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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

APPENDIX

**REPLIES TO THE QUESTIONNAIRE
ON NATIONAL REMEDIES
IN RESPECT OF
EXCESSIVE LENGTH OF PROCEEDINGS

IN ROMANIA**

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

Yes (civil, criminal, enforcement).

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.

European Court of Human Rights (*Tudorache vs. Romania* – 29.09.2005, *Pantea vs. Romania* – 3.06.2003, *Moldovan and others vs. Romania* – 12.07.2005, *Strain and others vs. Romania* – 21.07.2005).

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

Yes, it exists in the Constitution (Article 21).

Also, in Romanian law, the European Convention of Human Rights is directly applicable, as provided by Articles 11 and 20 of the Constitution.

Article 10 of the Law on judicial organization also provides it: “All persons are entitled to a fair trial and to the resolution of cases within a reasonable time, by an impartial and independent court, set-up according to the law”.

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

Yes. Recent statistics are available, drawn up by the Superior Council of Magistracy. One statistic concerns the length of civil and commercial cases, shown in percents. The other shows the solving term for cases at various degrees of jurisdiction.

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

No.

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?

Although a remedy, as such, does not exist in domestic law, Romanian judges take the criteria provided by the ECHR’s case-law into account when solving certain demands (e.g.: postponement requests, challenging a judge for bias requests).

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

No.

10. What are the available forms of redress :

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

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

No.

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

Through the Judicial Inspection Direction, the Superior Council of Magistracy analyzes the narrow application of regulations of procedures regarding the *sanctioning of facts that obstruct the good development of the trials, including the unjustified delay of case solving due to litigants, lawyers, witnesses, experts or other persons contributing to the fulfilment of the act of justice*. SCM elaborates quarterly reports in this respect.

A seminar was organized between 6th and 8th of June 2005, regarding the optimum volume of activity for establishing criteria on which the magistrates' work would be measured. According to the final report of the seminar, elaborated by the Romanian magistrates in collaboration with foreign experts, the scheme of work volume should be based on time lots assigned for *solving cases classified on categories*, as well as *fulfilment of other activates within court, classified on categories*. In this way, the individual annual work volume could be defined by number of cases/activities that can be achieved during the magistrates' and auxiliary staff' legal annual number of hours, by the formula: the annual work volume, as number of cases to be solved, results from dividing the magistrates' annual number of work minutes, to the time assigned to resolving different categories of cases/tasks.

Work volume must be established for relevant categories of solved cases at different levels of jurisdiction, having in mind the differences between organization, procedure and stage of trial, making a difference between first instance, appeal and second appeal. Also, special workload must be considered for executive positions etc.

Solving term for cases at first instances courts on quarters I, II and III 2005

| Matter | Period | Total solved | Term | | | | |
|------------------------|--------|--------------|------------|-------------|-----------|-----------|--------------|
| | | | 0-6 months | 6-12 months | 1-2 years | 2-3 years | Over 3 years |
| Commercial litigations | T1 | 26665 | 25822 | 754 | 87 | 0 | 2 |
| | T2 | 27501 | 26581 | 752 | 214 | 0 | 0 |
| | T3 | 24848 | 24347 | 366 | 135 | 0 | 0 |
| Civil litigations | T1 | 147214 | 131652 | 10321 | 4783 | 333 | 125 |
| | T2 | 160626 | 143480 | 10303 | 5796 | 806 | 195 |
| | T3 | 108962 | 100131 | 5644 | 2910 | 190 | 87 |
| Criminal litigations | T1 | 62958 | 54921 | 6972 | 956 | 92 | 17 |
| | T2 | 61578 | 53987 | 6496 | 1003 | 70 | 22 |
| | T3 | 38140 | 34822 | 2780 | 497 | 30 | 11 |

Solving term for cases at tribunals on quarters I, II and III 2005

MERITS OF THE CASE

| Matter | Period | Total solved | Term | | | | |
|------------------------|--------|--------------|------------|-------------|-----------|-----------|--------------|
| | | | 0-6 months | 6-12 months | 1-2 years | 2-3 years | Over 3 years |
| Commercial litigations | T1 | 12340 | 9771 | 1388 | 677 | 317 | 187 |
| | T2 | 15168 | 12440 | 1288 | 930 | 269 | 241 |
| | T3 | 8587 | 6946 | 904 | 418 | 178 | 141 |
| Civil litigations | T1 | 22263 | 19481 | 1804 | 808 | 136 | 34 |
| | T2 | 25311 | 23568 | 1257 | 689 | 47 | 50 |
| | T3 | 28027 | 25939 | 1423 | 522 | 97 | 46 |
| Criminal litigations | T1 | 8258 | 7687 | 432 | 122 | 14 | 3 |
| | T2 | 8551 | 8061 | 377 | 95 | 16 | 2 |
| | T3 | 6424 | 6011 | 359 | 49 | 5 | 0 |

APPEAL

| Matter | Period | Total solved | Term | | | | |
|----------------------|--------|--------------|------------|-------------|-----------|-----------|--------------|
| | | | 0-6 months | 6-12 months | 1-2 years | 2-3 years | Over 3 years |
| Civil litigations | T1 | 7100 | 6243 | 487 | 271 | 75 | 24 |
| | T2 | 7602 | 6739 | 469 | 251 | 98 | 45 |
| | T3 | 4115 | 3663 | 292 | 88 | 56 | 16 |
| Criminal litigations | T1 | 6262 | 5902 | 317 | 39 | 4 | 0 |
| | T2 | 6395 | 6200 | 139 | 51 | 5 | 0 |
| | T3 | 3778 | 3643 | 110 | 22 | 3 | |

SECOND APPEAL

| Matter | Period | Total solved | Term | | | | |
|------------------------|--------|--------------|------------|-------------|------------|-----------|--------------|
| | | | 0-6 months | 6-12 months | 1-2 months | 2-3 years | Over 3 years |
| Commercial litigations | T1 | 3240 | 3110 | 118 | 10 | 2 | 0 |
| | T2 | 2923 | 2830 | 81 | 12 | 0 | 0 |
| | T3 | 1637 | 1529 | 92 | 16 | 0 | 0 |
| Civil litigations | T1 | 16756 | 15904 | 659 | 174 | 13 | 6 |
| | T2 | 15582 | 14778 | 622 | 132 | 46 | 4 |
| | T3 | 9571 | 9079 | 369 | 83 | 38 | 2 |
| Criminal litigations | T1 | 10857 | 10673 | 178 | 6 | 0 | 0 |
| | T2 | 11326 | 11225 | 95 | 6 | 0 | 0 |
| | T3 | 6868 | 6743 | 119 | 6 | 0 | 0 |

Solving term for cases at courts of appeal on quarters I, II and III 2005

MERITS OF THE CASE

| Matter | Period | Total solved | Term | | | | |
|----------------------------------|--------|--------------|------------|-------------|-----------|-----------|--------------|
| | | | 0-6 months | 6-12 months | 1-2 years | 2-3 years | Over 3 years |
| Contentious claims and civil law | t1 | 2756 | 2644 | 85 | 26 | 1 | 0 |
| | t2 | 2905 | 2794 | 96 | 8 | 5 | 2 |
| | t3 | 1534 | 1478 | 42 | 8 | 3 | 3 |
| Criminal law | t1 | 380 | 373 | 4 | 3 | 0 | 0 |
| | t2 | 412 | 405 | 7 | 0 | 0 | 0 |
| | t3 | 417 | 415 | 2 | 0 | 0 | 0 |

APPEAL

| Matter | Period | Total solved | Term | | | | |
|----------------|--------|--------------|------------|-------------|-----------|-----------|--------------|
| | | | 0-6 months | 6-12 months | 1-2 years | 2-3 years | Over 3 years |
| Commercial law | t1 | 1241 | 1018 | 198 | 6 | 1 | 18 |
| | t2 | 1462 | 1299 | 143 | 13 | 0 | 7 |
| | t3 | 525 | 475 | 41 | 8 | 1 | 0 |
| Civil law | t1 | 8440 | 7549 | 794 | 83 | 5 | 9 |
| | t2 | 8217 | 7116 | 816 | 260 | 14 | 11 |
| | t3 | 6719 | 5938 | 592 | 181 | 6 | 2 |
| Criminal law | t1 | 2081 | 2040 | 36 | 4 | 1 | 0 |
| | t2 | 2097 | 2076 | 18 | 3 | 0 | 0 |
| | t3 | 1522 | 1506 | 15 | 1 | 0 | 0 |

SECOND APPEAL

| Matter | Period | Total solved | Term | | | | |
|----------------|--------|--------------|------------|-------------|-----------|-----------|--------------|
| | | | 0-6 months | 6-12 months | 1-2 years | 2-3 years | Over 3 years |
| Commercial law | t1 | 3493 | 3331 | 151 | 9 | 2 | 0 |
| | t2 | 16206 | 16048 | 141 | 12 | 0 | 5 |
| | t3 | 13065 | 12955 | 105 | 5 | 0 | 0 |
| Civil law | t1 | 16636 | 15923 | 594 | 92 | 15 | 12 |
| | t2 | 16905 | 16254 | 567 | 62 | 12 | 10 |
| | t3 | 8025 | 7729 | 236 | 41 | 11 | 8 |
| Criminal law | t1 | 5432 | 5384 | 45 | 3 | 0 | 0 |
| | t2 | 5249 | 5235 | 13 | 1 | 0 | 0 |
| | t3 | 4749 | 4735 | 12 | 2 | 0 | 0 |

LENGTH OF THE PROCEEDINGS

Statistical data from the first 9 months of 2005 shows an **average of 91,9 % of all files rendered with a civil or commercial judgement within 0-6 months.**

First instance courts

| Matter | 0-6 months | 6-12 months | 1-2 years | 2-3 years | More than 3 years |
|-------------------|-------------------|--------------------|------------------|------------------|--------------------------|
| civil | 90% | 6% | 3,2% | 0,3% | 0,09% |
| commercial | 97,1% | 2% | 0,5% | - | - |

Tribunals – merits

| Matter | 0-6 months | 6-12 months | 1-2 years | 2-3 years | More than 3 years |
|-------------------|-------------------|--------------------|------------------|------------------|--------------------------|
| civil | 91,2% | 5,9% | 2,6% | 0,3% | 0,1% |
| commercial | 80,7% | 9% | 5% | 2% | 1,5% |

Tribunals – appeals

| Matter | 0-6 months | 6-12 months | 1-2 years | 2-3 years | More than 3 years |
|-------------------|-------------------|--------------------|------------------|------------------|--------------------------|
| civil | 88,4% | 6,6% | 3,2% | 1,2% | 0,4% |
| commercial | - | - | - | - | - |

Tribunals – second appeals

| Matter | 0-6 months | 6-12 months | 1-2 years | 2-3 years | More than 3 years |
|-------------------|-------------------|--------------------|------------------|------------------|--------------------------|
| civil | 94,8% | 3,9% | 0,9% | 0,2% | 0,02% |
| commercial | 95,7% | 3,7% | 0,4% | - | - |

Courts of appeal – merits

| Matter | 0-6 months | 6-12 months | 1-2 years | 2-3 years | More than 3 years |
|-------------------|-------------------|--------------------|------------------|------------------|--------------------------|
| civil | 96,1% | 3% | 0,5% | 0,1% | 0,06% |
| commercial | - | - | - | - | - |

Courts of appeal – appeals

| Matter | 0-6 months | 6-12 months | 1-2 years | 2-3 years | More than 3 years |
|-------------------|------------|-------------|-----------|-----------|-------------------|
| civil | 88,1% | 9% | 2% | 0,1% | 0,09% |
| commercial | 86,4% | 11,8% | 0,8% | 0,06% | 0,7% |

Courts of appeal – second appeals

| Matter | 0-6 months | 6-12 months | 1-2 years | 2-3 years | More than 3 years |
|-------------------|------------|-------------|-----------|-----------|-------------------|
| civil | 96% | 3,3% | 0,4% | - | - |
| commercial | 98,6% | 1,2% | 0,07% | - | - |

Workload

From the analysis of **statistical data of the first 9 months of 2005**, results a **decreasing average workload of cases/judge**:

| Trimester | First instance courts | Tribunals | Courts of appeal |
|---------------|-----------------------|-----------|------------------|
| Trimester I | 284 | 134 | 117 |
| Trimester II | 159 | 74 | 91 |
| Trimester III | 142 | 67 | 63 |

The number of pending cases decreased:

| Trimester | First instance courts | Tribunals | Courts of appeal |
|---------------|-----------------------|-----------|------------------|
| Trimester I | 481.229 | 177.093 | 80.250 |
| Trimester II | 270.632 | 95.691 | 61.701 |
| Trimester III | 244.288 | 85.536 | 42.145 |