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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

APPENDIX

REPLIES TO QUESTIONNAIRE ON NATIONAL REMEDIES IN RESPECT OF EXCESSIVE LENGTH OF PROCEEDINGS[1]

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

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* This questionnaire was filled in by the Venice Commission Secretariat.

APPENDIX

Replies to questionnaire per country

ALBANIA*

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

Yes.

Case-law of the European Court of Human Rights

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

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

The Article 42 § 2 of the Albanian Constitution reads as follows:

"In the protection of his constitutional and legal rights, freedoms and interests, or in defending a criminal charge, everyone has the right to a fair and public hearing, within a reasonable time, by an independent and impartial court established by law."

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

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

"The Constitutional Court shall decide in:

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

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

The deadline for lodging the application with the Constitutional Court is provided in the Article 30 of the Law No. 8577 of 10 February 2000 on the Organisation and Functioning of the Constitutional Court of the Republic of Albania: "The application of persons regarding the violation of a constitutional right are to be presented no later than 2 (two) years from the time at which evidence of the violation becomes available to them. If the law provides that the applicant may address another authority, he/she may present the application to the Constitutional Court after all the other legal means in protection of such rights have been exhausted. Under such a case, the deadline for lodging the application is 6 (six) months from the date on which the decision of the relevant authority is announced".

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ANDORRA

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

Les justiciables se plaignent dans certains cas de la lenteur de la justice dans notre pays, compte tenu des dimensions du pays et du nombre d'habitants, mais par rapport aux pays voisins, on peut dire qu'elle est rendue avec célérité dans la plupart des cas. Les organes judiciaires pensent que peut-être la procédure d'instruction en matière pénale est un peu longue à cause de la rigueur procédurale qui se veut très protectrice des droits fondamentaux (propos relevés du rapport du président de la Batllia pour la période 2003-2004). En principe, en première instance, le délai maximum pour statuer sur une affaire est de quatre ans, en fonction de la complexité de l'affaire et du comportement des plaideurs. En deuxième instance, les délais sont raccourcis à maximum 1 an. Devant le Tribunal Constitutionnel, la procédure n'excède pas trois mois. Le problème se pose plutôt au niveau de la mise en oeuvre de l'exécution des décisions car leur mise en exécution est beaucoup plus longue.

2. Ces délais sont-ils reconnus par des décisions des instances judiciaires ? Lesquelles? (nationales! Cour européenne des Droits de l'Homme) ?

Ces délais ne sont pas reconnus par des décisions des instances judiciaires. Mais le premier souci de l'Administration de justice est celui de garantir le respect du droit à un procès équitable et d'une durée raisonnable.

Le Tribunal Constitutionnel dans une décision très récente du 2 décembre 2004 sur l'affaire 2004-9-RE a considéré que le droit à un procès d'une durée raisonnable avait été lésé parce que «il peut être déduit qu'un litige, initié le 11 septembre 1999, sur une procédure administrative antérieure, clos en 2003 et dont la décision résolutoire n'a pas encore été exécutée, et n'existant pas d'indices permettant de penser qu'elle le sera, a une durée irraisonnable et porte atteinte au droit à la juridiction inscrit dans l'alinéa 2 de l'article 10 de la Constitution ».

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

L'article 10 de la Constitution andorrane dispose que « 1. Toute personne a droit au recours devant une juridiction, à obtenir de celle-ci une décision fondée en droit, ainsi qu'à un procès équitable, devant un tribunal impartial créé préalablement par la loi.

2. Est garanti à chacun le droit à la défense et à l'assistance d'un avocat, le droit à un procès d'une durée raisonnable, à la présomption d'innocence, à être in formé de l'accusation, à ne pas être contraint de se déclarer coupable, à ne pas faire de déclaration contre soi-même et, en cas de procès pénal, à l'exercice d'un recours. »

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

Chaque année, lors de l'ouverture de l'année judiciaire, le Conseil supérieur de la justice, organe de représentation, de direction et d'administration de l'organisation judiciaire, publie un rapport, établi par les différentes juridictions ordinaires, sur l'état de la justice, sur les statistiques et sur les suggestions d'amélioration du système.

Les statistiques élaborées pour l'année judiciaire 2003-2004, sont les suivantes: les décisions rendues entre deux et trois ans représentent à peu près 6% du total des décisions rendues; celles qui tardent entre I an et 2 ans 65,60%, celles qui tardent entre 6 mois et I an 22,28% et celles qui sont rendues dans moins de 6 mois 6,12%.

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

Les justiciables peuvent s'adresser au Conseil supérieur de la justice pour exposer leur mécontentement sur les organes juài et sur le retard dans la résolution de leurs litiges. Cet organe prendra les mesures nécessaires pour résoudre les éventuels conflits.

Aussi la Constitution a prévu la possibilité de saisir le Tribunal constitutionnel dans le cas où des actes des pouvoirs publics lèseraient des droits fondamentaux, c'est le recours en protection constitutionnelle (d'amparo). La procédure est développée dans la Loi qualifiée du Tribunal Constitutionnel, Chapitre VI. L'article 94 dispose que si l'un des droits énoncés à l'article 10 de la Constitution (parmi eux le droit à un procès équitable et d'une durée raisonnable) est lésé au cours d'une procédure judiciaire ou pré- judiciaire, le sujet titulaire du droit lésé doit alléguer cette lésion pour le défendre devant l'organe judiciaire ordinaire grâce aux moyens et aux recours prévus par la loi. Une fois qu'aucun recours ne pourra être interjeté ou qu'il n'existe aucun moyen de défense du droit constitutionnel lésé, la personne ayant eu le droit constitutionnel à la juridiction lésé peut former recours de protection devant le Tribunal Constitutionnel dans un délai de quinze jours ouvrables comptés à partir du lendemain de la notification du dernier jugement de rejet ou de la date où elle a eu connaissance du jugement qui viole le droit constitutionnel à la juridiction.

Le Ministère public peut également former, d'office ou l'instance de la partie intéressée, le recours de protection devant le Tribunal Constitutionnel en défense du droit fondamental à la juridiction contre les résolutions ou omissions judiciaires qui le violent, une fois tous les moyens de défense épuisés dans la voie ordinaire, dans le délai prévu à l'alinéa antérieur.
L'écrit d'introduction du recours doit contenir expressément les actions exercées au cours de la voie ordinaire dans la défense du droit lésé et une copie y doit être jointe.

Le Tribunal Constitutionnel, une fois que le document de demande de protection a été présenté par la personne affectée par la lésion du droit fondamental à la juridiction, avant de se prononcer sur sa recevabilité, requiert un rapport du Ministère public, quidevra l'émettre dans un délai maximum de quinze jours ouvrables. Le Tribunal n'est pas tenu de suivre son avis. L'absence de production de ce rapport dans le délai prévu ne bloque pas les délais pour que le Tribunal statue sur la recevabilité du recours de protection.

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

Le recours en protection constitutionnelle ne peut être exercé que lorsque les voies judiciaires ordinaires ont été épuisées.

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

Non.

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

Le Tribunal Constitutionnel a estimé que l'article 10 de la Constitution devait être interprété à la lumière de l'article 6 de la Convention européenne des Droits de l'Homme puisque cette Convention, intégrée dans l'ordonnancement juridique andorran conformément aux dispositions de l'article 3.4 de la Constitution, pouvait être utilisée comme un élément d'interprétation (décision 2000-3-RE) et la jurisprudence construite par la Cour européenne des Droits de l'Homme sur l'article 6 de la Convention a été parfois retenue (décision 2000-1 7-RE). Les critères généraux fixés par le Tribunal sont ceux « qui adaptés aux particularités du cas concret, perm ettront d'obtenir une appréciation du « raisonnable », exigée par la Constitution, pour protéger un bien juridique qui comporterait l'obtention d'une justice prompte et efficace ». Donc « la complexité de l'affaire soumise au tribunal, la conduite des plaideurs et l'attitude des pouvoirs publics, de la justice, sont les critères à retenir pour déterminer, dans chaque cas concret, si la durée du procès est raisonnable ou non. Et prendre comme point de référence tout le procès, depuis son origine jus qu'à son issue, en incluant même la détermination des frais et des dépens et en portant notre attention spécialement sur la suspension injustifiée de l'exécution puisque c'est l'exécution de la décision qui en dernière instance satisfait la prétention de celui qui a porté une affaire devant la justice. » (Décision 2004-9-RE)

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

Le Tribunal constitutionnel ne doit pas dépasser le délai de deux mois pour statuer sur un recours en protection constitutionnelle (article 91.2 de la Loi qualifiée du Tribunal Constitutionnel) à partir de sa recevabilité.

Néanmoins l'article 42 prévoit que « les délais prévus par la présente loi pour exercer les diverses actions sont impératifs pour les parties et pour le Tribunal constitutionnel. Toutefois en cas de nécessité et pourvu que ces délais ne soient pas prévus par la Constitution, à l'initiative du

magistrat rapporteur, d'office ou à la demande d'une partie, le Tribunal peut consentir à réduire ou à augmenter la durée de ces délais moyennant un arrêté motivé. »

Ces dispositions n'ont jamais eu à s'appliquer jusqu'à la date.

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

Lorsque le Tribunal constitutionnel reconnaît la violation du droit à un procès de durée raisonnable (article 92.2 de sa loi), il demande à l'organe judiciaire de rétablir le droit du plaideur par l'adoption des mesures nécessaires. Si l'atteinte est matériellement irréparable, le Tribunal pourra déterminer le genre de responsabilité encourue pour la réclamer devant la juridiction ordinaire.

12. En cas de compensation pécuniaire, cela se fait-il en fonction de quels critères ? Sont-ils semblables ou inspirés par ceux préconisés par la Cour européenne des Droits de l'Homme ? Y a-t-il un plafond pour une telle compensation ?

Puisque ce cas ne s'est jamais présenté devant le Tribunal, il n'a pas eu à se prononcer sur cette question.

13. Si des mesures peuvent être prises pour accélérer les procédures en question, y a-t-il un lien entre ces mesures et la gestion des affaires de la Cour compétente ?

Sont-elles coordonnées au niveau d'une instance centrale ou a un plus haut niveau? Sur la base de quels critères et de quelles informations factuelles (charge de travail, nombre de juges, nature des cas pendants, problèmes spécifiques concernant la cour en question) l'autorité compétente ordonne-t-elle de telles mesures ?

Le Conseil supérieur de la justice pourra demander aux juges et magistrats, s'il le croît nécessaire, d'accélérer la procédure en question. Quant au Tribunal constitutionnel, il pourra constater la violation du droit à un procès raisonnable et demander à l'organe judiciaire dans le cas du retard dans l'exécution simplement de procéder à la mise en oeuvre de l'exécution de la décision.

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

La juridiction de première instance (Batilia) est la juridiction compétente pour mettre en oeuvre l'exécution de la décision.

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

Le Tribunal constitutionnel s'est prononcé une seule fois sur la reconnaissance de la violation du droit à un procès de durée raisonnable pour non-exécution d'une décision (affaire 2004-9-RE déjà citée) et il a demandé au tribunal de première instance la mise en oeuvre de l'exécution de la décision. Le requérant peut toujours saisir le Tribunal constitutionnel si sa décision n'est pas exécutée, mais celui-ci n'a pas des moyens coercitifs pour faire exécuter sa décision, mis à part les éventuelles demandes en responsabilité.

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

Non.

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

Non.

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

Nous n'avons pas de données statistiques sur ce point.

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

Nous ne le savons pas.

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

Non, elle ne s'est pas pour l'instant prononcée.

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ARMENIA

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

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

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

There is no case, where the delays of judicial proceedings have been acknowledged by national courts' decisions. In regard to the 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. It is only two years, as the Republic of Armenia has assumed an obligation to guarantee the rights and freedoms set forth in the European Convention, and during this period the European Court has not yet adopted any 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. Are any statistical data available about the proportion of this problem in your country?

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

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

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

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

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AUSTRIA

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

There are isolated cases of excessive delays.

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

Yes.

Case-Law of the European Court of Human Rights.

Among other, the European Court declared violation of Article 6 §1 of the Convention with respect to Austria in the following cases : *Holzinger v. Austria* (judgement of 30 January 2001), *Maurer v. Austria* (judgement of 17 April 2002*), G.H. v. Austria* (judgement of 3 January 2001).

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

Yes.

Section 91 of the Courts Act (*Gerichtsorganisationsgesetz*), 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.

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

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

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

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

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

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

10. What are the available forms of redress :

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

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

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

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

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

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

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

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*, judgement of 24 February 2005).

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AZERBAIJAN

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

Very few (at least not within the context of the ECtHR case-law). Delays mainly happen in civil proceedings. In particular, they take place in situations, when appellate courts have to reconsider their own 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? What courts (national/ European Court of Human Rights)? Please provide some examples in English or French or reference to ECtHR case-law.

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

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

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

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

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

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

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

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BELGIUM

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

La procédure criminelle

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

La procédure civile

De manière générale en Belgique le contentieux civil représente 80 % du contentieux traité par les cours et tribunaux (ces derniers temps la proportion semble toutefois se réduire devant les cours d'appel en raison de l'impact des procès d'assises).

En matière civile (en ce compris les procédures d'exécution en matière civile), on relève des longueurs excessives dans les procédures essentiellement devant les juridictions bruxelloises (en raison des problèmes linguistiques que le législateur s'efforce cependant de résoudre ne fût-ce que partiellement, sous l'effet de décisions rendues sur la base de l'article 6 de la Convention européenne des droits de l'homme[2]; une loi du 16 juillet 2002 a modifié l'article 86bis du Code judiciaire et la loi du 3 avril 1953 d'organisation judiciaire et une autre du 18 juillet 2002 a remplacé l'article 43quinquies et inséré l'article 66 juin 1935 concernant l'emploi des langues en matière judiciaire afin d'alléger les exigences du bilinguisme et permettre de dégager davantage de moyens pour juger les affaires francophones qui sont majoritaires devant les juridictions bruxelloises) et les cours d'appel. Devant les autres juridictions l'arriéré est tantôt inexistant, tantôt peu significatif.

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

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

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

Jurisprudence au niveau national
Voir par exemple corr., Mons (ch. cons.), 23 décembre 2003, J.T., 2003, p. 629 (pour la phase de l'instruction).

En ce qui concerne la procédure de jugement, voir corr., Liège, 7mai 2001, J.LM.B., 2002, p. 928 et note P. Monville ou cass., 31 octobre 2001, J.T., 2002, p. 44, cass., 4 février 2004, Rev. dr. pén., 2004, p. 845 (du point de vue interne). Ce ne sont là que quelques exemples parmi de très nombreuses décisions.

Jurisprudence de la Cour Européenne des Droits de l'Homme
Au stade du jugement, voir par exemple l'arrêt *Ernst c. Belgique* (jugement du 15 juillet 2003).

On en trouve un exemple pour la phase de l'instruction dans l'arrêt *Stratégies et Communications et Dumoulin c/ Belgique* (jugement du 15 juillet 2002).

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

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

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

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

En ce qui concerne la procédure civile, les statistiques sont éparses et parfois tardives lorsqu'elles sont centralisées au niveau fédéral. De plus en plus les chefs de juridiction établissent, chambre par chambre, une liste des délais de fixation c'est-à-dire des délais qui s'écoulent entre la demande d'une audience de plaidoiries par les parties qui ont instruit le litige et la date de celle-ci (suivant les juridictions et les chambres la durée varie d'une semaine à quelques mois; réserve faite des situations spéciales énoncées au n° 1). L'existence de «tableaux de bord» par juridiction est une pratique qui tend à se développer.

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

a) Aucune voie de recours particulière n'est organisée comme telle à l'encontre d'une décision qui statuerait alors que le délai raisonnable était dépassé. Le prévenu pourra faire valoir ce moyen en appel. Celui-ci pourra également être

soulevé devant la Cour de cassation pour autant qu'il ait déjà été allégué en appel et dans la mesure où il ne touche que des questions de droit, telles les conséquences que la Cour d'appel a tirées ou n'a pas tirées de la constatation du dépassement du délai raisonnable.

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

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

Pour ce qui concerne les procédures pendantes,

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

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

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

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

- l'article 136bis du Code d'instruction criminelle, dans le même souci de contenir les instructions dans des délais raisonnables, fait obligation au procureur du Roi de faire rapport au procureur général de toutes les affaires dont l'instruction n'est pas clôturée dans l'année du premier réquisitoire (c'est-à-dire de la saisine du juge d'instruction). S'il l'estime nécessaire pour le bon déroulement de l'instruction, et donc pour l'accélération de la procédure, par exemple, procureur général peut saisir la chambre des mises en accusation qui, après avoir éventuellement entendu le rapport du juge d'instruction, a alors les mêmes pouvoirs que dans le cadre de l'article 136 évoqué ci-dessus.

c) Pour ce qui concerne encore une affaire faisant l'objet d'une instruction, il faut relever que la chambre du conseil - juridiction d'instruction de première

instance– lorsqu'elle est appelée à décider du sort d'une instruction clôturée par le juge d'instruction, peut, dès ce stade, constater le dépassement du délai raisonnable et ordonner le non-lieu ou déclarer les poursuites irrecevables. La chambre des mises en accusation peut mettre fin aux poursuites à tout moment pour le même motif, fût-elle saisie d'un problème de procédure en cours d'instruction.

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

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

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

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

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

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

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

-	Reconnaissance de la violation	Oui	Non
-	Compensation pécuniaire		
	o Pour dommage matériel	Oui	Non
	o Pour dommage non matériel	Oui	Non
-	Mesures destinées à accélérer la procédure dans le cas où elle est toujours pendante	Oui	Non
-	Dans les cas criminels, réduction de la peine	Oui	Non
-	Autres (préciser)		

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

b) Par les juridictions de jugement: selon l'article 21ter du Titre préliminaire du Code de procédure pénale, la sanction du dépassement du délai raisonnable prend la forme

d'une simple déclaration de culpabilité[3] ou du prononcé d'une peine inférieure à la peine minimale prévue par la loi; selon la jurisprudence de la Cour de cassation, il faut que cette réduction de peine soit réelle et mesurable par rapport à la peine que le juge aurait infligée s'il n'avait pas constaté la durée excessive de la procédure. Toutefois, la Cour de cassation admet que lorsque le dépassement du délai raisonnable a eu des conséquences sur l'administration de la preuve ou sur l'exercice des droits de la défense, il peut s'ensuivre une décision d'irrecevabilité des poursuites[4]. Aucune autre réparation n'est prévue.

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

Non.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Il n'existe pas de données statistiques sur le recours aux articles 136 et 136bis du Code d'instruction criminelle, pas plus que sur les moyens invoqués devant les juridictions

d'instruction ou de fond. Les projets d'informatisation des données judiciaires pourraient, à l'avenir, inclure cette donnée s'il s'avérait qu'elle constitue un critère pertinent.

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

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

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

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

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

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

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

Il est à noter que, dès lors que le problème soumis à l'examen de la Cour concernait une personne à qui le juge d'instruction n'avait notifié aucune inculpation formelle, on ne peut déduire son l'arrêt que, de manière générale – et en particulier à l'égard de la partie poursuivie ayant le statut d'inculpé en vertu d'une décision du juge d'instruction - l'article 136 ne constitue pas une voie de recours suffisante au regard de l'article 13 de la Convention.

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

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

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

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

A. Les voies d'accélération

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

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

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

B. Les voies d'indemnisation

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

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

En bref, la violation du délai raisonnable engage la responsabilité de l'Etat ; cette responsabilité est déduite de la méconnaissance de l'article 6 de la Convention européenne des droits de l'homme et du droit subjectif que ce texte consacre au profit du justiciable; cette méconnaissance constitue, dans l'ordre interne, une faute au sens de l'article 1382 du Code civil obligeant l'Etat à réparer le préjudice qui en est résulté. Consacrant de tels principes, une jurisprudence établie serait de nature à éviter à la Belgique de nouvelles condamnations pour ne point offrir, dans l'ordre interne, un recours effectif au justiciable qui s'estimerait victime d'un dépassement du délai raisonnable.

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BELGIUM

La procédure administrative

1. Voies de recours non juridictionnelles existant en droit interne face à la durée excessive des procédures de droit administratif belge: lutte contre l'inertie de l'administration saisie d'une demande de permis. Permis tacite et lettre de rappel. [5]

Le problème

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

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

Le problème du délai raisonnable

Le délai d'ordre appelle la question du délai raisonnable. La volonté de sanction est bien compréhensible[6]. La méthode du délai raisonnable présente toutefois au moins deux inconvénients.

D'abord, il y a dans l'administration du raisonnable une part importante de subjectivité. Bien sûr l'on peut dire que la complexité de l'affaire, la bonne volonté du demandeur sont des facteurs d'appréciation[7] mais il reste que ce critère est peu satisfaisant à une époque où l'on

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5 M. PÂQUES, «Aménagement du territoire, urbanisme, patrimoine et questions diverses de droit administratif notarial», *in* Chronique de droit à l'usage du notariat, Faculté de droit de Liège et Bruxelles, Larcier, Vol. XXXIX, 1er avril 2004, pp. 254 à 263.

6 Not. C.E., 4 septembre 1997, DEBRABANDERE, 67981; C.E., 4 février 1994, ROYACKERS, 45999.

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

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

Ensuite, imposer le délai raisonnable revient à créer une condition d'exercice de la compétence, d'ordre public[8]. Une fois expiré le délai, la compétence de l'autorité prend fin, fait obstacle à une remédiation par le biais d'un recours organisé[9] et, une fois sanctionnée par le Conseil d'Etat, cet épuisement de la compétence empêche la réfection de l'acte sur la base de la demande initiale[10]. Cette conséquence est paradoxale, dans la mesure où la compétence de décider sur une demande d'autorisation ou de recours organisé n'est pas facultative mais obligatoire.

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

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

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

- A l'expiration de ce délai de rigueur, la loi attribue à l'absence de décision du fonctionnaire délégué la portée d'un refus de permis (art. 118, §2, du CWATUP). Le fonctionnaire délégué cesse dès lors d'être compétent[11].

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

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

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

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

Actuellement:

- L'article 121 du CWATUP ne donne qu'au demandeur la compétence d'envoyer la lettre de rappel. Ce n'a pas toujours été le cas[12].

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

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

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

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

11 C.E., 24 juin 1980, Ville de Courtrai, 20447 rec. p. 827.

- Et l'option actuelle du CWATUP, à l'article 121, est que la décision doit non seulement être prise mais envoyée dans le délai de trente jours que fait courir la lettre de rappel. En conséquence l'arrêté pris dans le délai mais notifié tardivement est privé de sa force exécutoire par l'effet du décret et, pour des raisons de sécurité juridique, le Conseil d'Etat peut le suspendre ou l'annuler [13].

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

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

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

Formalités du rappel

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

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

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

Défaut de décision dans le délai de rigueur

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

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

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[12] Sur ce que, sans précision du législateur, la lettre peut émaner d'un autre que celui qui a introduit le recours, C.E., 4 décembre 1980, NUYENS, 20770, rec. p. 1478; C.E., 10 janvier 1984, VAN BEVER, 23870.

[13] C.E., 30 juin 2000, BOTTON, Rev. Rég. Dr., 2000, p. 398; C.E., 31 mai 2000, REGOUT, 87736, APM, 2000, p. 111; C.E., 29 octobre 2002, NOTREDAME et GYSSELS, 112002; C.E., 12 décembre 2002, QUEWET et QUAIRIAUX, 113604.

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

Exemples de calcul des délais

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

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

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

Retrait du rappel ?

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

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

ne peut être considéré comme la source d'une illégalité qui affecterait le permis délivré après l'expiration du délai qu'avait fait courir l'envoi du rappel et qui a donc été interrompu par son retrait. En outre, la Cour considère qu'il n'y a pas de parallélisme des formes qui s'imposerait et qu'aucune forme particulière ne s'applique au retrait, ni recommandation postale, ni même de signature, pourvu que le retrait soit communiqué avant l'expiration du délai. Une télécopie suffit, juge la Cour. Ce dernier point, lui aussi, demeure controversé car la preuve du moment du retrait peut poser problème[14].

Depuis lors le Conseil d'Etat a assis sa jurisprudence dans de nombreux arrêts[15]. Nous en signalons quelques uns prononcés dans la période la plus récente:

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

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

Nouveau délai de recours contre l'acte confirmé

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

Dans ce dernier cas, la décision confirmée du collège peut donc faire l'objet d'un recours au Conseil d'Etat à l'initiative d'un tiers. Le délai se calcule de manière ordinaire[17].

Dans ce cas aussi la Région wallonne est maintenue à la cause car c'est son silence qui a permis à la décision confirmée de sortir ses effets[18].

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

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

[16] Aussi,

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

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

L'astreinte

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

La décision tacite

Au lieu de confirmer la décision antérieure, ce qui peut conduire à un refus sur toute la ligne, le législateur peut décider de donner un sens au silence persistant. La décision d'accorder un sens au silence de l'administration chargée de délivrer une autorisation doit être l'œuvre du législateur. Généralement, toutefois, l'autorisation tacite est réservée au cas dans lequel, il n'y a eu aucune décision au cours de la procédure[19].

Le législateur peut choisir l'octroi ou le refus tacite. Les intérêts servis par l'une et l'autre option ne sont pas les mêmes. Dans son arrêt du 3 juillet 1998, VAN DER STICHELEN, 74948, le Conseil d'Etat a mis en évidence les choix de politique que contenait l'option pour le refus ou le permis tacite. Dans le dernier cas , il s'agit de favoriser la liberté du commerce et de l'industrie ou à tout le moins l'exercice d'une activité[20]. Le permis tacite est alors la négation de l'utilité de soumettre le comportement à autorisation. Le refus tacite sert l'intérêt de police qui avait justifié l'instauration de l'autorisation, en l'espèce le droit à la protection d'une environnement sain (article 23 de la Constitution) ou le bon aménagement du territoire… Mais aucune de ces solutions aveugles n'est satisfaisante. Par leur portée radicale, elles sont disproportionnées. Elles sacrifient nécessairement les autres intérêts que l'autorité chargée d'autoriser devait également apprécier.

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

Le permis tacite, choix favorable au demandeur est-il une permission légale d'agir sans permis ou une autorisation tacite?[21] La question est d'importance, dans le premier cas, il n'y a pas d'acte administratif susceptible de recours ; dans le second, il y en a un. En matière d'urbanisme, c'est la première branche que la Cour de cassation à retenue dans un arrêt du 19 avril 1991[22]. Le Conseil d'Etat a retenu la même solution dans son arrêt du 3 juillet 1998, VAN DER STICHELEN, 74948, à propos de l'article 41 de l'ordonnance relative au permis d'environnement du 30 juillet 1992[23] [24]. Dans cet arrêt, à défaut d'acte susceptible de recours, le Conseil d'Etat n'a pas pu poser de question à la Cour d'arbitrage sur la conformité de cette législation aux articles 10 et 11 de la Constitution.

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

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

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

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

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

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

L'autorisation tacite condamnée par la Cour d'arbitrage

Toutefois le juge de référés du tribunal de première instance de Bruxelles a interrogé la Cour d'arbitrage à l'occasion d'une action de tiers qui se sont adressés à lui pour faire interdire provisoirement sous peine d'astreinte, la poursuite des travaux de construction entrepris sous le bénéfice de l'article 137 de l'OOPU qui contient une disposition similaire à celle de l'article 41 de l'ordonnance relative au permis d'environnement de 1992. La Cour a estimé que l'autorisation tacite n'était pas un acte administratif mais un effet direct de l'ordonnance et qu'il n'y avait donc pas de décision à entreprendre devant le Conseil d'Etat [25]. Même en l'absence d'acte administratif, le contrôle de la situation par le juge judiciaire est possible. Cette faculté d'agir sans permis a été justifiée par la volonté de ne pas pénaliser le demandeur de permis victime de l'incurie de l'administration. Le moyen est pertinent, juge la Cour. Toutefois, ce système porte une atteinte disproportionnée aux «droits des tiers» malgré la possibilité de saisir le juge judiciaire. Les tiers et les demandeurs sont privés du service d'une administration spécialisée chargée d'apprécier leur situation in concreto et du contrôle par le juge de cette appréciation, qu'il s'agisse du Conseil d'Etat ou du juge judiciaire. En outre, «charger le juge judiciaire, dans de telles circonstances, de substituer son appréciation au pouvoir discrétionnaire de l'administration reviendrait à lui reconnaître une compétence incompatible avec les principes qui régissent les rapports entre l'administration et les juridictions». «Il en résulte une atteinte disproportionnée aux droits des tiers intéressés, ce qui discrimine cette catégorie de personnes par rapport à celles auxquelles un contrôle juridictionnel est garanti»[26]. Le législateur bruxellois s'incline. La révision de l'article 137 est en cours[27].

Plus récemment la Cour a été saisie d'une question portant sur l'article 52 de l'ancien CWATUP qui contenait un dispositif identique à celui de l'article 137 de l'OOPU. Par son arrêt 156/2003, elle a tranché dans le même sens, par identité de motifs[28].

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

En revanche, quand le législateur tire du silence de l'autorité de recours que la décision entreprise sortira ses effets, comme c'est le cas à l'article 121 in fine du CWATUP, par exemple, il ne se heurte pas à l'enseignement de l'arrêt 78/2001[29]. De nombreuses observations peuvent être faites. La Cour ne donne pas d'indication sur les droits des tiers dont elle affirme pourtant

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

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

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

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

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

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

L'autorisation tacite condamnée par la Cour de Justice

Quand une directive communautaire exige qu'un projet soit soumis à autorisation préalable, l'organisation d'un mécanisme d'autorisation tacite n'est pas de nature à exécuter convenablement le droit communautaire (CJCE, 28 février 1991, C-360/87, Commission c/ Italie, Rec. I, p 791, en matière d'eaux souterraines). Cette décision est confirmée, en ce qui concerne les autorisations tacites, par l'arrêt du 14 juin 2001, Commission c/ Belgique, C-230/00, à l'occasion d'une affaire dans laquelle la Commission critiquait une série de législations belges au regard de nombreuses directives de protection de l'environnement. La Cour de Justice juge que les autorités nationales sont tenues «d'examiner au cas par cas toutes les demandes d'autorisation introduites»[30].

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

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

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

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

L'amende forfaitaire

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

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

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

L'Etat belge a récemment été condamné par la Cour européenne des droits de l'homme pour violation de l'article 6, §1, de la Convention. La Cour a en effet constaté le non-respect du délai raisonnable relativement à une procédure administrative dans un arrêt «Entreprises Robert DELBRASSINE S.A.» contre Belgique, le 1er juillet 2004. Par ailleurs, on note que la Cour pourrait aboutir à une conclusion identique dans une affaire VAN PRAET contre Belgique, à propos de laquelle elle a rendu, le 28 octobre 2004, une décision de recevabilité. La longueur d'une procédure administrative était également en cause. Nous examinons succinctement ces deux affaires ci-après.

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

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

soulevée par le gouvernement ne pouvait être retenue et reporta l'examen du grief sur le fond, estimant que celui-ci posait « de sérieuses questions de fait et de droi t»[31].

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BOSNIA AND HERZEGOVINA*

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

Yes.

Case-law of the Constitutional Court

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

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

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

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

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

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

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

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

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

NO.

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

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

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

There is no specific deadline.

10. What are the available forms of redress :

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

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

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

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

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

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

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

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

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BULGARIA*

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

Yes.

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

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

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

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

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

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

"1. Each party may lodge a complaint about delays at every stage of the case, including after oral argument, when the examination of the case, the delivery of judgement or the transmitting of an appeal against a 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 the proceedings complained of which are already completed.

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

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

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

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

NO. There is no fee for using the remedy.

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

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

10. What are the available forms of redress :

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

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

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

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

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

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

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CROATIA*

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

Yes, in all types of proceedings.

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

Yes. Case-law of the Constitutional Court:

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

Case-law of the European Court of Human Rights

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. What are the available forms of redress :

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

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

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

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

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

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

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

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

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

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

In a recent judgement, *Debelic v. Croatia* (judgement of 26/05/2005), the Court reaffirmed the adeqaucy 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.

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CYPRUS

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

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

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

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

Case-Laws of National Courts

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

Case Law of the European Court of Human Rights

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

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

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

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

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

No.

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

(a) In Criminal cases, the accused may raise the issue that his constitutional right for a trial within a reasonable time has been violated and that he should be acquitted. The Court will examine the argument based on the criteria established by the European Court of Human Rights. And we had cases with this result.

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

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

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

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

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

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

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

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

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

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

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

10. What are the available forms of redress:

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

11. Are these forms of redress cumulative or alternative?

These forms of redress are cumulative.

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

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

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

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

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

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

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

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

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

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

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

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

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

No.

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CZECH REPUBLIC*

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

Yes. Case-law of the Constitutional Court

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

By its decision no. Pl. ÚS 6/98 of 17 February 1998 the Constitutional Court decided that the right to a hearing without unjustified delays corresponded to the courts' obligation to comply with the principle of fair trial, without it being possible to draw a distinction between the various elements of judicial power.

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

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

procedural delays had entailed an infringement of the principle of fair trial or other substantive rights guaranteed by the Constitution.

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

Case-law of the European Court of Human Rights:

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

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

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

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

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

Law no. 82/1998 on State liability for damage caused in the exercise of public authority by an irregularity in a decision or the conduct of proceedings (in force since 15 May 1998) in its Section 13 provides that the State is liable for damage caused by an irregularity in the conduct of proceedings, including non-compliance with the obligation to perform an act or give a decision within the statutory time-limit. A person who has suffered loss on account of such an irregularity is entitled to damages which section 31(2) requires to include reimbursement of the costs incurred by the claimant in respect of the proceedings in which the irregularity occurred, in so far as those costs are linked to the irregularity.

Law no. 182/1993 on the Constitutional Court
Section 82(3) provides that when the Constitutional Court upholds a constitutional appeal it must either set aside the impugned decision by a public authority or, where the infringement of a right guaranteed by the Constitution is the result of an interference other than a decision,

forbid the authority concerned to continue to infringe the right and order it to re-establish the status quo if that is possible.

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

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

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

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

None.

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

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

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DENMARK

1. Does your country experience excessive delays in judicial proceedings? what 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? What courts (national/ European Court of Human Rights)? Please provide some examples in English or French or reference to ECtHR 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.

<u>Case-law of national courts</u>

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* (judgement 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. Are any statistical data available about the proportions of this problem in your country? If so, please provide them 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 available also 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 Q5) – 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 with, 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
  - 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)

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 with, 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 ECtHR.

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 case of non-enforcement of such 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 Q2, 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 Q6.

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

There are unfortunately no statistics available. Please refer to the summaries mentioned in the reply to Q6.

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* (judgement 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.

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ESTONIA

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

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

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

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

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

Case-Law of the National Courts

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

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

"8. The criminal Chamber does not agree with the appellant [Rüngas], that invalidating the acquittal twice by the Appellate Court would necessitate the termination of proceedings due to the passing of reasonable time for conducting the proceedings. When judging the reasonability of the length of the proceedings, the Supreme Court analyzes the complexity of the case, deadlines for the preliminary investigation and judicial proceedings, as well as the 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 (Judgement of 20 January 2004; the proceedings against him were initiated in May 1999). Then, the Supreme Court further specified its position:

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

times the case has been sent for further consideration to the lower courts or to the investigative authorities.

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

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

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

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

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

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

According to the Ministry of Justice,[32] 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.

[32] 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

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

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

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

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

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

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

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FINLAND

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

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

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

Case-Law of the National Courts

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

Case-Law of the European Court of Human Rights

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

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

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

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

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

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

Courts of Appeal
- private law cases 8,6 months

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

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

Supreme Administrative Court
- 11 months (year 2003)

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

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

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

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

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.

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FRANCE*

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

Generally yes.

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

Yes.

Case-law of the national courts

Among many cases, see for example, the judgements of the Tribunal de Grande Instance (Paris) of 9 June and 22 September 1999, the Aix en Provence and Lyon Courts of Appeal judgements 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* (judgement of 4 September 1999), *Delgado v. France* (judgement of 14 November 2000), *Piron v. France* (judgement of 14 November 2000), *Serra v. France* (judgement of 13 June 2000) and *Mutimura v. France* (judgement 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 do 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).

4. 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.

5. Is this remedy available also 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.

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

When assessing the reasonableness of the length of the proceedings, the competent authorities base themselves on the criteria set out by the European Court.

8. 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?

9. What are the available forms of redress :

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

10. 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.

11. 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.

12. 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 34.1, but only for those applications that are lodged with the Court before 20 September 1999. See also *Mutimura v. France* (judgement 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.)

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GEORGIA

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

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 Defense 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, Judgement,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, Judgement, 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.

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 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.[33]

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.

[33] Kudla v. Poland para 124.

"Examining the criminal case before a district (city) court, the term of detention in custody of the person on trial, before the sentence or other final judgment is rendered, after referral of the case to court shall not exceed 12 months.

Examining the case at first instance, by way of appeal and cassation, in the Supreme Court of Georgia, in the Supreme Courts of the Autonomous Republics of Abkhazia and Ajara, in the Regional courts of Tbilisi and Kutaisi, the total term of detention in custody of a convicted person shall not exceed 24 months. In exceptional cases, upon proposal of the court examining the case, the term for further 6 months may be prolonged by the President of the Supreme Court of Georgia. Further prolongation of the term of detention in custody of the convicted person shall be inadmissible." [34]

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 inquirer, 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 inquirer, investigator or prosecutor to satisfy the motion, complaint or application".[35]

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".[36]

"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 body of inquiry, inquirer, investigating body, investigator, prosecutor".[37]

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 inquirer, body of inquiry, investigator, head of investigating department or prosecutor may be lodged within the whole period of inquiry and pre-trial investigation".[38]

The terms of consideration of appeals are determined by a procedure established by this Code.

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[34] Article 162 of the Code of Criminal Procedure

[35] Article 15, para 4, Code of Criminal Procedure

[36] Article 21, para 1, Code of Criminal Procedure.

[37] Article 45 para 2, Code of Criminal Procedure.

[38] Article 236, para 1, Code of Criminal Procedure.

Participants to the proceedings have the right to require the consideration of a case in no less than two judicial instances:[39] appeal and cassation, Here the Code provides for terms of lodging appeals with the court and other judicial guarantees.

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."[40]

c) 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…".[41] Disciplinary liability maybe initiated by the President of the Supreme Court, Presidents of the Supreme Courts of the Autonomous Republics of Ajara and Abkhazia, Heads of regional courts of Tbilisi and Kutaisi, Council of Justice of Georgia and Councils of Justice of the Autonomous Republics of Ajara and Abkhazia.[42] Whereas 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.

d) 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 jail term extending from three to six months or by imprisonment for up to a two-year term, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years."[43]

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[39] Article 517, Code of Criminal Procedure.

[40] 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).

[41] 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".

[42] Article 6, law of Georgia "On disciplinary proceedings and disciplinary liability of judges of the courts of general jurisdiction of Georgia".

[43] 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? what proceedings (civil, criminal, administrative, enforcement)?

Yes.

2. Have such delays been acknowledged by court decisions? What courts (national/ European Court of Human Rights)? Please provide some examples in English or French or reference to ECtHR 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 immidiately in order to promote the progress of the proceedings and to work towards their prompt conclusion.

The Third Chamber of the Second Panel 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.

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* (judgement of 15 July 1982) for civil proceedings, *Uhl v. Germany* (judgement of 10 February 2005) for constitutional proceedings, or *H.T. v. Germany* (judgement of 11 October 2001).

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, guarantees an accused in proceedings dealing with an administrative offence, as well as to 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.

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, any over-stepping of the "reasonable time" within the meaning of Article 6.1 ECHR, constitute a "suitable means of affording reparation" for the violation of the Convention.

In 2004, in the case *Surmeli v. Germany* (decision of 29 April 2004), the question of an effective domestic remedy for excessive length of civil proceedings has been put to the German authorities.

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GREECE

1. Does your country experience excessive delays in judicial proceedings? what 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? What courts (national/ European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR case-law.

Case-law of the European Court of Human Rights

Among many cas4es 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. Are any statistical data available about the proportions of this problem in your country? If so, please provide them in English or French.

No

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

No

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

The 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.

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 case of non-enforcement of such 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 judgement of 10 April 2003 in *Konti-Arvaniti* v. *Greece* case and later on in *Lalousi-Kotsovos v. Greece* case (judgement 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).

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HUNGARY*

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

Case-law of the European Court of Human Rights

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 3 (2) 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 January 1993, 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.

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 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.

Furthermore, 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.

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 an effective remedy as it does not guarantee any redress for the length of proceedings.

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 finaly concluded saying 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.

In *Simko v. Hungary* case (decision of 12 march 2002) the Court noted that there was no 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.

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ITALY*

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

Yes.

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

Case-law of the European Court of Human Rights

In *Di Mauro v. Italy*, (judgement of 28 July 1999), 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.

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

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

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

See the answer to question number 2.

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

YES.
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 available also in respect of pending proceedings? how?

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

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

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

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

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

10. What are the available forms of redress :

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

The remedy is 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 with, those applied by the European Court of Human Rights? Is there a maximum amount of compensation to be awarded?

There is no limit as to the amount of compensation.

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

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

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

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

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

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

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

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LITHUANIA

1. Does your country experience excessive delays in judicial proceedings? What 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? What 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 judgements of the Supreme Court of Lithuania in both civil and criminal proceedings (judgement of 13 May 2004 in the case of *Bolotovas* v. *the Lithuanian State*, the judgement of 1 June 2004 in the case of *Leparskienė* v. *Burčikas*, the judgement of 22 November 2004 in the case of *Šiaulys* v. *General procurator* (criminal proceedings); the judgement of 4 September 2002 in the case of *Girdžiūnas* v. *Girdžiūnienė*, the judgement 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* (judgement of 10 October 2000), *Šleževičius v. Lithuania* (judgement of 13 November 2001), *Meilus v. Lithuania* (judgement of 6 November 2003), and *Girdauskas v. Lithuania* (judgement 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 judgement 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. Are any statistical data available about the proportions of this problem in your country? If so, please provide them 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 paragraph 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 judgement.

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 judgement 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 judgement" (Article 346 paragraph 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 judgement 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 available also 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 with, 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 with, 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.

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LUXEMBOURG*

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 the case *Rezette v. Luxembourg* (judgement of 13 July 2004), the Court considered that a State liability action under the Law on State responsibility has not yet acquired a sufficient degree of certainty to be considered an effective remedy in the sense of article 35 § 1 of the Convention.

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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, according to Article 152 (1) of Chapter 12 of the Laws of Malta, the Registrar of the Court has the duty to list an appealed cause 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 with, 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 with, 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.

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NETHERLANDS

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

A great majority of judicial proceedings come to an end within a reasonable time. However, 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? What courts (national/European Court of Human Rights)? Please provide some examples in English of French or reference to ECtHR case-law.

Case-Law of the National Courts

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

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

In a 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* (judgement of 29 July 2003).

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

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

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

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

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

Dutch law does not provide a specific remedy nor a specific procedure to obtain a remedy. There is the general remedy of a civil action against the State for tort, but tort actions for violation of the reasonable-time requirement have been instituted only very seldom and have not been successful so far. Consequently, the European Court of Human Rights has held that in this respect there are no effective remedies to be exhausted before a complaint is lodged in Strasbourg (judgement of 3 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 judgement of 3 October 2000 (NJ 2000, 721), the Supreme Court has developed general guidelines for criminal cases in this respect.

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

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

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

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

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

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

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

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

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

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

10. What are the available forms of redress:

- acknowledgement of the violation YES

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

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

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

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

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

In the administrative phase, an interested party may institute proceedings against failure to act.

In judicial proceedings, the parties may ask the court to speed up the proceedings and, in case of urgency and danger of irreparable damage, may request provisional measures. There is, however, no special action for speeding up proceedings.

- possible reduction of sentence in criminal cases YES

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

- other (specify what) NO

11. Are these forms of redress cumulative or alternative?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. What is the general assessment of this remedy?

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

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

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

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

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

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POLAND*

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

Yes.

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

Among many cases where the European Court declared violation of Article 6 §1 of the Convention with respect to Poland, see for example the following cases :

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* judgement of 26 October 2000, the Polish authorities adopted the Act of 17 June 2004 on a complaint against violation of the party's right to have a case examined without undue delay in judicial proceedings.

This Act established a specific remedy in respect of excessive delays in judicial and (civil and criminal) as well as administrative proceedings allowing speeding-up lengthy proceedings.

In addition, the new Article 417 of the Civil Code provided for a new regime of liability of the State for damage caused by public authority.

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

The specific remedy established by the Act of 17 June 2004 and allowing for the speeding-up of lengthy proceedings is available in respect of pending proceedings ONLY. The party in the proceedings may lodge a complaint seeking to determine that in the proceedings complained of there has been a violation of his or her right to have a case examined within a reasonable time. The competence to adjudicate complaints is vested to the court superior over the court that examines the proceedings as to the merits.

The party whose complaint as to the excessive length of the pending proceedings has been allowed may in addition, in separate proceedings and 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, there is a fixed fee which 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 with, 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 11 of the Act provides that the competent court will issue its decision on a complaint within two months from the date of lodging the complaint.

10. What are the available forms of redress :

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

11. Are these forms of redress cumulative or alternative ?

They may also be cumulative.

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

When the Court orders pecuniary compensation there is a maximum amount that can be awarded.

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. New Polish legislation was introduced on 17 September 2004 in response to the European Court of Human Right's Grand Chamber judgment in the case *Kudła v. Poland* (judgment of 26 October 2000), in which the Court held that the lack of an effective remedy for a breach of the right to a hearing within a reasonable time was in violation of Article 13.

The European Court of Human Rights 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.

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 *Krasuski v. Poland* case (judgement of 14 June 2005), the ECHR considered that from 17 September 2004, the date on which the 2004 Act entered into force, an action for damages based on Article 417 of the Civil Code acquired a sufficient level of certainty to become an "effective remedy" within the meaning of Article 13 of the Convention.

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PORTUGAL*

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

Yes**.**

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

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RUSSIAN FEDERATION*

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

Yes.

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

Yes. See for example the following cases : *Smirnova v. Russian Federation* (judgment of 24 October 2003), *Kormacheva v. Russian Federation* (judgment of 29 April 2004), Plaksin v. Russian Federation (judgment f 10 November 2004).

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 decision to remit the case for further investigation taken by a first instance court may be appealed to a higher court. This was established by the Constitutional Court in its judgment No. 20-П of 2 July 1998 on the compatibility of Articles 331 and 446 of the Code of Criminal Procedure with the Constitution. The ordinary rules of "cassation" appeal apply to such proceedings. This means that the higher court has competence, *inter alia*, to find the first instance decision unlawful and to order the court proceedings be resumed.

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 No. 5-П of 23 March 1999. The court may annul any unreasonable or unlawful extension.

Article 1070 § 1 of the Civil Code provides for liability of the State for damages caused by its agents acting in their official capacity. The Constitutional Court in its judgment of 25 January 2001 expressly confirmed the possibility to award damages for excessive length of proceedings under this provision, and ruled that it was not limited to cases in which the responsible judge was convicted of miscarriage of justice.

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

The 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 NO
- possible reduction of sentence in criminal cases
- 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 *Kormacheva v. Russia* case (judgement of 14 June 2004), the Court considered that there is no legal remedy allowing an applicant to obtain relief – either preventive or compensatory – for the excessive delay of proceedings.

In *Nikitin v. Russia* case (decision of 13 November 2003), the Court noted the case-law of the Russian Constitutional Court according to which the authorities may be held liable in tort for excessive length of proceedings without pronouncing on its effectiveness.

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SERBIA AND MONTENEGRO

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

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

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

The delays have not been acknowledged by decisions of domestic courts, as until recently, no-one has sued the State for damages caused by unreasonably long judicial proceedings. The recent cases are still pending, and no final judgements have been rendered. The European Court of Human Rights is yet to decide a case against Serbia and Montenegro.

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

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

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

No reliable statistics exist at this time.

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

There are two types of remedies available.

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

Second, a new central monitoring body has been established by the recent amendments to the Law on Judges. This Oversight Board is comprised of five justices of the Supreme Court, and has the authority to inspect any case, pending or concluded before any court in Serbia, and can institute disciplinary proceedings against a judge who has not performed his or her duties in a conscientious and competent manner, and can recommend the judge to be dismissed from office.

Any party can file a complaint to the Oversight Board, or to the president of the court which is deciding on the particular case. The Board does not have the power to award damages. Presidents of the courts do not have the authority to inspect a case in order to determine whether the judge is performing his or her duties adequately; they can only involve themselves in matters of judicial administration (e.g. case-load, frequency of delays and so on).

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

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

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

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

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

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

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

There is no specific deadline.

10. What are the available forms of redress :

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

11. Are these forms of redress cumulative or alternative?

Cumulative.

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

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

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

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

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

The same authority which has delivered the decision.

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

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

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

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

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

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

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

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

No reliable statistical data is available.

19. What is the general assessment of this remedy?

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

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

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

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

No.

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SLOVAKIA*

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

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

Yes. Case-law of the Constitutional Court

In its decision No. III. ÚS 17/02-35 of 30 May 2002, the Constitutional Court found, upon a complaint under Article 127 of the Constitution, a violation of Article 48 § 2 of the Constitution and of Article 6 § 1 of the Convention as a result of undue delays in proceedings

concerning the plaintiff's action for recovery of property filed with the general court on 24 February 1999. The Constitutional Court decided, with reference to the particular circumstances of the case and to the practice of the European Court of Human Rights under Article 41 of the Convention, to award SKK 5,000, noting that that the district court in question was obliged to pay that sum within two months after the Constitutional Court's decision had become binding. Finally, the Constitutional Court ordered the district court concerned to proceed with the case without delays.

In 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.

The Constitutional Court has subsequently delivered several other decisions to the same effect.

Case-law of the European Court of Human Rights:

Amongst others, in *Beňačkova v. Slovak Republic* (judgement of 17 June 2003), *Piskura v. Slovak Republic* (judgement 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.

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 loos can introduce a legal suit.

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

Yes (see under Q5).

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

No information available.

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 ?

When assessing the reasonableness of the length of the proceedings, the authorities 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 ?

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.

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
- other (specify what)

11. Are these forms of redress cumulative or alternative?

Cumulative.

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

When deciding on the claim for pecuniary compensation, the Constitutional Court generally also considers the relevant case-law of the EctHR.

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. 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.

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SLOVENIA*

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

Yes**.**

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

Yes. See for example, the *Majaric v. Slovenia* case (judgment of 8 February 2000).

There are approximately 500 length-of-proceedings cases currently 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 within reasonable time is guaranteed be Article 23§1 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.

The protection of the right to a trial within 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.

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

Yes.

10. What are the available forms of redress:

- acknowledgement of the violation — YES
- pecuniary compensation
  - material damage — YES
  - non-material damage — YES
- measures to speed up the proceedings, if they are still pending — NO
- possible reduction of sentence in criminal cases
- 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 *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. This view has been confirmed very recently in the *Lukenda v. Slovenia* case (judgment of 6 October 2005).

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SPAIN*

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

Yes**.**

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

Yes. See for example, the following 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?

The right to a trial within reasonable time is guaranteed be 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 civil 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…"

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

Only the *amparo* 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 with, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

The criteria specified 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?

No information available.

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
- other (specify what)

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 *Gonzales Marin v. Spain* (decision of 5 October 1999) and *Fernandez-Molina Gonzalez and Others v. Spain* (decision of 8 October 2002).

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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 its choice of sanction and in its determination of the appropriate punishment, take into account whether an unnaturally long time has elapsed since the commission of the offence.

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).

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 available also in respect of pending proceedings ? how ?

Yes. See Q5.

7. What are the available forms of redress :

- acknowledgement of the violation YES
- pecuniary compensation
  - material damage YES
  - non-material damage
- measures to speed up the proceedings, if they are still pending YES
- possible reduction of sentence in criminal cases YES
- other (specify what)

8. Are these forms of redress cumulative or alternative ?

Cumulative.

9. 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 Q 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.

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SWITZERLAND*

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

In two recent cases – *M.B. v. Switzerland* (judgement of 30 November 2000) and *G.B. v. Switzerland* (judgement 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."[44]

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).

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.[45]

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

The criteria applied by the European Court of Human Rights.

[44] Federal Court Judgment of 7 June 1991, JdT 1993 IV 189 (= ATF 117 IV 124 (129), preambular paragraph 3d). Cf. also Federal Court Judgment of 17 February 1998, ATF 124 I 139 (141), preambular paragraphs 2b and c.

[45] 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.

8. What are the available forms of redress :

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

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"[46]. 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 Q5).

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 c. 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.

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UKRAINE*

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

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

Yes.

Case-law of the European Court of Human Rights.

In its decision *Merit v. Ukraine* (judgement of 30 march 2004), the European Court found the violation of Article 6 § 1.

[46] Federal Court Judgment of 7 June 1991, ATF 117 IV 124 (128), preambular paragraph 3b.

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.

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

Yes, in criminal proceedings (Article 234 of the Code of Criminal Procedure). See under Q5.

10. What are the available forms of redress :

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

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* (judgement 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”.

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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? what 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 [47] 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".[48]

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.[49] 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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47 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).

48 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.

49 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.[50] 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)[51] 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).[52] 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.[53] 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.[54]

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

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.[55]

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50 See e g *Stubbings v United Kingdom* (1996) 23 EHRR 213.

51 See CPR, Part 54.

52 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.

53 See *Attorney-General's Reference (No 1 of 1990)* [1992] QB 630

54 *R v Brentford Magistrates, ex p Wong* [1981] QB 445.

55 *Goose v Wilson Sandford & Co* The Times, 19 February 1998. See also *Cobham v Frett* [2001] 1 WLR 1775.

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.[56]

The ECHR Case-Law

The UK has been found guilty of breaching the "reasonable time" requirement in the following cases: *H v UK* (Judgement of 8 July 1987), D*arnell v UK* (Judgement of 26 October 1993), *Robins v UK* (Judgement of 1997), H*owarth v UK* (Judgement of 21 September 2001), *Somjee v UK* (Judgement of 15 October 2002), *Mitchell v UK* (Judgement of 17 December 2002), O*basa v UK* (Judgement of 16 January 2003), *Price and Lowe v UK* (Judgement of 29 July 2003), *Foley v UK* (Judgement of 22 October 2003).

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.

[56] *Bangs v Connex South Eastern Ltd* [2005] EWCA Civ 14, [2005] 2 All ER 316.

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. Are any statistical data available about the proportions of this problem in your country? If so, please provide them 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 n° 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."[57] 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.[58]

6. Is this remedy available also 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 with, 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?

Not applicable

10. What are the available forms of redress:

- acknowledgement of the violation YES
- pecuniary compensation
  - material damage
  - non-material damage
- 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)

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57 Ibid, para 108] (Lord Hope).

58 *R v Lord Advocate* [2002]UKPC D3, [2003] 2 WLR 317.

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 with, 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 with 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 case of non-enforcement of such 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. Are there any available statistical data 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.

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.[59]

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.[60] 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:

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59 *Attorney-General's Reference (No 2 of 2001)* [2003] UKHL 68; [2004] 2 AC 72.

60 Prosecution of Offences Act 1985, s 22; and Prosecution of Offences (Custody Time Limits) Regulations 1987 (S.I. 1987/229).

(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. [61] 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. [62]

61 *R v Leeds Crown Court ex p Bagoutie,* Times Law Report, 31 May 1999.

62 *R (Gibson) v Crown Court at Winchester* [2004] EWHC 361, [2004] 1 WLR 1623.