionate interference with the rights of third parties, which discriminates against this class of people in comparison with those for whom a judicial review is provided."[25] The Brussels legislature has admitted defeat. Article 137 is currently under review.[26]

More recently, the AJPC has dealt with a matter concerning Article 52 of the previous CWATUP, which contained provisions identical to those of Article 137 OOPU. In Judgment 156/2003 it came to a similar decision on the same grounds.[27]

The system of tacit authorisation has therefore been condemned, at least where it involves a tacit decision in a case in which it has not been possible for the project to be granted permission earlier in the proceedings.

On the other hand, when the legislature infers from the appellate authority's silence that the decision being challenged is to take effect – as laid down at the end of Article 121 of the CWATUP, for example – it is not in contradiction with Judgment 78/2001.[28] Quite a few comments could be made. The AJPC says nothing about third-party rights, whose existence it nevertheless asserts. Are these rights inferred from Article 23 of the Constitution, infringement of which, together with Articles 10 and 11 of the Constitution, was the issue submitted to the AJPC?

Tacit authorisation condemned by the Court of Justice

When a Community directive renders a project subject to prior authorisation, a process of tacit authorisation is not considered appropriate for enforcing Community law (ECJ, 28 February 1991, C-360/87, *Commission v. Italy*, Reports I, p 791, concerning groundwater). This decision was confirmed, for tacit authorisations, in the judgment of 14 June 2001, *Commission v. Belgium*, C-230/00, regarding a case

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[24] Oddly enough, it was by referring to this Judgment 78/2001 and concurring in its interpretation that a Flemish division of the Conseil d'Etat allowed an appeal against implied environmental planning permission (Milieuvergunningsdecreet, Article 25, § 1, and Vlarem I, Article 50), Conseil d'Etat, 27 June 2002, Salaets, 108540, *T.R.O.S.*, 2002, pp. 191 et seq., comments J. Verkest.

[25] Administrative Jurisdiction and Procedure Court, 7 June 2001, 78/2001, *J.L.M.B.*, 2001, pp. 1203 et seq., comments 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, comments J. Verkest; *Am.-Env.*, 2002/1, p. 45, comments P. Nicodeme, "L'arrêt 78/2001 de la Cour d'arbitrage: une atteinte disproportionnée aux droits du demandeur de permis d'urbanisme?"; J.-F. Neuray, "Vie et mort du permis tacite", *A.P.T.*, 2002, pp. 55 et seq.

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

[27] Administrative Jurisdiction and Procedure Court, 26 November 2003, 156/2003.

[28] Similarly, J. Sambon, op. cit, No. 5.

in which the Commission had criticised a series of Belgian laws in the light of a large number of environmental protection directives. The Court of Justice held that the national authorities were required "to examine individually every request for authorisation".[29]
This decision can only be approved: in the absence of authorisation, there is no guarantee that a project will actually be examined, there is no assessment of the project's impact on the environment, and no specific operating requirements are laid down. As J. Sambon points out, this criticism extends even to laws allowing tacit authorisation subject to compliance with regulatory emission standards.

In his opinion on case C-230/00, Advocate General Mischo expressed the even plainer view that both tacit authorisation and tacit refusal conflicted with the obligation under Community law to submit such steps for authorisation. The Court had already found to this effect in its judgment of 28 February 1991, C-131/88, *Commission v. Germany*, Reports, I, p. 825.

Authorities' liability for refusal or late granting of permission

On this question, see our comments on Nivelles Court, *référés* ("urgent applications"), 26 May 1987, *Aménagement* (Planning), 1987, p. 88 et seq., and on Brussels Court, 26 September 1990, *Aménagement* (Planning), 1991, p. 51 et seq.; see also F. Haumont, "Responsabilité de l'administration en matière d'aménagement de territoire", in *La responsabilité des pouvoirs publics*, Brussels, Bruylant, 1991, p. 261 et seq.

Fixed fine

Article 40 § 9 of the Walloon decree on environmental planning permission provides as follows: "Damages equal to twenty times the amount of the handling fee referred to in Article 177, paragraph 2, (1) and (2) shall be paid by the Region if refusal of permission arises out of the absence of a decision at first instance or on appeal and if no summary report has been sent within the prescribed time-limit. Claims for damages fall within the jurisdiction of the courts."

2. Judicial remedies in respect of excessive length of proceedings in Belgian administrative law: recent case-law of the European Court of Human Rights

Belgium was recently found by the European Court of Human Rights to be in breach of Article 6 § 1 of the Convention: in its judgment of 1 July 2004 in *Entreprises Robert Delbrassine S.A. v. Belgium* the Court found that a case relating to administrative proceedings had not been heard within a reasonable time. The Court might well deliver a similar finding in the *Vanpraet v. Belgium* case, which it declared admissible on 28 October 2004. Length of administrative proceedings was again the issue. We shall consider these two cases briefly below.

In the first of these cases the Court found against Belgium after establishing that the Conseil d'Etat had not delivered judgment until more than five years after the case had been referred to it. The Belgian government underlined the complexity of the case, given that, amongst other things, it specifically concerned the law on planning, development and the environment, and given also the number of third parties and the interconnectedness of the cases. The applicant argued that nothing in its attitude had contributed to the unreasonable length of the proceedings, and the Court decided in its favour. The Court observed that although "the case presented certain special difficulties, especially given the number of parties that had applied to be joined to the proceedings", the length of the proceedings resulted mainly from the length of time taken by the legal assistant to file his report and that the government had provided no explanation for the greater part of the delay.

In *Vanpraet v. Belgium* the applicant likewise complained of the length of the proceedings that he had initiated before the Conseil d'Etat, the latter having declared inadmissible on 9 June 1998 an appeal that he had lodged on 29 November 1991. The government raised an objection to admissibility based on failure to exhaust all domestic remedies within the meaning of Article 35 of the Convention. It held that "the applicant should have sued the Belgian state in the domestic courts in order to have it ordered, on the basis of Article 1382 of the Civil Code, to pay damages for any injury sustained". Amongst other things, it here argued "that, since a judgment of 19 December 1991, the Belgian Court of Cassation has accepted the

[29] *J.L.M.B.*, 2001, p. 1200, comments J. Sambon; *A.J.T.*, 2001-01, p. 350, comments D. Van Heuven and S. Ronse.

principle whereby the State may incur civil liability for injury caused by negligence by members of the court in the performance of their duties". It then cited "a number of rulings by the courts below that had ordered the State to pay damages for violations of the right to a hearing within a reasonable time".
The European Court of Human Rights found that the Belgian Court of Cassation had, at the time when Mr Vanpraet lodged his application, already accepted the principle whereby State liability could be incurred for negligence by members of the court in the performance of their duties. It pointed out, however, that the various rulings by the lower courts cited by the government as applying this principle had all occurred after August 1998, apart from one decision "which nevertheless concerned excessive length of non-judicial proceedings". The Court consequently held that "at the time when the application was lodged, the possibility of raising the question of the State's liability for injury caused by negligence by members of the court who had failed to comply with the requirements of 'reasonable time' within the meaning of Article 6 of the Convention had not yet acquired a degree of legal certainty such that it could or should have been used for the purposes of Article 35 § 1 of the Convention". It concluded that the government's objection that domestic remedies had not been exhausted was not admissible and adjourned examination of the merits, considering that the latter raised "serious questions of fact and law".[30]

[30] The European Court of Human Rights had yet to deliver judgment on the merits at the time of writing.

BOSNIA AND HERZEGOVINA

2. Have such delays been acknowledged by court decisions? Which 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.

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. 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. 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.

6. Is this remedy also available 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 to, 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 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/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 only general time-limits for the administrative bodies which govern issuing decisions. If these time-limits are not observed in the procedure initiated by a party, the latter could proceed with an appeal procedure considering that a negative decision was 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 have reasonably been 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.

BULGARIA

2. Have such delays been acknowledged by court decisions? Which 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 (judgment 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 (judgment 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 judgment or the transmitting of an appeal against a judgment 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 completed proceedings.

Articles 368-369 of the new Code of Criminal Proceedings 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 order the prosecutor to bring the preliminary investigation to an end within two months or put an end to the penal proceedings.

6. Is this remedy also available 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

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.

CROATIA

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

Yes, in all types of proceedings, where the excessive delays are experienced mostly in civil and enforcement proceedings, while in criminal proceedings there are very few delays.

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

Yes, by the decisions of the national courts and by the judgments of the European Court of Human Rights (hereinafter: the European Court).

In Croatia such delays have been acknowledged since 1999 by the decisions of the Constitutional Court of the Republic of Croatia (hereinafter: the Constitutional Court).

From 29 December 2005, such delays have also been acknowledged by the decisions of national courts of law (ordinary/regular and specialized courts), and these are: District Courts (21 in total), the High Commercial Court of the Republic of Croatia, the High Misdemeanour Court of the Republic of Croatia and the Supreme Court of the Republic of Croatia as the highest court of law in Croatia (hereinafter: the Supreme Court).

2.1. Case-law of the Constitutional Court:

The Constitutional Court found in numerous cases a violation of the right to a trial within reasonable time as guaranteed by Article 29 § 1 of the Constitution of the Republic of Croatia ("Narodne novine", Official Gazette, no. 41/01; hereinafter: the Constitution), and by Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (hereinafter: the European 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).

2.2. Case-law of the Supreme Court:

After entry into force of the new Courts Act on 29 December 2005 ("Narodne novine", Official Gazette, no. 150/05; hereinafter: the 2005 Courts Act) national courts of law also considered in numerous cases that there had been a violation of the right to a trial within reasonable time as guaranteed by Article 29 § 1 of the Constitution and Article 6 § 1 of the European Convention and Article 4 of the 2005 Courts Act, because of the excessive length of proceedings (see for example, decisions of the Supreme Court nos. Gzp-10/06 of 25 May 2006; Gzp-124/06 of 30 May 2006; Gzp-4/06 of 3 July 2006; Gzp-113/06 of 5 July 2006, etc.)

2.3. Case-law of the European Court

See, among other cases where the European Court declared violation of Article 6 § 1 of the European Convention with respect to Croatia, the following cases: *Horvat v. Croatia* (judgment of 26 July 2001)[1] and *Delić v. Croatia* (judgment of 27 June 2002) in respect of civil proceedings, *Camasso v. Croatia* (judgment of 13 January 2005) in respect of criminal proceedings, and *Cvijetić v. Croatia* (judgment of 26 February 2004) in respect of enforcement 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

[1] This case was closed by Resolution ResDH(2005)60 summarising the measures adopted by the authorities to comply with the judgment.

Constitution or legislation?

Yes, it exists in Article 29 § 1 of the Constitution and Article 4 § 1 of the 2005 Courts Act.

Article 29 § 1 of the Constitution provides that:

> *"(1) In the determination of his rights and obligations, or of the suspicion or the charge of a penal offence against him, everyone shall have the right to a fair trial within a reasonable time by an independent and impartial court established by law."*

Article 4 § 1 of the 2005 Courts Act provides that:

> *"(1) In the determination of his rights and obligations, or of the suspicion or the charge of a penal offence against him, everyone shall have the right to a fair trial within a reasonable time by an independent and impartial court established by law."*

Finally, in accordance with Article 140 of the Constitution, the European Convention is directly applied in Croatia and has a priority over all other domestic legislation.

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

At the end of 2005, the Supreme Court created a programme for resolving old cases, being criminal cases older than three (3) years and all civil cases older than five (5) years.

On 31 December 2005, when the programme implementation started, there was a total of 78.582 unresolved old cases at county and municipal courts (15.156 criminal and 63.436 civil cases). On 30 September 2006, the number of old unresolved cases amounted to 58.481 (7.653 criminal and 50.828 civil cases), which means that the initial number was reduced by 20.111 cases, i.e. by 26%.

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 are legal remedies provided by the 1999 Constitutional Act of the Constitutional Court of the Republic of Croatia ("Narodne novine", Official Gazette, nos. 99/99, 42/02, 49/02 - consolidated text) and by the 2005 Courts Act.

Note: Since the revisions of the 1999 Constitutional Act of the Constitutional Court of the Republic of Croatia, adopted in 2002, essentially changed the jurisdiction of the Constitutional Court in respect to the protection of the right to a trial within reasonable time, this Act shall be referred to in the text as: the 2002 Constitutional Act.

5.1. Article 63 of the 2002 Constitutional Act 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 constitutional complaint can be lodged by a party in the proceedings.

There is no prescribed time-limit - the constitutional complaint may be lodged at any time during the proceedings.

The remedy procedure is a separate one before the Constitutional Court.

5.2. 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.

This request is decided on by the higher instance court of law in respect of a lower instance court before which proceedings are pending. These are:

- District Courts - in respect of the length of proceedings before the Municipal Courts,
- the High Misdemeanour Court of the Republic of Croatia - in respect of the length of proceedings before the Misdemeanour Courts,
- the High Commercial Court of the Republic of Croatia - in respect of the length of proceedings before the Commercial Courts, and
- the Supreme Court - in respect of the length of proceedings before District Courts, the High Misdemeanour Court of the Republic of Croatia, the High Commercial Court of the Republic of Croatia and the Administrative Court of the Republic of Croatia.

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.

Relevant articles of the 2005 Courts Act provide that:

Article 27

"(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.

(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 will adjudicate on the matter.

(3) The adjudication procedure pertaining to the request stated in Paragraph 1 of the Article hereof is of urgent nature."

Article 28

"(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.

(2) The compensation will be remunerated from the State Budget within 3 months of the day the party filed its request for compensation.
(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."

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.

5.3. The relations between the Constitutional Court and national courts of law concerning the protection of the right to a trail within reasonable time after 29 December 2005.

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.

In all other cases the Constitutional Court has become the court of last instance concerning the protection 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.)

In this sense the constitutional complaint for the protection of the right to a trial within reasonable time still remains the last national legal remedy to be exhausted before submitting the application to the European Court.

Finally, regarding pending cases before the Constitutional Court on 29 December 2005, the 2005 Courts Act stipulated the following:

Article 158.

> *"(2) The provisions of this Law for protection of the right to a trial within a reasonable time can not be applied on the cases, in which till the day of entry into force of this Law constitutional complaint is filed, based on the Article 63 of the Constitutional Act on the Constitutional Court of the Republic of Croatia ("National Gazette", no. 99/99, 29/02 and 49/02 – consolidated wording). Upon the submitted constitutional complaints shall decide the Constitutional Court of the Republic of Croatia according to the provisions of the Constitutional Act."*

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

6.1. These legal remedies are available *only for pending proceedings*.

In their decisions, the courts of law and the Constitutional Court will determine a time-limit within which the competent court of law is due to complete the proceedings and deliver a final decision on the merits of the case.

6.2. Concerning *already completed proceedings* there is one thing to point out: although no case has been recorded so far in the national courts practice, in principle there is a legal possibility for every party to file a civil suit before the competent court of law for the compensation of damage he/she suffered because of the unreasonably (excessive) length of relevant already completed judicial proceedings. This right stems from international treaties ratified by the Republic of Croatia (the European Convention in the first place) and from the Croatian Constitution that guarantees to everyone the right to have a judicial decision in a reasonable time.

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

There are no judicial fees either for the submission of the constitutional complaint or for the request for the protection of the right to a trial within a reasonable time.

Judicial fees would be paid only in civil proceedings related to the compensation for damage filed by a party who suffered because of the unreasonably long duration of already completed judicial proceedings (see *supra*, under the question no. 6.2.).

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 to, the criteria applied by the European Court of Human Rights of Human Rights in respect of Article 6 § 1 ECHR?

The same criteria as applied by the European Court.

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 consequences of a possible failure by the authority to respect the deadline?

No, there is no deadline, but all these procedures are of urgent nature. They have a priority related to other cases.

10. What are the available forms of redress:

- acknowledgement of the violation	YES
- pecuniary compensation	
o material damage	NO
o 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)	-

The competent courts of law, i.e. the Constitutional Court, are to decide on whether the pending proceedings complained against lasted excessively long; if so, they will determine the time-limit within which the court before which the proceeding is pending shall decide the case on the merits, and shall also fix appropriate compensation for the applicant in respect of the violation found concerning his/her right to a trial within a reasonable time.

11. Are these forms of redress cumulative or alternative?

Acknowledgement of the violation, determination of non-material damage and measures to speed up the pending proceedings (i.e., setting the time-limit for the competent court to decide on the case) are cumulative ones.

Only when the court proceeding is completed *before* the competent court of law delivers a decision on the request for the protection of the right to a trial within a reasonable time in accordance with the Articles 27 and 28 of the 2005 Courts Act, or *before* the Constitutional Court renders a decision on a constitutional complaint, the competent court of law, or the Constitutional Court, shall not prescribe the measure to speed up the proceedings, because the proceedings are not pending any more. In such cases courts only establish the violation of the right to a trial within a reasonable time and determine an appropriate compensation for the applicant.

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

The compensation is determined in the light of the particular circumstances of the case and on the basis of the social and economic situation in Croatia, having regard to the criteria lay down in the Constitutional Court's case-law.

When deciding on a compensation for the violation of the applicant's right to obtain a final decision on disputes within a reasonable time, the Constitutional Court, just like competent courts of law, as a rule considers the period from the date when the European Convention entered into force in the Republic of Croatia (5 November 1997), but they may also exceptionally take into account an unreasonably long period of total judicial inactivity even prior to 5 November 1997, depending on the specific circumstances of each individual case.

There is no maximum amount of compensation to be awarded.

In the period from 2002 to 24 November 2006 the Constitutional Court ordered the Ministry of Finance of the Republic of Croatia to pay appropriate compensation for the violation of the right to a trial within reasonable time amounting to total of 14.846.905,00 kunas (approx. 2.033.823,00 EUR). The appropriate compensation was awarded to 1.887 applicants. The average amount of the appropriate compensation per applicant was 7.867,99 kunas (approx. 1.078,00 EUR).

The highest amount paid so far to one applicant, according to the decision of the Constitutional Court,

amounted to 18.400,00 kunas (approx. 2.521,00 EUR).

On the other hand, the highest amount adjudicated to one applicant by the court of law in accordance with Article 28 of the 2005 Courts Act, amounted to 27.000,00 kunas (approx. 3.700,00 EUR) in civil proceedings (decision of the Zadar County Court, no. Gzp-5/2006), and to 45.000,00 kunas (approx. 6.165,00 EUR) in the enforcement proceedings (decision of the Zadar County Court, no. Gzp-36/2006). The Public Prosecution of the Republic of Croatia appealed against both decisions to the Supreme Court of the Republic of Croatia, which has not yet decided on the appeals.

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?

At the end of 2005, the Supreme Court created a programme for resolving old cases, being criminal cases older than three (3) years and all civil cases older than five (5) years, and imposed the obligation on presidents of all county courts and the president of the High Commercial Court of the Republic of Croatia to make and submit a timescale and to report on the pace of resolving those cases, which are to be treated as priorities.

Furthermore, the president of the Supreme Court, in accordance with the Article 10 §§ 2 and 5 of the 2005 Courts Act, redistributes the cases from the overburdened courts to those with lighter caseload.

Article 10 §§ 2 and 5 of the 2005 Courts Act provides that:

> *"(2) The President of the Supreme Court of the Republic of Croatia can decide if there is a different appropriately competent court, where the local and appropriately competent court cannot adjudicate on the case and reach a decision within reasonable time, due to the pending caseload.*
>
> *(5) Paragraph 2 of the Article hereof stipulates that the parties and their proxy are entitled to reimbursement of public transport expenses. The attorneys are entitled to reimbursement of travel expenses set out in the Tariff on Rewards and Reimbursement of Expenses of Prosecutors. The expenses of Paragraph 2 of the Article hereof will be reimbursed by State funds, if the expenses exceed those a party would incur if the proceedings were to be held before a locally competent court."*

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

According to Article 31 §§ 4 and 5 of the 2002 Constitutional Act, the Constitutional Court in its decision accepting the constitutional complaint requests from the president of the court before which the proceeding is pending a written notice of the dates of passing and sending the decision. The president of the relevant competent court is obliged to deliver this information to the Constitutional Court within a term of eight (8) days from the delivery of the decision, and no later than eight (8) days from the expiry of the deadline determined in the Constitutional Court's decision.

On the other hand, regarding the obligation to pay appropriate compensation to the applicant, the Ministry of Finance of the Republic of Croatia informs the Constitutional Court on the allocated appropriate compensation adjudicated to the applicant for the violation of her/his right to have a final court decision in a reasonable time immediately after the compensation is paid to the applicant.

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.

Until now the Ministry of Finance of the Republic of Croatia always enforced the decisions of the Constitutional Court and of the competent courts of law. The Ministry has paid all adjudicated compensations to the applicants within the statutory term of three months from the submission of the application for the payment.

On the other hand, there were several cases where the competent court failed to deliver its judgment within the deadline determined by the Constitutional Court. In such cases the competent court before which the proceeding is still pending timely informed the Constitutional Court that it was not possible for it to deliver the decision within the determined deadline, and explained in detail the reasons for such omission. The Constitutional Court forwarded this information of the competent courts to the Supreme Court of the Republic of Croatia and to the Government of the Republic of Croatia via its Ministry of Justice.

Article 31 of the 2002 Constitutional Act provides that:

> *"(1) The decisions and the rulings of the Constitutional Court are obligatory and every individual or legal person shall obey them.*
>
> *(2) All bodies of the central government and the local and regional self-government shall, within their constitutional and legal jurisdiction, execute the decisions and the rulings of the Constitutional Court.*
>
> *(3) The Government of the Republic of Croatia ensures, through the bodies of central administration, the execution of the decisions and the rulings of the Constitutional Court.*
>
> *(4) The Constitutional Court might determine which body is authorized for the execution of its decision, respective its ruling.*
>
> *(5) The Constitutional Court may determine the manner in which its decision, respective its ruling shall be executed."*

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?

16.1. Before the 2005 Courts Act entered into force (29 December 2005), the applicant could have, after the decision of the Constitutional Court, applied to the European Court. Until that day the Constitutional Court was the court of the first and last instance for deciding on the excessive length of all judicial proceedings in the Republic of Croatia.

After the 2005 Courts Act entered into force (29 December 2005), against the decisions of the competent courts of law of the higher instance on the excessive length of judicial proceedings before the lower instance courts the applicants may appeal to the Supreme Court.

Against the final decision of the Supreme Court whereby this court decided in the second instance on the appeal against the decision of the first instance court, the applicant may lodge a constitutional complaint, on the grounds of Article 62 of the 2002 Constitutional Act, within 30 days from the day when the Supreme Court's decision was received.

Article 62 of the 2002 Constitutional Act provides that:

> *"(1) Everyone may lodge a constitutional complaint with the Constitutional Court if he/she deems that the individual act of a state body, a body of local and regional self-government, or a legal person with public authority, which decided about his/her rights and obligations, or about suspicion or accusation for a criminal act, has violated his/her human rights or fundamental freedoms guaranteed by the Constitution, or his/her right to local and regional self-government guaranteed by the Constitution (hereinafter: constitutional right).*
>
> *(2) If some other legal remedy is provided against violation of the constitutional rights, the constitutional complaint may be lodged only after this remedy has been exhausted."*

The appeal is not permitted only when the Supreme Court's proceedings last excessively long. Applicants may, in such cases, directly lodge a constitutional complaint with the Constitutional Court on the grounds of Article 63 of the 2002 Constitutional Act (see ***supra***, under the question 5.1.).

Accordingly, after 29 December 2005, the Constitutional Court decides as the court of the first and last

instance only in cases related to the excessively long duration of proceedings before the Supreme Court in compliance with Article 63 of the 2002 Constitutional Act. In all other cases it decides only as the court of the last instance in accordance with Article 62 of the 2002 Constitutional Act.

16.2. According to the 2005 Courts Act the proceedings are of urgent nature, but the deadline for the competent court of law to deliver its decision is not stipulated.

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?

17.1. Yes, it is possible to use these remedies more than once in respect of the same proceedings. A request for the protection of the right to a trial within a reasonable time in accordance with Articles 27 and 28 of the 2005 Courts Act, i.e., a constitutional complaint lodged with the Constitutional Complaint as the court of the first and last instance due to the excessive length of the Supreme Court proceedings in accordance with Article 63 of the 2002 Constitutional Act, may be used more than once provided that the proceeding is still pending, and at the latest until the decision on the completion of proceedings is served on the applicant.

17.2. No, there is no minimum period of time for re-submitting the request for the protection of the right to a trial within a reasonable time in accordance with the Articles 27 and 28 of the 2005 Courts Act, i.e. for lodging the constitutional complaint with the Constitutional Court as the court of first and last instance due to the excessive length of the proceedings before the Supreme Court in accordance with the Article 63 of the 2002 Constitutional Act. A legal remedy may be used again immediately, and the competent court shall meritoriously decide according the circumstances of each individual case.

17.3. Exceptionally, only when a constitutional complaint is lodged against the decision of the Supreme Court as an court of appeal, whereby the Supreme Court decided on the appeal against the first instance judgment of the lower instance court delivered in accordance with Articles 27 and 28 of the 2005 Court Act, than a constitutional complaint can be lodged only once. In such a case, the constitutional complaint is lodged on the grounds of Article 62 of the 2002 Constitutional At (see ***supra***, under the question no. 16.1.) within 30 days from the day when the disputed decision was served on the applicant. The Constitutional Court than – as the Court of last instance – reviews alleged violations of the applicant's constitutional rights done in the final decision of the Supreme Court.

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

Constitutional Complaints before the Constitutional Court
against the excessive length of Judicial Proceedings
1 January 2000 - 24 November 2005

Year	Number of filed constitutional complaints	Number of solved constitutional complaints	Number of accepted constitutional complaints (established violations)
2000	64	49	1
2001	43	30	0
2002	442	144	6
2003	542	285	42
2004	925	543	276
2005	1433	724	493
24 November 2006	65*	888**	666**
TOTAL	3.514	2.663	1.484
TOTAL %	100%	75,78%	55,73%

* 65 constitutional complaints filed in 2006 include: a) those sent to the Constitutional Court by a registered mail until 29 December 2005 (*see supra*, Article 158 of the 2005 Courts Act under the question no. 5.3.), b) those filed against the unreasonably long proceedings of the Supreme Court on which the Constitutional Court still decides in the first and last instance (*see supra*, Article 63 of the 2002 Constitutional Act under the question no 5.1.), and c) those filed against the decisions of the Supreme Court which ruled against the appeals of the lower instance courts decisions delivered in accordance with Articles 27 and 28 of the 2005 Courts Act (*see supra*, Article 62 of the 2002 Constitutional Act under the question no. 16.1.)

** The matter concerns constitutional complaints filed with the Constitutional Court before 29 December 2005, and the Constitutional Court is entitled to solve them in accordance with the legislation in force prior to 29 December 2005, i.e. until entering into force of the 2005 Courts Act (see *supra*, Article 158 of the 2005 Courts Act under the question no. 5.3.)
On the other hand, in compliance with the new legal remedy prescribed in Articles 27 and 28 of the 2005 Court Act, from 1 January 2006 to 30 September 2006 the Supreme Court filed the following number of requests, i.e. appeals in accordance with Articles 27 and 28 of the 2005 Courts Act:

- the total number of the requests for the protection of the right to a trial within a reasonable time before county courts (21 in total), on which the Supreme Court decides as the court of first instance: **281**

- the total number of the requests for the protection of the right to a trial within a reasonable time before the High Commercial Court of the Republic of Croatia, on which the Supreme Court decides as the court of first instance: **39**

- the total number of the requests for the protection of the right to a trial within a reasonable time before the Administrative Court of the Republic of Croatia, on which the Supreme Court decides as the court of first instance: **121**

- the total number of appeals against the first instance decisions of the lower instance courts (county courts), which decided on the requests for the protection of the right to a trial within a reasonable before municipal courts, on which the Supreme Court decides as an court of appeal: **97**

19. What is the general assessment of this remedy?

These remedies are available and effective, and free of charge for the applicants.

20. Has this remedy had an impact on the number of cases possibly pending before the European Court of Human Rights 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 Article 63 of the Constitutional Act on the Constitutional Court 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 inadmissible (by July 2004, 12 cases were thus declared non admissible by the Court).

Further to *Nogolica v. Croatia* case (judgment of 17 November 2005), 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 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 (judgment 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*, Note under the 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*, judgment of 9 May 2003).

In its judgment, *Debelic v. Croatia* (judgment of 26.05.2005), the Court reaffirmed the adequacy of the remedy in general, but found that, in this particular case, the Constitutional Court as the authority competent to decide on it, managed to render it ineffective.

CYPRUS

1. Does your country experience excessive delays in judicial proceedings? Which 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? Which courts (national/European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR 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*, (judgment of 21 March 2000), *Louka v. Cyprus, (*judgment of 21 August 2000), *Gregoriou v. Cyprus*, (judgment of 25 March 2003) and *Serghides a.o. v. Cyprus* (judgment 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 judgment 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 judgments should be handled down promptly.

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it 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.

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.

If a judgment 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:

- order the retrial of the case by a different court

- make an order for the issue of Judgment within a time limit
- issue any other necessary order.

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

6. Is this remedy also available 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 to, 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
- pecuniary compensation
  - material damage NO
  - non-material damage NO
- measures to speed up the proceedings if they are still pending YES
- possible reduction of sentence in criminal cases YES

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 to, those applied by the European Court of Human Rights? Is there a maximum amount of compensation to be awarded?

The legal system of Cyprus 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 the case of non-enforcement of such a 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. Is there any statistical data available on the use of this remedy? If so, please provide it in English/French

No.

CZECH REPUBLIC

2. Have such delays been acknowledged by court decisions? Which 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 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. the Czech Republic* (judgment of 10 July 2003), *Dostal v. the Czech Republic* (judgment of 25 may 2004), and *Houfova v. the 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. 192/2003 introduced a new Article 174a to the Law no. 6/2002 on tribunals and judges (in force since 01.07.2004) according to which a party who considers that proceedings have lasted too long may ask for a deadline for taking a procedural action. This deadline is set within 20 working days by the superior court if it finds the request motivated. The court in question is bound by this deadline and there is no possibility to appeal a decision setting/refusing such deadline.

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.

The draft law modifying the Law no. 82/1998 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.

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 also available in respect of pending proceedings? How?

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

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

None.

19. What are the available forms of redress:

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

- other (specify what)

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. the Czech Republic*, (judgment 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.

DENMARK

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

Generally, Denmark does not experience excessive delays in judicial proceedings. However, as in all legal systems, there are of course unfortunate examples of the opposite.

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

Yes. A number of examples can be found where Danish courts have acknowledged that the length of proceedings amounted to a violation of article 6 of the ECHR.

Case-law of national courts

One example is printed in the Weekly Law Review (*Ugeskrift for Retsvæsen*) 1998, p. 1759. Two persons were charged with fraud. The total length of proceedings was more than six years. Having regard to the relatively limited extent of the case and the lack of complexity, the High Court held that a violation of Article 6 of the ECHR had taken place. Therefore, the penalties imposed were suspended.

Another example is printed in the Weekly Law Review (*Ugeskrift for Retsvæsen*) 2001, p. 510. The case concerned a compensation claim following a car accident. The applicant was acquitted under the Road Traffic Act and subsequently claimed compensation. The compensation claim as such was rejected, but having regard to the lack of complexity of the criminal case against the applicant that had nevertheless lasted almost four years, the court held that a violation of Article 6 of the ECHR had taken place, and therefore, compensation was awarded on this basis.

In its decision of 12 June 2003 (No. 550/2002), the Supreme Court of Denmark considered the fact that the case was not proceeded for two years as a violation of Article 6.1 ECHR.

Case-law of the European Court of Human Rights

In *A and Others v. Denmark* (judgment of 8 February 1996), and the case of *Kurt Nielsen v. Denmark* (judgment of 15 February 2000), the Court concluded that the "reasonable time" requirement was not satisfied and there had accordingly been a breach of Article 6.1 ECHR.

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. However, the European Convention can be invoked directly before the Danish courts.

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

The Court Administration monitors the length of proceedings in general for civil as well as criminal cases and for enforcement proceedings. There are no statistics available concerning the overall length of proceedings, but according to statistics for 2004, the average length of a criminal case before a city court was 69 days, whereas the average length of a civil case before a city court was 13.7 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.

Danish law does not contain any legal remedy that has been specifically designed or developed to provide a remedy in respect of complaints of length of judicial proceedings.

In civil as well as criminal cases, 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 or reduction of the sentence. The question may be raised by any party to the case.

In criminal cases that are discontinued before the case is brought before the courts, a compensation claim can be lodged with the Regional Public Prosecutor/the Director of Public Prosecutions. The compensation claim is considered under section 1018h of the Administration of Justice Act which in practice also covers compensation on the basis of the length of proceedings.

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

Yes.

According to section 96 of the Administration of Justice Act, the public prosecutors must proceed with any case as quickly as possible, having regard to the nature of the case in question.

In criminal cases, 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 the basis of a complaint or otherwise – give instructions to the Chief Constables, including instructions concerning the handling of a specific case. When receiving a complaint, the Regional Public Prosecutor must look into it.
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. The court will then make a decision on this issue, including in relation to ECHR article 6. This decision can be appealed to a higher court. There is no possibility of compensation at this point in the proceedings (but there will be at a later stage (see under Question 5 - this remedy should rather be seen as being preventative of further delay.

This remedy has already been used in practice. Thus, for instance, the High Court of Eastern Denmark decided in a decision of 2 April 1996, as requested by the prosecution, to uphold the decision of the City Court of Copenhagen to schedule the case in question for trial even though the defence counsel asked to have it postponed.

Furthermore, on 13 January 2004, the Supreme Court upheld, as requested by the prosecution, the decision of the High Court of Eastern Denmark to schedule a case for trial with long days in court – in spite of protests from the defence – stating that the persons in question had been charged for more than 9½ years and that the defence itself had held that the length of the proceedings was violating the ECHR. Hence, the trial had to be completed as soon as possible even if it meant working longer hours than usually for all the parties involved.

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

When assessing the reasonableness of the length of the proceedings, the authorities (the Regional Public Prosecutor/the Director of Public Prosecutions and the courts) base themselves on the criteria set out by the ECtHR.

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
- measures to speed up the proceedings, if they are still pending YES
- possible reduction of sentence in criminal cases YES
- other (specify what)

Exemption from paying legal costs that the person in question should otherwise have paid.

11. Are these forms of redress cumulative or alternative?

The forms of redress mentioned can be alternative or cumulative. It is up to the courts to decide how to provide redress for the applicant.

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

As it is the case with other compensation claims, it falls within the discretion of the courts to mete out the compensation. When meting out, of course, the courts may find guidance in the level of compensation set out by the ECHR.

There is no fixed maximum amount.

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 Court Administration monitors the length of proceedings in general for civil as well as criminal cases and for enforcement proceedings. The measures available for pending proceedings however, work on an individual basis.

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

In case a higher court has ordered that the case in question must be scheduled for trial, the responsibility for implementing this decision lies with the court dealing with the case.

The Regional Public Prosecutors generally supervise the work of the local police districts, including in relation to length of proceedings.

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

There are no known examples of non-enforcement of such a decision. The relevant measure in this situation would be a new complaint to the higher court or to the Regional Public Prosecutor/the Director of Public Prosecutions.

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. As indicated in the reply to Question 2, it is the court dealing with the concrete case that decides on a complaint concerning the length of proceedings. Therefore, a decision concerning the length of proceedings can – along with other elements of the judgment – be appealed to a higher court. The deadline

is thus the same as for appeal of any other element of the judgment. Non-compliance with the deadline would mean that the question cannot be appealed, unless special conditions for disregarding the deadline are met.

Similarly, decisions made by the Regional Public Prosecutors can be appealed to the Director of Public Prosecutions. His decisions can furthermore be challenged before the courts. The deadlines are the same as for appeal or bringing proceedings concerning any other element of the decision. Non-compliance with the deadline would mean that the question cannot be appealed, unless special conditions for disregarding the deadline are met.

As for pending proceedings, please refer to the reply to Question 6.

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?

Yes – in the unlikely event that the first complaint does not solve the problem. There is no fixed minimum period of time which needs to have elapsed between the first decision and the second application for a new decision.

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

There are unfortunately no statistics available. Please refer to the summaries mentioned in the reply to Question 6.

19. What is the general assessment of this remedy?

It is the general assessment that the remedies available satisfy the requirements set out in Article 13 of the ECHR.

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.

There are unfortunately no statistics 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.

In *Ohlen v. Denmark* (decision of 6 March 2003) and *Pedersen and Pedersen v. Denmark* (decision of 12 June 2003), the Court considered that, in the absence of the confirmed practice demonstrated by the Government, the wording of the invoked sections of the Administration of Justice Act does not allow to consider it an effective remedy for the purposes of Article 35.1 ECHR.

More recently, there were some examples where this remedy has been used. In fact, in *Ohlen v. Denmark* (judgment of 24 May 2005), the Court found that the redress afforded at domestic level for the violation of the applicant's right to trial within reasonable time (reduction of sentence) was adequate and sufficient.

ESTONIA

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

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

2. Have such delays been acknowledged by court decisions? Which 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 (judgment 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 behaviour 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 (Judgment 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. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

According to the Ministry of Justice,[1] 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.

[1] 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

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.

FINLAND

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

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? Which 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, Article 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 Article 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 ECHR has in four cases concerning Finland found a violation of Article 6 of the Convention because of the excessive length of the proceedings. These cases are *Launikari v. Finland* (judgment of 5 October 2000); *Turkikye IS Bankasi v. Finland* (judgment of 18 June 2002); *Pietiläinen v. Finland* (judgment of 5 November 2002); and *Kangasluoma v.. Finland* (judgment 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 Article 6 of the Convention (as applied and interpreted by the ECtHR).

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it 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 Articles 6 and 13 of the Convention, and to the interpretation of these articles in *Kudla v. 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.e., 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 Article 6 and 13 of the Convention.

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 *Eskelinen v. Finland* (decision of 3 February 2004), the Court noted that the Finish Government have failed to show how the applicant could obtain relief – either preventive or compensatory – by having recourse to the relevant provisions of the Judicial Procedure Code. On the contrary the Government admitted that a mere delay was not as such a ground for compensation under Finnish law.

FRANCE

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

Generally yes.

2. Have such delays been acknowledged by court decisions? Which 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 national courts

Among many cases, see for example, the judgments of the Tribunal de Grande Instance (Paris) of 9 June and 22 September 1999, the Aix en Provence and Lyon Courts of Appeal judgments of 14 June and 27 October 1999.

Case-law of the European Court of Human Rights

Amongst many others, see for example, *Caillot v. France* (judgment of 4 September 1999), *Delgado v. France* (judgment of 14 November 2000), *Piron v. France* (judgment of 14 November 2000), *Serra v. France* (judgment of 13 June 2000) and *Mutimura v. France* (judgment of 8 September 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?

An explicit requirement of reasonableness of the length of the proceedings does not exist. Nevertheless, it is implicitly included in Article L. 781-1 of the Code of Judicial Organisation, which provides:

> *"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."*

A "denial of justice" has been interpreted by the Paris Tribunal de Grande Instance as including the right of a person to have his or her claims decided within a reasonable time (see under point 5).

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. Article L. 781-1 of the Code of Judicial Organisation provides for a legal remedy in cases where the length of administrative or judicial (civil as well as criminal) proceedings before the French courts has been excessive.

New provisions dating to 2005 modifying the procedural part of the Code of Administrative Justice 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.

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 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.

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

Yes. Regardless of the stage reached in proceedings of which the length appears excessive, Article L. 781-1 of the Code of Judicial Organisation allows litigants to obtain a finding of a breach of their right to have their cause heard within a reasonable time and compensation for the ensuing loss.

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

When assessing the reasonableness of the length of the proceedings, the competent authorities base themselves on the criteria set out by the European Court.

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 remedy is only a compensatory one.

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 challenged before a court of appeal.

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 the *Guimmarra and Others v. France* case (decision of 12 June 2001), the Court has held that, having regard to the developments in the case-law, the remedy provided for by Article L.781-1 of the Code of Judicial Organisation was an effective remedy for the purposes of Article 35.1, but only for those applications that are lodged with the Court before 20 September 1999. See also *Mutimura v. France* (judgment of 8 June 2004), *Mifsud v. France* (decision of 11 September 2002), and *Broca Texier-Micault v. France* (judgment of 21 October 2003, with respect to administrative procedure cases).

GEORGIA

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

Yes, our country experiences excessive delays in judicial proceedings. In particular in the sphere of enforcement of court judgments.

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

Such delays have been acknowledged by the European Court of Human Rights.

In the Case of *Assanidze v. Georgia*

According to the merits of the case the applicant, Tengiz Assanidze, was a Georgian national born in 1944. By the time of hearing he was in custody in Batumi, the capital of the Ajarian Autonomous Republic in Georgia. He had formerly been the mayor of Batumi and a member of the Ajarian Supreme Council. He was accused of illegal financial dealings in the Batumi Tobacco Manufacturing Company, and of unlawfully possessing and handling firearms. On 28 November 1994 he was sentenced to eight years' imprisonment and orders were made for his assets to be confiscated and requiring him to reimburse the pecuniary losses sustained by the company. On 27 April 1995 the Supreme Court of Georgia, on an appeal on points of law, upheld the applicant's conviction for illegal financial dealings. The applicant was granted a pardon by the President of the country on 1 October 1999, but was not released by the local Ajarian authorities.

While the applicant was still in custody (despite having been pardoned), further charges were brought against him on 11 December 1999 in connection with a separate case of kidnapping. On 2 October 2000 the Ajarian High Court convicted the applicant and sentenced him to twelve years' imprisonment. Although he was subsequently acquitted by the Supreme Court of Georgia on 29 January 2001, he had still not been released by the Ajarian authorities. Consequently, more than three years later, he remained in custody in a cell at the Short-Term Remand Prison of the Ajarian Security Ministry.

The applicant submitted that the failure to comply with the judgment acquitting him had infringed Article 6 § 1 of the Convention.

The Court held that the fact that the judgment of 29 January 2001, which was a final and enforceable judicial decision, had not been complied with more than three years after its delivery had deprived the provisions of Article 6 § 1 of the Convention of all useful effect.

In the Case of *Mebagishvili and Amat-G Ltd. v. Georgia.*

An application is lodged with the European Court of Human Rights on 17 December 2002.

The Applicant alleges that non-enforcement of the Decision of the Panel for Civil and Entrepreneur Cases of Tbilisi Regional Court of 6 December 1999, which imposed on the Ministry of Defence of Georgia the obligation of payment of 254.188 Georgian Laris "GEL" to Amat-G Ltd. constitutes a violation of Article 6 § 1.

In accordance with case law the right to fair trial includes the right to have the binding judicial decisions enforced, otherwise the right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. (*Prodan v. Moldova*, Judgment,18 May 2004, para 39.) "Execution of a judgment given by any court must be regarded as an integral part of the "trial" for the purposes of Article 6". (*Hornsby v. Greece*, Judgment, 19 March 1997, para 40). "The right to a court as guaranteed by Article 6 also protects the implementation of final, binding

judicial decisions, which, in States that accept the rule of law, cannot remain inoperative to the detriment of one party *(see, mutatis mutandis, the Hornsby judgment cited above, para 40).* Accordingly, the execution of a judicial decision cannot be unduly delayed*." (Immobiliare Saffi v. Italy*, Judgment, 28 July 1999, para 66.)

The European Court has not considered the merits of this 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?

Our legislation and Constitution do not provide for 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. However the Code of Criminal Procedure of Georgia and the Code of Civil Procedure of Georgia provide for terms and procedural guarantees for completion of proceedings in reasonable time.

Article 6(1) of the European Convention is to guarantee that within a reasonable time and by means of a judicial decision, an end is put to the insecurity into which a person finds himself as to his civil law position or on account of a criminal charge against him. This rationale entails that the provision also applies in cases where there is no question of detention on remand.

The European Court assesses the reasonableness of the length of the proceedings in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what is at stake for the applicant has also to be taken into account.[1]

The Code of Criminal Procedure of Georgia and the Code of Civil Procedure of Georgia provide for the guarantees of a participant of the proceedings.

a. The Code of Criminal Procedure of Georgia provides for terms for detention.

According to Article 162 of the Code of Criminal Procedure of Georgia pre-trial detention of a charged and detention pending trial should not exceed 9 months in total.

b. The Code of Civil Procedure provides for procedural guarantees as well. As regards the procedural terms.

> *"Procedural action shall be exercised within a term established by law. In case procedural term is not established by law, it shall be determined by a court. Determining the duration of the procedural term the court shall envisage the possibility of the completion of that procedural act for which this term has been established."*[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.

a. In accordance with the Code of Criminal Procedure a person is entitled to appeal before a court and protect his/her rights from unlawful decision of an investigator, public prosecutor etc at any stage of proceedings.

> *"…judicial control is set up over those procedural acts of the investigator and prosecutor which are associated with the restriction of the constitutional rights and freedoms of a person. In the cases and in accordance with a procedure established by this Code, a suspect, accused, attorney and other participant in a proceeding shall be entitled to appeal in court against refusal of the investigator or*

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1 *Kudla v. Poland* para 124.

2 Article 59, Code of Civil Procedure of Georgia, this Article also provides for terms for the consideration of a case of a particular nature. (The term for complex cases may be prolonged).

prosecutor to satisfy the motion, complaint or application".[3]

The Code of Criminal Procedure envisages the freedom of appeal against procedural acts and decisions, in particular:

"A participant in a criminal proceeding as well as other person and authority may, under the statute-established procedure, appeal against an act and decision of the authority or official who conducts the process".[4]

"A court may not waive the administration of justice. It shall, pursuant to jurisdiction, consider a criminal case, a submission, an application with regard to exercised procedural acts restricting the constitutional rights of citizens, complaints concerning illegal actions and activities on the part of a an investigator or prosecutor".[5]

At the same time the Code of Criminal Procedure provides for terms for lodging appeals at any stage of proceedings:

"An appeal against actions or decision of an investigator, head of investigating department or prosecutor may be lodged within the whole period of pre-trial investigation".[6]

The terms of consideration of appeals are determined by a procedure established by this Code.

Participants to the proceedings have the right to require the consideration of a case in no less than two judicial instances:[7] appeal and cassation, Here the Code provides for terms of lodging appeals with the court and other judicial guarantees.

b. The other issue is the violation of procedural norms by a judge, where the law of Georgia "On disciplinary proceedings and disciplinary liability of judges of the courts of general jurisdiction of Georgia" is applied.

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…".[8] Disciplinary liability maybe initiated by the President of the Supreme Court, Head of an Appellate Court, High Council of Justice of Georgia.[9] The reason of initiation of proceedings may be a claim or an application of a person, report of other judge, ruling or other act of a higher court, etc. At the end of proceedings the Disciplinary Board shall adopt a decision, which may be appealed before Disciplinary Council. The decision of the Disciplinary Council shall be final. As a result of which the judge may be justified or he/she may be imposed disciplinary liability and fine, or released from the position of a judge.

c. As regards the legislative guarantee of non-enforcement of a judgment or other decision of a court, the Criminal Code of Georgia provides for punishment for such behaviour:

"Non-enforcement of an effective judgment or any other court decision or impeding execution thereof by any government representative, officer of the State, local government or self-governmental body or by a person exercising administrative authority in an enterprise or any other organisation, - shall be punishable by fine or by socially useful labour ranging from one hundred and eighty to two hundred and forty hours in length or by imprisonment for up to a three-year term,

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3 Article 15, para 4, Code of Criminal Procedure.

4 Article 21, para 1, Code of Criminal Procedure.

5 Article 45 para 2, Code of Criminal Procedure.

6 Article 236, para 1, Code of Criminal Procedure.

7 Article 517, Code of Criminal Procedure.

8 Article 2 para 2, subpara "e", law of Georgia "On disciplinary proceedings and disciplinary liability of judges of the courts of general jurisdiction of Georgia".

9 Article 7, law of Georgia "On disciplinary proceedings and disciplinary liability of judges of the courts of general jurisdiction of Georgia".

by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years."[10]

[10] Article 381. Non-enforcement of Sentence or any Other Court Decision, Criminal Code of Georgia.

GERMANY

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

Yes. Judicial proceedings of all branches (civil, criminal, administrative, constitutional) have experienced excessive delays in some cases. For instance, a case has been reported in which a civil law suit took about 15 years (which the Federal Constitutional Court held to be unconstitutional in its decision of 20 July 2000, no. 1 BvR 352/00).

2. Have such delays been acknowledged by court decisions? Which 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 national courts

In its decision of 17 November 1999 (no. 1, BvR 1708/99), the Second Chamber of the First Senate of the Federal Constitutional Court of Germany considered that the duration of the proceedings before the Higher Regional Court violated the complainant's right to trial within reasonable time guaranteed by Article 2.1 of the Basic Law in conjunction with the principle of the rule of law. The competent court was obliged, therefore, to take suitable measures immediately in order to promote the progress of the proceedings and to work towards their prompt conclusion.

The Third Chamber of the Second Senate of the Federal Constitutional Court in its decision of 5 February 2003 (no. 2 BvR 29/03) declared that a delay in the proceedings that is contrary to the principle of the rule of law must affect the assessment of punishment. In exceptional cases, it may even result in a discontinuance of the proceedings or in a stay in the proceedings that can be directly derived from the principle of the rule of law guaranteed by the Basic Law.

The Federal Court (Bundesgerichtshof) has also ruled that delays in criminal court proceedings were unlawful. In the case decided the proceedings had taken more than six years, which the Federal Court, after an examination of the circumstances in the case, considered to be 2.5 years to long (judgment of 10 November 1999, no. 3 StR 361/99).

Lower courts, too, have held delays in judicial proceedings to be unlawful. For instance, in a case of family law, the Berlin Court of Appeal (Kammergericht) has considered it unlawful for a court not to take measures to hasten the work of an official expert when that expert has not given her opinion in more than 1 year (decision of 22 October 2004, no. 18 WF 156/04, published in Neue Juristische Wochenschrift - Rechtsprechungsreport 2005, 374).

Case-law of the ECHR

The European Court of Human Rights found more than once that the reasonable time requirement of Article 6 § 1 ECHR had not been met; some of the examples are the following: *Eckle v. Germany* (judgment of 15 July 1982) for civil proceedings, *Uhl v. Germany* (judgment of 10 February 2005) for criminal proceedings, or *Sürmeli v. Germany* for civil proceedings (judgment of 8 June 2006).

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 2 (1) of the Basic Law in conjunction with the principle of the rule of law (Article 20 (3) of the Basic Law) guarantees an accused in proceedings dealing with an administrative offence, as well as an accused in criminal proceedings, the right to a fair trial and due process. The latter right includes the right to have the proceedings completed within a reasonable time.

The First Chamber of the First Senate of the Federal Constitutional Court has also held that Article 2 (1) in

conjunction with Article 20 (3) of the Basic Law protects the parties in a civil law suit against unreasonable delays in judicial proceedings (decision of 20 July 2000, no. 1 BvR 352/00), while the First Chamber of the Second Senate of the Federal Constitutional Court has considered that protection to be offered by Article 19 (4) of the Basic Law to the participants in proceedings before the administrative finance court (Finanzgericht) (decision of 26 Mai 2000, no. 2 BvR 2189/99).

The constitutions of some federal states (Bundesländer) include special provisions concerning the length of proceedings. The constitution of the Land Brandenburg provides in its Article 51 (4) that everyone is entitles to fair and speedy proceedings before an independent and unbiased court ("Jeder hat Anspruch auf ein faires und zügiges Verfahren vor einem unabhängigen und unparteiischen Gericht.").[1]

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.

According to Article 93. 4a. of the Basic Law the Federal Constitutional Court shall rule 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 Articles 33, 38, 101, 103 or 104 has been violated by public authority.

At present German law does not provide for a specific remedy in respect of excessive length of proceedings. However, the 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.

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.

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.

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 judgment *Eckle v. Germany* (15 July 1982), the Court considered that the right of the national courts to take proper account, when determining sentence, of any over-stepping of the "reasonable time" within the meaning of Article 6.1 ECHR, constitutes a "suitable means of affording reparation" for the violation of the Convention.

In *Sürmeli v. Germany* (judgment of 8 June 2006) the Court considered that none of the remedies envisaged for civil proceedings could be considered effective within the meaning of Article 13.

[1] Although the Basic Law supersedes the constitutions of the Länder, the latter remain valid and applicable where they do not collide with the Basic Law, even if they offer more protection. Hence, the provision of Article 51 (4) of the constitution of Brandenburg is valid and applicable in that federal state.

GREECE

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

With the exception of the enforcement, all other proceedings (civil, criminal, administrative) experience excessive delays.

2. Have such delays been acknowledged by court decisions? Which 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

Among many cases where the Court declared violation of Article 6 § 1 of the Convention with respect to Greece, see for example: *Antonakopoulos, Vortsela and Antonakopoulou v. Greece* (judgment of 14 December 1999), *Dimitrios Georgiadis v. Greece* (28 March 2000), *Biba v. Greece* (26 September 2000), *Agoudimos and Cefallonian sky shipping Co. v. Greece* (28 June 2001), *Adamogiannis v. Greece* (14 March 2002), *Smokovitis and others v. Greece* (11 April 2002), *Logothetis v. Greece* (12 April 2001), *Vasilopoulou v. Greece* (21 March 2002).

Actually, a great number of cases in front of the ECHR concerns violation Article 6.1.

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.

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it 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.

No. The Greek authorities have informed the Council of Europe Committee of Ministers that legislative measures are currently (April 2006) envisaged for the introduction of an effective remedy in Greek law, in conformity with a series of judgments against Greece delivered by the ECtHR finding violations of Article 13 (See notably *Konti-Arvaniti v. Greece*, judgment of 10 April 2003, and *Aggelopoulos v. Greece*, judgment of 9 June 2005).

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6, 1 ECHR?

The relevant codes on judicial proceedings provide that the decision will be held when the case is "ripe" (e.g. Article 308 of the Code of Civil Judicial Procedure).

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?

Measures are normally taken to speed up procedure by the Ministry of Justice in collaboration with the Judges of the three highest Courts of Greece. There are several problems but the most important are workload and lack of judges.

Legislative, infrastructural and other measures already adopted by Greece for the acceleration of proceedings are described in the appendices in the following CM Final Resolutions: ResDH(2005)64 on Academy Trading Ltd and others and other cases (civil proceedings); ResDH(2005)66 on Tarighi Wageh Dashti and other cases (criminal proceedings); ResDH(2005)65 on Pafitis and other cases (administrative proceedings).[1]

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

In each level of judicial proceedings (Court of First instance, Court of Appeals, High Court) the head of the relevant Court is responsible for the supervision of the duration of the proceedings. The Highest Court of Greece supervises all other courts. Nevertheless, the criteria for the supervision are on an *ad hoc* basis since there do not exist any standard criteria to access the reasonableness of the duration of the proceedings.

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

Normally the judge(s) who is (are) in charge of the case gets a notice from his supervisor that he has delayed a decision. The delay of publishing a decision is considered one of the criteria for the promotion of the Judge. Recently (April 2005), one judge was expelled from the Corps of Judges because he was continuously delaying the proceedings in all the cases he was in charge of. The decision for his expulsion was taken by the High Court (Areios Pagos) and it was the first decision of this kind.

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.

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?

No.

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 judgment of 10 April 2003 in *Konti-Arvaniti* v. *Greece* case and later on in *Lalousi-Kotsovos v. Greece* case (judgment of 9 May 2004), the Court found that there was no remedy in domestic law for length of civil proceedings cases. This was confirmed in several other recent judgments. See for example, *Nastou v. Greece* (judgment of 29.09.2005), *Athanasiou v. Greece* (judgment of 4.08.2005), and *Vozinos v. Greece* (judgment of 4.08.2005).

[1] Documents accessible at www.coe.int/t/cm.

HUNGARY

2. Have such delays been acknowledged by court decisions? Which 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

Violation of Article 6 § 1 of the Convention with respect to Hungary has been found in many cases before the Court: *Sesztakov v. Hungary* (judgment of 16.12.2003), *Szakàly v. Hungary* (judgment of 25.05.2004), *Moder v. Hungary* (judgment of 5.10.2004), *Kellner v. Hungary* (judgment of 28.09.2004), *Tamas Kovacs v. Hungary* (judgment of 28.09.2004).

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?

Indirectly yes. Section 2 (1) of the Code of Civil Procedure as amended, provides that it is the court's *ex officio* duty to arrange for actions to be dealt with thoroughly and terminated within a reasonable time. This provision, which entered into force on 1 July 2003, can be invoked, if one, claiming non-respect of these duties of the court, brings an official liability action in pursuance of S. 349 of the Civil Code.

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

Length of proceedings in the cases pending before the courts on 30 June 2006 (Hungary)

		0-3 months	**3-6 months**	**6-12 months**	**1-2 years**	**2-3 years**	**over 3 years**
Local courts	Penal	12947	8782	10692	10093	3180	1936
	Commercial	2369	1443	1316	1150	347	275
	Labour	5398	3274	2676	1655	365	173
	Civil	25500	12883	10538	8188	2343	1804
	Offences	6339	2793	1479	539	69	0
	Total	**52553**	**29175**	**26701**	**21625**	**6304**	**4188**

		0-3 months	**3-6 months**	**6-12 months**	**1-2 years**	**2-3 years**	**over 3 years**
County courts as appeal courts	Penal	3168	1345	463	90	2	0
	Commercial	513	175	74	9	0	0
	Labour	708	294	154	21	0	0
	Civil	3118	1128	507	88	6	7
	Offences	13	0	0	0	0	0
	Total	**7520**	**2942**	**1198**	**208**	**8**	**7**
County courts as first instance	Penal	292	244	316	256	80	38
	Commercial	1024	534	694	853	352	233
	Military	121	51	54	16	1	1
	Administrative	2629	1287	1009	562	93	28
	Civil	2064	1155	1658	2116	835	345
	Total	**6130**	**3271**	**3731**	**3803**	**1361**	**645**
Appellate courts	Penal	155	89	36	8	0	0
	Commercial	215	58	17	3	0	0
	Military	30	0	2	2	0	0
	Administrative	233	105	8	0	0	0

	Civil	566	98	20	2	0	0
	Total	**1189**	**350**	**83**	**15**	**0**	**0**

Note: There are 20 county courts, and 5 appellate courts in the country.

These statistics were provided by the National Judicial Council (www.birosag.hu).

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.

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.

The Hungarian Parliament has recently passed a bill on the introduction of a preventive remedy based on the Austrian model (Holzinger). Upon a complaint by a party to the case, in case of refusal by the proceeding judge to act upon it, the court of higher instance would have the power to set a deadline to the proceeding court for taking specific measures or for concluding the case (S. 114/A and 114/B, in force since 1 April 2006).

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 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.

In criminal cases, the granting of a more lenient sentence on account of the length of the proceedings is a general judicial practice in Hungary.

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 YES
- other (specify what)

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 *Erdos v. Hungary* case (decision of 3 May 2001), the Court considered that a set of civil court proceedings, like an official liability action under Article 349 of the Hungarian Civil Code, cannot be considered as an effective remedy.

The Court's doubts as to the effective nature of an official liability action were further confirmed in the case *Timar v. Hungary* (decision 19 March 2002) where the Court considered that this remedy would probably not be effective for a complaint about a delay in the administration of justice. It stressed that the Government have not submitted any precedents illustrating the interpretation of Article 349 by the domestic courts and its practical application to length complaints. The Court finally concluded that obliging the applicant to test the scope of Article 349 in the absence of any precedent would result in an excessively rigid and formalistic approach to the exhaustion requirement.

Apart from their failure to establish the effectiveness of the remedy provided for under Article 349, in *Simko v. Hungary* case (decision of 12 March 2002) the Court noted that the Government have not referred to the availability of any domestic procedure which would have allowed the applicants to obtain other forms of redress such as an acceleration of the proceedings when they were still pending.

In criminal cases, the granting of a more lenient sentence on account of the length of the proceedings was recognized by the European Court of Human Rights as an effective remedy depriving the applicant of the victim status (*Tamás Kovács* judgment of 28 September 2004).

ICELAND

Brief Introduction

Since the time of Iceland regaining sovereignty in 1918, the organisation of the judicial power has been based on having a two-tier court system, with the primary jurisdiction being rested in local or regional courts and the secondary jurisdiction in the Supreme Court, as the court of sole and ultimate appeal. The system of today is the result of a reorganisation at the primary level culminating in 1992, according to which the primary judicial instance is constituted by eight District Courts seated around the country and having territorial boundaries of their own. The reorganisation did not basically affect the structure of the Supreme Court, which was planned in 1920 as a court of five justices, empowered to act in chambers of three in minor cases. However, the Court has been undergoing changes over the past few decades, mainly to the effect of increasing the number of justices and widening the scope for operating in smaller groups. The justices are now nine in all and sit in chambers or divisions of five and three, with a sole judge being able to dispose of very minor or interlocutory matters. For cases of exceptional weight, a plenum of seven justices may be constituted.

The reorganisation of 1992 was accompanied by the adoption of revised codes both for civil procedure and criminal procedure, as well as revised laws governing proceedings for implementation of judgments and other enforcement, including restitution and injunction.

This reform was followed up by the adoption in 1998 of a new comprehensive Act on the courts of law (the Judicature Act), as well as an Act on Attorneys at Law. The former Act provided for the establishment of a Judicial Council, with powers of supervision or monitoring of the operations of the District Courts, but not of the Supreme Court. Otherwise, the responsibility for the functionability of the courts of law and their financing under the national budget rests with the Minister of Justice. - The Ombudsman institution was established in Iceland in 1987, but without power of supervision of the operations of the courts. In relation to administrative proceedings, however, the Ombudsman's powers of monitoring and recommendation are of major importance for purposes of prevention of excessive delays and reparation therefor.

The Icelandic courts of today are common or general courts with jurisdiction in all fields of the law, including a power of constitutional review of legislation *(ex post*). The only special court remaining since 1992 is the Labour Court, with jurisdiction relating to labour disputes and union wage agreements. There is in particular no constitutional court and no separate administrative court. On the other hand, a first access to justice in certain fields (notably taxation, personal privacy protection, competition, housing and insurance) is currently provided by administrative or other boards or committees acting as review tribunals within their domain. Their decisions are subject to review by the courts of law.

Proceedings for enforcement are generally handled by county commissioners (sheriffs), i.e. local/regional representatives of the central government, whose decisions generally are subject to review by the courts of law under a simplified or streamlined procedure.

With respect to the work of the Supreme Court, it is to be noted that the right of appeal is relatively wide, and generally not subject to a leave of the Court on a selective or discretionary basis.

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

In general, judicial proceedings in Iceland are held without excessive delays. The average processing period for cases before the courts is relatively short and may be said to be fairly close to the optimum. This applies both to the District Courts and the Supreme Court, and statistics are referred under Section 4 below.

Delays are experienced, but more in the way of exception. In civil lawsuits, a major incidence of delays relates to the time at disposal of the parties for the pursuit of the case, which sometimes becomes unnecessarily lengthy due to inefficiency and/or lack of active interest for promptness on the side of the parties and/or their attorneys. Similarly, a risk of prolongation of the judicial resolution of concrete disputes attaches to the matter of case preparation, and will materialise if the court decides to dismiss a

case without consideration of the merits due to inadequate or faulty preparation, leaving the complaining party in a position of having to commence a new suit on an improved basis if and as possible.

In criminal cases, celerity is actively emphasised by the courts, and the major risk of serious delays being experienced accordingly tends to be found at the pre-trial stage, i.e. during the period of investigation and case preparation after a person is singled out as an "accused" or subjected to detention as such. However, a delay may occur after a case is brought before the courts if the court decides to dismiss it without considering the merits, on grounds of faults in relation to the indictment which are such that the prosecution may be able to remedy them in a new proceeding.

The processing time for cases relating to enforcement generally tends to be substantially shorter than for an ordinary civil action, and the applicable procedural rules are specifically designed to avoid a risk of serious delay.

It is to be noted that the above situation of a relative absence of major delays differs considerably from the situation prevailing 2 – 4 decades ago, when proceedings in civil cases before the courts of first instance tended to be lengthy for various reasons and the court calendar tended to be burdened by an excessive load of cases relating to enforcement of money claims. At the same time, the Supreme Court tended to have to battle with an overload of cases (including appeals relating to enforcement), which at times resulted in civil cases being subjected to a significantly long waiting period after being allegedly ready for final hearing.

The relatively radical change from this situation over the last two decades may be ascribed to several factors and their interaction. It partly relates to the procedural law reform achieved through the above legislation of 1992 and certain prior action, and partly to an increased emphasis in court practice on discipline and planning in the pursuit of cases from their being brought before the court to their final hearing. In other words, case management is being given increased attention, with judges e.g. seeking to maintain a policy of requiring celerity and foresight on the side of the actors in a civil lawsuit without necessarily imposing preclusive time limitations.

Furthermore, several economic and social factors external to the court system have contributed to the materialisation of this change. One of these was the development of the national economy some years ago away from high inflation, which for a time produced an abnormal incidence of recourse to the courts for resolution of financial claims. And beyond this, a growing general interest for human rights together with relative affluence in the nation has sharpened public awareness of the importance of safeguarding the independence and functionability of the judicial power, which again has resulted in necessary requirements for the appropriate manning and financing of the court system being reacted to more positively than otherwise.

It remains perhaps to be said in the above connection that as regards the Supreme Court, the problem of calendar congestion mentioned as existing in past decades has been successfully overcome many years ago, without significant limitation of the wide right of appeal. This has been achived partly by virtue of the measures referred to in the introduction (i.e. by a gradual increase in the number of justices and a liberalisation of their authority to work in chambers or divisions), partly by certain adjustments in the procedures before the Court including added discipline towards the parties, and otherwise as a result of the reform provided for in the above codes and laws on civil, criminal and other judicial procedure.

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

The occurrence of excessive delay in or in connection with a judicial proceeding has often been acknowledged in decisions of the national courts, under a practice which goes back a long time and has been sharpened in recent years. The importance attached to the delay has been varied, but has tended to be particularly strong in criminal cases and in cases resulting from administrative proceedings of various kind, including tax cases.

As of now, no case against Iceland has been brought before the European Court of Human Rights on the major ground of excessive delay in judicial proceedings having occurred.

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?

By virtue of an amendment of the human rights chapter (VII) of the Icelandic Constitution of 1944 entering into force in 1995, an explicit requirement for reasonableness of the length of judicial proceedings is now squarely embedded in Article 70 § 1 of the Constitution, which is substantially equivalent to Article 6 § 1 of the European Convention on Human Rights.

In addition, under an Act No. 62/1994, the European Convention has been given the force of law in Iceland, so that its provisions now form a part of ordinary Icelandic legislation, with persuasive power augmented by the fact of its constituting an international treaty.

Beyond this, the principle that judicial proceedings should be expeditiously pursued has for long formed a part of Icelandic jurisprudence, even though not necessarily being accorded a direct force of law except as expressed in legislation in specific relations or acquiring special importance in specific circumstances given recognition by the courts. For criminal cases, however, the principle is clearly expressed as a general rule of court procedure, i.e. that the processing of a case shall be expedited as much as feasible (Article 133 of the Code of Criminal Procedure No. 19/1991).

Furthermore, the Judicature Act No. 15/1998 provides in Article 24 § 2 that a judge shall be in duty bound to complete the processing of the cases allotted to him within a reasonable time, and to pursue his work with care and conscientiousness.

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

The length of proceedings in general before the District Courts is monitored by the Judicial Council, which maintains itemised statistics on the matter. This applies both to civil and criminal cases, as well as enforcement and other special procedure cases. The statistics are made available to the public. The Council will be able to submit recommendations to the respective District Courts as a unit in relation to case management, i.e. primarily to the Court President.

The monitoring also takes place within the respective Courts, where attention is given to the occurrence of substantial delays, and these can be addressed by the Court President, or by the presiding judge, if the delay is mainly being caused by the parties.

The Supreme Court similarly maintains running statistics over the incidence of incoming appeal cases and their disposal by the Court. The results are published in the annual report of the Court.

According to the statistics of the Judicial Council, the average processing time for ordinary civil cases disposed of within the year by the eight District Courts was approximately 9.8 months (295 days). A slightly more favourable average, i.e. of less than 9 months, was maintained through the next 6 years.

In criminal cases, the average processing time in the District Courts (i.e. from the date of filing of an indictment before the Court) for cases completed within the year was approximately 2.3 months (68 days). A similar average, i.e. of less than 3 months, was maintained through the 6 years next preceding.

The Supreme Court does not publish statistics over the processing time for civil and criminal cases submitted to the Court under an appeal calling for oral procedure. In civil cases, a period of up to 12 – 14 weeks after the issue of a writ of appeal is allowed to the parties for the preparation of the case documentation and their basic statements. This is followed by a waiting period until the hearing which in recent years has been relatively short, and a decision by the Court usually is rendered within 1 – 3 weeks after the hearing according to data for the year 2005. Under inclusion of the time allowed to the parties, the average processing time for these cases may be calculated as approximately 5.4 months.

For criminal cases, which are subject to swifter procedure but also to documentation time requirements, the processing time in 2005 was approximately 3.5 months.

Statistical information relating specifically to cases incurring substantial delay is not available, and the current record indicates a relative absence of the problem. In the Supreme Court, there can be no question

of a substantial delay except by reason of a congestion of its calendar, which has been sucessfully avoided for many years as noted within Section 1 above.

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.

Icelandic law does not include legislation which may be described as being specifically designed to provide specific remedies in respect of excessive delays in judicial proceedings, i.e. against infringement of the general principles referred to in Section 3 above. However, such remedies do exist by virtue of certain provisions and principles relating to legal procedure in particular and of general principles relating to liability of the State and of the parties to judicial proceedings.

As regards preventive remedies such as an acceleration of procedure in a pending case, the codes of civil and criminal procedure do not expressly provide for the possibility of lodging a complaint over an excessive delay for this purpose. In view of the general principles of expeditious procedure, however, a party presumably should be able to raise such complaint, which would then fall to be decided upon by the judge or tribunal in charge of the case.

If the delay is being caused by the other party, the party obviously may request a ruling against further postponement of final hearing, and any interlocutory decision by the court permitting a time extension can be submitted by the contesting party to the Supreme Court by means of a summary appeal. Further, a defending party possibly may be able to frame the complaint as a demand for dismissal of the case without consideration of the merits if the adequacy of the case preparation also is in doubt, although claims for dismissal normally are required to be brought and disposed of at an early stage of the proceeding.

If the delay is due to the conduct or circumstances of a District Court judge in charge of the case, the party allegedly suffering should be able to bring the problem to the attention of the President of the Court, who also will be able to intervene at his own accord on the strength of his duty to minitor the work of the court judges. The President may not interfere in the handling of the case by the judge, but does have authority for asking the judge to withdraw from the case if a request from the President for completing the proceedings within a reasonable term is not complied with, cf. Article 18 § 5 of the Judicature Act. The judge may appeal a decision of the President for his withdrawal from the case to the Judicial Council, which will have the final say in the matter.

According to Article 27 (1) of the Judicature Act, anyone who considers a judge having caused him an injury in the course of duty is entitled to submit a written complaint over the matter to the Commission for Judicial Functions, a supervisory body established under Article 23 of the Act for purposes including a monitoring of compliance by judges with their duty to abstain from extraneous work or activity potentially involving an inconsistency with their position or performance as judges. The problem of excessive delay presumably may be made a subject of such complaint, although the question has not arisen in fact. If the Comission should find upon consideration that the matter is such as to merit action, the Comission may submit written comments to the judge or decide to issue a disciplinary reprimand against him.

As regards remedies which are more of a compensatory than preventive nature, it is firstly to be noted that the occurrence of excessive delay in the District Court may potentially qualify as a procedural error, enabling the Supreme Court to quash the resulting judgment in the case upon appeal. This is unlikely to occur, however, as the superior court will normally limit itself to including an admonition to the lower court within its judgment unless the delay has in fact been compounded by other faults in procedure.

There is one form of delay, however, which the Supreme Court has established as a ground for the quashing of District Court judgments *ex officio.* This relates to the requirement of the Code of Civil Procedure (Article 115 § 1) that a judgment of the court should normally be handed down within four weeks after the case is taken under consideration upon completion of its final hearing, and to the similar requirement of the Code of Criminal Procedure (Article 131 § 2), where the corresponding limit is three weeks. A failure to observe these indicative limits regularly gave cause to reprimanding comments by the Supreme Court, but in a line of decisions pronounced during the mid-nineties, the Court found that if the limits were substantially exceeded in cases heard under oral procedure, the value of the oral hearing must be regarded as having deteriorated to such extent as to render the judgment invalid, and that the judgment

accordingly must be quashed under an order for a new hearing. The precedent thus established has proved highly effective in reducing the incidence of the above limits being significantly overstepped by District Court judges.

Coming secondly to remedies which are wholly compensatory, the main remedy will be action for monstary damages against the State, available to a party having suffered economic/material damage due to excessive delay in proceedings being wrongfully incurred. Such action may be based on Article 32 § 2 of the Judicature Act, which provides that the State will be liable in damages according to general principles of law for damage or loss caused by acts or omissions of a judge in the course of duty. The action may not be brought against the judge, but the State may have recourse against him or her for indemnification if the damage has resulted from intentional conduct. - This remedy is to be pursued in an independent action rather than as part of the proceedings from which the damage materialised.

The possibility of seeking damages for immaterial loss presumably is not to be excluded, but the criteria of liability for such damage will be more stringent than for a material loss.

Beside potential liability for damages, a judge who intentionally or negligently disregards his duties may risk being held criminally liable and subject to disciplinary or penal sanctions. This is affirmed by Article 32 § 1 of the Judicature Act, which states that criminal liability of a judge for his conduct in office will be determined by provisions of the General Penal Code (applicable to public officials) and special provisions of other laws.

Other potential remedies, mainly available in respect of the pending proceedings, are listed as forms of redress in Section 10 below.

Among these, in addtion to the remedy of acknowledgement of the excessive delay, attention is to be called to the possible reduction of sentence in criminal cases in light of the delay. The possibility of this remedy is not explicitly provided for in the General Penal Code (mainly, Articles 70 and 74), but has been developed by judicial practice on the basis of its principles.

The lightening of retribution on this account may also take the form of a suspension of sentence or punishment. This similarly has been developed by judicial practice, on the strength of the discretionary powers of the courts under Article 55 of the Penal Code in the matter of suspension.

As regards the potential liability of one party to the other in respect of an excessive delay in judicial proceedings, the general principles of tort will be applicable. For practical purposes, however, the remedy of taking the delay into account in the award of costs of the proceedings, as referred to in Section 10 below, may lie closer to hand.

Finally, the investigative and other action in criminal cases during the pre-trial stage is subject to monitoring and intervention by the State Prosecutor General, who may decide to intervene in favour of the accused or suspect by requiring action, or possibly by resolving upon a discontinuation of the prosecution. Furthermore, serious delays incurred during this stage will typically raise the question of redress before the courts in the form of reduction in or suspension of sentence.

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

The availability of remedy or redress for excessive delays in respect of the pending proceedings is substantially described within Sections 5 and 10 hereof.

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

The criteria used by the Icelandic courts in assessing the reasonable duration of proceedings may be assumed to be similar to those applied by the European Court of Human Rights, but will not necessarily be

linked thereto, although the courts certainly are able to cite Article 6 § 1 of the Convention and refer to the practice of the Court.

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 for a ruling on the matter of length of proceedings, and no specific provision is made for the legal consequences of a failure in making a timely ruling.

10. What are the available forms of redress:

-	acknowledgement of the violation	YES
-	pecuniary compensation	
	o material damage	YES
	o 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)	YES

The other forms of redress to be mentioned are, firstly, that a reduction of sentence in criminal cases may take the form of a suspension of the sentence.

Secondly, an unnecessary delay in judicial proceedings which is caused by a party intentionally or by virtue of recklessness or glaring mistake may result in an award of costs to the other party, according to Article 131 (1) (b) of the Code of Civil Procedure. Further, under Article 135 (1) (c) of the Code, a party may be subjected to a procedural fine for intentionally causing an unnecessary delay.

11. Are these forms of redress cumulative or alternative?

The forms of redress may be cumulative, as far as the court concerned may deem suitable.

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 criteria for awarding and assessing pecuniary damages will be determined by the courts on the basis of general principles and the law rule being applied. The criteria may be expected to be similar to those of the European Court of Human Rights, but will not necessarily be linked thereto.

There is no fixed maximum amount.

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?

In the determination of such measures as can be taken to speed up a proceeding, it may be considered reasonable to have a view to the general case management of the court concerned and to such factors as existing workload and the nature of other cases pending (in terms of need for priority). However, the determination will primarily be up to the judge or judges in charge of the proceeding, who will primarily take account of other cases in his or their charge. It is mainly when the judge in question is in a position of wishing or being required to withdraw from the case that the matter of coordination will be relevant in a wider perspective.

As related within Section 4 above, a recommendation of the Judicial Council (and in extreme circumstances, an opinion of the Commission for Judicial Functions) may play a part in the eventual determination. These bodies presumably may tend to take the wider perspective.

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

In the event that the Supreme Court has ordered specific action in the case in question under consideration of the reasonableness of the duration of the proceeding, the responsibility for implementing the decision to that effect lies with the District Court judge or judges in charge of the case.

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

There are no known instances of a failure to implement such a decision on the part of the lower court. Presumably, the appropriate measure in such situation would be a complaint susceptible to a new appeal to the Supreme Court.

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?

A decision by the District Court on the reasonableness of the duration of the proceedings which is taken in the form of a grant or determination of a time extension can be submitted to the Supreme Court by a summary appeal. A decision expressed or impliedly contained within a judgment in the case can be submitted to the Supreme Court by an appeal of the judgment in whole or in part. The time limits applicable will be the same as for similar appeal on other grounds, and the consequences of a failure to meet the limits will be similar, i.e. that an appeal will not be allowed in the absence of special circumstances.

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 answer presumably will be yes in the case of an interlocutory appeal, i.e. in the event that the first complaint does not suffice to solve the problem. There is no set minimum period which needs to have elapsed, but it presumably will be imperative to cite further consequences and/or a further incidence of the delay.

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

There are no statistics available.

19. What is the general assessment of this remedy?

A general assessment of the remedies available in respect of excessive delays in proceedings will be to the effect that the remedies may be expected to satisfy the requirements of Article 70 § 1 of the Constitution and Article 6 § 1 of the European Convention of Human Rights. A possible exception may materialise if the delay is primarily due to a patently unacceptable case overload of the national court (which ground for delay may be less amendable to remedy than other grounds). However, such situation does not prevail in Iceland at this time.

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 satistics in this connection.

It is believed that no impact on the work of the European Court of Human Rights has occurred.

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.

IRELAND

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

There have been instances of complaints and litigation regarding delays in civil and criminal judicial proceedings in Ireland. Nonetheless, Ireland has a good record in this regard. In January 2006 Mr Justice Finnegan, President of the High Court, stated that the High Court has made significant progress in this respect and although he is aware of problems 'where they exist' the situation is vastly improved from that of four years ago.[1] The appointment of additional judges and the provision of extra courtrooms has resulted in improvements.

The Courts Service is responsible for the management of the Courts and states in its Annual Report for 2004 that waiting times were reduced during that period and that they will continue to improve.[2]

There is a body of Irish jurisprudence concerning delay in relation to the making of a complaint with special consideration in relation to charges of child sexual abuse but, as this delay occurs before judicial proceedings have been instituted, it will not be considered in this questionnaire.[3]

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

The issue of delay has been considered by domestic courts and orders have been granted to prohibit criminal, or strike out, civil proceedings on the basis of delay. The Constitution provides guarantees against excessive delays and the courts will examine each case on its own facts. The Courts have not become involved in any general appraisal of average waiting times or an analysis of the extent of delay in Irish courts.

Delays have also been found to exist by the European Court of Human Rights in the cases of *Barry v. Ireland*,[4] *Doran v. Ireland*,[5] *O'Reilly v. Ireland*[6] and *McMullen v. Ireland.*[7]

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?

Criminal

In the criminal context Article 38.1 of the Irish Constitution has been interpreted to imply the right to an early trial. That Article provides:

> *"No person shall be tried on any criminal charge save in due course of law."*

The Supreme Court accepted in *In the matter of Paul Singer (no. 2*[8]*)*, a prosecution for fraud, that:

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1 Finnegan P, '*Staggering condition of the non-jury list' – the President of the High Court responds (*2006) 100(1) G.L.S.I., 12.

2 Available from www.courts.ie, publications section.

3 See for example JO'C v. DPP 31R [2000] 478 and H v. D.P.P. Supreme Court 631/07/2006.

4 Application no. 18273/04, 15 December 2005.

5 Application no. 50389/99, 31 July 2003.

6 Application no. 54725/00, 29 October 2004.

7 Application no. 42297/98, 29 October 2004.

8 (1960) 98 I.L.T.R. 112.

> "*… the Constitution guarantees to every citizen that the trial of a person charged with a criminal offence will not be delayed excessively; or, to express the same proposition in positive terms, that the trial will be heard 'with reasonable expedition…*"[9]

The courts have stated that they will consider delay as a whole in the particular circumstances of the case.[10] In a recent Supreme Court decision involving child sex abuse where 30 or so years had elapsed before formal complaint, the law concerning delay by the complainant in making a formal complaint it was restated as follows:

> "*The test is whether there is a real or serious risk that the applicant, by reason of the delay, would not obtain a fair trial, or that a trial would be unfair as a consequence of the delay. The test is to be applied in light of the circumstances of the case.*"[11]

Civil

In the civil context, the implied constitutional principle of basic fairness of procedures under Article 40.3.1 has been held to ground the termination of a claim on the ground of delay.[12] In the case of *Ó Domhnaill v. Merrick*[13] it was said that "While justice delayed may not always be justice denied, it usually means justice diminished", the judge also stated that 'inordinate and inexcusable' delay will not be overlooked unless there are countervailing circumstances. It was held that the claim in question was barred due to delay even though it had been brought within the time period stipulated by the Statute of Limitations 1957. In coming to this decision the Court was influenced by Article 6 of the ECHR, even though it had not yet been incorporated into domestic law.

(a) the courts have an inherent jurisdiction to control their own procedure and to dismiss a claim when the interests of justice require them to do so;
(b) it must, in the first instance, be established by the party seeking a dismissal of proceedings for want of prosecution on the ground of delay in the prosecution thereof, that the delay was inordinate and inexcusable;
(c) even where the delay has been both inordinate and inexcusable the court must exercise a judgment on whether, in its discretion, on the facts the balance of justice is in favour of or against the proceeding of the case;
(d) in considering this latter obligation the court is entitled to take into consideration and have regard to

(i) the implied constitutional principles of basic fairness of procedures,
(ii) whether the delay and consequent prejudice in the special facts of the case are such as to make it unfair to the defendant to allow the action to proceed and to make it just to strike out the plaintiff's action,
(iii) any delay on the part of the defendant - because litigation is a two party operation - the conduct of both parties should be looked at,
(iv) whether any delay or conduct of the defendant amounts to acquiescence on the part of the defendant in the plaintiff's delay,
(v) the fact that conduct by the defendant which induces the plaintiff to incur further expense in pursuing the action does not, in law, constitute an absolute bar preventing the defendant from obtaining a striking out order but is a relevant factor to be taken into account by the judge in exercising his discretion whether or not to strike out the claim, the weight to be attached to such conduct depending upon all the circumstances of the particular case,

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9 In *the Matter of Paul Singer* (No. 2) (1960) 98 I.L.T.R. 112.

10 In *Blood v. DPP* (2 March 2005, Supreme Court, McGuinness J) Mc Guinness J held:

> *"cases involving delay in prosecution, or the denial of the right to an expeditious trial, must be decided on an ad hoc basis, in the particular circumstances of the case. In the particular circumstances of this case, taken as a whole, it seems to me that the delays in the latter period of the prosecution of the applicant amount to a denial of his right to an expeditious trial."*

11 *H v. D.P.P.* 31 July 2006 Supreme Court.

12 *O'Donoghue v. Legal Aid Board* 21 December 2004, High Court, Kelly J.

13 [1984] IR 151 See also *Primor v. Stokes Kennedy Crowley* where Hamilton J stated that the courts may dismiss a claim on the grounds of inordinate and inexcusable delay, when the interests of justice require it, having regard to the implied constitutional principles of basic fairness of procedures.

(vi) whether the delay gives rise to a substantial risk that it is not possible to have a fair trial or is likely to cause or have caused serious prejudice to the defendant,
(vii) the fact that the prejudice to the defendant referred to in (vi) may arise in many ways and be other than that merely caused by the delay, including damage to a defendant's reputation and business."[14]

Prior to the European Commission on Human Rights Act 2003 coming into effect it was held that a party "*…had a right, in particular by virtue of, or more probably by analogy with the provisions of the [ECHR] to a fair trial, which encompasses the notion of a speedy trial.*" [15]
Following the incorporation of the ECHR into Irish law, subject to statutory provisions or rules of law, every organ of the State is required "*to perform its functions in a manner compatible with the State's obligations under the Convention provision*". Whilst the definition of "*organ of State*" does not include a court, nonetheless all other public or State bodies are bound by the terms of the Convention and of Article 6(1) in particular. The possibility of an award of damages to a person injured as a result of a contravention of the State's obligations under the Convention is provided for.

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

The Courts Service is responsible for the management of courts. Average waiting times in each court for 2005 are as set out below. Provision is made to accord early hearing dates to urgent and emergency matters. The average times are as follows:

Supreme Court	14 months from lodgement of a certificate of readiness to hearing date (earlier hearing dates are allocated by the court for urgent cases).	
Criminal		
Court of Criminal Appeal	Sentence appeals	6-8 months
	Conviction cases	7-9 months
High Court	Bail applications – date immediately available	
Central Criminal Court	6 months for cases returned to the court in November and December 2005	
Special Criminal Court	4 months	
Circuit Court	7 months (Average)	
District Court	3 months (Average)	
Family		
High Court	3 months	
Circuit Court	6 months (Average)	
District Court	11/2 months (Average)	
Civil		
Commercial Court	Date immediately available	
Chancery	Motions list – date immediately available Cases certified as ready for trial – 10 months Special Summons (Mortgage suits) – 3 weeks Chancery miscellaneous – 4 months (cases taking less than 2 hours	

[14] *Primor plc v. Stokes Kennedy Crowley* [1996] 21.R. at 475.

[15] *Duignan v. Carway* [2001] 4 IR 550.

	will be dealt with sooner)
Non-Jury	Miscellaneous - 7 months (cases taking less than 2 hours will be dealt with sooner) Motions list – 3 weeks Actions certified as ready for trial – 22 months
Judicial Review (excluding asylum)	15 months (cases taking less than 2 hours will be dealt with sooner)
Judicial Review (asylum)	Prior to obtaining leave to judicially review decision – 5 weeks Following leave to judicially review decision – 5 months
Jury	Civil actions for damages for assault, defamation, wrongful imprisonment, or objections to warship proceedings – 9 months, warship matters get priority.
Appeals from the Circuit Court	8 weeks
Personal and Fatal Injuries	17 months (Average)
Probate Office	6-8 weeks
Circuit Court	10 months (Average)
District Court	2.5 months (Average)

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.

Criminal
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'[16]. The Court has an inherent jurisdiction to prohibit a prosecution where there is unreasonable delay.

Civil
In the civil context defendants may seek an order for dismissal for want of prosecution in circumstances where there has been delay on the part of the Plaintiff. This application is made to the courts.

In *O'Donoghue v. Legal Aid Board*[17] the High Court held that the applicant in family proceedings could obtain a declaration of breach of rights under Article 40.1.3 and be awarded damages for delay in the State providing her with legal aid. This case was not appealed to the Supreme Court.

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 agents or agencies might give rise to this remedy.

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.

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. However, the ECtHR in *O'Reilly* found that this did not constitute an adequate remedy.

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16 *Connolly v. DPP* 15 March 2003, HC, Finlay Geoghegan J.

17 21 December 2004, High Court, Kelly J.

The Courts themselves employ a system of case management and judges seized of a case will set deadlines by which time the parties are required to have submitted or served documents. Legislation, including the Statute of Limitations 1957, stipulates the period in which applicants must take proceedings, before they become 'statute barred'.

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

An application can be made at any stage in proceedings.

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

Generally, costs follow the event of the trial i.e. they are awarded to the winning party. However, awards may be made to a particular party in relation to specific interlocutory proceedings.

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

Criminal

In criminal proceedings the courts have assessed the reasonableness of the duration of the proceedings with respect to the complexity of the case,[18] showing increasing tolerance with greater complexity. Relevant factors considered by the courts are the large number of witnesses to be interviewed,[19] the need to examine and consider witness statements[20] and the lack of co-operation from an institution.[21]

The Courts may also have regard to the conduct of the applicant and the relevant authorities and, as was stated in *DPP v. Byrne*,[22] a violation of the right will be more readily identified if there has been an 'improper motive or gross carelessness on the part of the prosecuting authorities'. In assessing delay, the courts will include delay caused by the prosecution and by the courts.[23]

The issue of what is at stake for the applicant has been mentioned[24] as a relevant factor by the Courts. Constitutional rights in themselves are considered to be of great importance and any infringement is treated very seriously. There have been no judicial statements to the effect that a matter is of too trivial a consequence to attract Constitutional protection.

The natural coincidence of fair trial, delay and prejudice to an applicant have resulted in some confusion in Irish case law on the subject of delay. There are dicta stating that in order for breach of constitutional rights due to delay to be of relevance the applicant must show that prejudice has or will be caused by the delay. As stated in answer to question 3 above, in a recent Supreme Court judgment:

> "*The test is whether there is a real or serious risk that the applicant, by reason of the delay, would*

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[18] In *Keely v. Moriarty*, it was held that a delay of five years between complaint and charge in a very complex case involving allegations of conspiracy to defraud did not disclose "acts or omissions which could reasonably be described as delay."

[19] *Barry v. DPP* 17 December 2003, Keane CJ: "This was a case in which the Gardaí had to investigate over six hundred complaints and in which they took written statements from one hundred and forty six persons. In addition, expert medical evidence had to be obtained with a view to ascertaining whether the conduct complained of was justified in medical terms"; *Keely v. Moriarty* (7 October 1997) HC.

[20] *Keely v. Moriarty* (7 October 1997) HC, Lynch v DPP (16 December 1997) HC.

[21] *Blanchfield v. Harnett* [2002] 3 IR 207.

[22] [1994] 2 IR 236, 246.

[23] In *DPP v. Arthurs* a delay of two years and three months was said to be an excessive delay in bringing summary proceedings to trial. In this case the prosecution was listed on three occasions on which it had not gone ahead. O'Neill J stated that:

> *"the inference that these delays are the result of a failure on the part of the State to have provided adequate resources so that the District Court could deal with the cases before it in an expeditious manner is inescapable. The failure on the part of the State to have made adequate provision for the expeditious conduct of cases in the District Court …[was] an unwarranted invasion of the accused constitutional right to an expeditious trial."*
>
> See also *DPP v. Byrne* [1994] 2 IR 236; *Robert Byrne v. DPP* 22 July 2005, High Court, Peart J.

[24] *DPP v. Byrne* [1994] 2 IR 236 at 246, *PC v. DPP* [199] 2 IR 25 at 65.

not obtain a fair trial, or that a trial would be unfair as a consequence of the delay. The test is to be applied in light of the circumstances of the case."[25]

Civil

Although case law in the area of civil law is less developed than in the criminal sphere, broadly similar criteria are considered. The judgment of Hamilton CJ in *Primor v. Stokes Kennedy Crowley*[26] describes the court's approach as follows:

> *"(a) the courts have an inherent jurisdiction to control their own procedure and to dismiss a claim when the interests of justice require them to do so;*
>
> *(b) it must, in the first instance, be established by the party seeking a dismissal of proceedings for want of prosecution on the ground of delay in the prosecution thereof, that the delay was inordinate and inexcusable;*
>
> *(c) even where the delay has been both inordinate and inexcusable the court must exercise a judgment on whether, in its discretion, on the facts the balance of justice is in favour of or against the proceeding of the case;*
>
> *(d) in considering this latter obligation the court is entitled to take into consideration and have regard to*
>
> > *(i) the implied constitutional principles of basic fairness of procedures,*
> >
> > *(ii) whether the delay and consequent prejudice in the special facts of the case are such as to make it unfair to the defendant to allow the action to proceed and to make it just to strike out the plaintiff's action,*
> >
> > *(iii) any delay on the part of the defendant -- because litigation is a two party operation, the conduct of both parties should be looked at,*
> >
> > *(iv) whether any delay or conduct of the defendant amounts to acquiescence on the part of the defendant in the plaintiff's delay,*
> >
> > *(v) the fact that conduct by the defendant which induces the plaintiff to incur further expense in pursuing the action does not, in law, constitute an absolute bar preventing the defendant from obtaining a striking out order but is a relevant factor to be taken into account by the judge in exercising his discretion whether or not to strike out the claim, the weight to be attached to such conduct depending upon all the circumstances of the particular case,*
> >
> > *(vi) whether the delay gives rise to a substantial risk that it is not possible to have a fair trial or is likely to cause or have caused serious prejudice to the defendant,*
> >
> > *(vii) the fact that the prejudice to the defendant referred to in (vi) may arise in many ways and be other than that merely caused by the delay, including damage to a defendant's reputation and business."*[27]

As mentioned in response to question 3 the ECHR has been incorporated into domestic law and Article 6 has been directly relied upon. As a result, it has been suggested that it is no longer necessary to establish prejudice where unacceptable delay exists in civil proceedings.[28]

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?

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25 *H v. D.P.P.* 31 July 2006 Supreme Court.

26 [1996] 2 IR 459.

27 [1996] 2 IR 459 at 475. This test has been followed in *Duignan v. Carway* [2001] 4 IR 550.

28 *Crowley v. Roche Products (Ireland) Ltd* Master of the High Court, Decision of 20 January 2006.

No such deadline exists.

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)

In criminal proceedings if Article 38.1 is held to have been breached because of delay, an order of prohibition will be granted directing that the prosecution be restrained. Similarly, in a civil action if a Defendant successfully argues that Article 40.1.3 has been violated by reason of delay the claim will be dismissed for want of prosecution. In a judgment in the High Court a Plaintiff in a civil matter complain successfully about delay and declaration of breach of rights and damages were awarded. In the case of *PP v. DPP*[29] it was held that although a breach of constitutional rights in the context of criminal proceedings had not been made out, any further delay would not be tolerated and the courts should not permit it to occur.

In criminal proceedings if an accused has been in custody pending trial, the period spent in custody will be set off against a sentence imposed.

11. Are these forms of redress cumulative or alternative?

Generally, proceedings will be restrained where unacceptable delay has been shown to exist. A declaration of breach of rights has been accompanied by an award of damages in a civil case.

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?

In *O'Donoghue v. Legal Aid Board* damages were calculated with regard to the loss suffered by the applicant[30] and stress and upset caused.

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?

No.

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

In criminal prosecutions successful applications under the above-mentioned constitutional rights have resulted in orders that the proceedings be abandoned. There have not been any orders that a trial should be speeded up or completed by a certain date. If such orders were to be made any failure to comply would be brought back to court and the judge in question would be responsible for supervising the implementation of such decisions.

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29 [2000] 1 IR 403.

30 By the time the proceedings for breach of Constitutional rights had concluded the maintenance application had been determined and the High Court's award for breach of Constitutional rights was calculated as the amount of maintenance the applicant would have received for the period during which she was waiting for Legal Aid.

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.

Generally if an order has been made on the grounds of delay, a prosecution or claim will be restrained. If a mandatory order provided that proceedings should be expedited it would be open to an applicant to issue proceedings if it was not complied with.

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 order made by the High Court may be appealed to the Supreme Court. There is no fixed time-frame for an appellate court to deal with an appeal but the proceedings would be subject to the same Constitutional guarantees of reasonable expedition.

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?

There is no reason why this remedy could not be used more than once in respect of the same proceedings.

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

Not applicable.

19. What is the general assessment of this remedy?

Not applicable.

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.

Not applicable.

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 remedy available before this development was considered by the European Court of Human Rights in the cases of *Barry v. Ireland*,[31] *Doran v. Ireland*,[32] *O'Reilly v. Ireland*[33] and *McMullen v. Ireland*.[34] In each of these decisions Ireland was found to be in breach of the convention for failure to provide an adequate remedy for delay.

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31 Application no. 18273/04, 15 December 2005.

32 Application no. 50389/99, 31 July 2003.

33 Application no. 54725/00, 29 October 2004.

34 Application no. 42297/98, 29 October 2004.

ITALY

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

Yes.

2. Have such delays been acknowledged by court decisions? Which 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*, (judgment of 28 July 1999), the Court drew attention to the fact that since 25 June 1987, the date of the *Capuano v. Italy* judgment (25 June 1987), 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.

The Court found violation of Article 6 § 1 among others in *Ledonne v. Italy* (judgment of 12 May 1999) in respect of criminal proceedings, in *Abenavoli v. Italy* (judgment of 2 September 1997) in respect of administrative proceedings and in *Ceteroni v. Italy* (judgment of 15 November 1996) in respect of civil proceedings.

In *Cocchiarella v. Italy* (judgment of 29.03.2006), the Court after years of examining the reasons for the delays attributable to the parties under the Italian procedural rules, had to resolve to standardize its judgments and decisions. This allowed it to adopt more than 1.000 judgments against Italy since 1999 in civil length-of-proceedings cases. That approach had made it necessary to establish scales on equitable principles for awards in respect of non-pecuniary damage under Article 41, in order to arrive at equivalent results in similar cases.

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" introduced by the Pinto law.

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it 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.

In 2001, the so-called "Pinto Law" has introduced a specific domestic legal remedy with respect to the excessive length of proceedings allowing applicants to obtain an appropriate relief in the form of financial compensation before the Court of Appeal.

A complaint can be lodged by anyone sustaining pecuniary or non-pecuniary damage as a result of a violation of ECHR.

A special requirement, distinct from the general procedural law, is provided for the applicants: a claim must be submitted by a lawyer holding special authority. It must be submitted within six months from the date when the decision ending the proceedings becomes final (or during the proceedings, from the moment when there was already a delay of proceedings).

The remedy proceedings are separate from the proceedings on merits.

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

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

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

Since 2004 and after a number of the European Court's judgments in which other violations were found, the Italian Court of Appeal and the Cassation Court adopted 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. However, no sanctions or any other legal consequence for missing the deadline have been provided for by the Law.

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

The remedy is only 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 to, 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 Articles 13 and 35.

Later the amount of damages awarded by the Italian courts has proven in some cases to be inadequate and thus, the remedy was considered ineffective (*Scordino and ors. (no. 1) v. Italy*, (decision of 27 March 2003).

This defect was corrected by the Italian Court of Cassation in a judgment of January 2004, as noted by the Court in *Di Sante v. Italy*, no. 56079/00, decision of 24 June 2004. The Court took the view that this new development in national law should have been widely known by 26 July 2004, which became the key date for the exhaustion of domestic remedies.

The recent judgments of the Grand Chamber (in particular the lead judgment of *Scordino v. Italy*, judgment of 29 March 2006) outlined that the proceedings under the Pinto law were not entirely sufficient and therefore did not deprive applicants of their victim status for the purpose of bringing a case to Strasbourg.

The victim status of the applicants was based principally on the manifestly unreasonable nature of the amounts awarded by the Italian authorities (including sums as low as 8% of what the ECHR would have awarded).

LATVIA

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

Yes.

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

Yes. See, for example, judgments of the Court of Human Rights in cases:

– Case of *Lavents v. Latvia*
– Case of *Estrikh v. Latvia*
– Case of *Cistiakov v. Latvia*
– Case of *Moisejevs v. Latvia*
– Case of *Freimanis and Lidums v. Latvia*
– Case of *Kornakovs v. Latvia*

However there have been also judgments of the Court of Human Rights, where the applicant holds that there is violation of the length of proceedings, but the Court found no such violation. See for example judgments of the Court of Human Rights in cases:

– Case of *Nazarenko v. Latvia*
– Case of *Igors Dmitrijevs v. Latvia*

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 first sentence of Article 92 of the Constitution of the Republic of Latvia (Satversme) provides: "Everyone has the right to defend their rights and lawful interests in a fair court."

The Constitutional Court in some of its Judgments (see for example Constitutional Court 5 March 2002 Judgment in case No. 2001-10-01; 4 February 2003 Judgment in case No. 2002-06-01, 4 February 2003 Judgment in case No. 2003-03-01, 27 June 2003) has concluded that the notion "the fair court", incorporated into Article 92 of the Satversme, includes several mutually interconnected aspects. One of them is the "fair court" as the appropriate process in a law-based state in which the case is being reviewed. In this aspect the concept "a fair court" shall be read together with the principle of justice, which follows from Article 1 of the Satversme.

Thus Article 92 of the Satversme requires creating the system in the State under which the court shall review cases under the procedure, ensuring fair and impartial adjudication of the matters.

To assess the compliance of the challenged norm with Article 92 (the first sentence) of the Satversme, one has to establish also whether the process, which conforms with the "fair court", includes adjudication of the case in a reasonable time (see Constitutional Court Judgment in case No. 2003-03-01, 27 June 2003).

Taking into consideration Article 89 of the Satversme, which establishes that the State shall recognize and protect fundamental human rights in accordance with the Constitution, laws and international instruments binding upon Latvia and the fact that the objective of the legislator has not been to differentiate between the norms of the human rights, included in the Satversme and the international human rights norms, but – quite to the contrary – to create mutual harmony of these norms, it can be concluded that Article 92 of the Satversme guarantees minimum of rights, enshrined into Article 6 (the first and the second parts) of the

Convention (see Constitutional Court Judgment in case No. 2003-03-01, 27 June 27 2003).

Criminal Procedure Law provides:

> *"Section 14. Rights to the Completion of Criminal Proceedings in a Reasonable Time Period*
> *(1) Each person has the right to the completion of criminal proceedings within a reasonable time period, that is, without unjustified delay.*
> *(2) A performer of criminal proceedings shall chose the simplest type of criminal proceedings that complies with the concrete conditions, and shall not allow for unjustified intervention in the life of a person and unfounded expenditures.*
> *(3) Criminal proceedings wherein a security measure connected to the deprivation of liberty has been applied shall have preference, in comparison with other criminal proceedings, in the ensuring of a reasonable time period.*
> *(4) Criminal proceedings against an underage person shall have preference, in comparison with similar criminal proceedings against a person of legal age, in the ensuring of a reasonable time period.*
> *(5) The inobservance of a reasonable time period may be the basis for the termination of proceedings in accordance with the procedures specified by this Law."*

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

According to the Courts Administration statistical data[1] the length of a proceedings in 2006 (cases have been completed in 2006):

In Criminal cases

	First instance	Instance of appeal
Less than 3 months	6913 (68,7%)	1304 (71,2%)
From 3 until 6 months	1453 (14,5 %)	284 (15,5%)
From 6 until 12 months	893 (8,9%)	153 (8,4%)
From 12 until 18 months	375 (3,7%)	44 (2,4%)
From 18 until 24 months	161 (1,6%)	18 (1,0%)
From 24 until 30 months	85 (0,8%)	8 (0,4%)
From 30 until 36 months	50 (0,5%)	10 (0,5%)
36 months and more	127 (1,3%)	12 (0,7%)

In civil cases

	First instance	Instance of appeal
Less than 3 months	35228	2074
From 3 until 6 months	10585	338
From 6 until 12 months	5989	189
From 12 until 18 months	1515	792
From 18 until 24 months	661	226
From 24 until 30 months	316	71
From 30 until 36 months	198	25
36 months and more	563	34

[1] http://www.ta.gov.lv.

In administrative cases

	First instance	Instance of appeal
Less than 3 months	162 (8%)	216 (19%)
From 3 until 6 months	153 (7%)	227 (20%)
From 6 until 12 months	749 (37%)	282 (24%)
From 12 until 18 months	745 (37%)	341 (29%)
From 18 until 24 months	202 (10%)	87 (8%)
From 24 until 30 months	27 (1%)	5 (0%)
From 30 until 36 months	1 (0%)	0
36 months and more	0	0

However, the statistics do not show the whole average of the length of the case and 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.

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 possibility in each procedure (criminal, civil and administrative) to appeal against every single procedural decision, which causes delay.

For example Section 441 of the Civil Procedure Law provides:

> *"The decisions of a first instance court or of an appellate instance court may be appealed separately from a court judgment by participants in the matter, by the submission of an ancillary complaint, or by a prosecutor, by the submission of an ancillary protest: […] 2) if the court decision hinders the matter being proceeded with."*

But **there is no specific remedy in respect of excessive delays in case as a whole**. However, it is possible to submit a complaint to the Ombudsman.

LIECHTENSTEIN

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

Delays in judicial proceedings were a problem in the past, in particular in the case of international judicial assistance and criminal investigations. However, this problem was resolved by increasing the staffing level at the courts and in the Office of the Public Prosecutor. Occasionally the duration of proceedings exceeds reasonable limits in civil, criminal and administrative proceedings, but this is hardly ever the case in enforcement proceedings.

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

Just recently the ECtHR dealt with such a case of excessive length of proceedings in Liechtenstein which culminated in a verdict against Liechtenstein (Case of *Von Hoffen v. Liechtenstein*, decision of 27.07.2006 [Application no. 5010/04]). Moreover, there have also been some decisions of this nature in Liechtenstein courts, some of which have been published.

Constitutional Court (StGH) 2003/97; Administrative Court (VBI) 2003/92.

An electric power plant endeavoured over a period of several years to obtain the necessary permit to extend a high-voltage power line; after proceedings of over two years' duration the permit was granted with certain restrictions. However, this permit was revoked by the Administrative Court after proceedings which extended over multiple stages. Subsequently, a permit was again granted but a complaint was filed with the government against this permit. Since the government did not issue any decision within 3 months, the power company lodged a "default complaint" six months later with the Administrative Court in accordance with Article 90 para 6a LVG. The Administrative Court decided that only the party who addressed the complaint to the government was entitled to file the default complaint with the Administrative Court; it held that this was not the case with regard to the power company. On the other hand, it stated that the complaint in question was to be dealt with as a supervisory complaint within the meaning of Article 23 para 1 LVG. A delay of justice was however denied since the government had appointed an expert whose report was late for various reasons. Consequently the Administrative Court decided no sanction was called for under supervisory law. The complaint which was filed against this decision with the Constitutional Court was also dismissed.

Constitutional Court (StGH) 2001/4

This case dealt with a criminal sentence for embezzlement. Already 4 years had passed from the time when the crime had been committed until the initiation of criminal proceedings. Because of appeals filed all the way to the Supreme Court, the proceedings lasted another 4½ years until the case was concluded by a final Supreme Court decision. The fact that several years had passed since the crime had been committed and the claimants good conducts since that time were acknowledged as being special grounds from mitigation in terms of the severity of the penalty.

The claimant brought the case before the Constitutional Court, among other grounds, for delay of justice. The Constitutional Court referred to the Strasburg practice in assessing the duration of the proceedings. It found that the duration was still reasonable according to the criteria generally applied by Strasburg to economic crimes.

Constitutional Court (StGH) 1997/30

In 1989 the claimant informed the Agency for the Promotion of Residential Construction in writing that he had let the apartment built with the help of subsidies to a third party. But he requested that the matter be left aside for the moment until everything had "sorted itself out" again. 2¼ years later the Agency

requested either a justification or that the owner use the apartment himself. Based on the subsequent justification provided by the claimant an order was issued approximately 8 months later to the effect that the subsidies were to be repaid with interest. The government dismissed the complaint filed against this decision approx. 6 months later. The appeal filed with the Administrative Court against this decision was dismissed approx. 4¼ years later. In response to the complaint filed against this decision the Constitutional Court held that the first delay occurred because the claimant requested the matter to be left aside for the time being. The Constitutional Court furthermore took into account that the period of time of over 3½ years until the Administrative Court issued its decision was excessive in view of the straightforward legal situation and facts of the matter. The Constitutional Court left the question of the possibility of sanctions open, as no damages had been incurred – or claimed - in the case in question.

Administrative Court (VBI) 1994/44

This case concerned the repayment of residential construction subsidies due to not permitted changes in construction. Two years passed from the time at which the authority became aware of the changes in construction until the final restitution order was issued. The claimant maintained that no interest was owed for this time as he could have saved this interest if the decision had been made within a reasonable period of time. The Administrative Court held that in the case in question there was no justification for such an excessive length of proceedings, even if the Agency for the Promotion of Residential Construction wished to wait for a similar case which was pending with the Administrative Court to be decided. But the Administrative Court also denied any obligation to pay compensation for damages to the claimant since the latter on the one hand should have expected a restitution order and, what is more, on the other hand had not proven any financial disadvantage.

Decision of the Supreme Court (OGH) of 30.06.2004, 14 UR 2002.17-87, LES 2004, 432

Based on a decision of the County Court a freezing order was issued in 1987 within the framework of international legal assistance proceedings. This freezing order was cancelled in 1994 but as a result of a legal remedy asserted by the Office of the Public Prosecutor the Supreme Court issued another freezing order. Up to this decision of the Supreme Court no further investigative actions were however carried out. In the absence of a conviction or sufficiently strong grounds for suspicion the blockage of the account was lifted by the Court of Appeal in 2004 in view of the excessive length of the proceedings, a decision which was confirmed by the Supreme Court.

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 Liechtenstein Constitution (Landesverfassung [LV])[1] does not contain any explicit provision in this respect. However, an unreasonable length of proceedings may constitute a violation of the prohibition of a refusal or delay of justice. There is nevertheless no uniform practice of the Liechtenstein Constitutional Court (Staatsgerichtshof [StGH]) in citing one particular human right; in some cases Article 31 para 1 LV (equality before the law)[2] is invoked, whereas some decisions are based on Article 43 LV (a right to an effective remedy) and in other decisions a combination of the two is applied.

On the other hand there are regulations at the legislative level, specifically in Articles 23 and 90 para 6a of the State Law on the Administration of Justice (Landesverwaltungspflegegesetz [LVG]),[3] in Article 23 of the Court Organisation Law (Gerichtsorganisationsgesetz [GOG])[4] and in Article 45 of the Law on Enforcement Proceedings (Exekutionsordnung [EO]).[5] In this connection it may be mentioned that Article 1 para 3 of the old Law of the Constitutional Court (Staatsgerichtshofgesetz [StGHG])[6] – which was valid

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1 Systematic Collection of the Laws of Liechtenstein ["LR"] 101.

2 Article 31 para 1 of the Constitution (LV) "All citizens[1] shall be equal before the law. The public offices shall be equally open to them, subject to observance of the legal regulations."

3 LR 172.020.

4 LR 173.30.

5 LR 281.0.

6 Law of 5 November 1925, Law Gazette (Landesgesetzblatt [LGBl.]) 1925/8; in the meantime replaced by the Law of 27.11.2003, LGBl. 2004/32, LR 173.10.

until 20.01.2004 – allowed a complaint to the Parliament on the grounds of refusal of justice or a delay of justice by the Constitutional Court, without even having to wait for a prescribed minimum period of inactivity to have lapsed on the part of the authority.

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

There are no statistical data available.

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.

5.1 Prohibition of the Delay of Justice under Constitutional Law:

The prohibition of the delay of justice is inferred from Article 31 para 1 and/or Article 43 LV (cf. Question 3).

Article 43 LV

The right of complaint is guaranteed. Any citizen shall be entitled to lodge a complaint regarding any action or procedure on the part of a public authority which is contrary to the Constitution, the law or the official regulations and detrimental to his rights or interests. Such complaint shall be addressed to that authority which is immediately superior to the authority concerned and may, if necessary, be pursued to the highest authority, except when the right of recourse may be barred by a legal restriction. If a complaint thus submitted is rejected by the superior authority, the latter shall be bound to declare to the complaining party the reasons for its decision.

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. Finally, this 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 (Article 15 et seq. StGHG).

5.2 Article 23 LVG (Supervisory complaint):

Article 23 of the Law on the Administration of Justice (LVG)

Supervisory Complaints

1. Supervisory complaints against the government, the head of government or other members of the government based on improper conduct in the exercise of official acts or based on the refusal or delaying of an administrative act are to be filed by the parties concerned with the Administrative Court; if the complaint applies to other government officials, it is to be filed with the government (Article 93 of the Constitution); however, if the complaint concerns a matter of disciplinary law with respect to a member of the government, the Administrative Court or the members thereof, then the complaint is to be filed with the Disciplinary Court as an immediate complaint (Article 104 of the Constitution).

2. Recourse may also be had to a supervisory complaint if a formal complaint is not allowed, the deadline for submitting a complaint was missed or all the stages of appeal have been exhausted, unless exceptions apply (para 5).

3. All complaints – except for those which are obviously unjustified – are to be communicated to the authority or the official in question along with a request to remedy the complaint within a certain period of time and to report thereon or to state the obstacles to the contrary.

4. Complaints against officials and employees in the government chancellery and against enforcement authorities based on disregard or improper performance of official acts incumbent on them by law or entrusted on them by the government (officials) or based on improper conduct are

- unless otherwise stipulated for specific individual cases – to be filed with the government orally or in writing; a complaint against the government's decision may be filed with the Administrative Court within 14 days (Article 93 of the Constitution).

5. The complaint is not tied to a deadline if it concerns a lack of action on the part of the authority or an official; however, if it concerns an administrative act of which the complainant is given notice, the complaint must be submitted within 14 days of such notice.

6. The complainant is to receive a written reply which states the grounds for the decision and is to be designated as a supervisory order or a supervisory decision; (Article 43 of the Constitution).

7. Further reaching provisions of the Constitution (Articles 43, 62) are not affected by these clauses.

A supervisory complaint in accordance with Article 23 LVG may be submitted by any party involved in proceedings and has to be filed with the Administrative Court (Verwaltungsgerichtshof [VGH]; formerly Verwaltungsbeschwerdeinstanz [VBI]) if it concerns 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 (para 1).

There is no deadline which applies to supervisory complaints in respect of a delay of justice or refusal of justice (para 5).

It is undisputed in court practice and doctrine of the German speaking countries that a supervisory complaint is a legal remedy which does not need to fulfil any special requirements as to form. It is not an ordinary remedy since there is no obligation to enter into the merits of the complaint. Consequently, a supervisory complaint in accordance with Article 23 LVG is not a typical supervisory complaint, since in accordance with para 6 the complainant has a right to a response to his supervisory complaint in which the grounds for the decision are given.

5.3 Article 90 para 6a LVG (Default Complaint):

Article 90 para 6a (LVG)

6a) If the appellate authority is competent to issue a decision on a ruling or a decision issued by a lower administrative authority, and this latter administrative authority has not replied within three months of receipt of the party's application, then the application may be considered to have been dismissed upon expiry of this period of time and the party may have recourse to a complaint in this sense.

In accordance with Article 90 para 1 LVG a supervisory complaint may be filed with the Administrative Court in respect of all administrative acts of the government, the head of government, commissions or authorities appointed in place of the government. Only the complainant is entitled to file a complaint, whereas the respondent is not entitled to do so (VBI-Decision 2003/92; StGH-Decision 2003/97).

In accordance with Article 90 para 6a LVG a default complaint is admissible after a three months' period of inactivity of the authority in question.

5.4 Article 23 GOG (Supervisory complaint):

Article 23 of the Court Organisation Law (GOG)

1. Supervisory complaints by parties concerned against courts, the presidents of courts and judicial officials based on improper conduct in the exercise of their office, a refusal of or a delay in administration of justice are to be lodged with the President of the Court of Appeal; if the complaint is raised against the Court of Appeal or a member of this court, it has to be filed with the Supreme Court.

2. All complaints – except for those which are obviously unjustified – must be communicated to the court or judicial official in question along with a request to remedy the complaint within a certain period of time and to report thereon or to state the obstacles to the contrary.

3. Complaints against officials in the court chancellery and enforcement officials based on disregard

or improper performance of official acts incumbent on them by law or entrusted on them by the court are – unless otherwise stipulated with respect to specific individual cases – to be filed with the President of the Court of Justice orally or in writing, against whose ruling a complaint may be lodged within ten days of receipt of said ruling with the President of the Court of Appeal whose decision is final.

Article 23 GOG 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). No deadline applies to this type of supervisory complaint.

5.5 Article 45 EO (Complaints in respect of Performance of Enforcement):

Article 45 of the Law on Enforcement Proceedings (EO)

Complaints regarding the execution of enforcement

Whosoever deems they have grounds for complaint based on an occurrence during the execution of enforcement, in particular based on a procedure observed by the executor in carrying out an official action or as a result of the refusal of or a delay in conducting enforcement proceedings may request a remedy with a supervisory complaint in the sense of the Court Organisation Law.

Reference is made in Article 45 EO to the GOG as to complaints in respect of performance of enforcement including a refusal or a delay in carrying out enforcement acts.

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

As already explained in the reply to Question 5, it is permissible to make supervisory complaints at any time in accordance with the LVG. In the case of a default complaint in accordance with Article 90 para 6a LVG a three months' waiting period must first lapse, upon expiry of which there is deemed to have been a negative decision. As regards legal remedies in the ordinary stages of appeal, the delay of justice can in principle only be censured after the decision has been issued. However, the problem of sanctions then arises (see for example VBI-Decision 2002/76, p. 30: "The claim is justified. It will not have any special consequences."). In the case of constitutional complaints the problem arises that a complaint is actually only admissible once the proceedings have been formally concluded by a final decision. A reversal of such a belated decision on the only ground of a delay of justice would not make sense, although in principle this should be the sanction for all violations of a constitutional right in accordance with Article17 para 1 StGHG.

There is, however, also a constellation within the context of an excessive length of proceedings in which a decision may be or has to be reversed precisely because of the ensuing delay of justice. This constellation has arisen in concrete cases in connection with the freezing of accounts, whereby decisions ordering the extension of the freezing order were lifted upon appeal (Decision of the Supreme Court [Oberster Gerichtshof,OGH] of 03.06.2004, Liechtenstein Law Report [LES] 2004, 432; cf. also StGH-Decision 2004/25 [can be accessed in the Internet at: www.stgh.li], in which, however, a delay of justice was denied).

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

If the complaint in respect of delay of justice is successful, there are no costs for the proceedings.

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 an older decision of the Constitutional Court (StGH 1982/31, LES 1983, 105) a particularly large court file was not held to be a justification for a delay of justice (see however the decision to the contrary of the Constitutional Court StGH 1984/11, LES 1986, 63; which was, however, subject to doctrinal criticism – and rightly so).

In later decisions[7] reference is made to the nature of the matter and the overall circumstances, basically corresponding - in the final analysis - to the criteria contained in Article 6 para 1 of the European Convention on Human Rights. In more recent decisions of the Constitutional Court explicit reference is made to the Strasbourg criteria.[8]

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 explicit deadline for the competent authority to rule on a complaint in respect of a delay of justice. It is obvious that such a ruling should be issued as soon as possible. Cf. however § 23 para 2 GOG and Section 10.3. below in reference thereto.

In the StGH-Decision 1982/31/V the Constitutional Court set the Administrative Court a deadline of 14 days to remedy the delay of justice, which, in view of the fact that the Constitutional Court only has powers of cassation, is not per se admissible.

10. What are the available forms of redress?

10.1 It is up to the appellate bodies to determine in their decision whether there has been a violation of the prohibition of delay of justice upon filing of a complaint; this has been a regular occurrence (cf. inter alia StGH 1997/30 in LES 2000, 124; VBI 1994/44 in LES 1995, 44; VBI 2002/76).

10.2 Financial compensation may only be awarded for an excessive length of proceedings within the limits of the Law on Public liability (Amtshaftungsgesetz [AHG]).[9] Article 3 para 5 AHG stipulates a reversed burden of proof in that the state has to prove that its officers are not at fault; otherwise the state is liable.

Due to the lack explicit rules, Article 3 para 4 AHG makes reference to the provisions with respect to liability contained in the Civil Code. Accordingly compensation for immaterial damage is only awarded in the cases explicitly stipulated by the law.

Specifically with regard to the AHG-provisions the Constitutional Court in its decision StGH 1997/30, expressed reservations against filling the gap and providing compensation in a similar manner as in the Strasburg case-law. In the VBI-Decision 1994/44 the subject of such compensation was brought up but in the end the question was not resolved. The correlation of such compensation to public liability was not dealt with. The VBI-Decision 2003/92 mentioned only public liability as - de lege lata - the sole available financial sanction; in our view this is correct.

10.3 Measures to speed up pending proceedings: In accordance with § 23 para 2 GOG the supervisory body may set a specific deadline whereby the authority in question has to render account in respect of its compliance therewith. It should, however, also be possible to set a deadline in accordance with Article 23 LVG (cf. also StGH-Decision 1982/31/V and Section 9 above).

10.4 It has already been possible in the past to obtain, due to a delay of justice, a reduction of the sentence in criminal proceedings (cf. StGH-Decision 2001/4, Consideration 5.2.). In this connection the idea of rehabilitation and the lacking necessity for a deterring effect upon the offender were of special significance. Whoever has been successful in reintegrating into society after lengthy criminal proceedings, should, if possible, be given a short and, more particularly, a suspended sentence. In this year's March session of Parliament there was a first reading of a revision of the Criminal Code (adapted from Austria) – similar to a revision already introduced in Austria, according to which an unreasonable length of proceedings in criminal matters shall be deemed to constitute, a new legal ground for mitigation pursuant to § 34 of the Criminal Code.[10]

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7 e.g. StGH 1997/30, Deliberation 4.

8 Cf. inter alia StGH 2000/4, StGH 2001/4 and StGH 2004/25 (accessible via Internet at www.stgh.li).

9 LR 170.32.

10 Cf. Government report to Parliament no. 99/2005; Government comments to the Parliament no. 10/2006, S. 385.

11. Are these forms of redress cumulative or alternative?

Recognition by the court of a violation can be cumulative along with setting a deadline in accordance with § 23 GOG, any reduction of the criminal sentence and also with proceedings in respect of public liability.

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?

Reference is made here to the comments on pecuniary compensation contained in Section 10.2 above.

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?

As explained in Section 1, delays in judicial proceedings do not present a major problem, for which reason the courts have not taken any special measures.

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

See reply to Question 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.

If decisions of higher courts or administrative bodies which determine a delay of justice are not complied with – apart from a default complaint in accordance with the LVG which gives the higher court or administrative body the possibility to make a substantive decision by itself – there only remains the possibility of disciplinary proceedings against the judge(s) in question.

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?

Please refer to the reply to Question 5 in this connection. Insofar as a delay of justice is asserted within the framework of an ordinary legal remedy, the entire ordinary stages of appeal are also available in such case. According to the case-law there is a further ordinary legal remedy against a supervisory complaint to the Court of Appeal pursuant to § 23 GOG (cf. OGH-Decision of 30.04.1985, Deliberation no. 5 in LES 1986 p. 45 [47]). There obviously exists no ordinary remedy against decisions of the Supreme Court and the Administrative Court as final courts of appeal. In the same way as there is no specific period of time which needs to have lapsed before a decision can be issued on a complaint citing a delay of justice (Question 9), there is no such minimum period of time for dealing with a remedy in respect of such a decision.

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?

During pending proceedings a supervisory complaint in accordance with § 23 GOG or Article 23 LVG may of course be filed more than once. According to the explicit stipulation in § 23 para 2 GOG the supervisory authority should however request the body concerned to render account on the resolving of the delay of justice so that repeated complaints in respect of a delay on proceedings should in principle not be necessary. There is no minimum period of time for a second complaint invoking an unreasonable length of the proceedings.

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

English/French.

There is no statistical data.

19. What is the general assessment of this remedy?

As already mentioned in the reply to question 1, delays in judicial proceedings are currently not a severe problem in Liechtenstein. The existing remedies are sufficient to efficiently fight delays if the occur.

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.

As explained in reply to Question 2, the European Court of Human Rights only recently dealt with a complaint with regard to a delay of justice in Liechtenstein.

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

See the reply to Question 20.

LITHUANIA

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

National statistics show that such cases are very rare (in 2004, only 1-2% of the total amount of cases).

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

The problem of excessive delays in judicial proceedings was acknowledged by the National Courts and the European Court of Human Rights.

National Case-Law

The principle of "reasonable length of the judicial proceedings" is analysed in several judgments of the Supreme Court of Lithuania in both civil and criminal proceedings (judgment of 13 May 2004 in the case of *Bolotovas v. the Lithuanian State*, the judgment of 1 June 2004 in the case of *Leparskienė v. Burčikas*, the judgment of 22 November 2004 in the case of *Šiaulys* v. *General procurator* (criminal proceedings); the judgment of 4 September 2002 in the case of *Girdžiūnas v. Girdžiūnienė*, the judgment of 3 June 2002 in the case of *Bieliauskas v. Trakų turizmo įmonė* (civil proceedings) etc).

European Court of Human Rights Case-Law

In the following four cases, the ECtHR found that Lithuania violated Article 6.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms: *Grauslys v. Lithuania* (judgment of 10 October 2000), *Šleževičius v. Lithuania* (judgment of 13 November 2001), *Meilus v. Lithuania* (judgment of 6 November 2003), and *Girdauskas v. Lithuania* (judgment of 11 December 2003).

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

There is no explicit constitutional requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 para 1 of the European Convention on Human Rights.

In its Article 30.1, the Constitution of Lithuania provides that :

> *"The person whose constitutional rights or freedoms are violated shall have the right to apply to court."*

The **Law on Courts** provides for the reasonableness of the judicial proceedings, i.e.:

> *"Article 5. Right to a Hearing within a Reasonable Time by an Independent and Impartial Court:*
>
> *1. Everyone shall be entitled to a fair hearing by an independent and impartial court established by law.*
>
> *2. The court, in all its activities, must ensure that the hearing of a case be fair and public and within a reasonable time."*
>
> *"Article 34. Underlying Principles of Court Hearings*
>
> *1. Court hearings shall be founded on the following principles: equality of the parties, the right to legal assistance, the right to due process, expeditious and least expensive proceedings, the right*

to be heard, the adversarial procedure, presumption of innocence, impartiality of the court, public hearing, the right to be tried in one's presence and prohibition of the abuse of process."

Furthermore, the **Code of Criminal Proceedings** of the Republic of Lithuania provides that "every person charged with the commission of a crime shall have the right to a fair and equal public hearing of his case by an independent and impartial court in the shortest time" (Article 44, para 5).

Article 7 ("Concentration and economy of the proceedings") of the **Code of Civil Proceedings** of the Republic of Lithuania provides that:

"1. The court shall take all the means provided in the Code of Civil Proceedings in order to prevent the delay of proceedings and shall seek to find a solution of the case in one sitting of the court if this does not prejudice the proper solution of the case; the court shall also ensure that the judgment of the court would be enforced in the shortest time possible and in the most economic way.
2. Parties of the case shall be obliged to use their rights of the proceedings honestly and not to abuse these rights; they shall be obliged to attend the prompt, fair and timely examination of the case <…>."

The **Law on Administrative Proceedings** does not provide for the explicit requirement of the promptness of the legal proceedings, but there are procedural periods set for the length of judicial proceedings: Article 65 of the Law on Administrative Proceedings provides:

<…> "2. As a rule the preparation of administrative cases for hearing in the court must be completed within one month from the day of acceptance of the complaint/petition.

3. The hearing of the case in the administrative court must be completed and the decision must be adopted in the court of the first instance within two months from the day of issuance of the order to hear the case in the court, unless the law establishes shorter time limits for the hearing.

4. As necessary, the above-mentioned time limit for the hearing of the case may be extended for up to one month and in the cases in which the legality of regulatory administrative acts is contested – for up to three months."

In the Article 153 "Grounds for the Renewal of Proceedings" of the same law it is stated that one of the grounds to resume the proceedings is if the European Court of Human Rights rules that a decision of the court of the Republic of Lithuania is not in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols.

There are also some dispositions in the **Judge's Code of Conduct** of the Republic of Lithuania. The 10th rule states that "while investigating the cases, the judge shall go into the essence of the case, he shall avoid undue haste and superficiality but he shall not delay the judicial proceedings". It should be mentioned that according to Article 83 of the Law on courts "a disciplinary action may be brought against a judge: 1) for an action demeaning the judicial office; 2) for the commission of an administrative offence; 3) for non-compliance with the limitations on the work and political activities of judges provided by laws. An act demeaning the judicial office shall be an act incompatible with the judge's honour and in conflict with the requirements of the Judge's Code of Conduct, discrediting the office of the judge and undermining the authority of the court. Any misconduct in office - negligent performance of any specific duty of a judge or omission to act without a good cause shall also be regarded as an act demeaning the office of a judge."

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

The national administration of courts has just begun to ask the courts to provide this kind of information about the length of proceedings. It has collected some information for the year 2004, but only from the courts of first instance:

Average length of proceedings (in months)	First instance, civil proceedings	
	Amount (in cases)	%
less than 6 months	145.154	97

6-12 months	3.531	2.4
more than 12 months	961	0.6
Total:	**149.646**	**100**

Average length of proceedings (in months)	**First instance, criminal proceedings**	
	Amount (in cases)	**%**
less than 6 months	16.416	94.5
6-12 months	596	3.4
more than 12 months	352	2.1
Total:	**17.364**	**100**

Administrative proceedings are the most prompt: normally the entire administrative process (including the appeals) is completed within 6 months. One of the reasons for this is the concrete time limits, provided in the Law on Administrative Proceedings.

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.

Criminal proceedings: there is no special provision concerning the remedies in respect of excessive delays, but these questions may be put in the complaint to the Supreme Court (during the cassation proceedings) concerning the "principal violations of the Code of Criminal Proceedings". According to Article 369 para 3 of the Code of Criminal Proceedings, the principal violations of the Code are such violations of the requirements of the Code, due to the fact that the lawful rights of the accused person were restricted or because the court was unable to examine the case properly and impartially in order to pronounce the correct judgment.

This cassation complaint can be lodged by the procurator, the aggrieved person, the representative of the aggrieved person, the convicted person and its advocate and representative, the exculpated person and its advocate and representative.

The complaint in the cassation proceedings can be lodged within 3 months from the date of the judgment of the court.

Civil proceedings: There is no special provision concerning the remedies in respect of excessive delays, but these questions may be put in the complaint to the Supreme Court (during the cassation proceedings) concerning the "violation of the material or procedural legal norms, which is of principal concern to the equal interpretation and application of law, if this violation could have had an impact on the adoption of the unlawful judgment" (Article 346 para 2 point 1 of the Code of Civil Proceedings).

This complaint can be lodged by parties to the case.

The complaint in the cassation proceedings can be lodged within 3 months from the date of the judgment of the court.

Administrative Proceedings: Article 127 of the Law on Administrative Proceedings states that the decisions of Regional Administrative Courts, adopted when hearing the cases in the first instance, may be appealed against to the Supreme Administrative Court of Lithuania within fourteen days from the pronouncement of the decision.

All parties to the proceedings shall be entitled to file an appeal. The appeal shall include *inter alia* the contested issues; the laws and circumstances of the case whereon the illegality or invalidity of the decision or a part thereof is based (legal grounds for appeal); the appellant's petition (subject matter of the appeal)

and the evidence confirming the circumstances presented in the appeal (Article 130).

There are also some 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.

In Article 6.272 of the Civil Code it is stated that:

> *"1. The State entirely compensates the damage made by unlawful conviction, arrest, application of coercive procedural measures and imposition of the administrative punishment, regardless of the fault of officers of pre-trial investigation, officers of the procurator office and of the court.*
>
> *2. The State entirely compensates the damage made by unlawful actions of the judge or the court during the investigation of the civil case, if the damage was made because of the fault of the judge or other officer of the court.*
>
> *3. Besides the material damage, non-material damage is to be compensated too."*

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

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.

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 the judge to speed up the judicial proceedings or initiates the disciplinary action against the judge. Nevertheless this is a very sensitive question as it may interfere with the principle of the independent court and we do not have any information about these cases.

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

No special cost.

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 para 1 ECHR?

In analysing the reasonableness of the duration of the proceedings, the Supreme Court of Lithuania is using the same criteria as applied by the European Court of Human Rights in respect of Article 6 para 1 ECHR.

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.

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 (formally)
- possible reduction of sentence in criminal cases	NO

- other (specify what) YES
  (disciplinary action)

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 to, those applied by the European Court of Human Rights? Is there a maximum amount of compensation to be awarded?

As was mentioned in point 8 of this reply, the same criteria as those applied by the European Court of Human Rights are used. The maximum amount of compensation is not set.

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 information is provided in point 6.

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

In the case of delay of judicial proceedings in the pending cases – Chairmen of the courts and the Judicial Court of Honour. However we do not have any statistics or concrete information about the supervising of the implementation of the decision on the reasonableness of the duration of the proceedings.

LUXEMBOURG

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.

Exceeding the reasonable delay for giving a judgment can be invoked at any level of judiciary even if there are no specific remedies designed for speeding-up the proceedings.

In a number of cases the domestic courts admitted the breach of the reasonable time requirement in respect of criminal proceedings and the above circumstance was taken into account when determining the sentence by mitigation of the latter.

The person complaining of a violation of the reasonable time requirement may claim compensation based on the Law of 1 September 1988 on the Civil Liability of the State and Public Entities.

In civil cases a post of an investigating judge has been created. The functions of the latter should include: supervising the conduct of the proceedings, ensuring the timely exchange of pleadings and submission of documents. The judge is therefore entitled to set deadlines and order the necessary measures. After the investigation is over, the judge issues an order closing the investigation, which does not have to be reasoned and can not be appealed, unless it is supposed to be reviewed for significant grounds. After the order closing the investigation is issued no pleadings can be submitted and no document can be produced for hearing, failure of which would result in an ex officio decision of inadmissibility.

As regards the administrative proceedings, the legislation envisages particular deadlines for procedural actions.

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

The criteria used by the jurisdictions of Luxembourg while assessing the reasonableness of the length of proceedings are the same as those applied by the ECtHR.

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

In the case *Rezette v. Luxembourg* (judgment of 13 July 2004), the Court considered that a State liability action under the Law on State responsibility had not yet acquired a sufficient degree of certainty to be considered an effective remedy in the sense of Article 35 § 1 of the Convention.

This jurisprudence has been confirmed since then (see in particular the *Dattel and others v. Luxembourg*, judgment of 04.08.2005, in which the Court reiterated that the remedy provided by the Law of 1 September 1988 had not acquired a sufficient degree of legal certainty to be used or exhausted by the applicant for the purposes of Article 35 § 1 of the Convention). All these cases concern civil proceedings.

As regards criminal proceedings, the European Court recently found a violation of Article 6 § 1 in the case *Casse v. Luxembourg* (judgment of 27 April 2006) and of Article 13 since the applicant did not have an effective remedy against the length of proceedings.

MALTA

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 39 of the Constitution of Malta which states that all cases have to be given a fair hearing "within a reasonable time." Moreover, since the European Convention on Human Rights has been incorporated into the Maltese legal system since 1987, this right is further guaranteed by Article 6 (1) of the said Convention.

In addition, the Registrar of the Court has the duty to list an appealed case for hearing not later than six months after the filing of the application to appeal.

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 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.

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

The Court in its assessment of what constitutes "unreasonable length of time" follows the same standards and criteria as those adopted 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
  - non-material damage YES
- measures to speed up the proceedings, if they are still pending YES
- possible reduction of sentence in criminal cases YES
- other (specify what)

As long as they act within the parameters of the law, the Maltese courts have an absolute discretion of awarding any remedy which they deem effective after taking into account all the circumstances of the case.

11. Are these forms of redress cumulative or alternative?

They may also be cumulative.

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

When the Court orders pecuniary compensation there is no limit on the minimum or maximum amount that can be awarded.

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 *Debono v. Malta* case (decision of 10 June 2004), the Court held that, at least regarding the length of proceedings at first instance, the applicant had the possibility of lodging a constitutional claim and thus, obtain the pecuniary or non-pecuniary redress.

MOLDOVA

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

Yes, in the Republic of Moldova there have been such cases of excessive delays of all mentioned procedures.

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

There is no answer to the above question because there is no any statistical data of the judicial proceedings, classified by legal reason.

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

The Constitution of the Republic of Moldova does not contain the requirement of reasonableness of the duration of judicial proceeding, specifying only about everyone's right "to obtain effective protection from competent courts of jurisdiction against actions infringing on his/her legitimate rights, freedoms and interests" (Article 20 of the Constitution of the Republic of Moldova).

The reasonable duration of judicial proceedings, equivalent to that contained in Article 6 of the European Convention of Human Rights, is established by the Criminal Procedure Code and Civil Procedure Code.

So, Article 19 para (1) of the Criminal Procedure Code of the Republic of Moldova contains the similar provision as the European Convention of Human Rights. The named article specifies that any person has the right for the criminal prosecution and the trial to be carried out in reasonable terms by an independent, impartial and legally established court.

As for the request of the reasonable term in the civil procedure, it is provided in the Article 4 of the Civil Procedure Code – "Civil Procedure Tasks".

According to Article 63 of the Enforcement Code of the Republic of Moldova, the enforceable document shall be enforced by the bailiff within a 3 months term since the day when the enforcement procedure was initiated, or in within the term specified in the enforceable document, as well as the possibility to prolong "upon necessity" the term of enforcement by the chief of the enforcement office, at the motivated request of the bailiff. The Enforcement Code does not refer to the term of "delay".

The Administrative Contentious Law provides clear terms for proceedings. So, the administrative, non-judicial proceedings have a limit term of 30 days, in which the issuing or higher authority can judge upon the annulment or maintaining of the contested act. The terms applied for the administrative judicial proceedings are the same as for civil proceedings; the court establishes the reasonable trial date au fond if there are no other law provisions.

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

According to the statistical data on criminal cases held by the Ministry of Justice, during the year of 2005 (the first 6 months of the year of 2006, respectively) there were 1.244 from the total number of 14.988 completed cases (706 of 7.206 cases, respectively) that were carried out within the period of more than three months, with the verdict being brought in. At the same time, there were 486 pending cases (384 cases, respectively) for more than 6 months, no verdict being brought in, and more than 12 months – 375 dossiers (263 dossiers, respectively).

As for civil dossiers, according to the statistical data held by the Ministry of Justice, during the year of 2005 (the first 6 months of the year of 2006, respectively), there were 9.807 from the total number of 51.664 completed cases (5.528 of 25.018 cases, respectively) that were carried out within the period of more than two months, with the verdict being brought in, and 2.720 dossiers (2.757 dossiers, respectively) that were carried out during more than three months no verdict being brought in.

Concerning the non-enforcement of the enforceable documents within the legal term of three months, there are 26.803 overdue dossiers at the Department of Enforcement of judicial decisions.

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 procedural legislation of the Republic of Moldova contains provisions concerning the sanctioning of those culpable for the delay of the trial, such as compensation payment to the interested party, the quantum being express provided in some cases.

Article 10 para (3) of the Civil Procedure Code provides as procedure sanction the forfeiture of rights in the case of delay of fulfillment of the act of procedure.

Article 50 para (3) of the same Code provides the sanction of the party that submitted the challenging application against the judge in ill fate, with the aim of delaying the trial. Article 61 para (2) provides the right of the court to sanction the culpable party that submitted in ill fate ill-founded requests contesting a paper or a signature applied to a paper, a request of cancellation of a trial or of the transfer of the case, etc.

Article 119 provides the sanction of employees carrying out the official responsibilities that ignores the court order providing the redress of the prejudice caused by the delay of the trial. Article 204 para (2) of Civil Procedure Code provides the commitment of the court, at the request of the interested party, to solve the redress of the prejudice issue, caused by the delay, in the case another party's ungrounded or false evidence in order to delay the trial is ascertained.

According to the provisions of Article 20 para (4) and (5) of Criminal Procedure Code, 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. In case when the challenging application against the judge is submitted in ill fate and abusively, Article 34 para (4) provides for the court that tries the possibility to apply a legal fine on the guilty person. Article 201 para (3) p. 4 provides the application of the judicial fine for the expert, interpreter or translator in the in the case of unduly delay while performing the entrusted tasks.

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

The observance of the reasonable term during the criminal prosecution and during the trial of the certain cases can be made only through an ordinary appeal. The same rule is applied in civil matters.

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

There are no fees for the judgment of remedy in criminal proceedings and the actions provided by the Law no.1545-XIII of 25.02.1998 (Article 85 para 1, letter 1) of Civil Procedure Code); for ordinary appeal in civil cases there is a fee established by Article 3 letters j) and k) para 1 of the Law on state fees no.1216-XII of 03.12.1992.

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 para 1 ECHR?

The procedural legislation of the Republic of Moldova establishes the criteria of establishment of the reasonable term of the proceeding, but not of its reliability. On the establishment of the reasonable term of

the proceedings in criminal and civil matters, the adequate authority applies Article 20 para (2) of Criminal Procedure Code and Article 192 para (1) of Civil Procedure Code, in accordance to which there are following criteria:

- complexity of the case;
- the conduct of the parties in the proceeding;
- the conduct of the criminal prosecution body and the court.

The observance of the reasonable term during the proceedings is secured by the appeal court.

The observance of the reasonable term during the civil cases will be verified by the court. The observance of the reasonable term during the trial of the certain cases will be verified by hierarchically superior court in the proceeding of the trial of the respective case by certain 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?

The domestic legislation does not provide a deadline for the competent authority to rule on the matter of the length of proceedings, it provides only for the reasonableness of the length of the proceeding, excepting some categories of cases, as in labor, administrative contentious and contravention matters.

10. What are the available forms of redress?

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

* There are some possibilities of obtaining moral and material compensations. As for material compensations, as it was mentioned in the answer to the question 5, Article 204 para (2) of Civil Procedure Code 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. According to the Article 1422 of the Civil Code, the moral damage is 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.

11. Are these forms of redress cumulative or alternative?

The question is irrelevant, taking into account the answer to the above question.

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 Moldovan procedural legislation does not refer to any criteria on which compensations can be provided, the possibility of compensation for the damage caused by the excessive duration of the proceedings being provided in some cases.

The compensation of material damage is equivalent to the real damage born.

There is no established limit for the compensation of material damage.

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-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?

There are no measures for speeding up the proceedings.

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

There are no provisions in Moldovan procedural legislation that provide any authorities for the supervision of the length of the procedure.

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

There are no such measures provided.

16. Is an appeal possible against a decision on the reasonableness of the duration of the proceedings? Is there a minimum period if 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?

As mentioned above, there are no provisions in Moldovan procedural legislation that provide any possibility of passing a separate decision on the duration of the proceedings. The observance of the reasonable term of the proceedings is made at the same time with the possible appeal.

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?

See the answer to the question 16.

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

See the answer to the question 16.

19. What is the general assessment of this remedy?

See the answer to the question 16.

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

See the answer to the question 16. There are no statistical data on the ECHR decisions.

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

Because of the lack of such remedies in Moldovan legislation, ECHR has not given any opinion in any cases concerning the issue.

MONACO

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

The Principality of Monaco is not subject to lengthy proceedings, whether civil or criminal.

The country's small size, the geographical proximity of the various courts (virtually all located in the same court buildings), the resources continually granted to the courts in order to allow them to carry out their tasks as smoothly as possible in line with the changing needs of the Principality's development, and the constant high-quality work of judges, law officers, legal officials and the staff of the Directorate of Judicial Affairs permit day-to-day operation of the courts that is not subject to excessive delay.

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

To date there have been no Monaco court decisions (trial or appeal) dealing with procedural delays.

Since the Principality of Monaco is not subject to lengthy proceedings, its domestic courts have never specifically had to deal with applications on the issue and have therefore not yet had to deliver a ruling.

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 the Monaco Constitution of 17 December 1962, amended by Law No. 1249 of 2 April 2002, and in Monaco legislation – on the judicature, for example – there are no explicit concerning reasonable-time requirements similar to those in Article 6 § 1 of the European Convention on Human Rights, which has been ratified by the Principality, rendered enforceable and published with all due legal consequences.

However, there are quite a few provisions in Monaco law establishing implicit requirements that preserve Monaco from undue length of proceedings.

For example, in urgent civil cases, whatever their subject matter, the president of the court of first instance may, on urgent application, order any measures not prejudging the main issue (Code of Civil Procedure, Article 414); if the parties do not appear voluntarily, they are served with a writ of summons requiring them to appear within a minimum of one day if they are domiciled or resident in the Principality of Monaco, and the president has the power, in extremely urgent cases, to summon the parties to appear within the day or within the hour, or even to issue a summons at home on Saturdays, Sundays and bank holidays (Code of Civil Procedure, Article 417).
This obviously prevents unreasonable delays from affecting proceedings.

A justice of the peace is also able to try cases every day apart from bank holidays (Code of Civil Procedure, Article 65), and he and his registrar must sign the original judgment within three days (Code of Civil Procedure, Article 69).

The Supreme Court, which handles constitutional and administrative issues and jurisdiction disputes and whose decisions are not appealable, is organised and operates according to rules laid down in the Constitution which allow it to deal with appeals to it in a matter of months.

The same is true of the Judicial Review Court, the highest ordinary court, which also operates so as to allow court decisions, whether civil or criminal, to be delivered within a very reasonable time.

Without going into detail, it should be added that this court is so organised by the Monaco Code of Civil Procedure that its decisions are delivered just a few months after cases have been referred, which naturally

precludes lengthy proceedings.

Various provisions of Monegasque law, of which the above are only some examples, naturally help to tackle the risk of lengthy proceedings.

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

Figures appear every year for the Principality's work in all areas of the country's life, but there are no specific statistics on length of proceedings in Monaco. As the Principality is not subject to lengthy proceedings, there has never been any need to study the question from the statistical point of view.

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.

Monaco does not have any remedies specifically dealing with excessive procedural delays since, as stated above, the problem of lengthy proceedings does not arise.

MONTENEGRO

The replies to the questionnaire in respect of Serbia were submitted prior to 3 June 2006, the date Montenegro declared its independence and therefore concern both Serbia and Montenegro.

However, according to a recent opinion of the Supreme Court of Montenegro "the domestic legal system offers no legal remedy against violations of the right to be heard within a reasonable time, with the result that courts in the Republic of Montenegro have no jurisdiction to decide claims for compensation for non-material damage caused by violation of that right. This being so, any person who considers him/herself the victim of such a violation may apply to the European Court of Human Rights within six months of the giving of final judgment by the domestic courts. When asked to rule on claims for compensation for non-material damage caused by violation of the right to be heard within a reasonable time, the courts of the Republic of Montenegro must accordingly refuse jurisdiction, suspend all proceedings in connection with the application and declare the complaint inadmissible (Article 19, para 3 of the Code of Civil Procedure)."

NETHERLANDS

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

A great majority of judicial proceedings come to an end within a reasonable time. However, incidentally 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? Which courts (national/European Court of Human Rights)? Please provide some examples in English of French or reference to ECHR 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 judgment 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 judgment 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 judgment 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* (judgment of 14 May 2002), *Göcer v. the Netherlands* (judgment of 3 October 2002) and *Beumer v. the Netherlands* (judgment 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 judgments 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. Article 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. Is any statistical data available about the extent of this problem in your country? If so, please provide it 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 (judgment of 3 October 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 judgment 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 also available 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 to, 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 to, 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 judgments. 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 the case of non-enforcement of such a 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? 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?

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. Is there any statistical data available on the use of this remedy? If so, please provide it 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.

NORWAY

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

In general, judicial proceedings in Norway are held without excessive delays.

I 2005 the average time from an initial step in a civil suit to a ruling rendered by the District Court was 7.0 months, in criminal cases 3.2 months.

According to guidelines from the Department of Justice, the aim is to render rulings in civil cases within 6.0 months, in criminal cases within 3.0 months.

An appeal in a civil case was in average decided by the Court of Appeal within 9.8 months, while criminal cases in average was decided within 5 months.

As for the Supreme Court, approximately 20% of the appeals are granted leave of appeal to the Supreme Court after decision by The Appeals Selection Committee. The decision by the Appeals Selection Committee was in civil cases in average rendered within 0.7 months after receiving the case, while in criminal cases the decision was rendered within 0.6 months.

In 2005, the average time from an appeal in a civil case was granted leave of appeal to the Supreme Court to a decision was rendered, was 5.8 months. In criminal cases, the average time was 2.5 months.

Cases regarding enforcement are in general handled considerably faster than ordinary civil cases.

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

As it follows from the statistics quoted under question no.1, the main numbers of cases are decided within reasonable time. In specific cases though, the national courts have found that that the delay in a judicial proceeding has been excessive. Such delays have been noted both in criminal cases and in certain civil cases – for instance tax cases.

Norway has been a party to only a few cases before the European Court of Human Rights. In the case of *Beck v. Norway*, application no. 26390/95, the European Court of Human Rights found that that the proceedings had exceeded a reasonable time, but that the national court had afforded adequate redress for the alleged violation. As a result, the European Court of Human Rights held that there had not been a violation of Article 6 § 1 of the Convention. The same result was found in *Lie and Berntsen v. Norway*, application no. 25130/94.

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 Human Rights Act of 1999 gave The European Convention of Human Rights the legal force of national parliamentary legislation. The Convention is therefore invoked directly before the national courts, and Article 6 § 1 sets binding limits on the length of judicial proceedings. Furthermore, the Human Rights Act states that the convention shall prevail over any other conflicting statutory provisions.

The Criminal Procedure Act sets forth certain time limits with regards to the handling of cases where the defendant is held in custody. In both criminal cases and civil cases, there are statutory guidelines as to when a decision should be handed down after the closing of oral proceedings.

4. Is any statistical data available about the extent of this problem in your country? If so, please

provide it in English or French.

There is no such statistical data available in English or French.

The official statistics shows that in general, there are no excessive delays in the judicial proceeding in Norway, cf. question no 1.

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 specific legislation has been passed, proving specific remedies in case of excessive delay in the judicial proceedings.

An excessive delay may constitute a procedural error as mentioned in the Civil Procedure Code and the Criminal Procedure Code, leading the appellate court to quash a decision from the lower court, though this is unusual.

In cases where an excessive delay in the judicial proceedings has resulted in an economic loss, a lawsuit may be filed in order to compensate for such loss.

Certain forms of redress are available during the pending proceedings, cf. question no. 10.

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

Cf. questions no. 5 and 10.

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

The criteria used are the same as the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR.

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?

Not applicable.

10. What are the available forms of redress:

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

Cf. question no. 5.

11. Are these forms of redress cumulative or alternative?

In criminal cases 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. However, the courts are not obliged to acknowledge a violation of Article 6 § 1, since according to Norwegian sentencing practice, sentences will be reduced after excessive delays even where the delay did not amount to a violation of Article 6 § 1.

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

Not applicable.

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?

Not applicable, cf. question no. 10.

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

Not applicable.

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.

Not applicable.

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?

Not applicable.

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?

Not applicable.

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

Not applicable.

19. What is the general assessment of this remedy?

Not applicable.

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.

Not applicable.

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.

Not applicable.

POLAND

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

Yes, civil, criminal, administrative proceedings and enforcement of judgments.

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

Yes. European Court of Human Rights and national courts. Among many cases where the ECHR declared violation of Article 6 § 1 of the Convention with respect to Poland see the following cases: - *Styranowski v. Poland*; *Podbielski v. Poland* (case no. 27916/95); *Kudła v. Poland* (case no. 30210/96*); Iżykowska v. Poland* (case no. 7530/02), *Durasik v. Poland* (case no. 6735/03).

Judgments of national courts finding the violation of the right to a trial within a reasonable time and granting the pecuniary compensation.

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?

Yes, Article 45 sec. 1 Constitution

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

(see question 18)

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.

Following the *Kudla v. Poland* (judgment of 26 October 2000) the Polish authorities adopted the *Act of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time.*

This Act 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.

The complaint can be lodged by everyone who has the pending case before domestic courts.

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.

In addition, the Article 417 of the Civil Code provided for a new regime of the State liability for damage caused by public authority. 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 length of the proceedings after the proceedings concerning the merits of the case have ended.

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

Yes. According to section 5 of the Act *of 17 June 2004 on complaints about a breach of the right to a trial*

within a reasonable time - complaint about the unreasonable length of proceedings shall be lodged while the proceedings are pending. The competence to adjudicate complaints is vested to the court superior over the court that examines the proceedings as to the merits. 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 awards the complainant compensation of up to 10,000 zl. (approximately 2.550 euros).

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 of Article 417 of the Civil Code, request reparation of damage resulted from the established undue delay.

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

Yes, the complainant shall pay a court fee in the amount of PLN 100zloty (approximately 25 euros). The fee is returned ex officio by the court examining the complaint, if the latter is allowed.

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

The same as criteria 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?

Deadline: Two-moths time limit predicted by Article 11 of the Act. It can't be extended, no legal consequences.

10. What are the available forms of redress:

- acknowledgement of the violation : YES
- pecuniary compensation: YES
  1)"just satisfaction" - maximum amount of just satisfaction to be awarded by the domestic courts could not exceed 10.000 Polish zlotys (PLN) and
  2) a party whose complaint has been allowed may seek compensation from the State Treasury for the damage it suffered as a result of the unreasonable length of the proceedings (available under separated civil claim)
  - material damage YES
  - (civil claim- additional remedy)
  - non-material damage YES
  - ("just satisfaction")
- 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 to, those applied by the European Court of Human Rights ? Is there a maximum amount of compensation to be awarded?

Pecuniary compensation is available – the maximum amount of just satisfaction to be awarded by the domestic courts could not exceed 10.000 Polish zlotys, i.e. approximately 2.550 euros. It should be noted, that a party whose complaint has been allowed may seek compensation from the State Treasury (civil claim) for the damage it suffered as a result of the unreasonable length of the proceedings (additional compensatory remedy provided by national law).

Amount of just satisfaction, which could be granted at the request of the complainant, depends from individual circumstances of the case – the domestic court shall applied criteria fixed by ECHR

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?

At the request of the complainant, the court may instruct the court examining the merits of the case to take certain measures within a specified time. Such instructions shall not concern the factual and legal assessment of the case/individual measures to be taken to speed up the proceedings depend from specific circumstances of each case.
The domestic courts, in majority, order the specific measures on the basis of nature of the cases pending and activity of the court during judicial proceedings.

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

In practice, President of the Court.

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.

Administrative surveillance/disciplinary proceedings against the 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?

No appeal possible.

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?

Yes, the minimum period of time which needs to have elapsed is 12 months.

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

From 17 September 2004, when the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time ("the 2004 Act") entered into force, the Polish courts have examined:

2004 – 1.824 complaints – the domestic courts have found: violation in 290 cases / no violation 368 cases / rejected (from formal reasons) - 1166 cases.

2005 – 4.921 complaints - the domestic courts have found: violation in 1.001 cases / no violation 579 cases / rejected (from formal reasons) - 835 cases.

2006 (period January-June) – 1.879 complaints - the domestic courts have found: violation in 361 cases / no violation 579 cases / rejected (from formal reasons) - 835 cases.

19. What is the general assessment of this remedy?

The ECHR assess this remedy as effective one, but the jurisprudence of the domestic courts may cause the problem in the light of ECHR case –law.

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, before lodging the complaint to the ECHR each applicant has to exhaust this domestic remedy.

The ECHR is at present examining the effectiveness of various new remedies for Polish length-of-proceedings cases. Four leading cases have been given priority and around 700 similar cases have been adjourned.

20. 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, *Michalak v. Poland* (24549/03); *Charzynski v. Poland* (15212/03) decision of 1 March 2005, the ECHR found that Polish law provided an effective remedy for excessive length of proceedings.

PORTUGAL

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

Yes**.**

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

Among many cases where the European Court declared violation of Article 6 § 1 of the Convention with respect to Portugal, see for example the following cases*: Oliveira Modesto and others v. Portugal* (judgment of 8 September 1999), *Pena v. Portugal* (judgment of 18 March 2003), and *Marques Nunes v. Portugal* (judgment of 20 May 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?

Article 20 § 4 of the 1976 Constitution enshrines the right to a "judicial decision within a reasonable 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.

Article 22 of the Constitution defines the civil liability of the State and its authorities and agents in the following terms:

> *"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."*

Furthermore, Legislative Decree No. 48051 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 (*culpa*) by their agencies or officials in the performance of their duties or as a consequence thereof."

In accordance with the case-law concerning the State's non-contractual liability, the State is required to pay compensation only if an unlawful act has been committed with negligence and there is a causal link between the act and the alleged damage.

The failure to observe a time limit and the consecutive excessive length of proceedings is today deemed to be an unlawful act in the sense of Article 2 § 1 of the Legislative Decree 48051.

The modified Criminal Procedure Code (of 1 January 1988) made provision for interlocutory proceedings to expedite criminal proceedings. The preamble of the Code states, in particular, that the requirement of a speedy criminal trial is currently, thanks to the influence of the European Convention on Human Rights, a true fundamental right.

According to Article 108,

> *"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 (assistente) or the civil parties may make an application for an order to expedite the proceedings.
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.
3. No judge who has intervened in the proceedings in any capacity may participate in the decision."

Article 109 provides that

" /…/ 3. The Attorney-General shall make a decision within five days.
/…/ 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."

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

The Court in its assessment of what constitutes "unreasonable length of time" follows the same standards and criteria as those adopted 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. Article 498 of the Civil Code provides that the right to compensation is time-barred after the expiry of a period of three years from the date on which the victim becomes, or should have become, aware of the possibility of exercising that right.

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)

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 *Paulino Tomàs v. Portugal* case (decision of 27 March 2003), the ECHR ruled that, in view of the evolution in evolution in national case law, it could now be said that an action in tort against the state for excessive length of civil proceedings, based on Legislative Decree 48051 of 21 November 1967, constituted an effective remedy within the meaning of Article 35 of the Convention.

In *Tomé Mota v. Portugal* (decision of 2 December 1999), the Court considered that an application on the basis of Articles 108 and 109 of the New Code of Criminal Procedure put into place a true legal remedy enabling a person to complain of the excessive length of criminal proceedings in Portugual, which is sufficiently accessible and effective, especially as its exercise does not lead to the lengthening of the proceedings in issue, given the very strict time-limits imposed on the institutions responsible for taking a decision.

ROMANIA

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

Yes (civil, criminal, enforcement).

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

European Court of Human Rights (*Tudorache v. Romania* – 29.09.2005, *Pantea v. Romania* – 3.06.2003, *Moldovan and others v. Romania* – 12.07.2005, *Strain and others v. Romania* – 21.07.2005).

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?

Yes, it exists in the Constitution (Article 21).

Also, in Romanian law, the European Convention of Human Rights is directly applicable, as provided by Articles 11 and 20 of the Constitution.

Article 10 of the Law on judicial organization also provides it: "All persons are entitled to a fair trial and to the resolution of cases within a reasonable time, by an impartial and independent court, set-up according to the law".

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

Yes. Recent statistics are available, drawn up by the Superior Council of Magistracy. One statistic concerns the length of civil and commercial cases, shown in percents. The other shows the solving term for cases at various degrees of jurisdiction.

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.

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

Not applicable.

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

Not applicable.

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

Although a remedy, as such, does not exist in domestic law, Romanian judges take the criteria provided by the ECHR's case-law into account when solving certain demands (e.g.: postponement requests, challenging a judge for bias requests).

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.

10. What are the available forms of redress:

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

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

No.

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?

Through the Judicial Inspection Direction, the Superior Council of Magistracy analyzes the narrow application of regulations of procedures regarding the *sanctioning of facts that obstruct the good development of the trials, including the unjustified delay of case solving due to litigants, lawyers, witnesses, experts or other persons contributing to the fulfilment of the act of justice*. SCM elaborates quarterly reports in this respect.

A seminar was organized between 6th and 8th of June 2005, regarding the optimum volume of activity for establishing criteria on which the magistrates' work would be measured. According to the final report of the seminar, elaborated by the Romanian magistrates in collaboration with foreign experts, the scheme of work volume should be based on time lots assigned for *solving cases classified on categories,* as well as *fulfilment of other activates within court, classified on categories.* In this way, the individual annual work volume could be defined by number of cases/activities that can be achieved during the magistrates' and auxiliary staff' legal annual number of hours, by the formula: the annual work volume, as number of cases to be solved, results from dividing the magistrates' annual number of work minutes, to the time assigned to resolving different categories of cases/tasks.

Work volume must be established for relevant categories of solved cases at different levels of jurisdiction, having in mind the differences between organization, procedure and stage of trial, making a difference between first instance, appeal and second appeal. Also, special workload must be considered for executive positions etc.

Solving term for cases at first instances courts on quarters I, II and III 2005

Matter	Period	Total solved	Term				
			0-6 months	6-12 months	1-2 years	2-3 years	Over 3 years
Commercial litigations	T1	26665	25822	754	87	0	2
	T2	27501	26581	752	214	0	0
	T3	24848	24347	366	135	0	0

Civil litigations	T1	147214	131652	10321	4783	333	125
	T2	160626	143480	10303	5796	806	195
	T3	108962	100131	5644	2910	190	87
Criminal litigations	T1	62958	54921	6972	956	92	17
	T2	61578	53987	6496	1003	70	22
	T3	38140	34822	2780	497	30	11

Solving term for cases at tribunals on quarters I, II and III 2005

MERITS OF THE CASE

Matter	Period	Total solved	Term				
			0-6 months	6-12 months	1-2 years	2-3 years	Over 3 years
Commercial litigations	T1	12340	9771	1388	677	317	187
	T2	15168	12440	1288	930	269	241
	T3	8587	6946	904	418	178	141
Civil litigations	T1	22263	19481	1804	808	136	34
	T2	25311	23568	1257	689	47	50
	T3	28027	25939	1423	522	97	46
Criminal litigations	T1	8258	7687	432	122	14	3
	T2	8551	8061	377	95	16	2
	T3	6424	6011	359	49	5	0

APPEAL

Matter	Period	Total solved	Term				
			0-6 months	6-12 months	1-2 years	2-3 years	Over 3 years
Civil litigations	T1	7100	6243	487	271	75	24
	T2	7602	6739	469	251	98	45
	T3	4115	3663	292	88	56	16
Criminal litigations	T1	6262	5902	317	39	4	0
	T2	6395	6200	139	51	5	0
	T3	3778	3643	110	22	3	

SECOND APPEAL

Matter	Period	Total solved	Term				
			0-6 months	6-12 months	1-2 months	2-3 years	Over 3 years
Commercial litigations	T1	3240	3110	118	10	2	0
	T2	2923	2830	81	12	0	0
	T3	1637	1529	92	16	0	0
Civil litigations	T1	16756	15904	659	174	13	6
	T2	15582	14778	622	132	46	4
	T3	9571	9079	369	83	38	2
Criminal litigations	T1	10857	10673	178	6	0	0
	T2	11326	11225	95	6	0	0
	T3	6868	6743	119	6	0	0

Solving term for cases at courts of appeal on quarters I, II and III 2005

MERITS OF THE CASE

	Period	Total	Term

Matter		solved	0-6 months	6-12 months	1-2 years	2-3 years	Over 3 years
Contentious claims and civil law	t1	2756	2644	85	26	1	0
	t2	2905	2794	96	8	5	2
	t3	1534	1478	42	8	3	3
Criminal law	t1	380	373	4	3	0	0
	t2	412	405	7	0	0	0
	t3	417	415	2	0	0	0

APPEAL

Matter	Period	Total solved	Term				
			0-6 months	6-12 months	1-2 years	2-3 years	Over 3 years
Commercial law	t1	1241	1018	198	6	1	18
	t2	1462	1299	143	13	0	7
	t3	525	475	41	8	1	0
Civil law	t1	8440	7549	794	83	5	9
	t2	8217	7116	816	260	14	11
	t3	6719	5938	592	181	6	2
Criminal law	t1	2081	2040	36	4	1	0
	t2	2097	2076	18	3	0	0
	t3	1522	1506	15	1	0	0

SECOND APPEAL

Matter	Period	Total solved	Term				
			0-6 months	6-12 months	1-2 years	2-3 years	Over 3 years
Commercial law	t1	3493	3331	151	9	2	0
	t2	16206	16048	141	12	0	5
	t3	13065	12955	105	5	0	0
Civil law	t1	16636	15923	594	92	15	12
	t2	16905	16254	567	62	12	10
	t3	8025	7729	236	41	11	8
Criminal law	t1	5432	5384	45	3	0	0
	t2	5249	5235	13	1	0	0
	t3	4749	4735	12	2	0	0

LENGTH OF THE PROCEEDINGS

Statistical data from the first 9 months of 2005 shows an **average of 91,9% of all files rendered with a civil or commercial judgment within 0-6 months.**

First instance courts

Matter	0-6 months	6-12 months	1-2 years	2-3 years	More than 3 years
civil	90%	6%	3,2%	0,3%	0,09%
commercial	97,1%	2%	0,5%	-	-

Tribunals – merits

Matter	0-6 months	6-12 months	1-2 years	2-3 years	More than 3 years
civil	91,2%	5,9%	2,6%	0,3%	0,1%
commercial	80,7%	9%	5%	2%	1,5%

Tribunals – appeals

Matter	0-6 months	6-12 months	1-2 years	2-3 years	More than 3 years
civil	88,4%	6,6%	3,2%	1,2%	0,4%
commercial	-	-	-	-	-

Tribunals – second appeals

Matter	0-6 months	6-12 months	1-2 years	2-3 years	More than 3 years
civil	94,8%	3,9%	0,9%	0,2%	0,02%
commercial	95,7%	3,7%	0,4%	-	-

Courts of appeal – merits

Matter	0-6 months	6-12 months	1-2 years	2-3 years	More than 3 years
civil	96,1%	3%	0,5%	0,1%	0,06%
commercial	-	-	-	-	-

Courts of appeal – appeals

Matter	0-6 months	6-12 months	1-2 years	2-3 years	More than 3 years
civil	88,1%	9%	2%	0,1%	0,09%
commercial	86,4%	11,8%	0,8%	0,06%	0,7%

Courts of appeal – second appeals

Matter	0-6 months	6-12 months	1-2 years	2-3 years	More than 3 years
civil	96%	3,3%	0,4%	-	-
commercial	98,6%	1,2%	0,07%	-	-

Workload

From the analysis of **statistical data of the first 9 months of 2005**, results a **decreasing average workload of cases/judge**:

Trimester	First instance courts	Tribunals	Courts of appeal
Trimester I	284	134	117
Trimester II	159	74	91
Trimester III	142	67	63

The number of pending cases decreased:

Trimester	First instance courts	Tribunals	Courts of appeal
Trimester I	481.229	177.093	80.250
Trimester II	270.632	95.691	61.701
Trimester III	244.288	85.536	42.145

RUSSIAN FEDERATION

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

Such delays have been known in respect of civil, criminal and enforcement proceedings.

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

Such delays have not been acknowledged by national courts' decisions.

However, the European Court for Human Rights found in a number of cases that there had been a violation of Article 6 § 1 of the Convention on the Protection of Human Rights and Fundamental Freedoms in respect of the length of proceeding.

See for example the following recent cases:

In respect of civil proceedings:
Bakiyevets v. the Russian Federation (judgment of 15 June 2006), *Tusashvili v. the Russian Federation* (judgment of 15 December 2005) and *Sokolov v. the Russian Federation* (judgment of 22 September 2005),

In respect of criminal proceedings:
Nakhmanovich v. the Russian Federation (judgment of 2 March 2006), *Khudoyorov v. the Russian Federation* (judgment of 8 November 2005) and *Fedorov and Fedorova v. the Russian Federation* (judgment of 13 October 2005),

In respect of enforcement proceedings:
Zasurtsev v. the Russian Federation (judgment of 27 April 2006), *Timofeyev v. the Russian Federation* (judgment of 23 October 2003), *Burdov v. the Russian Federation* (judgment of 7 May 2002).

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, it can be said that remedies in respect of excessive delays in court proceedings exist in the Russian Federation.

Civil proceedings

Article 1070.1 of the Civil Code of the Russian Federation 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.
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 consideration (see for example Decision of 16 June 2003 no. 49-GOZ-43 of the Supreme Court of the Russian Federation).

Criminal proceedings

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.

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. Articles 108.3, 108.4, 108.11, 109.8, 124, 125, 227.3, 233, 362, 374 of the Criminal Procedure Code that set terms for passing relevant decisions at various stages can be specified as providing a remedy against delays.

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.

Disciplinary sanctions against judges

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.

Proceeding from the above provisions, courts of ordinary jurisdiction refuse to admit for consideration applications requesting that judges be made responsible, since "the issue of whether a judge can be made responsible for his actions, that have not been expressed in a judicial act (violation of reasonable time of judicial proceedings, other gross violation of procedure), if they have actually taken place, shall be decided by competent Judicial Qualification Board; 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)" - see Decisions of the Supreme Court of the Russian Federation of 29 November 2005 no. GKPI05-1484, and of 24 January 2005 no. GKPI2005-77.

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

Due to the lack of national settled case-law, such criteria can not be specified.

However, the Supreme Court of the Russian Federation issued recommendations for lower courts on the assessment of the length of judicial proceedings (Resolution of 10 October 2003 no. 5 "On the application of generally accepted principles and rules of international law and international treaties of the Russian Federation by courts of ordinary jurisdiction") that follow the jurisprudence of the European Court of Human Rights in respect of Article 6 § 1 of the Convention.

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?

The legislation of the Russian Federation sets no specific procedural terms for remedies against excessive length of judicial proceedings.

In civil proceedings it is possible, however, to apply, in relevant cases, general prescription (term of limitation) of 3 years that is provided for by the Civil Code (Articles 196 and 200) for the implementation of the right to compensation. The prescription starts to expiry from the date when the aggrieved person learnt or was to learn about the possibility to exercise this right.

In respect of criminal proceedings the Criminal Code of the Russian Federation (Article 78) sets terms of limitation for criminal prosecution. Expiration of these terms implies the duty of investigation body, public prosecutor or court to pass a decision to discontinue the criminal proceedings (Article 24.1.3 of the Criminal Procedure Code of the Russian Federation).

10. What are the available forms of redress:

- acknowledgement of the violation	NO
- 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	NO
- other (specify what)	

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 *Olshannikova v. the Russian Federation* (judgment of 29 June 2006) the European Court of Human Rights, citing, among others, its own judgment in *Kormacheva v. the Russian Federation* (judgment of 14 June 2004), did not accept the Government's submission that disciplinary action against the judge responsible for excessive delays in processing the applicant's case constituted an effective remedy for the purposes of Article 13. Such action concerned the personal position of the judge, but did not have any direct and immediate consequence for the proceedings which had given rise to the complaint (§§ 43-44).

In *Menesheva v. the Russian Federation* (judgment of 9 March 2006) the Court ruled that, considering the particular circumstances of the case (physical injuries sustained by the applicant as a result of ill-treatment by police) a remedy, to be effective, required, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible. However, the Court did not find that any effective criminal investigation into the applicant's allegations against police officers had been carried out, which effectively denied her any redress in civil action (§§ 72-73).

SAN MARINO

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

Yes, two cases concerning civil proceedings.

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

Yes, there have been two judgments of the European Court of Human Rights, one finding a breach by San Marino, dated 17 June 2003 (*Tierce v. San Marino* judgment of 17 June 2003), and one of 21 March 2006 whereby the case was struck out of the case-list following a friendly settlement.

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 2 of Constitutional law 26 February 2002 No. 36 modified Article 1 of the Declaration of the rights of the citizens and of the fundamental principles of the San Marino legal order, by introducing the following paragraphs:

3. The legal order of San Marino recognises, guarantees and secures the rights and freedoms set forth in the Convention for the protection of human rights and fundamental freedoms.

4. International agreements on the protection of human rights and freedoms, duly ratified and made enforceable, prevail over conflicting internal provisions.

Article 6 of the same law 26 February 2002 No. 36 has equally confirmed the content of Article 15 § 3 of the Declaration of rights, by phrasing it as follows:

> *"The law ensures that legal proceedings be carried out in a swift, cost-effective, public and independent manner."*

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

As stated under question 1, an inquiry at the Tribunale Commissariale revealed that two actions for denial of justice have been brought against the State: one was abandoned, whereas the other one is currently pending.

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 domestic remedy against the excessive length of proceedings in San Marino.

It must be said however that the case-law has considered that all the non merely programmatic provisions of the European Convention on Human Rights are directly applicable as part of the San Marino law (nowadays they even prevail over the other provisions), following the Convention's ratification by decreto reggenziale 9 March 1989 no. 22 (Giud. app. pen. Gualtieri, ord. 16 April 1991, Varinelli, pp no. 53/91; Giud. app. pen. Nobili 31 October 1996, Stefanelli, pp. no. 38/1992; Giud. app. pen. Gualtieri 25 June 2001, Molari, pp. no. 1114/97).

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 before the civil judge on the ground of breach of the reasonable time requirement.

It must be added that Article 2 of Law 27 June 2003 no. 89 has modified Article 200 of the code of criminal procedure by introducing amongst the grounds for revision of judgments and penal decrees of condemnation (decreti penali di condanna) the following:

> *"d) if the European Court of Human Rights has found that a judgment has been rendered in breach of the European Convention on Human Rights or its Protocols and the serious adverse consequences of such judgment can only be removed through its revision"*.

The above provision seems applicable also in case of a breach of the reasonable time requirement, even though it might be difficult to prove that the "serious adverse consequences" may only be removed through a revision.

SERBIA

1. Does your country experience excessive delays in judicial proceedings? Which 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 judgments in civil proceedings.

2. Have such delays been acknowledged by court decisions? Which 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 judgments 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. Is any statistical data available about the extent of this problem in your country? If so, please provide it 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 also available 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 to, 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

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 to, 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 to 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 the case of non-enforcement of such a decision? Please indicate these measures in respect of each form of redress and provide examples.

The enforcement of a judgment awarding compensation is a purely theoretical issue, as no such judgments have been delivered. These judgments will undergo the regular procedure of enforcement, as any other judgment 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 judgment, 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. Is there any statistical data available on the use of this remedy? If so, please provide it 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.

SLOVAKIA

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

Yes. The information before the European Court indicates that the excessive length of proceedings is a widespread problem in the national legal system, and several hundreds of applications against Slovakia in which the applicants allege a violation of the "reasonable time" requirement have been filed with the Court. This information has been confirmed by the workload of the Constitutional court in which one third out of all cases submitted to the Court deals with undue delays in proceeding before ordinary courts.

2. Have such delays been acknowledged by court decisions? Which 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 one of the first its decision of 10 July 2002 in a case registered as no. I. ÚS 15/02 the Constitutional Court found a violation of the plaintiffs' rights under Article 48 § 2 of the Constitution.

In view of this finding, the Constitutional Court ordered the general court concerned to proceed with the case without further delays. The Constitutional Court granted in full the plaintiffs' claim for SKK 20.000 each in compensation for non-pecuniary damage, and pointed out that the general court in question was obliged to pay those sums within two months after the Constitutional Court's decision had become final. The decision expressly stated that, when deciding on the above claim, the Constitutional Court had also considered the relevant case-law of the European Court of Human Rights.

Recently the Court in a case registered as no. I.US 80/06 has decided on 650.000 SKK as a compensation for undue delays in criminal proceedings before the Regional court in Bratislava. An aggrieved person in that proceedings was a mother of the victim

The Constitutional Court has delivered hundreds other decisions to the same effect. The level of compensation for non-pecuniary damage is in average from 20.000 to 900.000 SKK depending on the nature of the case concerned.

Case-law of the European Court of Human Rights:

Amongst others, in *Beňačkova v. Slovak Republic* (judgment of 17 June 2003), *Piskura v. Slovak Republic* (judgment of 27 May 2003) and *Z.M. and K.P. v. Slovak Republic* (judgment of 17 may 2005) case, 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?

Article 48 § 2 of the Constitution provides, *inter alia*, that every person has the right to have his or her case tried without unjustified 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.

Administrative proceedings

In accordance with Article 4c of the Complaints Act of 1998, a person can lodge a complaint alleging, *inter alia*, 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 (Section 11.1).

The complaint is to be examined within 30 days from the date of its receipt.

A person can lodge a complaint against undue delays in judicial proceedings to the President of an ordinary court including the Supreme court according to Articles 62 to 70 of the Law no. 757/2004 Collection of Laws on courts. The result of an investigation in such a case can lead to the conclusion on undue delay in a particular proceedings and subsequently to the instigation of a disciplinary proceedings against a judge under Article 116 of the Law no. 385/2000 Collection of Laws on judges and lay judges.

Further, Section 250t of the Code of Civil Procedure, 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.

Judicial proceedings

Article 127 of the Constitution (as amended in 2001) provides:

> *"1. The Constitutional Court shall decide on 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.*
>
> *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.*
>
> *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...."*

The implementation of the above constitutional provisions is set out in more detail in sections 49 to 56 of Law no. 38/1993 on the Constitutional Court, as amended (the relevant amendments entered into force on 20 March 2002).

Pursuant to section 50(3) of the Law on the Constitutional Court, a person claiming adequate financial compensation must specify the amount and explain the reasons for such a claim.

Section 56(3) provides that, when a violation of fundamental rights or freedoms is found, the Constitutional Court may order the authority liable for the violation to proceed in accordance with the relevant rules. It may also return the case to the authority concerned for further proceedings, prohibit the continuation of the violation or, as the case may be, order the restoration of the situation existing prior to the violation.

Under section 56(4), the Constitutional Court may grant adequate financial compensation for non-pecuniary damage to a person whose rights or freedoms were violated.

Section 56(5) provides that the authority which violated a person's rights is in such a case obliged to pay the compensation within two months after the Constitutional Court's decision has become final.

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 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. A person who has suffered loss on account of such an irregularity is entitled to compensation of real and moral damages.

In accordance with Article 15.2 of this Law, the right to a compensation of damages has first to be requested through a demand for friendly settlement before the "competent authority" (Ministry of Justice). If the competent authority has not replied to a request for a friendly settlement, in its entirety or in part, within 6 months from the receipt of the request, the person who has suffered loss can introduce a legal suit.

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

Yes (see under Q. 5). In addition to that it should be noted that under settled case law of the Constitutional court this remedy is, in fact, available only in pending proceedings before the courts.

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

When assessing the reasonableness of the length of the proceedings, the authorities base themselves on the criteria set out by the ECHR and also the criteria setting out by the Constitutional court, predominantly in proceeding under Section 250t of the Code of Civil Procedure.

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?

In the case of a complaint for the excessive length of administrative proceedings, the concerned public administrative authority is due to act within three months, a time-limit that can be prolonged under certain exceptional circumstances.

The authority competent to decide on State liability for damage caused in the exercise of public authority must decide within six (6) months from the receipt of the demand.

The Civil procedural code determines several time limits for passing a decision or a final judgment but usually, according to the settled case law of the Constitutional court, those time limits are considered only as an ideal wish of the legislator about the lengths of proceedings.

There are various legal consequences. Firstly, it is a possibility to initiate a disciplinary procedure against a responsible person. Secondly, the state must under legal conditions set out in law make good for damages caused by overstepping a deadline in a particular case. Finally, it is a penalty imposed to a official authority that has failed to comply with the judgment of the court handed down according to Section 250t of the Code of Civil Procedure

10. What are the available forms of redress:

- acknowledgement of the violation — YES
- pecuniary compensation
  - material damage — NO
  - 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 to, those applied by the European Court of Human Rights? Is there a maximum amount of compensation to be awarded?

When deciding on the claim for pecuniary compensation, the Constitutional Court generally also considers the relevant case-law of the ECHR. It is needed to underline that it concerns only non-material damage suffered by undue delays. There is, according to biding law, no a maximum amount of compensation to be awarded.

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 *Andrášik and others v. the Slovak Republic*, (decision of 22 October 2002), the Court held that the complaint under Article 127 of the Constitution is an effective remedy in the sense that it is capable of both preventing the continuation of the alleged violation of the right to a hearing without undue delays and of providing adequate redress for any violation that has already occurred.

SLOVENIA

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

Yes**.**

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

Yes. See for example, the *Majaric v. Slovenia* case (judgment of 8 February 2000).

In *Lukenda v. Slovenia* (no. 23032/02, judgment of 6 October 2005) the Court noted that there were approximately 500 length-of-proceedings cases before the Court against Slovenia.

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 right to a trial without undue delay is guaranteed by Article 23 § 1 of the Constitution.

The right to a trail without undue delay is also envisaged by Article 2 of the "Act on the Protection of the Rights to a Trial without Undue Delay" of 12 May 2006 (to be applied from 1 January 2007).

4. Is any statistical data available about the extent of this problem in your country ? If so, please provide it in English or French.

The government of Slovenia with the aid of the Supreme Court produced a document in 2002 in which it conceded that there were delays in judicial proceedings. The European Commission reached similar conclusions in its last report on the readiness of Slovenia to accede to the European Union published in November 2003. Furthermore, the Slovenian Human Rights Ombudsman observed in his report for the year 2004 that the most serious problem facing the Slovenian legal system was the length of court proceedings.

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 remedy in case of violation of the right to a trial within a reasonable time is provided by the administrative action. 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.

If unsuccessful, the party can start proceedings before the Supreme Court under the 1997 Administrative Dispute Act and eventually lodge a constitutional appeal with the Constitutional Court under Section 51 § 1 of the Constitutional Court Act. The condition that the appellants have to institute an administrative action before lodging a constitutional appeal under this section was confirmed by the Constitutional Court's decision of 7 November 1996.

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:

"1. Supervisory appeal - appeal with a motion to expedite the hearing of the case, which is filed

with the court hearing the case.
The president of the court shall request the judge, to whom the case has been assigned for resolving, to submit a report indicating reasons for the duration of proceedings, as well as the opinion on the deadline in which the case may be resolved.
If the judge notifies the president that all relevant procedural acts shall be performed or a decision issued within the deadline not exceeding four months following the receipt of the supervisory appeal, the president of the court shall inform the party thereof.
If the president has not informed the party and he establishes that the court is unduly delaying the decision-making, he shall order that appropriate procedural acts be performed and set the deadline for their performance (from 15 days up to 6 months). He may also order that the case be resolved as a priority, particularly when the matter is urgent.
If the president of the court establishes that the court does not unduly delay the decision-making on the case, he shall reject the supervisory appeal.
If the supervisory appeal is filed with the Ministry responsible for justice, the Minister shall refer it to the president of the court of competent jurisdiction to hear it and shall require to be informed on the findings and the decision.

2. Motion for a deadline – If the president of the court rejects the supervisory appeal or fails to answer the party within two months or fails to send the party the notification that all relevant measures will be taken by the judge dealing with the case, or if the appropriate procedural acts were not performed within the deadlines set in the notification or ruling of the president of the court, the party may file a motion for a deadline. The motion for a deadline 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.
If the president of the court establishes that the court does not unduly delay the decision-making on the case, he shall reject the motion for a deadline.
If the president of the court establishes that the court unduly delays the decision-making of the case, he shall order that the appropriate procedural acts be performed by the judge and set the deadline for their performance (from 15 days up to 4 months). He may also order that the case be resolved as a priority.

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:
- *Payment of monetary compensation, which shall be payable for non-pecuniary damage in the amount of 300 up to 5.000 euros;*
- *A written statement of the State Attorney's Office that the party's right to a trial without undue delay was violated;*
- *The publication of a judgment that the party's right to a trail without undue delay was violated."*

Action for pecuniary damage caused by a violation of the right to a trail without undue delay may be brought in accordance with the Obligations Code.

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

Supervisory appeal and motion for deadline are available in respect of pending proceedings. The claim for just satisfaction is available for terminated proceedings.

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

There is no particular fee. Regular court fees should be paid, if the dispute concerning damages goes to court.

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

The criteria used by the authority are following: the complexity of a case, the conduct of parties, the statutory deadlines for fixing preliminary hearings or drawing court decisions, the nature and type of a case and its importance for a party.

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 ?

The president of the court shall decide on the supervisory appeal within two months.

In case of no reply within the prescribed time-limit a party may lodge a motion for a deadline and seek damages.

10. What are the available forms of redress:

-	acknowledgement of the violation	YES
-	pecuniary damages	YES
-	non-pecuniary damages	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 to, those applied by the European Court of Human Rights? Is there a maximum amount of compensation to be awarded?

The maximum amount for non-pecuniary damage is 5.000 euros.

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?

If the president of the court establishes that the undue delay in decision-making of the case is due to excessive workload or extended absence of the judges, he may order that the case be reassigned. He may also propose that the additional judge be assigned to the court or order other measures under the statute regulating the judicial service to be implemented.

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.

Regular enforcement proceedings are applicable.

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 party may not file a new supervisory appeal or a motion for a deadlines concerning the same case before the expiry of deadlines set in the notification or ruling of the president of the court except for the cases where detention is proposed or ordered or where interim measure is proposed.

If a ruling rejecting or dismissing the appeal was issued, the party may file a new supervisory appeal only after sic months have elapsed from the receipt of the decision, except for the cases where detention is proposed or ordered or where interim measure is proposed.

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 *Belinger v. Slovenia* (decision of 2 October 2001), the Court considered that neither the administrative action nor the constitutional complaint constitute an effective remedy in respect of unreasonably lengthy proceedings in the sense of Article 13 of the Convention.

In *Lukenda v. Slovenia* (no. 23032/02, judgment of 6 October 2005) the Court surveyed the remedies (an administrative action, a claim in tort, a request for supervision or a constitutional appeal) available at that time under Slovenian law and found that there were no remedies that could be regarded as effective either when considered individually or in aggregate.

An administrative action was found ineffective by the Court in the Lukenda judgment. However, in the *Sirc v. Slovenia* case (decision of 16 May 2002), while dealing with the length of proceedings before administrative organs, the Court found that in the event of lack of reply from the administrative authority, the applicant could and should seek a decision directly from the Administrative Court. This remedy was therefore found effective for proceedings before administrative authorities.

SPAIN

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

According to the General Council of the Judiciary's 2006 report, the average length of a Spanish Court proceeding is five months. There are, however, substantial differences between levels: cases in front of superior courts take longer on average. Then, there exist differences between jurisdictions (social issues courts are the fastest; and administrative courts have a considerably longer average (20 months) in comparison to other specialised jurisdictions, and most delays are to be found there. The length of criminal proceedings is difficult to evaluate since the previous diligences add time that is not related to the court case. Additionally, there are large differences between geographical areas. Territories with a large "judicial mobility" (such as the Canary Islands), tourism areas (in which the number of judicial officers is calculated only on the basis of the permanent population) and big cities (with large concentration of growing immigration population) have the longest delays. The data are available at the web page: http://www.poderjudicial.es section on dates and statistics.

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

Yes.

The Constitutional Court has referred to this in cases 81/1989, 145/1988. More recently, the Supreme Court in its ruling STC 153/2005, 6 June. The Supreme Court (Second Chamber of Criminal Justice) recognised the excessive length of proceedings as a motive for the effective reduction of the penalty. Similarly, the Third Chamber of the *Contencioso-Administrativo* (Supreme Court) recognised the patrimonial responsibility of the State because of abnormal functioning of the judicial administration (meaning delays).

The ECHR has declared a breach of article 6 of the Convention in *Ruiz-Mateos v. Spain* (23-6-1993) and *Soto Sánchez v. Spain* (25-11-2003). The former case dealt with proceedings before the Constitutional Court, and the latter concerned a criminal procedure before the Supreme Court. In the second, Spain is condemned because of the delays in the *recurso de amparo*.

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 right to a fair trial within reasonable time is guaranteed by Article 24 § 2 of the Constitution.

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 relevant remedies in the Spanish legal order for excessive length of Court proceedings: an *amparo* appeal (while proceedings are still pending, on the basis of Articles 24 and 53 § 2 of the Constitution) and a claim for compensation (for the terminated proceedings, under sections 292 et seq. of the Judicature Act).

Article 121 of the Constitution provides that: "Losses incurred as a result of judicial errors or a malfunctioning of the administration of justice shall be compensated by the State, in

According to Section 292 of the Judicature Act:

"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 force majeure, in accordance with the provisions of this Part.

2. The alleged loss must in any event actually have occurred and be quantifiable in monetary terms and must directly affect either an individual or a group of individuals."

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."

The Constitutional Court Act provides in Section 44(1)(c)

"1. An amparo 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…"

If the Constitutional Court finds that there has been a violation of the right to a hearing within a reasonable time, it may decide that the hearing should proceed immediately, either by ordering that judicial inactivity be brought to an end or by setting aside the decision that was unjustifiably drawing out the proceedings.

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

The *recurso de amparo* applies in the case of open proceedings. If a case is terminated, then, the plaintiff can ask for compensation. The action for damages is only available for terminated proceedings.
Furthermore, the *recurso de amparo* is only available when all the appeals before ordinary Courts have been filed and judged. The only exception is when an undue delay is denounced. Then, the delay must be denounced; if the situation is not redressed, then the plaintiff can apply for constitutional ***amparo*** (SSTC 31/1997, 24 February, fj 2, and 303/2000, 11 December, ffjj 4 and 5)

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

The Constitutional Court has incorporated into its case law the criteria specified by the European Court of Human Rights (see cases 5/1985, 195/1997, 87/2000 and 103/2000, among others) following the constitutional mandate (see Article 10.2 Spanish Constitution). The first sentence was the Supreme Court STC Perán Torres, 24/1981. Rulings 223/1988, 24 November, and 195/1997, 11 November are particularly significant..

Even though the Spanish Supreme Court desires to follow the criteria of the ECHR, its case law is influenced by a domestic criterio: the ***normal length of similar processes***. And this happens despite that the criterion was explicitly rejected by the ECHR in the ruling Unión Alimentaria Sanders, 7 July 1989. Some posterior rulings have rejected this criterion (for instance, STC Franrich (195/1997, 11 November). But the criterio of the average standard length appears as *ratio decidendi* (e.g.. SSTC Celaya Nocito, 180/1996, 12 November, and Rodríguez Armas, 119/2000, 5 May).

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?

Although the Spanish procedural codes establish deadlines for proceedings, these are understood in practice as mere orientations for the Court. Spanish laws on the judicial procedure establish times for every different issue (for instance, 10 days for a certain activity, etc.). Administrative laws, on contrast, provide for a general length for the whole proceedings.

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 (at least formally: see rulings granting ***amparo***: e. g.. SSTC 181/1996, 12 November and 195/1997, 11 November)]
- possible reduction of sentence in criminal cases YES (see case law of the Chamber of Criminal Justice of the Supreme Court; rulings 2 January 2003, recurso de casación no. 1341-2001, or 30 June 2006, fj 11.)

11. Are these forms of redress cumulative or alternative?

Cumulative.

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. The effectiveness of the two relevant remedies has been affirmed by the ECHR in several cases. See for example, the case of *Gonzalez Marin v. Spain* (decision of 5 October 1999) and *Fernandez-Molina Gonzalez and Others v. Spain* (decision of 8 October 2002).

SWEDEN

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 addition to rules of a general character which provide that matters shall be decided as expeditiously as possible without compromising the principle of the rule of law, there exist in Swedish legislation specific rules pursuant to which certain types of cases shall be decided with particular promptness or within a specified time. Examples of the latter include rules governing the conduct of criminal investigations and prosecutions against persons below 18 years of age.

In certain cases there are also rules providing that in the event that a public authority fails to make a decision within a prescribed time-limit it shall be deemed to have made a decision to the applicant's favour. In a number of instances it is further prescribed that where the authority in questions fails to reach a decision within the specified time it shall inform the applicant of the reasons for its inaction (for example, under section 13 of the 1993 Competition Act, or under various provisions of 1991 Securities Operations Act and the 1992 Financing Operations Act).

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.

In judicial proceedings, a party who is of the opinion that the processing of the case has been unnecessarily delayed by a decision of a district court may file an interlocutory appeal against the decision (chapter 49 section 7 of the Code of Judicial Procedure). If the Court of Appeal finds that the appeal is meritorious it may quash the disputed decision.

In criminal proceedings, 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 their choice of sanction and in their determination of the appropriate punishment, take into account whether an unnaturally long time has elapsed since the commission of the offence.

Furthermore, 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. Based on this provision, the Supreme Court has found the State to be liable to pay compensation in a case where delays in proceedings concerning a loan before a county housing board caused the loan to be issued at a higher level of interest (see NJA 1998 p. 893).
The Swedish Supreme Court has recently tried a case concerning a claim for damages brought by an individual against the Swedish State. The plaintiff argued that since the criminal charges against him had not been determined within a reasonable time his right under Article 6 ECHR had been violated. The Supreme Court held that the right of the plaintiff under Article 6 ECHR had been violated. With reference to the case law of the European Court under Article 6 ECHR, especially *Kudla v. Poland*, the Supreme Court further held that the plaintiff under Swedish law was entitled to compensation both for pecuniary and non-pecuniary damage. It must be concluded that Swedish law provides a remedy in the form of compensation for pecuniary and non-pecuniary damage in cases where an individual's right to proceedings within a reasonable time under Article 6 of the Convention has been violated.

In addition, 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 Code and section 14 of the Public Employment Act).

Lastly, the Parliamentary Ombudsmen and the Chancellor of Justice exercise control *inter alia* over the conduct of proceedings before public authorities, including the courts. Where appropriate the Ombudsmen and the Chancellor of Justice may criticise an authority's delay in deciding a matter before it. However, they have no power to directly order a public authority to conclude proceedings within a certain time-period.

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

Yes. See question 5.

10. What are the available forms of redress :

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

11. Are these forms of redress cumulative or alternative?

Cumulative.

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 Court Presidents and senior judges responsible for Divisions and Sections within a court are responsible for ensuring that cases are determined within a reasonable time. The manner in which they exercise this control function is regularly reviewed by the Parliamentary Ombudsmen. However, as previously noted (see Question 5), where appropriate the Ombudsmen may criticise an authority's delay in deciding a matter before it but it has no power to directly order a public authority to conclude proceedings within a certain time-period.

SWITZERLAND

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

In two recent cases – *M.B. v. Switzerland* (judgment of 30 November 2000) and *G.B. v. Switzerland* (judgment of 30 November 2000) - the Court found that the "reasonable time" requirement had been violated.

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 right to be judged within a reasonable time is enshrined in Article 29 § 1 of the new Swiss Constitution.

All authorities at Federal and Canton level are required to respect and contribute to the effective application of this fundamental right, in particular under Article 35 of the Constitution, whereby:

> *"1) The fundamental rights shall be realized in the entire legal system. 2) Whoever exercises a function of the state must respect the fundamental rights and contribute to their realization. 3) The authorities shall ensure that the fundamental rights are also respected in relations among private parties whenever the analogy is applicable."*

Various Cantons' Constitutions also contain explicit guarantees concerning the length of judicial proceedings.

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.

At canton level most codes of criminal procedure 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 *ultima ratio* in extreme cases). The judge must explicitly mention the violation of the "reasonable time" principle in his judgment and state what account was taken of it."[1]

In cases concerning pecuniary rights violation of the "reasonable time" principle entails the liability of the public authorities, who may be required to pay compensation for damages sustained as a result of the length of the proceedings.[2]

According to the Federal Law on the Liability of the Confederation, Members of its Authorities and Officials (14 March 1958), the Confederation is responsible for the damage caused by an official in the course of the exercise of his/her functions.

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 to, the criteria applied by the European

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[1] Federal Court Judgment of 7 June 1991, JdT 1993 IV 189 (= ATF 117 IV 124 (129), preamble paragraph 3d). Cf. also Federal Court Judgment of 17 February 1998, ATF 124 I 139 (141), preamble paragraphs 2b and c.

[2] Cf. Jörg Paul Müller and Judgment cited in: Grundrechte in der Schweiz, Im Rahmen der Bundesverfassung von 1999, der UNO-Pakte und der EMRK, 3rd Edition, Bern, 1999, p. 509.

Court of Human Rights in respect of Article 6 § 1 ECHR?

The criteria 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
- measures to speed up the proceedings, if they are still pending	NO
- possible reduction of sentence in criminal cases	YES

The obligations linked to effective application of the "reasonable time" principle have led the Federal Court to define not only the content and scope of the principle but also the consequences of its violation: "In ratifying the European Convention on Human Rights Switzerland undertook to avoid unduly lengthy proceedings and, in the event of failure in this duty, to compensate the injured party as far as possible for any damages sustained."[3] The Federal Court accordingly made provision for various courses of action which are open to the authorities in the event of violation of the "reasonable time" principle in a particular case (see Question 5).

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 *Boxer Asbestos SA v. Switzerland* (decision of 9 march 2000), the Court affirmed that the possibility of applying to the *Tribunal Fédéral* in cases of excessive length of civil proceedings constituted an adequate remedy.

[3] Federal Court Judgment of 7 June 1991, ATF 117 IV 124 (128), preamble paragraph 3b.

"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"

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

"The former Yugoslav Republic of Macedonia" experiences excessive delays in judicial proceedings, especially in civil and enforcement cases.

The analysis of the performance of the judicial system in "the former Yugoslav Republic of Macedonia" demonstrates that the delivery of court summons or documents has been one of the main reasons for delays in the proceedings. The legal provisions governing this matter (that were amended by new laws adopted in 2005, mentioned below) were leaving large space for abuse on the part of the involved parties by avoiding to receive court summons or documents, or by indicating incorrect or concealing the accurate address. The principle of personal delivery that has been accepted in the procedural legislation (both criminal and civil) as a condition associated with individual freedoms and rights, does not correspond consistently with the other regulation (for residence registration) that would allow greater civil obedience and functioning of a so-called "mail box" system.

Furthermore, laws allowed for an abuse of the institute of exemption (in practice, besides the request for exemption of the sitting judge, and after a negative ruling upon such a request, an exemption could also be requested for the Court's President and even for the Court itself, and even more on several occasions during the same proceedings upon a single case).

Frequent delays of trial hearings also occur as a result of the failure of the involved parties, attorneys, witnesses or court experts to appear before the court, despite having been orderly summoned. Such occurrence has been typical in particular for cases involving larger number of parties, i.e. defendants and attorneys.

The previously existing legal provisions which allowed new facts and evidence to be presented in proceedings upon appeals, directly contributed to the delays in proceedings (if a party is not satisfied with the Court's ruling, by presenting new facts and evidence in the appeal, it exercises a possibility that the decision may be revoked by a higher court and the case be remanded to the court of first instance for re-trial and reassessment).

The system of alternative dispute resolution is currently under development. The use of arbitration in practice has been very limited.

Additional reasons for delays in procedure are the non-existence of adequate registers and records, as well as the low level of technical equipment available to the courts in their handling of cases. Namely, there is still lack of an integrated and authorized access to good-quality information, as well as of generation and storage mechanism for all documents from the initiation up to the permanent filing of a case (inappropriate document management).

At the same time, the flow, organization and analysis of data are a slow process.

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

Such delays have been acknowledged only by the European Court of Human Rights, since there is no a legal remedy in national law providing for protection of excessive delays in judicial proceedings. In 2005 European Court of Human Rights delivered the following judgments against "the former Yugoslav Republic of Macedonia" where the ECHR found a violation of Article 6 § 1 (excessive delays in judicial proceedings) of the European Convention of Human Rights: *Atanasovic v. "the former Yugoslav Republic of Macedonia"* Application no. 13886/02 of 22.12.2005 ECHR and *Dumanovski v. "the former Yugoslav Republic of Macedonia"* Application no. 13898/02 of 8.12.2005 ECHR.

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 "the former Yugoslav Republic of Macedonia" does not contain an explicit requirement of reasonable of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights. However, Article 50 § 1 of the Constitution of "the former Yugoslav Republic of Macedonia" provides that: "Every citizen may invoke the protection of freedoms and rights determined by the Constitution before the ordinary courts, as well as before the Constitutional Court of "the former Yugoslav Republic of Macedonia", ***in a procedure based upon the principles of priority and urgency".***

Legal provisions containing an explicit requirement of reasonable in terms of Article 6 § 1 of the European Convention of Human Rights are to be found in the Law on the Courts as well as in procedural laws.

The ***Law on the Courts*** ("Official Gazette of "the former Yugoslav Republic of Macedonia" no. 36/95") in Article 7 stipulates that: "Everyone is entitled to lawful, impartial and fair hearing in reasonable time".

The ***Law on Civil Procedure*** ("Official Gazette of "the former Yugoslav Republic of Macedonia" no. 79/2005") in Article 10 § 1 says: "The Court is obliged to conduct the proceedings ***without delay, in reasonable time***, with as little costs as possible, and to prevent any misuse of rights of the parties in the proceedings."

According to Article 4 § 1 of the ***Law on Criminal Procedure*** ("Official Gazette of "the former Yugoslav Republic of Macedonia" no. 15/97, 44/2002, 74/2004 and 15/2005" – cleared text): "A person charged with criminal offence is entitled to a fair and public hearing ***within reasonable time*** before a competent, independent and impartial court established by law."

According to Article 6 of the ***Law on Enforcement*** ("Official Gazette of "the former Yugoslav Republic of Macedonia" no. 35/2005"): "In conducting the enforcement, the enforcement agent is obliged ***to act promptly***, according to the order in which he has received the cases at work, unless the nature of the claim or some other special circumstances require otherwise."

According to Article 8 of the ***Law on General Administrative Procedure*** ("Official Gazette of "the former Yugoslav Republic of Macedonia" no. 38/2005"): "In administrative decision making, administrative bodies are obliged to ensure the ***efficient exercise of rights and interests of the parties*** in the administrative procedure."

According to Article 17 of the same Law: "The administrative proceedings is conducted ***economically and urgently without delay, in a cost-effective and time-consuming way,*** in such a manner that will allow everything that is necessary to be obtained for a rightful determination of facts and for making a lawful and correct decision."

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

The average duration of cases for civil and criminal decisions is presented in the chart below:

Average duration of cases		**2001**	**2002**	**2003**	**2004 (first 6 months)**
Civil Cases	Basic courts (first instance)	10 m .& 10 days	10 m. & 1 day	8 m. & 26 days	9 m. & 16 days
	Appealed civil cases (second instance proceedings)	30 days	1 m. & 11 days	1 m. & 9 days	1 m. & 24 days
	Supreme Court	1 y. & 6	1 y. & 6	11 m. &	7 m. & 15

		m. & 22 days	m. & 26 days	10 days	days
Criminal Cases	Basic courts (first instance)	9 m .& 13 days	9 m. & 24 day	8 m. & 27 days	9 m. & 7 days
	Appealed civil cases (second instance proceedings)	1 m. & 1 days	28 days	26 days	26 days
	Supreme Court	1 m. & 12 days	2 months	1 m. & 29 days	2 m. & 6 days

Source: State Statistical Office

Regarding the enforcement of judgments, the average time period between the delivery and the execution of judgments in civil and criminal cases is presented in the chart below:

	2001	**2002**	**2003**	**2004 (first 6 months)**
Civil cases	11 months & 11 days	6 months & 18 days	6 months & 23 days	7 months & 12 days
Criminal cases	2 years & 9 months & 16 days	3 years & 1 months & 5 days	2 years & 3 months & 21 days	1 year & 11 months & 29 days

Source: State Statistical Office

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.

In "the former Yugoslav Republic of Macedonia" a special judicial remedy in respect of excessive delays in the proceedings does not exist. There is however, an administrative remedy within the competences of the Ministry of Justice in the area of judicial administration. According to Article 77 of the Law on the Courts, 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. This remedy in practice has shown very little effectiveness since 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 former Yugoslav Republic of Macedonia" and propose dismissal of the judge.

The Judicial Council is also competent to review the complaints of citizens regarding the conduct of judges.

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

The remedy described under question no. 5 is available in respect of pending proceedings and is almost always used by citizens regarding cases pending before the courts.

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

No.

TURKEY

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

Yes.

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

As regards administrative courts: the European Court found the excessive length of compensation proceedings in the following cases *Ormancı and others v. Turkey* (judgment of 21.12.2004), *Güven Hatun and others v. Turkey* (judgment of 08.02.2005), *Güven Meryem and others v. Turkey* (judgment of 22.02.2005), *Özel Mehmet and others v. Turkey* (judgment of 26.04.2005), *Özkan Nuri v. Turkey* (judgment of 09.11.2004), *Yalman and others v. Turkey* (judgment of 03.06.2004).

As regards civil courts: *Yorgiyadis v. Turkey* (judgment of 19.10.2004), *Günter v. Turkey* (judgment of 22.02.2005), *Molin İnşaat v. Turkey* (judgment of 11.01.2005), *Sekin Mahmut and others v. Turkey* (judgment of 22.01.04), *M.Ö v. Turkey* (judgment of 19.05.2005).

As regards labour courts: *Ertürk Hüseyin v. Turkey* (judgment of 22.09.2005).

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 19 of the Constitution only provides that "Persons under detention shall have the right to request trial within a reasonable time or to be released during investigation or prosecution."

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

According to the statistics provided by the Ministry of Justice, the average length of civil proceedings in Turkey is 177 days before first-instance courts and 86 days before the Civil Chambers of the Court of Cassation.

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.

Article 14 of the Administrative Code provides that the examination of the petitions should be concluded at the latest within fifteen days of receiving the petition.
A new Code of Administrative Procedure is being drafted with a view to decreasing the workload of administrative courts. It also lays down procedures for resolving disputes before the trial stage and for friendly settlements and envisages a number of amendments with the aim of reducing the length of proceedings before administrative courts.

Preparations are under way for the adoption of a draft law on the establishment of the Council of Scrutiny of Public Works, which will provide that all disputes between the administration and citizens will first be examined by an Ombudsman before being brought before the administrative authorities or the administrative courts.

The Law on the Council of State (Law no: 2575) was amended by Law no. 5183 of 02.06.2004 whereby a new Chamber (the 13th Chamber) was established and the functions and jurisdictions of the other

Chambers were revised with the aim of reducing the length of proceedings before the Council of State.

The competence and jurisdiction of Civil and Criminal Courts of First Instance were reorganised and Regional Courts were established with the coming into force of Law no. 5235 of 26.09.2004.

A number of new courts have recently been established in Turkey, namely 823 Civil Peace Courts, 960 Civil Courts of First Instance, 704 Cadastral Courts, 174 Enforcement Courts, 98 Labour Courts, 149 Family Courts, 54 Commercial Courts, 20 Consumer Rights Courts, 4 Intellectual Property Rights Courts, 19 Juvenile Courts and 1 Maritime Court.

A new Law amending the Code of Civil Procedure is being drafted in order to prevent lengthy proceedings before civil courts.

6. 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.

UKRAINE

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

Yes. The information before the European Court indicates that the excessive length of proceedings is a problem in the national legal system with respect to civil and criminal proceedings and with respect to the execution of the judgments.

2. Have such delays been acknowledged by court decisions? Which 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 its decision (judgments) *Merit v. Ukraine* (judgment of 30 March 2004) in respect of criminal proceedings, *Svetlana Naumenko v. Ukraine* (judgment of 30 March 2004) in respect of civil proceedings and *Zhovner v. Ukraine* (judgment of 29 June 2004) in respect of enforcement proceedings the European Court found the violation of Article 6 § 1.

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?

There is no such a requirement. However, a specific time-limit do exist with respect to the length of the pre-trial investigation.

Article 120 Code of Criminal Procedure of 28 December 1960 (as amended on 21 June 2001) states the following:

> *"The pre-trial investigation in criminal cases shall last no longer than two months. This term shall commence from the moment the criminal proceedings were initiated up to the point of their being sent to the prosecutor with:*
>
> *In especially complicated cases the term of the pre-trial investigation, established by part 1 of this Article, can be extended on the basis of the reasoned resolution of the investigator up to six months, to be approved by the prosecutor of the Autonomous Republic of the Crimea, prosecutors of regions, the prosecutor of Kyiv, the military prosecutor of the military district (command), fleet and the prosecutors of equal rank or their deputies.*
>
> *Further continuation of the term of the pre-trial investigation shall only be approved by the Prosecutor General of Ukraine or by his deputies.*
>
> *Where the case was remitted for an additional investigation, or if the terminated case was re-opened, the term of additional investigation shall be established by the prosecutor who supervises the investigation, and shall not be more than one month from the moment of the re-initiation of the proceedings in the case. Further continuation of this term shall be enacted on a general basis".*

On 30 January 2003 the Constitutional Court of Ukraine interpreted article 120 of Code of Criminal Procedure of 28 December 1960 (as amended on 21 June 2001) and held that the maximum deadline for investigating criminal cases cannot be fixed. It decided that the time allowed for investigation should be reasonable, and referred to Article 6 of the Convention.

In accordance with Article 236 of the Code of Criminal Procedure, it is possible to introduce a complain in

respect of the prosecutor's actions before the court:

> *"Complaints in respect of the prosecutor's actions during the conduct of the pre-trial investigation or other individual investigative actions in the case shall be submitted to the superior prosecutor, who shall consider them in accordance with the procedure and within the terms prescribed by Articles 234 and 235 of this Code.*
>
> *A complaint about the prosecutor's actions can be lodged with the court.*
>
> *Complaints about the prosecutor's actions shall be considered by the first-instance court in the course of the preliminary consideration of the case or in the course of its consideration on the merits, unless otherwise provided for by this Code."*

By a decision of 30 January 2003 of the Constitutional Court of Ukraine, the domestic courts were given power to consider these complaints while the pre-trial investigation was still pending. On that date, the Constitutional Court held that the basis, the grounds and the procedure for initiating criminal proceedings against a person, but not the merits of the criminal accusations as such, were subject to appeal.

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 of proceedings. There exist however, some means of accelerating the lengthy procedures and obtaining reparation.

Generally speaking, pursuing to Article 8 §§ 2 and 3, the Constitution of Ukraine is directly applicable. Article 55 § 1 guarantees to everyone "the right to challenge before a court decisions, actions or omissions of State authorities, local self-government bodies, officials and officers".

Regarding civil proceedings, Article 248(1) of the Code of Civil Procedure provides the following :

> *"A citizen has a right of access to a court if he or she considers that his or her rights have been violated by actions or omissions of a State authority, a legal entity or officials acting in an official capacity. Among entities whose actions or omissions may be challenged before the competent court listed in the first paragraph of this provision are the bodies of State executive power and their officials".*

Following the Constitutional Court decision of 23 May 2001, which declared Article 248.3 § 4 of the Code of Civil Procedure to be partly unconstitutional, the citizens also have the right to complain directly to a court about the acts of investigating officers and to seek redress in respect of those acts.

As to the criminal proceedings, since the amendment of 21 June 2001 (with effect as from 29 June 2001), Article 234 of the Code of Criminal Procedure provides the possibility to complain to the courts about the resolutions of an investigating officer/prosecutor which violated the parties' rights, in the course of the administrative hearing or in the course of the consideration of the case on the merits.

In accordance with Articles 6 and 31 of the Law on Status of Judges, 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.

The draft law on Pre-trial and Trial Proceedings and Enforcement of judgments within reasonable time is in process of examination by the Parliament. It will set forth a new remedy allowing to request from a higher court to order particular procedural actions within a certain time-limit and/or award compensation for delays totaling up to fifteen minimum wages. The draft also specifies that such a decision should be dispatched to the competent authority in order to decide on disciplinary punishment of the persons responsible for the delay.

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

Yes, in criminal proceedings (Article 234 of the Code of Criminal Procedure). See under Question 5.

10. What are the available forms of redress :

- acknowledgement of the violation YES

Disciplinary responsibility 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?

There is no possibility of appeal.

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 its decision *Merit v. Ukraine* (judgment of 30 March 2004), the European Court found that neither of the remedies existing in the Ukrainian domestic system – complaint to the relevant court against the resolution of the prosecutor either in the course of civil proceedings (Article 248.3 CCP) or in the course of criminal proceedings (Article 234 CCRP) can be considered an effective remedy in terms of Article 35.1 of the ECHR.

Regarding the lodging of complaints with the superior prosecutor, which in accordance with the observations of the Government had to be considered effective remedies, the Court held that they cannot be considered "effective" and "accessible" since the status of the prosecutor in the domestic law and his participation in the criminal proceedings against the applicant do not offer adequate safeguards for an independent and impartial review of the applicant's complaints.

In so far as the remedy under Article 234 of the CCRP is concerned, the Court noted that this remedy suggests that complaints against the length of the investigation of the case can be made after the investigation has finished, but leaves no possibility of appeal in the course of the investigation. Furthermore, the law does not specifically state whether Article 234 of the CCRP is a remedy for the length of proceedings in a criminal case and what kind of redress can be provided to an applicant in the event of a finding that the length of the investigation breached the requirement of "reasonableness".

UNITED KINGDOM

Introductory note

The United Kingdom contains three legal systems. (a) English law applies in England and Wales. (b) Scots law applies in Scotland, which has a distinct legal system and since 1999 its own Parliament. (c) The law in Northern Ireland is based on the common law (English law) but with separate courts, legislation, and legal profession. Final appellate jurisdiction in civil law, and in criminal law except for Scotland, is exercised by the 12 Law Lords, sitting in the House of Lords. This response omits Northern Ireland entirely; in civil matters it concentrates on English law; regarding criminal procedure, it mentions both English law and Scots law.

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

Although cases of excessive delay occur in the United Kingdom, compared with many European countries, the country has a reasonably good record in this respect.

When excessive delays in judicial proceedings occur in the United Kingdom, whether in civil, criminal or administrative matters, these tend to be exceptions to the regular working of justice.

Apart from Article 6 § 1 ECHR, many aspects of domestic law address problems of delay. An extensive review of English civil procedure was conducted in the mid-1990s by Lord Woolf (the present Lord Chief Justice) who commented that (a) delay is the enemy of justice, (b) delay is an additional source of distress to parties who have already suffered damage, and (c) delay is of more benefit to lawyers than to the parties. Lord Woolf's reports[313] led to a complete re-writing of the rules of civil procedure. His review linked the excessive cost of civil litigation with undue delay: he observed that both costs and delay were often disproportionate to the value of the dispute. The Civil Procedure Rules now require cases to be dealt with 'expeditiously and fairly' and in ways that are proportionate to the amount in dispute, the complexity and importance of the issues and the financial position of each party. The Rules entrust judges with the duty of case-management, so as to minimise scope for delays and undue costs. The Rules have simplified procedure in many ways (for instance, by imposing a duty of prior disclosure of evidence on the parties to avoid surprises at trial). They provide for three different levels of procedure (in terms of speed and complexity) known as (i) small claims, (ii) fast track and (iii) multi-track. The choice between these procedures depends primarily on the amount in dispute. The present Rules have done a great deal to deal with factors that previously gave rise to delay in civil cases.

One aspect of civil justice that still demands attention is in the enforcement of civil judgments. A recent study of this subject was entitled "The Crisis in the Enforcement of Civil Judgments in England and Wales". The authors draw attention to the difficulty of enforcing the payment of judgment-debts. They observe that the provision of "simple, inexpensive, fair and accessible means of resolving disputes counts for little … if successful parties cannot in the end collect the money that the courts have ordered."[314]

In 2001, a full review of the criminal courts in England and Wales sought to apply to criminal justice (with necessary modification) the aims of more stream-lined and efficient procedure.[315] The Government has attached greater political priority to securing legislative reforms on criminal justice than it has done to reforming the enforcement of civil judgments.

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313 See Woolf, *Access to Justice: Interim Report to the Lord Chancellor on the Civil Justice System in England and Wales* (1995) and *Access to Justice: Final Report (on the same)* (1996).

314 J Baldwin and R Cunnington, [2005] *Public Law* 305, 309. The need for reform in the system is widely accepted (see the Government's white paper, *Effective Enforcement: Improved Methods of Recovery of Civil Court Debts etc* (Cm 5744, 2003), but the reforms have not yet been achieved.

315 See Lord Justice Auld's Review of the Criminal Courts of England Wales, September 2001.

A full study of delay in justice would include the law and practice on limitation (prescription) periods.[316] Prescription periods vary greatly in English law, ranging from (1) the short period within which judicial review of administrative decisions must be sought (the claimant must be made 'promptly', and in any event within three months of the decision complained of: in exceptional circumstances, the court may grant an extension of time for a claim outside three months)[317] to (2) limitation periods of six years or twelve years concerning matters of contract or property respectively. For certain crimes, proceedings must be initiated within a set time-limit (for instance, six months in respect of minor statutory offences). The scope of the questionnaire does not include these matters.

In English law the courts have a residual power, derived from their inherent jurisdiction, to strike out a civil case for 'want of prosecution' (that is, failure by a claimant to pursue a claim with reasonable speed, repeatedly neglecting to take procedural steps in time etc).[318] In criminal justice, the courts may at common law bring a prosecution to an end where to allow it to continue would constitute an abuse of process.[319] The principle applied has been that to stay a prosecution on the ground of delay requires exceptional circumstances: it would usually be necessary that the prosecutor had been at fault in causing the delay and, even then, the trial will be stayed only if the defendant can show that because of the delay it will not be possible for a fair trial to be held and that he will accordingly be prejudiced. The trial would not be stayed if the effects of unfairness could be dealt with in the course of the trial. The court will take a stricter attitude if the prosecutor has deliberately delayed taking action for his own purposes.[320]

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

The occurrence of undue delays has been recognised by national courts and by the ECHR.

National Case-Law

In 1998, the Court of Appeal was severely critical of a High Court judge whose judgment in a civil case was not delivered until 20 months after the end of the trial; the delay had been so great as to make the judgment unreliable on issues of fact; a fresh trial was ordered and the judge retired from the High Court earlier than he would otherwise have done.[321]

In 2005, in a case of racial discrimination in employment, the tribunal had announced its decision against the employers 13 months after the oral hearing. The Court of Appeal said that this far exceeded the normal and reasonable tribunal target period of 3½ months, but held that on the merits of the case, the employers (who were seeking a re-hearing of the evidence) had not shown that there was a real risk that they had lost the benefit of their right to a fair trial.[322]

The ECHR Case-Law

The United Kingdom has been found guilty of breaching the "reasonable time" requirement in the following cases: *H v. the United Kingdom* (Judgment of 8 July 1987), D*arnell v. the United Kingdom* (Judgment of 26 October 1993), *Robins v. the United Kingdom* (Judgment of 1997), H*owarth v. the United Kingdom* (Judgment of 21 September 2001), *Somjee v. the United Kingdom* (Judgment of 15 October 2002), *Mitchell v. the United Kingdom* (Judgment of 17 December 2002), O*basa v. the United Kingdom* (Judgment of 16 January 2003), *Price and Lowe v. the United Kingdom* (Judgment of 29 July 2003), *Foley v. the United Kingdom* (Judgment of 22 October 2003).

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316 See e g *Stubbings v. the United Kingdom* (1996) 23 EHRR 213.

317 See CPR, Part 54.

318 The leading authority that restricted the scope of this power was formerly *Birkett v James* [1978] AC 297. The power is now to be exercised in accordance with the Civil Procedure Rules.

319 See *Attorney-General's Reference (No 1 of 1990)* [1992] QB 630.

320 *R v. Brentford Magistrates, ex p Wong* [1981] QB 445.

321 *Goose v. Wilson Sandford & Co* The Times, 19 February 1998. See also *Cobham v. Frett* [2001] 1 WLR 1775.

322 *Bangs v. Connex South Eastern Ltd* [2005] EWCA Civ 14, [2005] 2 All ER 316.

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

Yes, since the Human Rights Act 1998 (HRA) took effect in October 2000. The reason for the HRA was to enable ECHR rights, including Article 6/1, to be enforced in national law. The HRA requires national courts and tribunals where possible to give effect to the Convention rights, except only if they are prevented by primary legislation from so doing.

Court and tribunals must give appropriate remedies if an individual's Convention rights are found to have been breached. Accordingly, the law of the United Kingdom now requires the individual's rights under Article 6/1 to be respected by all public authorities, including courts and tribunals, by means of the legislative framework adopted in 1998 for giving effect to Convention rights.

In addition to this general provision, statutory rules and the Civil Procedure Rules seek in many detailed ways to deal with problems relating to avoidable delay.

Civil Procedure Rules (1999)

Rule 1. The overriding objective

1.1(1) These Rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly.
(2) Dealing with a case justly includes, so far as is practicable
(a) ensuring that the parties are on an equal footing;
(b) saving expense;
(c) dealing with the case in ways which are proportionate
(i) to the amount of money involved;
(ii) to the importance of the case;
(iii) to the complexity of the issues; and
(iv) to the financial position of each party;
(d) ensuring that it is dealt with expeditiously and fairly; and
(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

In criminal proceedings, both in English and Scots law, legislative rules impose time limits on the institution of proceedings, particularly when individuals charged with crimes are held in custody (cf Article 5(3) ECHR: an accused person who has been arrested is entitled to trial within a reasonable time or to release pending trial). A note summarising this legislation appears in the Appendix to this report.

Criminal Procedure Rules

Rule 1.1(2)) Overriding Objective

/../ Dealing with a criminal case justly includes

... (c) recognising the rights of a defendant, especially those under Article 6 of the European Convention on Human Rights;

... (e) dealing with the case efficiently and expeditiously.

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

The most significant details concern waiting time in the High Court (Queen's Bench Division). In 2004, the average time between the issue of a civil claim and setting down for trial was 43 weeks, the average time between the issue of a claim and the start of the trial (or date of disposal) was 54 weeks, making a total average time between the issue of a claim and the start of the trial (or the date of disposal) 97 weeks at first instance.

In the county courts, the total average time in 2004 was 53 weeks, compared with total average time in 1990 of 81 weeks and in 2001 of 73 weeks.

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.

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. There is therefore no need for a dedicated remedy for excessive delays in court proceedings, since in law the Convention rights of individuals are fully protected by the existing procedures for appeal and review.

In the exercise of their inherent jurisdiction, the criminal courts may stay a prosecution where there has been an unreasonable lapse of time; and the civil courts may reject a claim where the claimant has failed to observe steps required by the Civil Procedure Rules.

Regarding criminal proceedings, since the HRA entered into force, the criminal appeal courts have been much concerned with the criteria that should be applied by the criminal courts in exercising their jurisdiction to stay a prosecution for delay. The leading case on the subject is an appeal against the Attorney General's Reference no. 2 of 2001 [2003] UKHL 68 [2004] 2 AC 72, in which the House of Lord considered for English law, that criminal proceedings could be stayed because of a breach of Article 6(1) only if a fair hearing was no longer possible or if for any compelling reason it would be unfair to try the accused person. An appropriate remedy might involve a reduction in the penalty imposed if he were convicted, or the payment of compensation if he were acquitted.

The majority of the judges reached this view after analysing the Strasbourg jurisprudence, and concluded that the position they favoured was compatible with that jurisprudence. The two dissenting judges (both had been judges in Scotland) held that the right under Article 6(1) to trial within a reasonable time "is a separate and independent guarantee which does not require the victim to show that a fair hearing is no longer possible."[323] In an earlier decision, it was held that in Scots law a defendant could not be tried if his right to trial within a reasonable time had been infringed.[324]

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

The question of a prospective breach of Article 6(1) can be raised by recourse to the ordinary procedures of the civil and criminal courts. Any procedural decisions made by the courts must, as stated already, seek to act in compliance with the litigant's rights under Article 6(1).

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

Not applicable.

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 to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

The courts apply the criteria applied by the Strasbourg Court in respect of Article 6(1) ECHR whenever possible.

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?

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323 Ibid, para 108] (Lord Hope).

324 *R v. Lord Advocate* [2002]UKPC D3, [2003] 2 WLR 317.

Not applicable

10. What are the available forms of redress:

- acknowledgement of the violation YES
- compensation is possible and if appropriate may be awarded in accordance with the Strasbourg criteria on 'just satisfaction', but in practice it will rarely be available measures to speed up the proceedings, if they are still pending YES
- possible reduction of sentence in criminal cases YES
- other (specify what)

In a case involving the unduly prolonged detention of an individual (e g pending deportation, when deportation is no longer possible), the court could on *habeas corpus* proceedings order his release. In the situation of undue detention of an accused person, undue delay may mean that he must be set free and cannot be tried on the charges for which he had been detained. (See Appendix)

11. Are these forms of redress cumulative or alternative?

In practice the courts prefer to give redress like speeding up a future trial or in a criminal case reducing a sentence, and are reluctant to hold that compensation is payable.

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

In the relatively rare cases in which compensation is available, it will be linked to the ECtHR criteria, as stated already. There is no prescribed maximum.

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?

Yes, the primary means for speeding up the proceedings in civil cases is by means of case-management, applied by the relevant court. I am not aware of any formal measures co-ordinating cases that raise questions of excessive delay, but all courts have a presiding judge who will oversee the performance in this respect of the courts for whom he or she is responsible.

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

The courts and tribunals concerned with the proceedings in question.

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

Since there is no dedicated procedure, this question does not arise. Presumably the remedy for an individual is to seek recourse to an appellate court; in some cases (lower courts and tribunals), the remedy takes the form of an application to the High Court for judicial review.

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?

Not applicable – the question of an appeal or review depends on the general procedures of the court or tribunal concerned..

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?

Not applicable.

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

Not applicable.

19. What is the general assessment of this remedy?

Not applicable.

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.

Not applicable.

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.

Not applicable.

APPENDIX

Statutory rules in England and Scotland barring criminal prosecutions on grounds of delay

The law in Scotland

1.1 There has for 300 years been legislation in Scotland providing for situations in which criminal prosecutions are barred on grounds of delay, particularly when the accused (A) has been held in custody pending trial. The legislation has been amended from time to time. The present law may be summarised in this way.

1.2 Where A is in custody on a warrant to commit him for trial, he may not be detained for more than 110 days before being brought to trial (the *110 day rule*). Unless the period has been extended by the court, failure to start the trial within 110 days results in the immediate liberation of A, who is thereafter 'free from all question or process' for the offence for which he had been held in custody. An extension in time may be granted only for unavoidable delay (such as the illness of A or an essential witness) or 'for any other sufficient reason' not attributable to the fault of the prosecutor. Scottish judges are very reluctant to grant extensions here and under the two following rules.

1.3 A subsidiary rule is the *80 day rule*. Where A is in custody on a warrant to commit him for trial, the indictment must be served within 80 days, and if this does not occur, A must be liberated from custody immediately. However, A may still be tried for the offence in question. The court has power to extend the period of 80 days 'for any sufficient cause', but if a fault by the prosecutor has caused the indictment not to be served within 80 days, an extension cannot be granted.

1.4 There is a *one-year rule*, by which if A is not in custody but has had to appear in court to answer a criminal charge, the trial on indictment must be commenced within twelve months of that appearance. If this does not occur, A may not thereafter be tried on indictment, but in some circumstances he may be prosecuted for summary offences (involving a less serious mode of trial) arising from the same events. The court may extend the period of one year in limited circumstances. The rule does not apply if A fails to appear for trial during the year.

2 On an application by the prosecutor for an extension of time under these rules, the Scottish judges consider (a) whether sufficient reason has been shown for the extension and, if so, (b) whether the extension will prejudice A, and also factors such as the gravity of the offence and the public interest. The complexity of a case is not a good reason for delay, and administrative difficulties arising from heavy pressure of business on the courts will not necessarily be sufficient to justify an extension of time. But a limited extension of time may be granted where delay has been inadvertent or caused by minor administrative errors that have caused no injustice.. Extensions of time may be sought both prospectively and retrospectively. The Scottish courts frequently deal with questions arising from these rules. The existence and enforcement of the rules may explain why no Scottish criminal cases claiming delay in breach of Article 6(1) ECHR have gone to Strasbourg. In the leading decision on the effect on English law of the Human Rights Act 1998 and the Strasbourg jurisprudence, the majority of seven Law Lords applied the Strasbourg jurisprudence to English law; the minority of two judges (both being Scottish judges) dissented, applying the more rigorous standards of Scots law.[325]

The law in England and Wales

3. The rules set out above have long existed as part of Scots law, but in English law legislation imposing time limits on prosecutions when the defendant (D) is in custody was first enacted in 1985.[326] In the case of the most serious offences ('indictable offences'), the custody time limit from first appearance in court after arrest to the proceedings when D is committed for trial is 70 days; and the time limit from committal proceedings to the commencement of the trial in the Crown Court is 112 days. Modified rules apply in the case of less serious offences ('offences triable either way'). Where a custody time limit has expired, D has an absolute right to be released on bail; the court may not require financial sureties to be given as a condition of bail; and once released on bail, D may not be arrested merely on the ground that the police believe that he is unlikely to surrender to bail. However, D's right to bail continues only until the commencement of trial in the Crown Court and the court may withhold bail from him during the actual trial.

4. Where an overall time limit has expired, the court must in general stop the proceedings against D, subject to limited exceptions. The time limits on custody pending trial may be extended by permission of the court, but only if two conditions are met:

(1) the extension is needed because of
    (a) the illness of D, a vital witness, or a judge
    (b) because separate trials have been ordered where several persons have been accused of a crime or
    (c) 'some other good and sufficient cause'; and
(2) the prosecutor has acted with all due diligence and expedition.

In case-law relating to these provisions, it has been held that condition (2) is satisfied if the prosecution can show that the acts of the prosecutor have not contributed to the delay.[327] The court is able to take account of the nature and complexity of the case, the conduct of the defence and the extent to which the prosecution has been delayed by persons outside the control of the prosecutor: the shortage of prosecution staff or police is not a sufficient reason for delay, but in some circumstances pressure on the courts or the difficulty of finding an appropriate judge in a complex case may be relevant. [328]

Section III

Reports presented at the Conference on "Remedies for unduly lengthy proceedings: a new

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325 *Attorney-General's Reference (No 2 of 2001)* [2003] UKHL 68; [2004] 2 AC 72.

326 Prosecution of Offences Act 1985, s 22; and Prosecution of Offences (Custody Time Limits) Regulations 1987 (S.I. 1987/229).

327 *R v. Leeds Crown Court ex p Bagoutie*, Times Law Report, 31 May 1999.

328 *R (Gibson) v. Crown Court at Winchester* [2004] EWHC 361, [2004] 1 WLR 1623.

WELCOME SPEECH

HE Mr. Mihai-Răzvan UNGUREANU
Minister of Foreign Affairs of Romania
CIO of the Committee of Ministers of the Council of Europe

Madam Vice-president of the Venice Commission,
Madam Judge,
Mr. President of the European Commission for the Efficiency of Justice,
Mr. Secretary of the Venice Commission,
Mrs. Minister of Justice,
Dear guests,
Ladies and gentlemen,

It is a great honour and pleasure to welcome you here today, as Chairman in office of the Committee of Ministers of the Council of Europe. We have come already into the last two months of this honouring mandate, for which we have set broad goals, as the contribution of my country to the high objectives of the organisation in Strasbourg. Among these, of foremost importance is ensuring the effectiveness and integrity of the unique human rights protection system provided by the European Convention on Human Rights.

However, my diplomatic career taught me, as did life in general, that setting high and broad goals is relatively easy. Attaining them is, of course, *the* challenge. And we can only do this by concrete, but determined steps. This is why we are so fond of events like the present one, where specialists come with possible solutions to a problem which may, at a first glance, seem marginal, but which, in real terms, affects - sometimes to annihilation – a key human right. This fundamental right is the guarantee for all the other rights and liberties: *the right to a fair trial*.

Two main components of the broad objective I have mentioned earlier - that of ensuring the effectiveness of the Strasbourg human rights protection system - are, undoubtedly, *the efficient functioning of the European Court of Human Rights* and *the execution of the Court's judgments*. And I think you all agree that finding a solution to the question of the excessive length of judicial proceedings is, simultaneously, a contribution to both.

The entry into force of Protocol 14 to the European Convention of Human Rights, which I so much advocated during the present chairmanship and which we hope for in May this year, will, of course, make things easier for the Court when it comes to the management of its backlog. But the real contribution to alleviating this backlog is our task, the Member States, who have to find domestic solutions for human rights infringements, by virtue of the *principle of subsidiarity*.

In almost twelve years since it has been a party to the European Convention, Romania has progressed enormously in understanding and undertaking the responsibility of subsidiarity – that is of *own management*. And by that I do not refer only to changing pieces of legislation – which, coming back to my earlier reflection on the simplicity of setting goals, proved to be rather easy compared to *the real challenge of rightfully implementing them*. What I have in mind is the progress in *changing an entire system*, both of infrastructure and of values.

We are still facing such challenges, but hopefully we overcame the most important ones. We adopted and adapted important legislation, radically reforming our justice system, in terms of its organization and guaranteeing its independence, as well as on substantial issues, such as freedom of the press, child protection, criminal and civil procedures and many others.

This process of adaptation is however *a continuous one* and we cannot just draw a line and stop

progressing. Fortunately, Romania has not faced *yet*, in Strasbourg, an "endemic" problem of the excessive length of procedure. Nevertheless, seeing the dimensions of this issue all over Europe, even in countries with long-lasting democracy, every such symptom – and we had and still have a few – worried us and prompted us to take a preventive step.

Ladies and gentlemen,

The most obvious proof of the significance of this issue is your presence here and the institutions you represent: *the European Court*, hoping not to have to deal anymore with such type of case-law in a foreseeable future; *the General Secretariat*, by the Service for the Execution of Judgments, vigilantly monitoring the correction of our national legal systems in accordance with the Court's guidance; *the European Commission for the Efficiency of Justice*, coming with the most concrete proposals for a better justice management; *Government Agents*, as intermediaries between the Council of Europe's bodies and the domestic ones; *judges, lawyers, professors*, all those who are in charge with enforcing justice. And, last but not least, *the Venice Commission*, a body of the highest legal expertise, which constantly supported the States' efforts for strengthening and perfecting the Rule of Law.

I am persuaded that the Venice Commission's effort of almost two years, *which was launched also in Bucharest in July 2004*, of putting together various national experience and drawing constructive and generally applicable conclusions, will make a real contribution to the general objective of ensuring the protection of human rights, to the more particular one of increasing the effectiveness of the European Court, by the respective correction of our national legal systems and, finally, to the even more particular, and by that all the more important objective of *allowing for an effective access to justice to our citizens.*

I therefore convey my *special thanks* to the representatives of the Venice Commission for their key contribution on this subject and for co-organizing this conference, as well as to all participants. I wish you all every success in today's work.

WELCOME ADDRESS

Mr Gianni BUQUICCHIO
Secretary of the Venice Commission

Ladies and Gentlemen,

I am pleased to be here in Bucharest today for the opening of this important conference and should like to begin by briefly going over the various phases in the co-operation between the Venice Commission and Romania, which has always been fruitful and stimulating.

It began with assistance to the Romanian parliament's constitutional committee concerning the preparation of the 1991 Constitution. The Commission and Romania then co-operated again regarding the revision of that constitution in 2001, which was intended to facilitate the country's accession to NATO and the European Union and remedy certain shortcomings that had come to light during the text's 10 years in existence.

In 2001, the Commission and Romania co-operated closely concerning the issue of the preferential treatment of national minorities by their kin-states. In co-operation with the Council of Europe, the OSCE High Commissioner on National Minorities and the countries concerned, including Romania, the Venice Commission's report on the subject led to agreement on a satisfactory version of Hungary's "status law."

In 2005, the Venice Commission assisted the Romanian authorities with the preparation of the laws on religions and on national minorities.

But it is an ongoing exchange of ideas between the Venice Commission and Romania that brings us together here today.

In July 2004, at the conference here in Bucharest to mark the 10th anniversary of the European Convention on Human Rights entering into force in Romania, the Romanians and the Venice Commission set about the difficult task of shaping a solution to the problem of the excessive length of proceedings, which is fairly widespread in Europe and has assumed alarming proportions in several countries in recent years and which, despite appearing to be a "minor" problem, is anything but. Indeed, it ends up destroying public confidence in justice systems and can therefore undermine the very foundations of democratic societies.

That conference was attended by representatives of the Romanian authorities, the Venice Commission, the European Commission for the Efficiency of Justice, the European Court of Human Rights (ECHR), the Committee of Ministers of the Council of Europe, the Department for the Execution of ECHR Judgments, the judicial authorities from some countries and government agents to the ECHR.

It should be underlined that the aim was to come up with an innovative approach.
For the Romanians, this chiefly involved being proactive in relation to a problem which had not yet arisen as such before the Strasbourg Court: there had been no rulings against Romania for breaching the "reasonable time" requirement of Article 6 of the Convention (the Court has now found breaches of Article 6(1) on the grounds of excessive length of proceedings in around 10 Romanian cases). However, realising that the length of proceedings could become a problem, they wished to anticipate it by developing a suitable remedy which could prevent Romanian citizens having to turn to the Strasbourg Court to assert their right to a hearing within a reasonable time.

For the Venice Commission, it involved finding a way of contributing not only to the effective protection of one of the rights enshrined in the European Convention on Human Rights but also to the efficiency and, more indirectly, the survival of the European human rights protection system. The Commission's role as a "facilitator" was acknowledged shortly afterwards by the participants at the seminar on the reform of the European human rights system (Oslo, 18 October 2004). The participants (liaison committee between the Committee of Ministers and the Court, government representatives and representatives of Council of Europe bodies) underlined the need to involve other Council of Europe bodies in order to help overcome,

in appropriate cases, certain difficulties encountered in the execution of judgments and recommended that the expertise of the Venice Commission be turned to good account in this connection.

In its opinion on the implementation of the judgments of the European Court of Human Rights (CDL-AD(2002)034, adopted in December 2002), the Venice Commission recommended that, in its task of supervising the execution of Court judgments, the Committee of Ministers should develop guidelines on what measures are to be taken by the respondent states following the finding by the Court of a breach of a particular Convention provision, so that member states may know in advance what consequences they may face. These guidelines, which should, of course, be inspired by both the practice of the Committee of Ministers and the more explicit case-law of the Court in this respect, would, in the Commission's opinion, allow for a less ad hoc and stricter approach by the Committee of Ministers to the supervision of execution of the Court's judgments.

In 2004, the Commission concluded that breaches of Articles 6(1) and 13 of the European Convention on Human Rights resulting from excessive length of proceedings were an ideal area for drawing up guidelines, given that they occurred in many member states, were becoming increasingly frequent and demanded complex solutions. At the request of the Romanian authorities, the Venice Commission therefore launched a study of the matter.

The seriousness and priority nature of the problem had, of course, also been recognised in other quarters, notably in other Council of Europe departments and bodies. In particular, the European Commission for the Efficiency of Justice (CEPEJ) was already studying the issue and had also adopted a new, comprehensive and comparative approach, which Mr Desch and Mr Uzelac will describe shortly. The DH-PR had also begun analysing the remedies that existed in Council of Europe member states, including in respect of unduly long proceedings.

The Venice Commission therefore began a process of close co-operation with these bodies, in particular the CEPEJ, with a view to avoiding any duplication of effort and capitalising on the various parties' strengths and know-how so as to produce the most comprehensive and satisfactory possible proposed solutions.

The work of the CEPEJ and that of the Venice Commission actually concern two separate but complementary aspects. The CEPEJ analyses the operation of courts so as to identify the causes of undue delays and propose solutions for improving the structure and working methods of courts. Its work is aimed at preventing delays in proceedings.

For its part, the Venice Commission deals with the form which national remedies concerning length of proceedings should take in order to be deemed effective in accordance with the case-law of the European Court of Human Rights, which Ms Tulkens, judge at the Court, will tell us about, and the criteria developed by the Committee of Ministers of the Council of Europe, about which we will hear details from Mr Lobov, who works in the Department for the Execution of Court Judgments. The Venice Commission's work is therefore aimed not a preventing but at remedying delays which have already occurred in proceedings.

Of course, the two areas of work are not entirely separate and sometimes overlap. For instance, a remedy may be designed to speed up proceedings still pending and give a judicial body the power to order a judge to conclude proceedings within a specific deadline or perform a particular task within a specific deadline. In such cases, orders of this kind will obviously have an impact on the organisation of the work of the judge in question and that impact will have to be in line with the relevant CEPEJ criteria.

The Venice Commission has drawn up a questionnaire asking member states for detailed information on the remedies that already exist in some of them. It has received satisfactory replies concerning 36 countries (other replies are expected and we hope to have information about all 46 Council of Europe member states by the end of the study). Mr Matscher will give us details concerning the aim of the questions put in the questionnaire and member states' reactions and will explain what types of remedies exist at present (for proceedings that are pending or in progress; designed to speed up proceedings or merely provide compensation; involving disciplinary measures against the judges responsible for the delays, etc).

The Commission has also analysed the case-law of the Court and the practice of the Committee of Ministers, which Ms Tulkens and Mr Lobov will describe here today.

It is now necessary to draw conclusions from national experiences and produce recommendations. Mr Aurescu, who has begun this task, will give us details of his thoughts so far. And I am sure that the ensuing discussions will also provide valuable insights here.

In our discussions today, it is vital that we always remember the ultimate aim of the exercise, which is to help ensure that the right to a hearing within a reasonable time is implemented in full. The process involves consultation and dialogue between the main players in this area, namely governments and the relevant Council of Europe bodies.
Compliance with the European Convention on Human Rights is a commitment which every Council of Europe member state enters into in respect of all persons under its jurisdiction and also in relation to the other member states. Naturally, it is up to each state to shape the remedies that are most suited to the national legal and socio-political context. Several countries have adopted solutions that are relatively satisfactory and effective. For its part, Romania has shown great determination and a remarkable capacity to anticipate problems. Mr Gâlcă and Ms Belegante will present Romania's strategy and recent initiatives in this area.

There is, however, also a need to identify and comply with common criteria for all Council of Europe member states.

With regard to length of proceedings, a comprehensive and comparative approach has been adopted for the first time. Work is being carried out on several fronts. The CEPEJ is doing remarkable work on the organisation of judicial systems. For its part, the Venice Commission has gathered together a great range of material and is intending to produce conclusions and recommendations on the form remedies in respect of excessive length of proceedings should take. The input of all those present here today will be most valuable for the next stages in the work. The Commission will also seek the opinion of other relevant Council of Europe bodies. It hopes to be able to produce comprehensive, consistent and useful proposals.

These proposals should lead to effective national remedies, which will both increase the level of protection by Council of Europe member states of the right to a hearing within a reasonable time and also prevent applications to the Strasbourg Court concerning the excessive length of proceedings.

I can only hope that today's discussions and the co-ordination and co-operation between the relevant Council of Europe departments and the national authorities will enable us to achieve this ambitious goal.

Allow me now to conclude by thanking the Romanian authorities once again for this initiative and for their contribution.

KEYNOTE SPEECH

Ms Finola FLANAGAN
Vice-president of the Venice Commission
Director General, Senior Legal Adviser
Head of the Office of the Attorney General, Ireland

The purpose of today is to contribute to the preparation of guidelines which will arise from the completed study arising out of the Venice Commission's questionnaire. Such guidelines will hopefully assist and allow Contracting States to take account of the particularities of their own constitutional legal orders and procedures to allow for effective measures to be taken at national level.

The obligation created by Article 6(1) of the ECHR is easily stated. It requires a "fair and public hearing within a reasonable time" in the determination of civil rights and obligations of criminal charges.

However, the enforcement of this obligation and, in particular, the creation and implementation of an effective remedy or remedies is a much more difficult affair.

The comparative study, on national remedies with respect to excessive length of proceedings, which the Venice Commission is in course of conducting in co-operation with Romania, shows that there is a wide variety of approaches to dealing with the problem of unreasonably lengthy proceedings. It shows also that the nature and extent of the problem varies greatly from State to State.

So Armenia in replying to the questionnaire states:

(i) that it does not experience excessive delays;
(ii) there is no case where delays have been deemed to exist by the national courts;
(iii) the constitution has no provision which will enshrine the requirement of reasonable length of proceedings;
(iv) there are strict statutory time-limits of 2 months within which judgments in civil proceedings must be delivered, though the code of criminal process has no such time limit;
(v) though there was no remedy for excessive length of proceedings, at the time of answering a law was in course of being drafted.

Whereas Slovakia confesses:

(i) to excessive delay in judicial proceedings being a 'widespread problem with several hundred pending cases';
(ii) these delays have been found to be violations by court decisions, both at national level and by the ECHR;
(iii) there is an express constitutional guarantee of the right to early trial;
(iv) but there does not appear to be express time limits;
(v) the constitution provides a remedy for failure to act in that the Constitutional Court can quash decisions, compel a body to take necessary action and grant financial satisfaction, which remedy has been found by ECHR to be "effective" in that it can prevent the continuation of a violation of the right to an early hearing and can provide adequate redress.

Article 13 ECHR requires an "effective remedy before a national authority" for everyone whose rights and freedoms are violated. But nevertheless the difficulties in applying Article 13 have been recognised by the European Court of Justice.

In respect of violations of Article 6(1)'s obligation to have proceedings heard within a reasonable time, no particular form of remedy is required and Contracting States are afforded a margin of appreciation in complying with its requirements.

This is self-evidently how it should be, indeed how it must be. The operation of the legal system, whether it relates to the establishment and resourcing of the courts and the justice system or the actual administration of justice by the judiciary in individual cases, is first and foremost a domestic matter. Issues that arise in meeting ECHR obligations must be addressed at national level. The primary duty of protecting human rights lies within the domestic legal system and Article 1 ECHR makes this clear by stating that "[the] High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms…of this Convention."

Therefore it is vital that the domestic remedy be "effective" within the meaning of ECHR jurisprudence. The ever-increasing number of cases brought to the ECHR on the issue of excessive length of proceedings demonstrates the need for more effective systems and remedies at national level. It is this issue that the Romanian authorities are seeking to address today and specifically a remedy to speed-up proceedings which is available to a party during the course of the proceedings.

Excessive delay in the administration of justice in respect of which litigants have no domestic remedy is, as ECHR recently said in the case of *Kudla v. Poland* 2001 No. 30210/96 of 26 October 2000 "an important danger" for the rule of law within national legal orders. In this case the court has, in effect, expanded the scope of application of Article 13's requirement for an "effective remedy" where it relates to the "right to a court" as embodied in Article 6(1) – so these two provisions (Article 6(1) and Article 13) are no longer mutually exclusive in application.

The Contracting States to the ECHR have both the opportunity and obligation to prevent and put right violations alleged against them before these allegations are submitted to the ECHR. This is given effect through Article 35 of the ECHR which sets out the rule on the exhaustion of domestic remedies. This rule is based on the assumption that there exists, indeed, an effective domestic remedy for any violation. There is no formal obligation on Contracting States to incorporate the Convention into their legal system but the national courts must interpret and apply their domestic law in accordance with ECHR jurisprudence.

Ireland, who ratified the Convention in 1957 and was one of the first Contracting States to award the right of individual petition, nevertheless only incorporated the Convention into domestic law on a legislative basis in 2003. Ireland has had four delay cases before ECHR (McMullan, Doran, O'Reilly and Barry) and has been condemned in all four for failure to provide a remedy for unreasonable delay rather than for the level of protection of the substantive right in the Constitution. The Irish Constitution provides expressly for due process in criminal cases and this is interpreted to include a right to an early trial and, specifically, a trial that has not suffered from delay that would cause prejudice to the accused. In civil proceedings, early trial is guaranteed by implicit rights of access to the courts and the constitutional justice requirement of a prompt hearing.

The incorporation of the Convention into Irish law together with the provision in the legislation of a possibility of an award of damages for violation by 'an organ of State' is a significant development bringing with it practical consequences for domestic law making and remedies. The four cases have underscored the obligation and liability of the State in the area of excessively lengthy proceedings.

There have been significant improvements in the efficiency of the judicial system insofar as early trial dates are concerned and statistics are now kept for all courts on the time it takes for cases to get a hearing. (There are, of course, isolated cases of excessive delay.) In a judgment of the High Court in December 2004, it was held that damages were available to a plaintiff where rights of access to the courts and constitutional fair procedures had been breached in the context of a delay in granting a certificate for free legal aid in family law proceedings. This judgment found that the plaintiff's rights and her entitlement to a remedy existed under the Constitution (the European Convention on Human Rights Act, 2003 not yet being in force at time) but the Court went on to refer to the ECHR jurisprudence that the Convention was intended to guarantee rights that were "practical and effective rather than merely theoretical or illusory". Thus the plaintiff's right to an effective remedy was upheld.

I hope that this conference will contribute to the development of measures for effective remedies at domestic/national level where violation of rights under the ECHR occur so as to ensure that those rights are indeed "practical and effective" and not merely "theoretical or illusory" and which will give

effect to the public to an efficient and effective system of justice. Such measures will have to allow Contracting States to take account of the particularities of their own constitutions and procedures to allow for effective measures to be taken at national level.

THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME: PROBLEMS AND SOLUTIONS

Ms Françoise TULKENS
Judge at the European Court of Human Rights

First of all, I would like to thank you for inviting the European Court of Human Rights, which I am honoured to represent here, to take part in this important conference. Looking at the programme, it is clear that there is a wish to address the reasonable time issue from two angles: first, identifying the *problems*, and then coming up with *solutions*, based on those put forward by the European Commission for the Efficiency of Justice (CEPEJ) and the Venice Commission.

In my short introduction, I shall try to show the guiding principles followed today in the case law of the European Court of Human Rights as far as the reasonable time requirement is concerned. I shall restrict myself to Article 6 of the Convention, i.e. solely to the time that elapses before judgment.[1] First, I shall discuss the parameters of the Court's action in this field **(I)** and then I shall look at the question of remedies, particularly in the light of the recent *Scordino (No. 1) v. Italy* judgment of 29 March 2006 **(II)**.

However, before going any further, I would like to recap on the reason behind the reasonable time requirement and put it in context. This requirement is part and parcel of a fair trial, which in turn is one of the foremost expressions of the rule of law in a democracy. The right to a trial within a reasonable time is both objective and subjective in nature: objective insofar as it is intended to ensure that justice is administered effectively, since delays will weaken confidence in the justice system and this will be a direct undermining of the rule of law; and subjective insofar as the guarantee that proceedings will not exceed a reasonable time is intend to spare the public undue anguish and uncertainty. A trial is an ordeal for everyone and no doubt the public knows that more than the judges. Accordingly, guarantees relating to a trial within a reasonable time are of paramount importance for the protection of human rights. And here, we must remember that the right to a trial within a reasonable time is a fundamental right.

I. The parameters of the Court's action

I will not go into technical matters of determining the beginning (*dies a quo*) and the end (*dies ad quem*) of the time elapsed in civil-law[2] and criminal-law[3] matters nor the period to be taken into consideration in ruling on whether the length of proceedings in question was reasonable or not.[4] I shall simply make a few comments on the concept of reasonable time (A), on the Court's assessment criteria (B) and the method it adopts (C).

A. The concept of reasonable time

The very concept of "reasonable time" is one enshrined of course in the Convention and in positive law,

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1 As a right guaranteed by the European Convention on Human Rights, the reasonable time requirement is also enshrined in Article 5 of the Convention (the right to liberty and security) and concerns the length of pre-trial detention.

2 European Court of Human Rights (ECHR), *Jorge Nina Jorge and others v. Portugal* judgment, of 19 February 2004, § 30.

3 ECHR, *Strategies and Communication and Dumoulin v. Belgium* judgment of 15 July 2002, § 42; ECHR, *Lavents v. Latvia* judgment of 28 November 2002, § 85; ECHR, *Pantea v. Romania* judgment of 3 June 2003, § 275; ECHR (GC), *Pedersen and Baadsgaard v. Denmark* judgment of 17 December 2004, § 44.

4 While, in principle, the whole period between the *dies a quo* and the *dies ad quem* should be taken into consideration, the Court accepts that, in exceptional circumstances, the period may be suspended. For example, the *Koua Poirrez v. France* judgment of 30 September 2003 stipulates that the length of proceedings before the Court of Justice of the European Communities for a preliminary ruling should not be taken into account in assessing the reasonableness of the domestic procedure at issue in the case (§ 61). See also, ECHR, *Antoine v. the United Kingdom* decision of 13 May 2003.

but ultimately it derives from the theory and philosophy of law.[5]

As we are all aware, the temporal dimension of law is not a simple, unilateral one, but rather is complex and plural,[6] as indeed Montesquieu pointed out: "the trouble, expense, delays, and even the very dangers of our judiciary proceedings, are the price that each subject pays for his liberty".[7] Proceedings imply prudence, breathing space, reflection; one must be aware of the risks inherent in speedy, hurried and hasty justice.

Accordingly, rather than a clear opposition between slow and fast justice, I prefer a more dialectical conception of the relationship between the two, for which in my eyes the concept of *reasonable time* is an excellent illustration. A "reasonable time" sets down the markers of what is acceptable to society. More specifically, the aim in using this concept to describe a time frame is to differentiate between what is discretionary and what is arbitrary,[8] to define a "lower limit" as stipulated by the European Commission for the Efficiency of Justice.[9] A concept of reasonable time along these lines is a way of avoiding false dilemmas and of striking a balance between the requirements for speed and upholding the other guarantees of a fair trial, such as access to the courts, equality of arms and adversarial proceedings.[10]

Here, it seems to me important to stress that the Court's assessment of the reasonable nature of proceedings is not – and never should be – a purely mechanical process: it should in each case have due regard to this fine balance to ensure that all the guarantees of a fair trial are complied with. This necessity has a cost: in the absence of any rigid indicators, the Court's assessment is often empirical and may even be criticised as being casuistic. While it would be wrong to seek in the Court's case-law European standards for the ideal length of proceedings, the Court does of course use certain criteria to assess whether or not proceedings can be deemed to be reasonable.

B. The criteria used

What exactly are the criteria that the Court takes into account? They are fairly conventional: the complexity of the case, the conduct of the applicant, the conduct of the judicial authorities; and the importance of the issue at stake.

1. The *complexity of the case* is looked at in the light of several variables pertaining to the nature and

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5 Ch. Perelman, "Le raisonnable et le déraisonnable en droit", *Archives de philosophie du droit*, 1978, p. 42; J. Salmon, "Le concept de raisonnable en droit international public", *Mélanges offerts à Paul Reuter. Le droit international: unité et diversité*, Paris, Pedone, 1981, p. 452. See also M. Van De Kerchove, "Accélération de la justice pénale et traitement en temps réel", in *Temps et droit. Le droit a-t-il pour vocation de durer?*, under the direction of Fr. Ost and M. Van Hoecke, Brussels, Bruylant, 1998, pp. 369 et seq.

6 Fr. Ost, "Conclusions générales", *Le temps, la justice et le droit*, Texts compiled by S. Gaboriau and H. Pauliat, Limoges, Pulim, 2004, p. 359.

7 Montesquieu, *De l'esprit des lois*, Paris, Garnier, 1871, p. 72.

8 J. Salmon, "Le concept de raisonnable en droit international public", op. cit., pp. 462-467.

9 European Commission for the Efficiency of Justice (CEPEJ), *A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe. Framework programme*, doc. CEPEJ(2004)19Rev2, Strasbourg, Council of Europe, 13 September 2005, p. 2.

10 A recent innovation in Italy provides one example. In order to comply with the requirements of a reasonable time in criminal law matters, alternative solutions have been put forward, including "negotiated justice". Under this system, the parties forego the right to an appeal on points of law to the Court of Cassation, in exchange for which they are given a reduced sentence. The paradox is, however, that having foregone the right to appeal to the Court of Cassation, applicants are no longer able to submit an admissible application to the European Court of Human Rights, having failed to exhaust all domestic remedies. This, in any event, is the tenor of the *Borghi v. Italy* decision of 20 June 2002, (see M.-A. Beernaert, "Négociation sur la peine et procès equitable", *Rev. trim. D.H.*, 2003, pp. 963 et seq). A further example is provided in France by the decree of 28 December 2005, the general purpose of which is to speed up proceedings. Under the terms of this new text, an appeal against a decision at first instance is, in certain cases, possible only if the decision has been enforced. The new text provides a safety net insofar as, in particular circumstances, an application may be made to maintain the right of appeal, even where the decision has not been carried out. It would appear that this decree is very close, *mutatis mutandis*, to Article 1009-1 of the Code of Criminal Procedure, regarding an appeal on points of law (which enables the President of the Court of Cassation, at the request of the respondent, to remove a case from the list if the applicant fails to prove that he or she has complied with the impugned decision, unless it appears that such compliance is likely to entail manifestly unreasonable consequences) which has been addressed in Court judgments (*Annoni di Gussola and Debordes and Omer v. France* of 14 November 2000).

purpose of the proceedings. For example, whether or not it was necessary to hold hearings, obtain expert reports, request evidence on commission, etc. The international dimension (extradition, for instance) clearly also has a role to play. Here, we are basically concerned with factual assessments.

2. The *conduct of the applicant* must be taken into account, but within certain limits. In criminal law matters, Article 6 does not require accused persons actively to co-operate with the judicial authorities,[11] similarly, they cannot be reproached for making full use of the remedies available under domestic law. However, such conduct constitutes an objective fact, not capable of being attributed to the respondent state.[12] In the *Jablonski v. Poland* judgment of 21 December 2000, the Court found that the accused's hunger strike and self-inflicted injuries had contributed to the length of the trial, for which reason the state could not be reproached.[13] Nor is the state responsible for delays caused by a refusal of witnesses to appear,[14] hospitalisation of the applicant[15] or deferral of a decision in application of the principle that civil proceedings are suspended while criminal proceedings are in progress.[16] In civil matters, the reasonable time may be subordinate to the initiatives taken by the parties; but this does not dispense the courts from ensuring that the requirements of Article 6 are complied with.[17]

3. The *conduct of the judicial authorities* is clearly of paramount importance since only delays attributable to the state can lead to a violation of the reasonable time principle. The following are some examples of the scope of the obligations.

Explanations such as a chronic overload of a court, and the consequent backlog of cases, are as a general rule not accepted by the Court insofar as states have an obligation to organise their judicial system in such a way that the courts are able to comply with all the requirements of the Convention.[18] This is established case-law. In contrast, a state will not be penalised for a temporary backlog or overload if the relevant authorities have taken reasonable measures to address an exceptional situation. Nonetheless, a situation in which there is a prolonged absence or acute shortage of judges, lasting several years, is not regarded as an exceptional or temporary situation.

In addition, states are not responsible solely for delays that can be attributed to judicial bodies, but also for delays that can be attributed to other public, or indeed private, authorities involved in the case. One example is to be seen in the *Beumer v. the Netherlands* judgment of 29 July 2003, where the Court found that the proceedings had been deferred on several occasions at the request of the social security services.[19] Here, the fundamental question is whether the courts took the appropriate steps to speed up the proceedings. The same question has to be asked in respect of delays caused by experts.[20] The state cannot be held responsible for a strike by counsel, in itself, but the Court will take a close look at efforts by the state to minimise delays.

Nevertheless, the obligation incumbent upon states to organise their judicial system in order to comply with the requirements of Article 6 is not always applied in the same way to all courts and all proceedings. The following show two contrasting situations. In the *Süssmann v. Germany* judgment of 16 September 1996, because of the particular and unique circumstances of reunification and the inherent political and social implications, the Constitutional Court was authorised to give priority to 300,000 cases concerning

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11 ECHR, *Beladina v. France* judgment of 30 September 2003.

12 ECHR, *Pascal Coste v. France* judgment of 22 July 2003, § 34.

13 ECHR, *Jablonski v. Poland* judgment of 21 December 2000, § 104.

14 ECHR, *Salapa v. Poland* judgment of 19 December 2002, § 85.

15 ECHR, *Lavents v. Latvia* judgment of 28 November 2002, § 100.

16 ECHR, *Sanglier v. France* judgment of 27 May 2003, § 34.

17 ECHR, *Berlin v. Luxembourg* judgment of 15 July 2003, § 58; ECHR, *Price and Lowe v. the United Kingdom* judgment of 29 July 2003 ; ECHR, *Liadis v. Greece* judgment of 27 May 2004, § 20.

18 ECHR, *Kolb and others v. Austria* judgment of 17 April 2003, § 54.

19 ECHR, *Beumer v. the Netherlands* judgment of 29 July 2003, § 51.

20 ECHR, *Herbolzheimer v. Germany* judgment of 31 July 2003.

employment.[21] More generally, in the *Gast and Popp v. Germany* judgment of 25 February 2000 regarding the Federal Constitutional Court, the European Court of Human Rights stated that "although [a state's obligation to organise its judicial systems in such a way that its courts can meet each of its requirements, including the obligation to hear cases within a reasonable time] applies also to a Constitutional Court, when so applied it cannot be construed in the same way as for an ordinary court. Its role as guardian of the Constitution makes it particularly necessary for a Constitutional Court sometimes to take into account other considerations than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms. Furthermore, while Article 6 requires that judicial proceedings be expeditious, it also lays emphasis on the more general principle of the proper administration of justice."[22] In contrast, in connection with summary proceedings to decide on custody of two children, the Court made it clear that "summary proceedings should by definition not be delayed, even at the appeal stage and notwithstanding the enforceability of the order made at first instance."[23]

The excessive length of proceedings may also be a result of the abnormal complexity of the provisions in force: such a situation should be seen as a structural shortcoming, the responsibility for which lies with the state.[24] This has major implications. Under the terms of the Convention, states are responsible for their organs, regardless of the authority to which they are subordinate. Accordingly, it is not for the Court to establish whether an alleged violation of the Convention can be attributed to the executive, legislative or judicial authorities.

4. And to complete the picture, there is a *qualitative requirement*. The nature and importance of the matters raised in the case may on occasion require special care on the part of the authorities.[25] For example, the Court has over time come to emphasise in certain cases the particular *issue* at stake, in the light of which it "adjusts its assessment of the length of the proceedings in question."[26] Here I mean the issue at stake not only for the applicant but also, in certain cases, for society at large because of the social and economic implications.[27]

In general terms, there is greater urgency in *criminal matters*; in addition, states must be more diligent when the accused is placed in pre-trial detention.[28] In *civil cases*, particular diligence must be shown in cases concerning a person's situation, because of the cascading consequences that the excessive length of proceedings can have on other rights, for example those provided for in Article 8 of the Convention[29] or Article 1 of Protocol No. 1.[30] For example, in cases of parental conflicts and disputes over custody or access, the Court often points out that family life requires that matters be resolved solely in the light of all relevant considerations and not by the mere passage of time.[31] Particular diligence is also necessary in cases where the applicants have suffered bodily harm, in particular as a result of police violence?[32] or where they have a short life expectancy.[33] It is also required in cases concerning labour disputes[34] or social security disputes; this also includes pensions and the related field of compensation for victims of road

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21 ECHR, *Süssmann v. Germany* judgment of 16 September 1996, § 60.

22 ECHR, *Gast and Popp v. Germany* judgment of 25 February 2000, § 75. See also ECHR, *Djuricic v. Croatia* decision of 9 October 2003.

23 ECHR, *Boca v. Belgium* judgment of 15 November 2002, § 28.

24 ECHR, *Litoselitis v. Greece* judgment of 5 February 2004

25 ECHR *Jussy v. France* judgment of 8 April 2003, § 23.

26 J. Callewaert, "La Cour européenne des Droits de l'Homme et l'urgence", *Rev. trim. D.H.*, 1994, p. 392.

27 ECHR, *Ruiz-Mateos v. Spain* judgment of 23 June 1993, § 52.

28 ECHR, *Debboub v. France* judgment of 9 November 1999, § 46.

29 ECHR, *Mikulic v. Croatia* judgment of 7 February 2002, § 44..

30 ECHR, *Luordo v. Italy* and *Bottaro v. Italy* judgments of 17 July 2003 (length of bankruptcy proceedings).

31 ECHR, *Johansen v. Norway* judgment of 7 August 1996; ECHR, *Schaal v. Luxembourg* judgment of 18 February 2003, § 35.

32 ECHR, *Krastanov v. Bulgaria* judgment of 30 September 2004, § 70.

33 ECHR, *Dewicka v. Poland* judgment of 4 April 2000.

34 ECHR, *Toth v. Hungary* judgment of 30 March 2004, § 62.

accidents.

Lastly, I would like to consider the impact of the new admissibility criterion introduced by Article 12 of Protocol No. 14 (supplementing paragraph 3 of Article 35 of the Convention) which has given the Court the power to declare an application inadmissible when the applicant has suffered no major loss or harm. In current case-law, the Court holds that a finding of a failure to comply with the guarantee of a reasonable time cannot be ruled out simply because the person making the complaint has suffered no prejudice.[35] Such a failing is conceivable even if the delay in the proceedings in question has, to a certain extent, been to the benefit of the party concerned.[36] In civil matters, the new criterion could lead to an inadmissible decision (on an otherwise well-founded case) where, for example, the proceedings relate to negligible monetary value or where the applicant has lost the case (in which case he or she could have benefited from the delay). In criminal matters, there could be a "presumption of prejudice" which could, however, be overturned in cases where, for example, the applicant is already serving one of the concurrent sentences or where the length of proceedings was a secondary issue and had been taken into account in the sentence handed down.

C. The method followed

In general, the Court takes a dual approach in its analysis: it looks at the details of the case on the basis of the criteria I have just described, and it looks at the overall picture.

In certain cases, while the "details" might not seem to be problematic, the picture gained from an "overall" assessment seems to be excessive. For example, in the *Boudier v. France* judgment of 21 March 2000, the Court found that a duration of twelve years called for an overall assessment.[37] The premise was, therefore, that the duration in question was, on the face of it, too long to be justified. Such a presumption of unreasonable duration[38] was applied in the *Berlin v. Luxembourg* judgment of 15 July 2003 which involved divorce proceedings lasting 17 years.[39] It was also applied in the *De Staerke v. Belgium* judgment of 28 April 2005 concerning criminal proceedings lasting more than 15 years.[40] The Court focuses in fact more on the state's legal system, analysing the extent to which the matter can be deemed unreasonable in the light not only of the circumstances of the case but also of the system as a whole. As J.-M. Thouvenin comments, the Court does necessarily reproach the authorities and courts involved in the case for their conduct, as it does not seek to analyse each and every individual stage, but it sharply criticises the mediocre performances, in terms of rapidity, of the judicial system in question.[41]

In contrast, in certain cases, the Court may find that the overall duration is acceptable, but that there are problems regarding the details of the case. In the *Hadjikostova v. Bulgaria* judgment of 4 December 2003, the Court was faced with an overall duration of a little more than five years for a case involving three judicial levels, which may in principle appear acceptable, but it noted that there were nonetheless considerable delays which could be attributed to the authorities.[42]

Lastly, the huge increase in cases concerning the reasonable time principle has led the Court to employ "shock treatment."[43] As the Court pointed out in the *Bottazzi v. Italy* judgment of 28 July 1999, "the

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35 ECHR, *Jorge Nina Jorge and others v. Portugal* judgment of 19 February 2004, § 39.

36 ECHR, *King v. the United Kingdom* judgment of 16 November 2004, § 39.

37 ECHR, *Boudier v. France* judgment of 21 March 2000, § 34.

38 S. Van Drooghenbroeck, *La Convention européenne des Droits de l'Homme. Trois années de jurisprudence de la Cour européenne des Droits de l'Homme. 2002-2004. Articles 1 à 6 de la Convention*, Brussels, Larcier, 2006, § 261.

39 ECHR, *Berlin v. Luxembourg* judgment of 15 July 2003, § 59.

40 ECHR, *De Staerke v. Belgium* judgment of 28 April 2005, § 51. Similarly in the *Diamantides v. Greece* judgment of 23 October 2003, the applicant pointed to the shame he had to live with for eight years without his case being completed, which had repercussions on his family and working life. The case was not a complex one, the investigation took place at a sustained pace, without long periods of inactivity, but the Court found that the overall duration had already amounted to eight years and two months and that the case was still pending. It therefore concluded that the overall duration of the proceedings was excessive.

41 J.-M. Thouvenin, "Le délai raisonnable", *Le droit international et le temps*, Paris, Pedone, 2001, p. 129.

42 ECHR, *Hadjikostova v. Bulgaria* judgment of 4 December 2003, § 35.

43 S. Van Drooghenbroeck, *La Convention européenne des Droits de l'Homme. Trois années de jurisprudence de la Cour européenne des Droits de l'Homme 1999-2001*, Brussels, Larcier, 2003, p. 112.

frequency with which violations are found shows that there is an accumulation of identical breaches which are sufficiently numerous to amount not merely to isolated incidents. Such breaches reflect a continuing situation that has not yet been remedied and in respect of which litigants have no domestic remedy. This accumulation of breaches accordingly constitutes a practice that is incompatible with the Convention."[44] In matters of form, the Court has drawn the appropriate consequences in drafting its judgments: the concept of practice has enabled it to restrict itself to an extremely short and relatively uniform wording in the grounds of its decisions and judgments.[45] When Protocol No. 14 enters into force, violations regarding length of proceedings, where they are repeated violations of the Convention, will doubtless fall under the new category of "manifestly well-founded", and will be dealt with under expedited procedure, falling under the competence of committees (Article 8 amending Article 28 of the Convention).

II. Remedies

One question to be addressed, which is of increasing topical relevance, is the issue of the remedies available in the different countries to ensure that the right to be tried within a reasonable time is upheld. This was directly reflected in Committee of Ministers Recommendation 2004(6) of 12 May 2004 on the improvement of domestic remedies.

A. The renewed relevance of Article 13

What was new about the *Kudla v. Poland* judgment of 26 October 2000 was that it looked at the relationship between Article 6 and Article 13 of the Convention from a new perspective.[46] Rather than applying the famous theory that Article 13 was absorbed by Article 6, the Court introduced a theory that could be described as the mutual reinforcement of these two provisions. Above and beyond the violation of the reasonable time principle enshrined in Article 6, the Court must also examine whether there has been a violation of the right to an effective remedy within the meaning of Article 13. On this basis, the Court quite logically made a link between Article 13 and Article 35.1 on the exhaustion of domestic remedies. More precisely, the rule set out in Article 35 is based on the assumption, reflected in Article 13 (with which it has a close affinity), that there is an effective domestic remedy available in respect of the alleged violation. We shall consider this subsequently.

1. In respect of Article 13, what is the scope and nature of the domestic remedy required? The *Kudla* judgment gives some pointers.

> *"The growing frequency with which violations in this regard are being found has recently led the Court to draw attention to "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.""*[47] *However, "subject to compliance with the requirements of the Convention, the Contracting States […] are afforded some discretion as to the manner in which they provide the relief required by Article 13 and conform to their Convention obligation under that provision.*[48] *But this obligation is one of result. Moreover, "even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies*

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44 ECHR (GC), *Bottazzi v. Italy* judgment of 28 July 1999, § 22.

45 This approach has also necessitated, as regards the award of compensation for non-pecuniary damage, the introduction of scales, based on the principle of equity, to bring about equivalent results in similar cases. This has led to levels of compensation which are higher than those awarded by the Convention bodies prior to 1999 and which might on occasion differ from those applied where other violations have been found to have occurred. This increase was not punitive in nature, but had a two-fold aim: first to encourage the state to find a solution accessible to all; and second, to enable applicants not to be penalised because of the lack of domestic remedies.

46 See in particular J.-Fr. Flauss, "Le droit à un recours effectif au secours du délai raisonnable: un revirement de jurisprudence historique", *Rev. trim. D.H.*, No. 49, 2002, pp. 167 et seq; Ph. Frumer, "Le recours effectif devant une instance nationale pour dépassement du délai raisonnable. Un revirement dans la jurisprudence de la Cour européenne des Droits de l'Homme", *JTDE*, No. 7, 2001, pp. 49-53; M. Puechavy, "L'arrêt *Kudla v. Pologne*, simple recommandation ou revirement définitif de jurisprudence?", *Les Annonces de la Seine*, supplément au journal No. 35 of 14 May 2001, pp. 2-6.

47 ECHR, *Kudla v. Poland* judgment of 26 October 2000, § 148.

48 *Ibid.*, § 154.

provided for under domestic law may do so."[49] *Lastly, if it is to be effective, the remedy in question must be capable of "preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred."*[50]

The *Mifsud v. France* decision of 11 September 2002 confirmed and further developed this case-law, in respect of an action for damages regarding outstanding cases: remedies were deemed to be effective "if they "[prevent] the alleged violation or its continuation, or [provide] adequate redress for any violation that [has] already occurred."[51]

2. Some ten countries have adopted this approach, which is a fairly positive development. In some cases, a new legal arrangement has been introduced, as in Italy with the Pinto Law of 24 April 2001, which was at the centre of the *Scordino (n° 1)* judgment, which I shall come to in a moment. In other cases, existing provisions have been adapted, as in France with the new interpretation given by the courts to Article L. 781-1 of the Code of Judicial Organisation, which provides that "the State shall be under an obligation to compensate for damage caused by a malfunctioning of the system of justice."[52]
Nevertheless, further clarification is required as to the scope of the obligation falling to the state and the choice of remedy. Are these to be preventive, punitive or compensatory remedies?[53] Clearly, certain remedies, such as an action for damages, are not designed to expedite the proceedings and are separate from the structural aspect of the problem. Furthermore, this impacts on litigants who are embroiled in two cases: (i) the main proceedings with all the possible remedies available; and (ii) the action for damages, also with all the possible remedies (appeal, cassation). There is therefore a risk for litigants of a (sometimes) ineffective accumulation of remedies.

B. General guidelines

The *Scordino (No. 1) v. Italy* judgment, delivered unanimously in the Grand Chamber on 29 March 2006, sums up the situation as it stands today and is, in this sense, a genuine judgment of principle. This, moreover, is the role of the Grand Chamber.

The question of domestic remedy, as required by Article 13 of the Convention, was addressed via Article 35, i.e. the two preliminary objections raised by the government regarding the admissibility of the application. It should be noted that in this case, the applicant had lodged an appeal based on the Pinto law and had complained about the amount of damages awarded to him, in view of the differential between that amount and the amount he would have been awarded by the Court under Article 41 of the Convention. He had not, however, appealed to the Court of Cassation, judging such a move to be pointless.

One of the interesting points of this judgment relates to the *exhaustion of domestic remedies*. When the Chamber adopted its admissibility decision on the case on 27 March 2003, it had noted that in numerous judgments of the Court of Cassation in Italy, the right to a hearing within a reasonable time was not regarded as a fundamental right. Moreover, it had found no instances in which the Court of Cassation had entertained a complaint to the effect that the amount awarded by the Court of Appeal was insufficient in relation to the alleged damage or inadequate in the light of the Strasbourg institutions' case-law. Nonetheless, there had been a departure from precedent in Italy and the Court of Cassation now held that "the determination of non-pecuniary damage […] although inherently based on equitable principles, must be done in a legally defined framework since reference has to be made to the amounts awarded, in similar

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49 *Ibid.*, § 157.

50 *Ibid.*, § 158.

51 ECHR (GC), *Mifsud v. France* decision of 11 September 2002, § 17.

52 Paris Regional Court, 5 November 1997, *Gauthier* judgment, D. 1998, Jur. p. 9, note A. Frison-Roche. However, as this liability is incurred only in respect of gross negligence or a denial of justice, the Court of Cassation has interpreted these concepts broadly, including failure by the courts to comply with an individual's right to have his or her case dealt with in a reasonable time: such failure gives rise to reparation for the damage sustained (Cass. (Plenary Assembly), *Bolle-Laroche* judgment of 23 February 2001).

53 Concerning the different possible remedies, see J.-Fr. Flauss, "Le droit à un recours effectif au secours du délai raisonnable: un revirement de jurisprudence historique", *Rev. trim. D.H.*, pp. 189 et seq.

cases, by the Strasbourg Court. Some divergence is permissible, within reason"[54]. The Grand Chamber took due note of this departure from precedent, welcomed the efforts made by the national authorities and accordingly, held that, from that date onwards, when the Court of Cassation judgment must have been public knowledge, applicants should be required to avail themselves of that remedy for the purposes of Article 35.1 de la Convention.[55]

But in point of fact, the full scope of the judgment is to be seen in respect of the status of *victim*. Insofar as the parties linked the issue of victim status to the more general question of effectiveness of the remedy and sought guidelines on affording the most effective domestic remedies possible, the Court decided to address the question in a wider context by giving certain indications as to the characteristics which such a domestic remedy should have.[56] It also focused on the particular requirements of a compensatory remedy and formulated certain observations on the enforcement of judgments.

1. On the different remedies

The best solution in absolute terms is indisputably, as in many spheres, prevention. Where a judicial system is deficient, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution. Such a remedy offers an undeniable advantage over a remedy affording only compensation since it also prevents a finding of successive violations in respect of the same set of proceedings and does not merely repair the breach a posteriori, as does a compensatory remedy of the type provided for under Italian law for example.[57] The Court has on many occasions acknowledged that this type of remedy is "effective" in so far as it hastens the decision by the court concerned.[58]

It is also clear that a remedy designed to expedite the proceedings – although desirable for the future – may not be adequate to redress a situation in which the proceedings have clearly already been excessively long.[59] Here, different types of remedy may redress the violation appropriately. One example, in criminal cases, is where the length of proceedings has satisfactorily been taken into account when reducing the sentence in an express and measurable manner.[60]

Some countries such as Austria, Croatia, Poland, the Slovak Republic and Spain have understood the situation perfectly by choosing to combine two types of remedy, one designed to expedite the proceedings and the other to afford compensation.[61] However, the Court accepts that states may also choose to introduce only a compensatory remedy, as Italy has done, without that remedy being regarded as ineffective.[62]

Lastly, where the legislature or the domestic courts have agreed to play their true role by introducing a domestic remedy, the Court will clearly have to draw certain conclusions from this. This is, in fact, a response to the third-party observations of the Czech, Polish and Slovakian governments on the scope of the Court's scrutiny in this matter and on the margin of appreciation that should be allowed to the national authorities.[63]

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54 ECHR (GC), *Scordino (No. 1) v. Italy* judgment of 29 March 2006, § 146.

55 *Ibid.*, § 147.

56 *Ibid.*, § 182.

57 *Ibid.*, § 183.

58 *Ibid.*, § 184.

59 *Ibid.*, § 185.

60 *Ibid.*, § 186. On the length of investigations (where authorities embark on proceedings, without either completing or abandoning them) and the effective nature of a possible remedy, see ECHR, *Strategies and Communication and Dumoulin v. Belgium* judgment of 15 July 2002

61 *Ibid.*, § 186 *in fine*.

62 *Ibid.*, § 187.

63 *Ibid.*, §§ 166-171.

2. On compensatory remedies

Where a State has made a significant move by introducing a compensatory remedy, the Court must leave a wider margin of appreciation to the State to allow it to organise the remedy in a manner consistent with its own legal system and traditions and consonant with the standard of living in the country concerned. In particular, the domestic courts could refer to the amounts awarded at domestic level for other types of damage.[64]

However, even if a remedy is "effective" in that it allows for an earlier decision by the courts to which the case has been referred or the aggrieved party is given adequate compensation for the delays that have already occurred, that conclusion applies only on condition that an application for compensation remains itself an effective, adequate and accessible remedy in respect of the excessive length of judicial proceedings. It cannot be ruled out that excessive delays in an action for compensation will render the remedy inadequate.[65] Clearly, the Court can accept that the authorities need time in which to make payment. Nevertheless, in respect of a compensatory remedy designed to redress the consequences of excessively lengthy proceedings that period should not generally exceed six months from the date on which the decision awarding compensation becomes enforceable.[66]

Furthermore, with regard to the need to have a remedy affording compensation that complies with the reasonable-time requirement, it may well be that the procedural rules are not exactly the same as for ordinary applications for damages. It is for each State to determine, on the basis of the rules applicable in its judicial system, which procedure will best meet the compulsory criterion of "effectiveness", provided that the procedure conforms to the principles of fairness guaranteed by Article 6.[67]

Lastly, one of the features of compensation which could remove victim status from the litigant relates to the amount awarded at the completion of the domestic remedy. The question is most problematic in relation to non-pecuniary damage. The Court assumes that there is a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage.[68] Moreover, the level of compensation depends on the characteristics and effectiveness of the domestic remedy.[69] The Court can also accept that a State which has introduced a number of remedies, one of which is designed to expedite proceedings and one to afford compensation, will award amounts which – while being lower than those awarded by the Court – are not unreasonable, on condition that the relevant decisions, which must be consonant with the legal tradition and the standard of living in the country concerned, are speedy, reasoned and executed very quickly.[70] In the case under discussion, the Court observed that this amount was approximately 10% of what it generally awarded in similar Italian cases. That factor in itself led to a result that was manifestly unreasonable having regard to its case-law. It therefore considered that the redress was insufficient and that the applicants could still claim to be "victims."[71]

3. On the execution of judgments

The *Scordino (No. 1) v. Italy* judgment also addressed the issue of the execution of judgments (Article 46). "[The Court] regrets to observe that where a deficiency that has given rise to a violation has been put right, another one related to the first one appears: in the present case the delay in executing decisions. It cannot over-emphasise the fact that States must equip themselves with the means necessary and adequate to ensure that all the conditions for providing effective justice are guaranteed.[72] In addition to incorporating

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64 *Ibid.*, § 189.

65 *Ibid.*, § 195.

66 *Ibid.*, § 198.

67 *Ibid.*, § 200.

68 *Ibid.*, § 204.

69 *Ibid.*, § 205.

70 *Ibid.*, § 206.

71 *Ibid.*, § 214.

72 *Ibid.*, § 238.

the Convention in the domestic legal order and providing for remedies, national courts must be able to apply the European case-law directly and their knowledge of this case-law has to be facilitated by the State in question. In this connection, the judgment makes explicit mention of Committee of Ministers Recommendation (2004)4 of 12 May 2004 on the European Convention on Human Rights in university education and professional training.

C. Addressing the causes

It is interesting to note that in the section on "relevant law", the *Scordino (No. 1) v. Italy* judgment I have just analysed makes reference to the European Commission for the Efficiency of Justice set up in the Council of Europe by Resolution Res(2002)12 with the aim of (a) improving the efficiency and the functioning of the justice of member states with a view to ensuring that everyone within their jurisdiction can enforce their legal rights effectively, thereby generating increased confidence of the citizens in the justice system and (b) enabling a better implementation of the international legal instruments of the Council of Europe concerning efficiency and fairness of justice. It also notes that in its framework programme the CEPEJ noted that "the mechanisms which are limited to compensation are too weak and do not adequately incite the States to modify their operational process, and provide compensation only a posteriori in the event of a proven violation instead of trying to find a solution for the problem of delays."[73]

In addition, at the Warsaw Summit in May 2005, the heads of state and government of member states decided to develop the evaluation and assistance functions of the CEPEJ, a decision which is to be welcomed.

I think there is a need to be clear and to take far-reaching action. Providing remedies to enable aggrieved parties to obtain recognition of a failure to comply with the reasonable time requirement is not the only solution in combating delays in the judicial apparatus. The availability of domestic remedies affording either a speeding up of proceedings or compensation is necessary but is not sufficient in itself. Such remedies do not dispense states from their positive obligation to organise their judicial system in such a way as to guarantee a person's right to obtain a final decision in a reasonable time. In other terms, the creation of a legal channel is not an alternative to the state's obligation to pursue, diligently, the adoption of general measures to prevent such violations. Here, reference can be made to Committee of Ministers Recommendation (2004)6 which points out that states have a general obligation to provide solutions to the problems underlying the violations found to have occurred. Here we are in the realm of structural measures in relation to which initiatives are essential not only to avoid a repetition of cases before the Court, but also to ensure that everyone's fundamental right to a trial within a reasonable time is upheld.

If human rights are not to be theoretical or illusory, as the Court frequently states, but concrete and effective, we need to move beyond focusing on responsibility and attack the root causes. "The reasonable time battle can be won only if we undertake a fundamental restructuring of the court system. Such a reform must be carried out if we want justice commensurate with both its and our time."[74]

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73 *Ibid.*, §§ 73 et 74.

74 J. Andriantsimbazovina, "Délai raisonnable du procès, recours effectif ou déni de justice", *RFDA*, 2003, p. 98.

THE EXECUTION OF JUDGMENTS CONCERNING THE EXCESSIVE LENGTH OF JUDICIAL PROCEEDINGS:

THE COMMITTEE OF MINISTERS' EXPERIENCE

Mr Mikhail LOBOV
Administrator, Department for the Execution of Judgments
of the European Court of Human Rights, DGII, Council of Europe

Ladies and gentlemen,

I am honoured to be here as a representative of the Directorate General of Human Rights, one of whose tasks, as you know, is to assist the Committee of Ministers in supervising the execution of judgments given by the European Court. Although they are of cardinal importance, supervision of the execution of judgments and Committee of Ministers activities in this area are aspects of the convention that remain relatively little known, at least by comparison with the attention paid to the activities of the Court itself. So I am particularly pleased to be presenting the Committee of Ministers' experience with cases concerning length of proceedings and I am extremely grateful to the organisers of this conference – the Venice Commission and the Romanian authorities – for giving me this opportunity to do so.

Allow me to start with a brief review of the historical background. The Committee started to address the problem of the excessive length of judicial proceedings as soon as the Court and Commission made their first findings of violations in the 1980s, first in criminal proceedings, then in civil proceedings and other areas. In line with its practice, which was already well established at the time, the Committee immediately took an interest in the reforms conducted by the respondent states to prevent further similar violations.

At the time, judgments of this kind concerned only a very few states, which took the lead in introducing reforms to reduce the length of proceedings, partly on the basis of the findings of the Commission and the Court. We well remember, for instance, how the resources of the Swiss Federal Tribunal were increased as a result of the *Zimmerman and Steiner* judgment (Resolution DH(83)17), how the Portuguese courts implicated in the *Martins Moreira* case were allocated additional resources (Resolution DH(89)22), how judicial reform was introduced in Spain as a result of the finding of a violation in the *Unión Alimentaria Sanders* (Resolution DH(90)40) and how Italy embarked on sweeping reforms in the criminal and civil justice systems which were welcomed by the Committee of Ministers in the mid-1990s (see in particular Resolution DH(92)54 in the *Frau* case and Resolution DH(95)82 in the *Zanghi* case).

Some of the reforms announced to the Committee at the time proved more effective than others. In any event, with hindsight, observers do not rule out the idea that the scale of the problems underlying some of the violations found was underestimated at the time by the Committee of Ministers but also, and above all, by a number of member states.

The inadequacy of the reforms introduced by some states soon made itself felt. The growing number of further violations found by the Court and the Commission prompted the Committee to review this problem, which was affecting more and more states in the 1990s. In 1997, in connection with a large group of Italian cases, the Committee adopted a resolution stating that "excessive delays in the administration of justice constitute an important danger, in particular for the respect of the rule of law," and decided to pay closer attention to the effectiveness and practical impact of any new general measures announced. As a result, cases concerning length of proceedings were kept on the agenda until the reforms announced by the respondent state were implemented (Resolution DH(97)336).

Since then the Committee has pursued this approach, geared to the effectiveness and implementation of reforms in several thousand cases on its agenda relating to the length of a wide range of proceedings. The issue currently concerns 20 or so member states (see press release No.171(2006) of 27 March 2006). The Committee's approach may vary from one state to another according to the scale of the problem, but the general trend is clear: on the strength of its past experience, the Committee is increasingly inclined to take a close look at the practical results of reforms before concluding its supervision of the execution of

judgments.

The Committee's experience also shows that violations due to delays in proceedings have very many consequences. While regularly reminding governments that delays in proceedings endanger the rule of law, the Committee sees their adverse consequences in areas other than justice itself. Many other violations of the convention – concerning private and family life or property rights, for example – stem from problems due to the length of proceedings.

Obviously, these findings of a very wide range of violations call for a wide variety of solutions and there is no single response that can be applied to all states. Nevertheless, we might identify some common lines of action.

I would remind you at this point that in all the cases transmitted to it by the Court, the Committee supervises the adoption of two types of measure by the respondent state, in addition to the award of just satisfaction: firstly, individual measures to remedy the consequences of the violation suffered by the applicant and secondly, general measures to prevent further violations of the convention similar to those found by the Court.

As regards individual measures in favour of the applicant, the most logical and natural step is that the respondent state should speed up the domestic proceedings criticised by the Court. Speeding up the pending proceedings might even be regarded as a means of *restitutio in integrum*: the respondent state remedies the past delays criticised by the Court by swiftly completing the proceedings in question as a result of the judgment given in Strasbourg. That is precisely what often happens as part of the execution of judgments under the supervision of the Committee of Ministers. Strikingly, proceedings are often speeded up in this way even where there is no special remedy for the purpose under domestic law.

That being said, the need to speed up proceedings is perceived differently depending on the circumstances of the case and the conclusions reached by the Court. In cases where the Court insists on the requirement of "particular diligence", the Committee is especially firm in requiring that the proceedings be speeded up and closes the case only when it is completed.

Examples of this include cases brought by persons suffering from an illness, labour disputes and proceedings concerning child custody. The Committee also requires states to terminate domestic proceedings when the length of the latter constitutes a continuous violation of the convention (for example the procedure for executing a domestic judgment) or results in a continuous violation of a substantive right protected by the convention (for example a continuous violation of property rights). Given their urgency, cases of this kind are normally reviewed by the Committee at short and regular intervals in order to ensure a speedy solution.

Obviously, when it is a question of supervising general measures designed to prevent further violations similar to those found by the Court, the Committee's task is more complex and the solutions are much less straightforward. In this area most of all, the Committee's experience is extremely varied and well worth taking a close look at.

I particularly wish to emphasise the diversity of the general measures introduced by states because in the few years since the *Kudla* judgment, discussion of the states' responses in cases concerning excessive length of proceedings has chiefly focused on the problem of domestic remedies. While recognising the need for and importance of such remedies against excessive length of proceedings – and I shall return to them towards the end of this paper – I would say that they form only a small proportion of the steps taken to resolve the problem of the length of proceedings. In a resolution adopted in November 2005, the Committee again took care to emphasise that "the setting up of domestic remedies does not dispense states from their general obligation to solve the structural problems underlying violations (Interim Resolution DH(2005)114 on cases concerning Italy).

Of course I do not intend to present an exhaustive list of the general measures introduced or planned under the supervision of the Committee of Ministers: all these measures are reproduced in many Committee documents and resolutions concerning the execution of judgments. So I shall simply cite a few examples illustrating various types of measure chosen by states and/or advocated by the Committee according to the

nature of the problems revealed by the judgments.

I. Measures to prevent further violations due to excessive delays in proceedings

1. Examples of measures concerning the organisation of the judicial system

- Increasing the number of judges and legal officials: the French authorities have informed the Committee of Ministers that between 1998 and 2002 more than 2,400 new posts were created in the legal service; 4,450 additional posts are also planned by 2007 (for 950 judges and 3,500 legal service officials and staff).

In 2004 alone, 709 additional posts, including 150 judges and 380 court clerks, were created in the courts (see *J.-M. F. and others v. France*, Annotated Agenda of the 922nd meeting (HR) of the Committee of Ministers, April 2005, CM/Del/OJ/DH(2005)922 Volume I Public).

- Setting up new courts to ease the workload of courts suffering from a chronic excess caseload: in Hungary the Supreme Court's workload has considerably decreased as a result of a reform of the judicial system carried out in 2002. The reform transferred its jurisdiction as an appeal court to the five appeal courts set up in 2003 and 2004. According to the information provided by the Hungarian authorities, at the end of 2003 the Supreme Court was dealing with only 16% of the cases referred to it before the reform (see *Timár and others v. Hungary*, above-mentioned Annotated Agenda of the 922nd meeting (HR) of the Committee of Ministers).

- Redrawing the "judicial map" of a country: in Italy, Act No.30 of 1 February 1989 on courts of first instance (*preture*) redefined the jurisdiction of these courts, which made it possible to abolish 273 courts of first instance with light workloads and redeploy the judges and legal officials to courts with heavier workloads (Resolution DH(95)82 on the *Zanghi v. Italy* case mentioned earlier).

- Increasing the funds allocated to certain courts: in France, the "Orientation and Planning for Justice" Act of 9 September 2002 authorises 114 million euros to be allocated to the Conseil d'Etat and the administrative courts for normal expenditure and 60 million euros in the form of authorised programmes, particularly to improve the existing courts' computer facilities and extend their premises (Resolution DH(2005)63 on the judgments of the Court in 58 cases against France concerning the excessive length of certain proceedings before the administrative courts).

- Concluding "contracts on objectives" with a number of pilot courts in France (Douai and Aix en Provence courts of appeal and some administrative courts of appeal): the courts undertake to substantially reduce the time they take to try cases, in return for additional staff and operating resources (see above-mentioned Resolution DH(2005)63).

- Administrative measures to improve court organisation and management: in Austria, computer facilities have been introduced to manage the flow of case files and monitor progress with cases (Resolution DH(2004)77 on the *G. S. v. Austria* case).

In the Slovak Republic, a pilot project named "court management" has gradually been set up in all district and regional courts. The intention is chiefly to provide courts with computers and appropriate software and to train staff and assist them with case management. The project was gradually set up in all district and regional courts between 2002 and 2004. In addition, the Court Officers Act in force since 2004 has introduced the function of senior court clerk, in order to assign to administrative staff a range of tasks that do not require the involvement of a judge (Resolution DH(2005)67 on the judgments of the Court in the case of *Jóri and 18 other cases v. Slovak Republic*).

2. Examples of procedural measures

- Reform of the rules governing the conduct of trials: on 14 July 2003 Croatia passed an act amending the Code of Civil Procedure and providing in particular for:

  - a single judge to be able, as a general rule, to hear civil cases at first instance;

- the reform of the rules governing summonses, which often cause delays in civil proceedings;
- the introduction of pecuniary penalties for parties who abuse their procedural rights and thereby cause unjustified delays in proceedings;
- abolition of the possibility for the State Attorney to ask for the revision of final judgments as part of extraordinary proceedings (Resolution DH(2005)60 on the judgments of the Court in the case of *Horvat and 9 other cases v. Croatia*).

- Reform of the procedure for executing judgments: Portugal has carried out a reform of this kind, assigning specific duties (previously performed by the courts) to specialist staff responsible for execution (eg writs, notices, sale of the property seized). In particular, the new legislation (Legislative Decree 38/2003) imposes stricter rules and time limits for the execution of domestic court decisions (above-mentioned Annotated Agenda of the 922nd meeting (HR) of the Committee of Ministers, April 2005).

- Reform of the jurisdiction of certain courts: in France, the jurisdiction of the Conseil d'Etat has been altered, excluding from it a number of appeals in proceedings concerning foreigners, which accounted for more than 40% of the net intake of appeals before the Conseil d'Etat in 2001. Some of these proceedings have been transferred from the Conseil d'Etat to the administrative courts of appeal (whose resources have been reinforced accordingly) as of 1 January 2005 (above-mentioned Resolution DH(2005)63).

II. Special additional measures to resolve serious structural problems

- Setting up specialist courts to deal with the most long-standing cases pending: in Italy, under Act No. 276 of 22 July 1997, provisional sections (*sezioni stralcio*) specially responsible for dealing with all the cases pending before the civil courts at 30 April 1995 were brought into service in November 1998 (Interim Resolution DH(99)437).

- Ad hoc measures enabling pending cases in which the parties have not appeared for some time to be exceptionally struck off the list (on grounds of withdrawal): in Italy, plans were made to strike off appeals pending for more than ten years before the administrative courts, unless the applicants object (Interim Resolution DH(99)436).

III. Introducing domestic remedies against the excessive length of proceedings

- A remedy to speed up pending cases: Poland passed an act to that effect on 17 June 2004. On 1 March 2005 the Court found two Polish cases concerning the length of proceedings (*Charzyński* and *Michalak v. Poland*) inadmissible on the grounds that the applicants had not filed any applications under the new 2004 act, which could have provided them with an effective remedy.

- The right to obtain financial compensation for the damage suffered as a result of the excessive length of proceedings: in France, Article L 781-1 of the Code of Judicial Organisation, as interpreted by the courts concerned as from 20 September 1999, allows persons to receive compensation for non-pecuniary damage they have suffered as a result of the excessive length of proceedings (see the decision as to admissibility given by the Court in the *Mifsud v. France* case).

- Other ways of remedying the damage suffered as a result of the excessive length of judicial proceedings: under Austria's 2004 Code of Criminal Procedure, a defendant may request that the trial be terminated in the event of excessive breaches of the principle of expeditious proceedings. The Austrian Criminal Code also provides that mitigating circumstances may be taken into account in the event of excessively lengthy criminal proceedings (*Schweighofer and others v. Austria*, Annotated Agenda of the 928th meeting (HR) of the Committee of Ministers, June 2005, CM/Del/OJ/DH(2005)928 Volume I).

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As regards the Committee's practice concerning remedies, it has to be said that after the *Kudla* judgment the Committee found itself in an unprecedented situation, since very few states had the necessary facilities. It therefore systematically checked the availability of domestic remedies in the event of violations due to the excessive length of proceedings, even where there was no formal violation of Article 13.

As regards the effectiveness of remedies, the Committee largely relies on the Court's assessment. Purely compensatory remedies are currently accepted insofar as the Court requires them to be exhausted under Article 35. However, the preferred remedies are clearly those that provide not only for compensation for past delays but also for speeding up pending proceedings.

The effectiveness of remedies to speed up proceedings is tested by the Court when considering the admissibility of applications. Developments in case-law in the matter are closely monitored and taken into account. Such will certainly be the case in the Grand Chamber judgment in the *Scordino* case, which has confirmed the already existing doubts as to the effectiveness of the remedy introduced by the Pinto Act in Italy. Other questions remain, some of which have already been clearly identified by legal writers. Responses will no doubt soon be forthcoming in connection with applications still pending before the Court.

Despite these questions, the situation regarding remedies, five years after the *Kudla* judgment, can on the whole be provisionally summed up as fairly positive. About ten states have responded to the findings of violations under Article 13 by introducing remedies to provide compensation or to speed up proceedings, or both at once, either through legislation or through case-law. About twenty others have adjusted their legal systems so that the Court has recognised them as being compatible with the convention. And lastly, the majority of countries where there are as yet no remedies are planning, with varying degrees of precision, to introduce such remedies in the not too distant future.

The Committee of Ministers monitors these reforms closely and assists states in the matter, as it does for very many other measures required for the execution of judgments concerning the length of proceedings. In this supervisory process the Committee draws on the wealth of experience it has accumulated over more than twenty years. In so doing, it endeavours to make the most of the growing synergy with other Council of Europe bodies, including the CEPEJ and the Venice Commission; both of these have for the past few years been helping to solve this problem, which to varying degrees affects a very substantial proportion of the member states.

WORK OF THE EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE ON TIMEFRAMES OF PROCEEDINGS

ELEMENTS FOR THE INTRODUCTION

Mr Eberhard DESCH
President of the European Commission for the Efficiency of Justice (CEPEJ)

I would like to thank the Romanian Presidency of the Committee of Ministers of the CoE for having invited the CEPEJ and its Task Force on timeframes of judicial proceedings to participate in this event, in close co-operation with the Venice Commission.

When lengths of proceedings are so high on the agenda of:
- the Presidency of the CM,
- the Venice Commission,
- the CEPEJ,

it proves that it is an essential point at stake while looking for concrete solutions for improving the mechanisms for the protection of human rights.

The confidence of European citizens in their justice system is at stake. Member states must be in a position to organise justice as a public service with quality, efficiency and equity.

Venice Commission and the CEPEJ had recently the opportunity to pursue their discussion on this point.

I am confident that the complementarity of determined actions towards a shared objective will enable to offer to the CoE member states well thought ideas and pragmatic tools for improving time management in courts: the Venice Commission being focused on legal remedies when excessive lengths of proceedings occur, and the CEPEJ being mainly dedicated to the prevention of excessive lengths.

The CEPEJ is entrusted by the Committee of Ministers to propose practical solutions, suitable for use by the Member States of the Council of Europe, for:

- promoting the effective implementation of existing Council of Europe instruments relating to the organisation of justice;
- ensuring that public policies concerning the courts take account of the needs of the users of the justice system and, in particular, the judiciary and law officers;
- helping to reduce the congestion of the European Court of Human Rights by offering states effective solutions prior to applications to the Court and preventing violations of Article 6.

In the Action Plan adopted at the Third Summit (Warsaw, 16 - 17 May 2005), the Heads of State and Government of Council of Europe member states decided to develop the evaluation and assistance functions of the CEPEJ in order to help member states deliver justice fairly and rapidly.
In 2004 at the Conference celebrating the 10th anniversary of the ratification by Romania of the ECHR, was presented here in Bucharest the CEPEJ Framework programme: *"A new objective for European judicial systems: the processing of each case within an optimum and foreseeable timeframe"*.

This Programme, which was very well received by the participants to this conference, as well as by the Committee of Ministers, proposes a fresh and pragmatic approach to dealing with delays in court proceedings, by means of 18 lines of action concerning:

- the organisation of the courts and the role of state institutions,
- court proceedings, and
- the role of the judiciary and law officers.

The CEPEJ aims at contributing to relieving the workload of the Court of Human Rights by elaborating the lines of action into concrete measures. For that purpose it has set up a specific Task Force, chaired by Mr

Alan Uzelac, who will specify its ongoing work in a few minutes.

To support the CEPEJ and its Task Force in their work, a Network of Pilot Courts has been set up, which will meet for the first time in Bucharest next Wednesday and Thursday, thanks to the kind invitation of the Ministry of Justice and the High Council of Justice of Romania.

This network is composed of courts, appointed by member states, which reflect the judicial situation in the country and taking into consideration the practical experience of the courts in the field of optimum and foreseeable judicial timeframes – some of them have documented success in monitoring or reducing judicial timeframes.

The Departmental Court of Arges is the Romanian member of this Network.

The competencies and expertise of these courts should serve to enhance the work being done by the CEPEJ, especially on court management. The Network will also serve as a test bed for assessing the quality and/or advisability of various measures proposed by the CEPEJ.

THE VENICE COMMISSION'S APPROACH TO REMEDIES FOR THE EXCESSIVE LENGTH OF PROCEEDINGS

Mr Franz MATSCHER
Venice Commission Member, Austria

The excessive length of proceedings – civil, penal, administrative – is a grievance which affects nearly all European countries to a wide extent but in a different manner. For some of them, it is an every-day experience; for reasons I would not like to scrutinize in the present context, this is typical for the – let me say so – "Mediterranean" countries. What for them is a daily experience, for other countries constitutes the expression of isolated pathological cases.

Since a few years, we have met the same phenomenon in the democracies of Eastern and South-Eastern Europe. But there, in my opinion, it is due to the fact that in these States, for many reasons the judiciary has not reached the level we have achieved, or we should have achieved, but partly we have abandoned in the last decades in the other member States of the Council of Europe.

However, the excessive length of proceedings is a phenomenon which is denounced less by the authorities and the magistrates, and more by the individuals searching for justice and in particular by the advocates.

It may seem strange that the complaints are weaker in those countries where the excessive length of proceedings is an every-day experience; this might be explained by considering that the people there have got used to the phenomenon; on the other hand, the complaints are more numerous in the countries where the cases of dysfunctions of the judiciary are isolated but felt more deeply.

For good reasons, the European Convention enumerates in Article 6, amongst the procedural guarantees, the right to a decision within a reasonable time in all civil and penal cases. If, in the programme of the present conference, administrative matters are included as well, it is because that following the interpretation of Article 6, nearly all classical administrative matters are included by the expression "civil" and "penal" of Article 6.

The present conference does not deal with the reasons of excessive length of proceedings. That issue will be dealt within another context.

Our conference is dedicated exclusively to the remedies against such undue length. Indeed the European Court does not limit itself to enumerate a series of fundamental rights but it calls also for effective remedies against violations of the rights guaranteed by it.

As far as the right to a decision with a reasonable time is concerned, for a long time, the problem of remedies against a violation of the right in question has not been discussed seriously by the Council of Europe institutions and only recently, it has been put on their agenda. Therefore it has to be welcomed that the Romanian Presidency has taken the initiative to go deeper into the search of appropriate solution.

Following a request by the Romanian Authorities and the Conference on the Human Rights Convention in July 2004, the Venice Commission decided to carry out a comparative study on national remedies with respect to allegations of excessive length of national proceedings, with a view to proposing possible improvements in their availability and effectiveness. The study is limited to the "reparation" aspects of the issue, whereas the "preventive" aspects of this matter are the object of the work of the European Commission for the Efficiency of Justice (CEPEJ).

To that end, a questionnaire has been prepared by the Venice Commission Secretariat in co-operation with Romania. Then, mainly on the basis of the information provided by the Venice Commission members in reply to the questionnaire, the Venice Commission has dressed a draft report. This report starts with a study on the requirements of the Convention in particular Article 13 regarding the remedies against excessive length of proceedings. Besides that more descriptive part, the report moves to a comparative analysis of the

remedies available in domestic law, and to their evaluation in the light of their effectiveness as required by the recent case law of the Strasbourg Court.

Here I refer specifically to the *Kudla v. Poland* judgment of 26 October 2000.

Indeed, in its prior case-law the Court had been rather reluctant to apply the rule of Article 13 in particular as far a violation of the procedural guarantees of Article 6 were at stake, deeming that the guarantees stipulated by Article 13 were "absorbed" by the more far-reaching guarantees of Article 6.

To a certain extent, it may be true, but not regarding the guarantee of the right to a decision within a reasonable time. Now since the Kudla judgment, in cases where the violation of the right to a speedy decision is at stake, the Court raises also the question of whether the national legislation offers an effective remedy against the alleged undue length of the proceedings, as required by Article 13.

The preparation of the report showed to be much more complicated than one might have thought at the outset. This is due to the fact that particularly in this matter domestic legislations differ considerably from each other, and within them the remedies provided for the categories "civil", "penal" and "administrative" are distinct too. Nevertheless the Venice Commission tried to elaborate a comparative analysis, whose statements for the reasons I have attempted to explain above are not very far reaching and hardly susceptible to generalisation but, as I hope, they are not without a certain interest.

Ladies and Gentlemen,

In this context, two questions arise:

Firstly: does the national legislation offer an effective remedy available to the parties in order to speed up the proceedings in the instant case If not, in addition to the finding of a violation of Article 6, the Court finds a violation of Article 13. In such a situation, provided that the national legislation does not offer an adequate compensation for the damages suffered by the excessive length of proceedings, the Court may grant a just satisfaction according to Article 41.

Secondly, when the Committee of Ministers, in line with Article 46 para 2, supervises the implementation of a judgment, it is up to it to see whether the legislation of the defendant State provides, in general, adequate remedies against undue length of proceedings, as required by Article 13.

It is exactly for that purpose that the Venice Commission's report once it has been finalized may offer to the Committee of Ministers useful guidelines for the accomplishment of its tasks. In this sense, we hope that the Venice Commission's report will be a valuable contribution to the aims of the Romanian Presidency when it proceeded to organise the present conference.

But, let me stress again the "reparation" aspect of the issue before us constitutes only one face of the problem of the excessive length of proceedings.

Indeed, it must be accompanied with efforts of the member States to organise their proceedings in such a way as to avoid as far as possible, the rise of situation of excessive length of proceedings. Speaking in medical terms, the therapy we prepare is important, but first of all we have to try to eliminate the causes of the disease.

To sum up, all the possible remedies may be useful to the individual, but the problem in general goes beyond the instrumental. Indeed, the society and the economic suffer when disputed cases do not reach a solution within a reasonable time.

CONCLUSIONS TO THE PRELIMINARY DRAFT REPORT ON NATIONAL REMEDIES IN RESPECT OF EXCESSIVE LENGTH OF PROCEEDINGS AND RECOMMENDATIONS AS TO THE REMEDIES TO BE USED TO OBTAIN THE SPEEDING-UP OF THE PROCEDURES

Mr Bogdan AURESCU
Secretary of State for European Affaires
Ministry of Foreign Affairs of Romania
Substitute member of the Venice Commission

I. Remedies in case of lengthy pending proceedings

1. Criminal proceedings

Speeding-up criminal proceedings could be achieved by using procedural steps leading towards rendering of a decision by the same court or by a different one, thus making it possible for the interested party to obtain the taking of a measure which the dilatory judge (or other authority having competences in criminal procedures) had failed to take.

The remedy that a State may provide in this respect must be in accordance with the ECHR jurisprudence under Article 13, namely it must acquire a sufficient legal certainty in theory and in practice (meaning that there must exist sufficient case-law which can prove that the remedy is able to lead to the acceleration of the procedure) and it has to be available to the applicant at the date on which the application is lodged with the Court.

It is important to underline the fact that the length of criminal proceedings also includes *the criminal investigation* as the applicability of the article 6 begins the moment when the criminal charge is notified to the person concerned. Thus, it is useful to consider the existence of a remedy for speeding up the procedure in this stage, by guaranteeing a petition right before the prosecutor in charge with the supervision of the criminal investigation, or, in case the criminal investigation is conducted by the prosecutor, before his/her hierarchic superior. Against the response of this authority an appeal before a court – the competent court for hearing the grounds of the case – should be taken into account. In these two hypotheses, the prosecutor or the court should take the necessary measures in order to speed up the procedure – for instance, the establishment of a dead-line for the termination of the criminal investigation.

- when finding a violation of the reasonable time requirement, the competent authorities may resort to remedies that constitute *compensation in kind*, such as abandonment/inadmissibility of prosecution, reduction or mitigation of sentence, exemption of punishment or even acquittal (the motivation used by the magistrate in such a decision is of great importance- for instance, the assessment that the defence rights were affected by the lengthy proceedings).

  Advantage: These remedies constitute a good motivation for the reasonable time requirement to be strictly observed in criminal cases, especially considering the fact that, as a result of the aforementioned remedies, the crime itself might be left unpunished.

  Disadvantage: Such a remedy might lead to a solution of criminal proceedings on the basis of procedural reasons, and not on the basis of the gravity of the alleged crime. However, taking into consideration that the substance of the criminal law and the final scope of the punishment is an educational one and not a mere application of the private justice principle “eye for an eye”, these remedies appear accurate as the social scope of the punishment can no longer be achieved and the society is no longer interested in punishing a crime committed a long time ago. Only the retributive scope of the punishment can be reached by continuing the criminal procedure. In this light, the abandonment of the prosecution or the acquittal is in fact the consequence of the expiry of a special statutory time limit, which exists in the domestic criminal law of many countries.

- when finding a violation of the reasonable time requirement, awarding compensations for the

damages (pecuniary or non-pecuniary) that occur as a result of lengthy proceedings should become possible. This remedy can either be the only one, or it can be coupled with the abovementioned remedies that allow the speeding up of the proceedings in question.

Advantage: These remedies may constitute a good, although indirect, motivation for the reasonable time requirement to be observed in criminal cases.

Disadvantage: The possibility of introducing a demand or an action for damages during the allegedly lengthy proceeding may raise concerns as to the effect of the pressure exercised in this way upon the judge, thus possibly leading to rendering of a decision too quickly and, as a consequence, to a superficial solution of the case.

Taking into consideration these arguments, the possibility of introducing a demand or an action for compensating the damages should be provided *before a higher court* that would have the competence to analyze the length of the procedure and, if the action is appreciated as well founded, could award compensation for damages.

As to the ground for obtaining damages, it may be the heavy workload of the courts, the malfunctioning or the denial of justice, the fault of a judge or of another authority or a violation of the right to a hearing within a reasonable time.

The recommendation, in the light of the ECHR case law, goes in favour of an *objective ground*, namely the unreasonable length of the procedure, without referring to fault or malfunctioning. It is of evidence that in appreciating the excessive character of the length the three elements established by the ECHR are to be taking into consideration, namely the complexity of the case, the behaviour of the applicant and the conduct of the authorities. A subsequent regress action could be introduced, if the fault of an authority is under question. But for the scope of the remedy, it should be based on objective responsibility of the State.
It is very important that the amount of pecuniary compensation for the victim be adequate and sufficient, that is to be awarded in conformity with the European Court of Human Rights' case-law on the matter and by taking into account the specific circumstances (the standard of living) in the respective State, and not be left to the total discretion of a jurisdiction. Otherwise, an inaccurate amount of the damages would not have the significance of a true reparation of the violation.

- when finding a violation of the reasonable time requirement, *a disciplinary action against the dilatory judge may also be provided***,** by means of a complaint to a supervisory authority.

  Advantage: The possibility of a disciplinary action has a certain effect as to the speeding up of proceedings in question.

  Disadvantage: This remedy is accompanied by the risk of a superficial solution of the case and, to a certain extent, could affect the impartiality and independence on the judge, if the disciplinary procedure is started while the criminal procedure is still pending before the dilatory judge. Thus, the disciplinary aspect could influence his/her behaviour as to the impartiality. Moreover, the disciplinary procedure is rather a preventive method than a remedy, as it does not deal, as regard the applicant, with the length of the procedure and the award of damages for the violation of the right to a fair trial, but prevents similar violations in the future.

- when finding a violation of the reasonable time requirement, the *possibility for a higher court to establish a time limit for the dilatory judge* to deliver a solution or/and give instructions to the dilatory judge should be considered. These measures might be joined by the decision of the higher court to *transfer the case to another judge***.**

  Advantage: This could constitute a remedy and a factor that would speed up the pending procedure.

  Disadvantage: Problems might appear if this remedy is not accompanied by guarantees against a superficial judgment of the case, in such a way that the time limit does not affect the other guaranties of the fair hearing, as the equality of arms and the proofs or the adversary principle.

The impartiality problem may also occur (see above). It can be avoided by transferring the case to another judge, but the latter will need (some) time in order to get acquainted with the details of the case.

2. Civil and administrative proceedings

Speeding-up civil and administrative proceedings could be achieved by using procedural steps that may lead towards the rendering of a decision by the same court or by a different one, thus making it possible for the interested party to obtain the taking of a measure which the dilatory judge had failed to take.

These *measures* are practically the same as described above, in Section a), adapted to the specificities of the civil/administrative procedures: *compensation in kind* (such as holding a hearing, obtaining an expert's report, issuing another necessary order or taking an act which the concerned authority had failed to take)**,** *a disciplinary action against the dilatory judge* by means of a complaint to a supervisory authority, the possibility *for a higher court to establish a time limit for the dilatory judge* to deliver a solution or/and give instructions to the dilatory judge (this measures might be joined by the decision of the higher court to *transfer the case to another judge),* awarding compensations for the *damages* that occur as a result of lengthy proceedings (this remedy can either be the only one, or it can be coupled with the abovementioned remedies that allow the speeding up of the proceedings in question).

As regards the ground and the amount of the damages to be awarded, the same principles and solutions as the ones mentioned above are applicable in these proceedings.

The *advantages* of such measures are clear. The *disadvantages* might result from the fact that *in civil proceedings* there are *private* parties, having *different/opposing interests*, including as far as the length of these proceedings is concerned. Anyway, the *public interest* in this case cannot be but a fair solution of the litigation, within a reasonable time frame (the fact that a party of a specific civil procedure has the interest of delaying the trial and acts to this purpose is generally considered, in many national legislations, as *a procedural abuse*, if certain limits are crossed).

In this respect, considering the private nature of the civil procedure, the remedies for excessive length should be adapted in consequence. For example, if the length of proceedings is due to the dilatory manoeuvres of one party (left unsanctioned by the judge), the other(s) party(ies) should be entitled to ask for the measures described above. On the other hand, if the length of proceedings is due to the lack of diligence from the part of the applicant, the domestic legislation should provide the possibility for the judge to suspend the procedure and even pronounce it obsolete. This is, beside a sanction for the lack of diligence, also a method for assuring the defendant that a procedure once started will not continue *sine diae.*

It is important to note the fact that the civil procedure also includes *the execution of the judgment.* This phase, conducted by the bailiff at the request of the creditor, could represent an important part in the analysis of the length of the proceedings, as a whole. In the light of the ECHR case law, it is essential for the domestic legislation to provide a remedy for an unreasonable length of the execution.

This remedy should consist in the possibility of seizing the competent court in order to obtain the speeding up of the execution procedure. The measures described above regarding a possible disciplinary action against the bailiff for his/her lack of diligence, the possibility for the tribunal to set a time limit for the termination of the execution or the award of damages for loss of the creditor are applicable in this hypothesis. In the case of the demand for damages, if they are the consequence of the bailiff's conduct, they may lead to a mitigation of his/her fees.

Regarding *administrative proceedings,* it is clear that the *public interest* is both to ensure prompt and efficient decision making, and to enable individuals who apply to administrative authorities or to administrative courts to receive fair and equitable treatment. Further to the measures described above, the efficiency of the administrative proceedings could be improved *by the preventive measure of providing the silent procedure, within a prescribed time limit***,** for certain administrative acts (such as authorizations, licences etc) to be issued or renewed (if a public authority fails to take a decision in the prescribed time limit, it shall be deemed to have made a decision in favour of the applicant).

It is of great importance that the procedure established by the State in order for the interested person to complain about the excessive length of proceedings, *either criminal, civil or administrative*, respect the time limit requirement. For this reason, the States should prescribe a strict time limit in which the judge called upon to examine the complaint regarding excessive length of the procedure must render a solution.

II. Remedies in case of lengthy completed proceedings

The considerations in respect of ***criminal, civil and administrative proceedings are the same*** as far as the remedies in case of lengthy completed proceedings are concerned.

The remedy that a State may provide must be in accordance with the ECHR jurisprudence under Article 13, namely it must acquire a sufficient legal certainty in theory and in practice (meaning that there must exist sufficient case-law which can prove the awarding of adequate redress) and it has to be available to the applicant at the date on which the application is lodged with the Court.

It is *not* necessary that the remedy provided for speeding up the pending proceedings and the one provided for reparation of damages in case of completed procedures be *cumulative*. However, in the case the procedure is already completed, the *only* possible remedy for the violation of the right to a trial in a reasonable time is *awarding compensation of damages* for the unreasonable length of the procedure.

In case the criminal procedure ends at the stage of criminal investigation without going to trial, the defendant should also be able to lodge an action for compensation of damages produced by the excessive length of the criminal investigation phase, knowing that the requirement of the reasonable time limit represents a guarantee for a defendant against the delaying of the procedure.

As in the case of pending proceedings, it is of great importance that the procedure established by the State in order for the interested person to complain about the excessive length of proceedings respect the time limit requirement. For this reason, the States should prescribe a strict time limit in which the judge called upon to examine the complaint regarding excessive length of the procedure must render a solution.

CONCLUSIONS

Mr Giorgio MALINVERNI
Honorary Professor of the University of Geneva, Switzerland
Member of the Venice Commission

1. Today's contributions, and the debates which followed them, have shown that we can arrive at certain principles to guide states in their search for optimum solutions to the problem of excessive length of proceedings.

First of all, there seems to be general agreement that the solutions adopted, whatever they may be, must in no way affect the other fair trial principles guaranteed by Article 6 of the ECHR - particularly independence and impartiality of judges and courts. Nor must they interfere with the rights and interests of parties to proceedings.

It has also been noted, rightly, that the measures which states adopt must not undermine the confidence which civil society should have in the workings of justice. In the specific case of criminal justice, the public's feeling that it can effectively deal with crime must in no way be compromised.

2. It is clear – and everyone seems agreed on this – that states must first of all try to prevent excessive length of proceedings. Prevention is better than cure, and so remedies for violations of the "reasonable time" requirement should be seen as a second-line solution to the problem. The important thing is for states to attack the causes of delay. Compensation for victims is a last-ditch answer – and cannot relieve states of the obligation of organising their judicial systems in ways which attack the roots of the problem.

Another problem mentioned today is that of finding criteria for deciding that the principle of dealing rapidly with cases has been violated. It has been noted that we need to strike a fair balance between the objective and subjective aspects of the "reasonable time" requirement, between things which can be regarded as falling within the Court's discretionary powers, and things which are merely arbitrary.

At all events, decisions that "reasonable time" has been exceeded should not be automatic. Their nature is such that they cannot be taken in this way. On the contrary, several cumulative criteria must be considered: the applicant's behaviour, which may protract the proceedings, the complexity of the case and, finally, the behaviour of the authorities. However, in addition to these precise criteria, broader issues may also have to be considered. As one of the speakers remarked, divorce proceedings lasting 17 years are, quite simply, too long.

The problem of indicators has also been mentioned, and the difficulty of finding reliable ones has rightly been emphasised. Nonetheless, the CEPEJ is to be congratulated on its work in this area.

3. Solutions to the problem of excessive length of proceedings can be grouped in two main categories: those applying to proceedings still pending, and those applying to proceedings already concluded.

In the first case, the adoption of measures to expedite current proceedings might be envisaged. In the criminal field, one speaker suggested winding up the trial, or even imposing a more lenient sentence.

When proceedings have already been concluded, however, there would seem to be just two remedies: compensation for the victim, to make good the damage caused, and disciplinary action against the judge responsible for the delay. However, several speakers expressed serious and justified reservations concerning the second measure, which must in no way affect the confidence which the public need to have in judges, their independence and their impartiality.

4. States have a broad choice of preventive measures to eliminate the problem of excessive length of proceedings: they range from appointing more judges or registrars, or indeed setting up more courts, to reorganising the judicial system, e.g. generalising reliance on single judges at first instance. Nor must we underestimate the benefits of settling more disputes by non-judicial means, such as mediation, arbitration or conciliation - although these solutions are suited to civil cases only.

5. The type of remedy adopted also depends very largely on the nature of the proceedings – civil, criminal or administrative.

In civil cases, the legitimate interests of all the parties must always be considered. States should adopt measures to ensure that either side can stop the other from using delaying tactics.

In criminal cases, it is particularly important to strike a balance between two types of interest: the public's interest in the case's not being unduly protracted, and the accused's interest in not being left too long in doubt concerning his/her fate, particularly if he/she is being held on remand; and society's need for soundly administered justice, and the public's confidence in the courts' ability to deal effectively with crime.